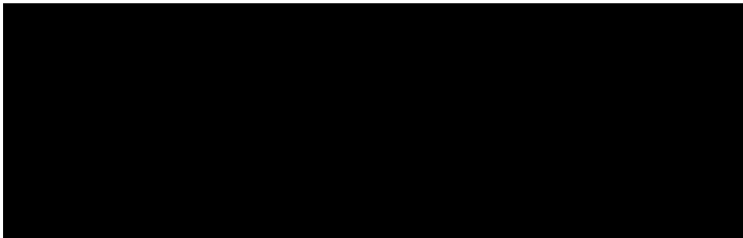


(No. 48757.—)

RITA RAE SKINNER, a Minor, v. REED-PRENTICE
DIVISION PACKAGE MACHINERY CO., Appel-
lant.—(Hinckley Plastic, Inc., Appellee.)

*Opinion filed December 12, 1977.—Supplemental opinion
filed on denial of rehearing January 26, 1978.—
Opinion modified March 1, 1978.*



[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

WARD, C.J., and UNDERWOOD and DOOLEY, JJ., dissenting.

Gerald E. Grashorn, Edward J. Wendrow, Frank L. Butler, and Stephen C. Bruner, all of Winston & Strawn, of Chicago, for appellant.

William H. Arpaia, Joseph B. Lederleitner, and Pretzel, Stouffer, Nolan & Rooney, of Chicago, for appellee.

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Plaintiff, Rita Rae Skinner, a minor, by Virginia Skinner, her mother and next friend, filed this action in the circuit court of Cook County seeking to recover damages for personal injuries suffered as the result of the alleged malfunction of an injection molding machine manufactured by defendant, Reed-Prentice Division Package Machinery Co. (hereafter manufacturer). The manufacturer filed a third-party complaint seeking contribution from the third-party defendant, Hinckley Plastic, Inc. (hereafter employer), by whom plaintiff was employed at

the time of her injuries. The circuit court allowed the employer's motion to dismiss the third-party complaint, the appellate court affirmed (40 Ill. App. 3d 99), and we allowed the manufacturer's petition for leave to appeal. The pleadings are adequately reviewed in the appellate court opinion, and it suffices here to state that plaintiff seeks to recover on the basis of strict liability in tort while the third-party complaint alleges negligence on the part of the employer. The relief asked by the manufacturer in its third-party complaint is "that if judgment be entered in favor of the plaintiff and against it that judgment be entered against the third party defendant and in favor of third party plaintiff in such amount, by way of contribution, as would be commensurate with the degree of misconduct attributable to the third party defendant in causing plaintiff's injuries."

In its dismissal order the circuit court observed that in *Gertz v. Campbell*, 55 Ill. 2d 84, this court "indicated that it might adopt the New York rule, because it stated, citing the *Dole* case [*Dole v. Dow Chemical Co.* (1972), 30 N.Y.2d 143, 282 N.E. 286, 331 N.Y.S.2d 382] 'to illustrate, there can and should be a continuing search for better solutions. The Court of Appeals of New York has recently supplanted this active-passage negligence criteria from indemnitee with one founded on equitable principles.'" It concluded, however, "that there is no decision in this state allowing contribution under the facts pleaded in the third party complaint." In affirming the judgment, the appellate court concluded that "a decision to apply theories of contribution in the instant case would require substantive and procedural formulations beyond the authority of this court" and that the issue presented was "the type of issue which should be decided by the highest court of this State ***." 40 Ill. App. 3d 99, 104.

The manufacturer argues that no decision of this court prohibits contribution between tortfeasors; that where the

tort was not intentionally committed, sound public policy requires that contribution between tortfeasors be permitted; that a manufacturer held liable on the basis of strict liability in tort should have a right of contribution against others who contributed to cause the injuries; and that if this court should adopt a rule of contribution, it should be based on the relative degree of fault rather than on the basis of equal apportionment among the number of wrongdoers. The employer argues that the long-established rule in this State is that there is no right of contribution among tortfeasors; that the only exception to the general rule is that a "passive" tortfeasor may obtain indemnity from an "active" tortfeasor; and that a manufacturer held strictly liable in tort cannot seek indemnity from the employer for the reason that public policy requires that the manufacturer's liability be considered "active."

This court's holdings concerning indemnity and contribution and the allocation among tortfeasors of the economic loss resulting from injuries have been much discussed by the bench and bar. (See, e.g., *Study Committee Report on Indemnity, Third Party Actions and Equitable Contributions*, 1976 Report of the Illinois Judicial Conference; *Report of Committee on Comparative Negligence*, 1964 Report of the Illinois Judicial Conference 110; *Moroni v. Intrusion-Prepakt, Inc.*, 24 Ill. App. 2d 534; *Sargent v. Interstate Bakeries, Inc.*, 86 Ill. App. 2d 187; Zaremski, *Expansion of Third Party Recovery: Common Law Indemnity, Contribution, Or ?*, 63 Ill. B.J. 684 (1975); Kissel, *Theories of Indemnity As Related to Third Party Practice*, 54 Chi. B. Rec. 157 (1973); Pöelle, *Contribution Among Negligent Joint Tortfeasors in Illinois: A Squeamish Damsel Comes of Age*, 1 Loy. Chi. L.J. 267 (1970); Feirich, *Third-Party Practice*, 1967 U. Ill. L.F. 236.) In its report submitted at the 1976 Judicial Conference, the Study Committee on Indemnity, Third Party Actions and Equitable Contributions presented a

comprehensive review of the historic development of the law and its application to various types of litigation and concluded that the present rule "is harsh and inequitable in operation" and "has resulted in a great deal of judicial effort in expanding the concept of indemnity creatively in order to avoid the harsh result inherent in the rule." It unanimously recommended the adoption of the principle of contribution among joint tortfeasors and recommended that liability among joint tortfeasors "be apportioned on the basis of their pure relative fault."

As the court, quoting from Prosser, Torts 278 (3d ed. 1964), observed in *Suvada v. White Motor Co.*, 32 Ill. 2d 612, 624: "There is an important distinction between contribution, which distributes the loss among the tortfeasors by requiring each to pay his proportionate share, and indemnity, which shifts the entire loss from one tortfeasor who has been compelled to pay it to the shoulders of another who should bear it instead." In *Nelson v. Cook*, 17 Ill. 443, an action by a sheriff against a judgment creditor to recover the sum he was compelled to pay for the conversion of another's property, this court, considering the distinction for the first time, said: "The principle laid down in *Merryweather v. Nixan* [(1799), 101 Eng. Rep. 1337], 8 Term R. 186, that there is no right of contribution as between tort-feasors, or trespassers, has been, and still is, recognized as unquestionable law. But this does not affect the right of indemnity where a right of indemnity exists." (17 Ill. 443, 449.) Based on the facts before it the court held that the sheriff had no right of implied indemnity.

Concerning *Merryweather*, the English authority upon which the court relied, the author of a frequently cited law review article said:

"It is singularly unfortunate, and has led to misunderstanding, that *Merryweather v. Nixan* should have been continually treated as stating the 'general rule.' As a

matter of fact that case states not the rule, but the exception. The general rule is that among persons jointly liable the law implies an assumpsit either for indemnity or contribution, and the exception is that no assumpsit, either express or implied, will be enforced among wilful tort-feasors or wrongdoers.

* * *

In considering the facts in *Merryweather v. Nixan*, and in applying that decision, it is important to bear in mind that the meaning of the word 'tort' at the time of the decision in 1799 was limited and narrow. None of the early writers, such as Bacon, accurately defined torts, but the actions which they treat as torts are practically all actions such as batteries, slanders, etc., which were, of course, wilful or intentional wrongs. At that time the word 'tort' had not come to be applied to the vast number of *quasi delicts* now known and classified as actions sounding in tort and arising out of mere negligence or unintentional injury. The classification of such actions as technical torts is of comparatively recent date. It is, therefore, vital to a correct understanding of the decision, that this limited meaning of the word 'tort'—*i.e.*, a wilful or intentional wrong—be remembered." Reath, *Contribution Between Persons Jointly Charged for Negligence—Merryweather v. Nixan*, 12 Harv. L. Rev. 176, 177-78 (1898).

In *Johnson v. Chicago & Pacific Elevator Co.*, 105 Ill. 462, in which it next considered contribution among tortfeasors, the court affirmed the denial of an application to be joined as a defendant made by an individual who alleged an interest in the action because he would be liable to contribute to the judgment if the defendant were held liable. The court, without citation of authority, said: "[T]here is no right of contribution between wrongdoers." 105 Ill. 462, 468.

In *Farwell v. Becker*, 129 Ill. 261, the court was presented for the first time, and until this case the only time, with the precise question whether there is a right of contribution among tortfeasors. In *Farwell* a number of creditors, by attachment, without knowledge of any

wrongdoing, converted the chattels of a third person. One creditor, who was forced to pay the entire claim, was held entitled to contribution in equal shares from the other creditors. In its opinion the court reviewed *Merryweather* and the decisions of other State courts and concluded that the rule prohibiting contribution among tortfeasors was confined to intentional wrongdoers, or wrongdoers presumed to know that their act was unlawful. *Farwell* has not been cited, followed or overruled in subsequent decisions of this court.

Dean Prosser, in discussing the application by courts in this country of the rule of *Merryweather v. Nixan* states: "The early American cases applied the rule against contribution to cases of wilful misconduct, but refused to recognize it where the tort committed by the claimant was a matter of negligence or mistake. But once the door was thrown open to joinder in one action of those who had merely caused the same damage, the origin of the rule and the reason for it were lost to sight. The great majority of our courts proceeded to apply it generally, and refused to permit contribution even where independent, although concurrent, negligence had contributed to a single result." Prosser, Torts sec. 50, at 306 (4th ed. 1971).

In *Consolidated Ice Machine Co. v. Keifer*, 134 Ill. 481, the court joined "the great majority" of courts described by Dean Prosser that, while permitting joinder of alleged joint tortfeasors, continued to proscribe contribution. In *Consolidated*, holding that two corporations whose concurrent negligence had caused the death of a laborer were properly joined as defendants, the court, without citation of authority, said: "There can, in such case, be no apportionment of damages as between the several parties whose negligent acts and conduct have contributed to the injury. Nor can one of the wrongdoers compel contribution from the other." (134 Ill. 481, 493.) Except for *Wanack v. Michels*, 215 Ill. 87, and *Skala v.*

Lehon, 343 Ill. 602, the court has not qualified the statement that there is no right of contribution among tortfeasors. (See *John Griffiths & Son Co. v. National Fireproofing Co.*, 310 Ill. 331, 339; *Chicago & Illinois Midland Ry. v. Evans Construction Co.*, 32 Ill. 2d 600, 603; *Miller v. DeWitt*, 37 Ill. 2d 273, 289; *Muhlbauer v. Kruzal*, 39 Ill. 2d 226; *Reese v. Chicago, Burlington & Quincy R.R. Co.*, 55 Ill. 2d 356; *Carver v. Grossman*, 55 Ill. 2d 507, 510.) In *Wanack*, which involved an intentional tort, the court stated that the noncontribution rule applied only to intentional wrongdoing. (215 Ill. 87, 94.) In *Skala* the court said: "It is true, as a general rule, that the right of contribution does not exist as between joint tort feors where there is concerted action in the commission of the wrong. Where, however, there is no concerted action the rule does not apply, as the parties in such case are not *in pari delicto* as to each other, and as between themselves their rights may be adjusted in accordance with the principles of law applicable to the relation in fact existing between them." 343 Ill. 602, 605.

Distinguishable from the case before us in that the alleged misconduct of the third-party defendant was subsequent to, rather than concurrent with, that of the third-party plaintiff, but illustrative of the "continuing search for better solutions," is the case of *Gertz v. Campbell*, 55 Ill. 2d 84. Plaintiff Gertz, a minor, filed suit against Campbell alleging that he was injured by reason of Campbell's negligent operation of an automobile. Campbell filed a third-party action against Dr. H. M. Snyder, the physician who treated Gertz, alleging malpractice in the treatment and seeking indemnity for any damages which might be assessed against Campbell under Gertz' complaint but which were attributable to the doctor's malpractice. Relief sought in the third-party action was "indemnity and judgment against Dr. Snyder for the amount of damages caused to the plaintiff as the result of the new injury or

aggravation of the plaintiff's existing injuries caused by the neglect and failure of Dr. Snyder." The court, after noting the distinction between contribution and indemnity, and recognizing that under Illinois case law there was no contribution between tortfeasors, concluded that Campbell did not seek indemnity for the total recovery for the plaintiff, but sought indemnity for the damages attributable to the fault of Snyder, and held that Campbell "had a right to bring the action to be indemnified for the damages to the plaintiff attributable to the malpractice." 55 Ill. 2d 84, 92.

Although this court has earlier recognized that under appropriate circumstances there existed the right of indemnification among tortfeasors (*Nelson v. Cook*, 17 Ill. 443), in *John Griffiths & Son Co. v. National Fireproofing Co.*, 310 Ill. 331, it was presented, for the first time, the question whether a written indemnification agreement between two parties, both liable under the Structural Work Act, was against public policy. In holding that the agreement was not against public policy, the court, at some length, discussed the concept of active-passive negligence as applied in other jurisdictions as the basis for the right of implied indemnity between tortfeasors.

In *Gulf, Mobile & Ohio R.R. Co. v. Arthur Dixon Transfer Co.*, 343 Ill. App. 148, citing *John Griffiths & Son Co.* as authority, the appellate court expanded the concept of implied indemnification among tortfeasors by applying the active-passive negligence doctrine. The rule as discussed and applied by many appellate court opinions was finally recognized by this court in *Chicago & Illinois Midland Ry. Co. v. Evans Construction Co.*, 32 Ill. 2d 600, and later in *Miller v. DeWitt*, 37 Ill. 2d 273, *Muhlbauer v. Kruzel*, 39 Ill. 2d 226, *Carver v. Grossman*, 55 Ill. 2d 507, and *Harris v. Algonquin Ready Mix, Inc.*, 59 Ill. 2d 445.

This court has candidly recognized that the concept of implied indemnity, based on the active-passive negligence

doctrine, "has been utilized to mitigate the harsh effects that could result from an inflexible application of this judicially created bar to contribution." (*Muhlbauer v. Kruzel*, 39 Ill. 2d 226, 230.) The application of this all or nothing liability based on terms of active-passive negligence, which "have not obtained precise judicial definition" (see *Carver v. Grossman*, 55 Ill. 2d 507, 511), to the ever increasing situations where there is some fault attributable to both parties produces harsh effects without uniformity of result.

A technique recently employed by the bar to circumvent the noncontribution rule has been the use of the loan receipt, approved by this court in *Reese v. Chicago, Burlington & Quincy R.R. Co.* 55 Ill. 2d 356. This, too, involves the application of an all or nothing rule of liability to situations where some fault is attributable to both parties, and also raises other problems. See *Harris v. Algonquin Ready Mix, Inc.*, 59 Ill. 2d 445; *Gatto v. Walgreen Drug Co.*, 61 Ill. 2d 513; Michael, "Mary Carter" Agreements in Illinois, 64 Ill. B.J. 514 (1976); Duree, *Has The Loan Receipt Agreement Established Reverse Comparative Negligence Or Indemnity Among Active Tortfeasors In Illinois?*, 64 Ill. B.J. 236 (1975); Freedman, *The Expected Demise of "Mary Carter": She Never Was Well!*, 1975 Ins. L.J. 602; Note, *The Mary Carter Agreement—Solving the Problems of Collusive Settlements in Joint Tort Actions*, 47 S. Cal. L. Rev. 1393 (1974).

Having recognized that the application of the noncontribution rule causes unjust results and having stated that the active-passive theory of indemnity was designed to mitigate the harsh effects of its application, the only reason found in the opinions of this court for its continued existence appears in *Reese*, where it was said that "the principal objection to contribution [is] use of the courts for relief of wrongdoers" (55 Ill. 2d 356, 363-64). As noted earlier in this opinion, when *Merryweather* was

decided, the term "tortfeasors" meant intentional wrongdoers, not the negligent and "strict liability" tortfeasors of today. One of the findings of the Study Committee on Indemnity, Third Party Actions and Equitable Contributions in its report presented to the 1976 Judicial Conference is that the no-contribution rule does not save judicial time and energy in defining the degree of culpability of joint tortfeasors because the court must search for a "qualitative distinction between the negligence of the two tortfeasors" (see *Chicago & Illinois Midland Ry. Co. v. Evans Construction Co.*, 32 Ill. 2d 600, 603) under the active-passive doctrine. It also presents opportunity for fraud and collusion among the parties, necessitating further judicial efforts in monitoring their out-of-court behavior. Other objections to contribution have been rejected by almost every writer on the subject. See Comment, *The Allocation of Loss Among Joint Tortfeasors*, 41 S. Cal. L. Rev. 728 (1968), and cases and law review articles cited therein.

We are of the opinion that there is no valid reason for the continued existence of the no-contribution rule and many compelling arguments against it. We agree with Dean Prosser that "[t]here is obvious lack of sense and justice in a rule which permits the entire burden of a loss, for which two defendants were equally, unintentionally responsible, to be shouldered onto one alone, according to the accident of a successful levy of execution, the existence of liability insurance, the plaintiff's whim or spite, or his collusion with the other wrongdoer, while the latter goes scot free." Prosser, Torts sec. 50, at 307 (4th ed. 1971).

The employer argues that the abolition of the no-contribution rule would produce substantial change in the fabric of tort law and substantial changes are best left to the General Assembly. Where this court has created a rule or doctrine which, under present conditions, we consider unsound and unjust, we have not only the power, but the

duty, to modify or abolish it. For the purposes of the motion to dismiss, the allegations of fact in the third-party complaint must be taken as true (*Acorn Auto Driving School, Inc. v. Board of Education*, 27 Ill. 2d 93, 96), and on these facts the governing equitable principles require that ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them. *Suvada v. White Motor Co.*, 32 Ill. 2d 612, 623; *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11, 25.

Citing *Texaco, Inc. v. McGrew Lumber Co.*, 117 Ill. App. 2d 351, *Kossifos v. Loudon Machinery Co.*, 22 Ill. App. 3d 587, and *Burke v. Sky Climber, Inc.*, 57 Ill. 2d 542, the employer argues that a defendant held strictly liable in tort is precluded from seeking contribution "because public policy requires that its liability to an original plaintiff be considered active" and that the duty imposed in strict liability is more stringent than in cases involving negligence. We do not agree. The public policy considerations which motivated the adoption of strict liability (see *Suvada v. White Motor Co.*, 32 Ill. 2d 612) were that the economic loss suffered by the user should be imposed on the one who created the risk and reaped the profit, including everyone from the manufacturer on through to the seller or any one of them. When the economic loss of the user has been imposed on a defendant in a strict liability action the policy considerations of *Suvada* are satisfied and the ordinary equitable principles governing the concepts of indemnity or contribution are to be applied. Thus, in *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.*, 62 Ill. 2d 77, where the assembler of the product, who had settled strict liability actions against it, filed an indemnity action against the producer of the defective component part, the court adopted a rule for indemnification in the manufacturer-

distributor-seller chain. After noting that the policy reasons for adopting strict liability in *Suvada* were not the same as those determining the ultimate liability in the manufacturer-distributor chain, the court, in effect, put the assembler in the shoes of the user and the producer into the shoes of the assembler in order for the assembler to shift the full economic loss to the producer. The court said: "In our judgment, the rule we are adopting is a logical and necessary [and equitable] extension of the principles enunciated in *Suvada* and *Williams*. It does not impose an undue burden on defendant and those similarly situated, for it is they who originated the defective product. Nor does it make them absolute insurers of the safety of their products. Plaintiffs in such indemnity actions must still prove the necessary elements of a strict liability action—that the product contained a defective condition which existed at the time it left defendant's control, rendering the product unreasonably dangerous and proximately causing the injury resulting in plaintiff's liability to the injured party. [*Suvada* theory of strict liability from seller through manufacturer.] And while proof of an indemnitee's negligence will not serve to bar a strict liability indemnity claim, proof that he misused the product or assumed the risk of the defect will be an effective bar to recovery." 62 Ill. 2d 77, 84-85.

Misuse of the product or assumption of the risk by a user will serve to bar his recovery (*Williams v. Brown Manufacturing Co.*, 45 Ill. 2d 418), and indemnity is not available to one who misuses the product or assumes the risk of its use (*Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.*, 62 Ill. 2d 77). We are of the opinion that if the manufacturer's third-party complaint alleges that the employer's misuse of the product or assumption of the risk of its use contributed to cause plaintiff's injuries, the manufacturer has stated a cause of action for contribution. The fact that the employee's action against

the employer is barred by the Workmen's Compensation Act (Ill. Rev. Stat. 1975, ch. 48, pars. 138.5, 138.11) would not preclude the manufacturer's third-party action against the employer for indemnification (*Miller v. DeWitt*, 37 Ill. 2d 273) and should not serve to bar its action for contribution.

We hold that the third-party complaint, although pleaded in terms of negligence, alleges misuse of the product and assumption of risk on the part of the employer and states a cause of action for contribution based on the relative degree to which the defective product and the employer's misuse of the product or its assumption of the risk contributed to cause plaintiff's injuries. For the reasons stated, the judgments of the appellate and circuit courts are reversed and the cause is remanded to the circuit court of Cook County for further proceedings consistent with this opinion.

Reversed and remanded.

Supplemental Opinion on Denial of Rehearing

The employer has filed a petition for rehearing urging, *inter alia*, that the holding in this case be given only prospective application. The Illinois Defense Counsel, as *amicus curiae*, pursuant to leave granted, has filed a motion "to invoke doctrine of prospective operation." Although not in agreement with either the employer or *amicus* as to the manner in which the "prospective operation" should apply, the manufacturer has also filed suggestions urging "prospective operation."

We have considered the arguments and have unanimously concluded that there are present here many of the problems and conditions which compelled the prospective application of the decisions in *Molitor v. Kaneland Community Unit District No. 302*, 18 Ill. 2d 11, and *Renslow v. Mennonite Hospital*, 67 Ill. 2d 348, and that this decision, too, should be prospective in operation. We

hold, therefore, that the decisions in this cause, *Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, and *Robinson v. International Harvester Co.* (1977), 70 Ill. 2d 47, will apply prospectively to causes of action arising out of occurrences on and after March 1, 1978.

MR. CHIEF JUSTICE WARD, dissenting:

I must dissent from the judgment of the court in this cause and in *Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, and *Robinson v. International Harvester Co.* (1977), 70 Ill. 2d 47, reversing the dismissal of the third-party complaints.

The situation in which the doctrine of contribution properly has been applied is that in which the independent acts of two or more tortfeasors (among whom there exists no antecedent express or implied agreement of indemnity) combine to produce a single, indivisible injury, and where each party, unlike the situation here, is liable to the plaintiff in tort on the ground of negligence or of strict liability. (Prosser, Torts 309 (4th ed. 1971).) The majority correctly observes that such cases do not lend themselves readily to a qualitative analysis of tortious conduct as "active" or "passive," as the indemnity theory requires.

Yet in *Skinner* the majority predicates its proposal for allowance of contribution among tortfeasors on the theory that the "ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them." (70 Ill. 2d at 14.) Although the majority opinion does not elaborate on its meaning, this standard suggests some quantitative comparison, such as 60 percent to 40 percent, instead of the qualitative comparison of active and passive made in the indemnity cases. The majority does not show that the determination of what percentage of the plaintiff's damages should be

attributable to each tortfeasor will prove any more manageable than the active-passive test used for indemnity.

There are a few jurisdictions in which the amount of the contribution between joint tortfeasors is based on the relative fault of each tortfeasor. (See, e.g., *Bielski v. Schulze* (1962), 16 Wis. 2d 1, 114 N.W.2d 105; Annot., 53 A.L.R.3d 184 (1973).) As Prosser observes, the usual method of distributing the loss, however, has been to divide the total damages *pro rata* without regard to comparative fault. That is the method adopted under the current provisions of the Uniform Contribution Among Tortfeasors Act as revised in 1955. (12 Uniform Laws Annotated secs. 1(b), (2).) Of the 18 jurisdictions which have adopted either the 1955 uniform act or its 1939 predecessor, some 13 appear to use the *pro rata* approach. (See 12 Uniform Laws Annotated 34 (1978). Cf. Annot., 53 A.L.R.3d 184, 191-92, 197-98 (1973). See also Commissioners' Prefatory Note (1955 Revision), 12 Uniform Laws Annotated 59-60; Commissioners' Prefatory Note (1939 Act), 12 Uniform Laws Annotated 60-62; Commissioners' Comment to section 1(a), 12 Uniform Laws Annotated 64; *Early Settlers Insurance Co. v. Schweid* (D.C. 1966), 221 A.2d 920; Prosser, Torts 310 (4th ed. 1971).) The conceptual basis for *pro rata* contribution is of course that one tortfeasor has discharged an obligation for which the other tortfeasor was also liable.

In any event, the majority's rule of apportionment should not have application in these cases. The plaintiffs are proceeding against the defendant manufacturers on the theory of strict liability, and of course negligence or its absence is not a factor in determining the liability of the defendants. These defendants thus may be without culpability in the sense that they were nonnegligent. The majority says that the extent of liability among tortfeasors should be determined by their relative roles in proximately

causing the plaintiffs' injuries, but it seems to me that this formula cannot properly be applied in the absence of a common standard of comparison. The plaintiffs seek to recover on the ground of strict liability; the defendants in their third-party complaints allege negligence by the employers. What will be the method of comparison, with negligence not a factor in determining the defendants' liability?

As Mr. Justice Dooley details in his dissent, in the majority opinion there is a confusing of contribution and indemnity. Until now these terms had distinctive meanings.

Somewhat remarkably, I think, the majority does not mention *Maki v. Frelk* (1968), 40 Ill. 2d 193, in which this court declined to abandon our rule on contributory negligence in favor of a comparative negligence rule. I do not recede from the dissenting position which Mr. Justice Schaefer and I took in *Maki*. While a distinction may be drawn between the question of apportionment as it arises in the context of contribution and as it appears in the context of contributory negligence, the holding in *Maki* that any change in the law of contributory negligence should be left to the legislature has been, it seems, overruled *sub silentio* in *Skinner* and the companion cases.

Finally, the majority's review of *Merryweather v. Nixan* (1799), 101 Eng. Rep. 1337, 8 Term R. 186, and of some of this court's decisions suggests that the rule against contribution between joint tortfeasors where the tort was one of intentional misconduct or of concerted action has not been disturbed, but the opinion does not make an explicit pronouncement to this effect. Torts of this character do not come within the rationale of the doctrine of contribution, and the rule denying contribution in that situation should be preserved. I would state clearly that it is being retained.

MR. JUSTICE UNDERWOOD, dissenting:

I agree with much of what the Chief Justice and Mr. Justice Dooley have written, but feel compelled to speak to the majority's citation of *Miller v. DeWitt* (1967), 37 Ill. 2d 273, as authority for the result it reaches here. *Miller* involved an action by injured contractor's employees against, among others, the architects who had designed the structure. The complaint alleged both negligence and Structural Work Act violations. The architects filed a third-party action against the contractor-employer of the plaintiffs, seeking indemnity on the ground that the contractor-employer's negligence was active while any negligence by the architects had been passive. The trial court dismissed that third-party action and this court reversed, holding the third-party complaint stated a cause of action.

The plaintiffs in *Miller* had been paid benefits under the Workmen's Compensation Act, and the third-party defendant-employer argued that both the theory of the Act and its language limited his liability to the payment of the employee benefits therein prescribed. He urged that to permit recovery by the architects would allow indirectly that which could not be done directly. Acknowledging some merit to the employer's position and conceding the question to be a close one, this court concluded that indemnification should be permitted because "unless a third party who has not been guilty of active negligence can succeed in an action against an employer who has been guilty of active negligence, the third party will be made to bear the ultimate burden of a loss which should fall on the employer." (37 Ill. 2d 273, 289.) It was the fact that the employer in *Miller* was *more culpable* than the architects which persuaded the court to breach the limitations upon the employer's liability. Because there is in this case no corresponding requirement that the employer's culpability be substantially greater than that of the manufacturer

before the employer's limited liability is again breached, it seems to me that the majority opinion repudiates, in a manner never contemplated by *Miller*, the very theory upon which the Workmen's Compensation Act became law.

I must add to the comments of Mr. Justice Dooley the observation that in a single sentence the majority has altered beyond recognition the theory of strict product liability in Illinois. Heretofore in this State it has been indisputably clear, as acknowledged by the majority, that misuse of a product or assumption of the risk of its use precluded liability on the part of the manufacturer. The manufacturer or supplier was liable to an injured plaintiff only if no intervening cause, such as misuse, supplanted the precedent causation of the defect. The identity of the one responsible for the intervening cause, whether it be the plaintiff, employer or a third party, was irrelevant, since the fact remained that the defect was not the proximate cause of the injury. (Prosser, Torts, sec. 102 (4th ed. 1971); 2 L. Frumer & M. Friedman, Products Liability sec. 16A(4)(d); see also *Lewis v. Stran Steel Corp.* (1974), 57 Ill. 2d 94, 102, where this court held the question whether an employer had misused a manufacturer's product, thus barring recovery by the plaintiff-employee from the manufacturer, was a jury question.) Now, in a sentence which seems to me internally contradictory, the majority says, "We are of the opinion that if the manufacturer's third-party complaint alleges that the employer's misuse of the product or assumption of the risk of its use contributed to cause plaintiff's injuries, the manufacturer has stated a cause of action for contribution." (70 Ill. 2d at 15.) If misuse and assumption of risk bar recovery, as they heretofore have, what is there to contribute to? The only conclusion I can draw is that the manufacturer has now been shorn of the sole protection he formerly had against strict liability actions and

has become the insurer of the user. In exchange the manufacturer is apparently given a cause of action for contribution from a third party (usually the employer) whose "misuse" or "assumption of the risk" of use of the product has injured the user (usually the employee-plaintiff). Nothing in product liability law supports this result.

In my judgment the majority has erred for an additional reason. The court's opinion is obviously the forerunner of other and equally substantial innovations in the tort law of Illinois. It is far preferable, I believe, that new law as significant as that here declared, and that presaged, be enacted legislatively. (*Maki v. Frelk* (1968), 40 Ill. 2d 193.) Such a course not only respects the separation of powers principles incorporated in our State and Federal constitutions, but affords the only means of simultaneously considering and acting upon all of the areas in which this new law will require change. Instead of the comprehensive and consistent changes which could thus be accomplished, we now have a confusing merger of indemnity and contribution, negligence and strict liability in a manner which creates more problems than it resolves.

*MR. JUSTICE DOOLEY, dissenting:

Today we have buried a great body of Illinois law. *Suvada v. White Motor Co.* (1965), 32 Ill. 2d 612, *Dunham v. Vaughan & Bushnell Manufacturing Co.* (1969), 42 Ill. 2d 339, *Williams v. Brown Manufacturing Co.* (1970), 45 Ill. 2d 418, *Sweeney v. Max A.R. Matthews & Co.* (1970), 46 Ill. 2d 64, *aff'g* 94 Ill. App. 2d 6, *Rios v. Niagara Machine & Tool Works* (1974), 59 Ill. 2d 79, *Peterson v. Lou Bachrodt Chevrolet Co.* (1975), 61 Ill. 2d 17, are but samples of Illinois authorities expressing the doctrine of strict liability and its facets which have been implicitly

* Mr. JUSTICE DOOLEY's dissent is addressed to the majority opinion prior to its modification on March 1, 1978. Mr. JUSTICE DOOLEY's untimely death precluded any revision of the dissent.

overruled. Also amongst the corpses are those decisions which, consistent with the concept of strict liability, have refused to allow a manufacturer liable under this teaching to pass on its responsibility in whole or in part to a third party. Some of those swept away—and again by implication—are *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.* (1975), 62 Ill. 2d 77, *Sorrentino v. Waco Scaffolding & Shoring Co.* (1976), 44 Ill. App. 3d 1055, *Vassolo v. Comet Industries, Inc.* (1975), 35 Ill. App. 3d 41, *Kossifos v. Loudon Machinery Co.* (1974), 22 Ill. App. 3d 587, *Stanfield v. Medalist Industries, Inc.* (1974), 17 Ill. App. 3d 996, *Burke v. Sky Climber, Inc.* (1973), 13 Ill. App. 3d 498, *aff'd* (1974), 57 Ill. 2d 542, and *Texaco, Inc. v. McGrew Lumber Co.* (1969), 117 Ill. App. 2d 351.

Contribution and indemnity have been commingled as if they were identical. Each is a precept wholly different from the other. *Gertz v. Campbell* (1973), 55 Ill. 2d 84, and *Suvada v. White Motor Co.* (1965), 32 Ill. 2d 612, are illustrative of this proposition. These and many other decisions which make up our entire body of law on contribution and indemnity have likewise been overruled.

When established precedents are to be swept aside, it should not be accomplished without at least referring to them. Bold assertions which completely abandon well-established doctrines are never a means of resolution of legal issues.

The majority opinion raises such novel theories as “assumption of risk” by plaintiff’s employer, a noninjured party—a concept unknown to the law in the 140 years of the existence of the doctrine of assumption of risk. The majority’s position fails to face up to the meaning of assumption of risk. It cannot be the basis of a third party action. And the majority fails to show how it could be employed in this context.

So also, misuse by an employer is erroneously termed

a defense. But it is part and parcel of plaintiff's action in strict liability in tort to plead and prove that the product was being used for a reasonably foreseeable purpose. *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.* (1975), 62 Ill. 2d 77, 83; *Dunham v. Vaughan & Bushnell Manufacturing Co.* (1969), 42 Ill. 2d 339, 344; *Cronin v. J.B.E. Olson Corp.* (1972), 8 Cal. 3d 121, 134, 501 P.2d 1153, 1162, 104 Cal. Rptr. 433, 442; *Higgins v. Paul Hardeman Co.* (Mo. App. 1970), 457 S.W.2d 943, 948; Restatement (Second) of Torts sec. 402A, Comment *h* (1965); D. Noel, *Manufacturer's Negligence of Design or Directions for Use of a Product*, 71 Yale L.J. 816, 858 (1962).

The majority opinion raises a question overshadowing all others. Has Illinois adopted not a doctrine of comparative negligence, but a doctrine of comparative fault? That such is what the majority stands for is apparent from their statement in *Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, written by the same author as *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1. Referring to *Skinner*, the majority in *Stevens* states: "We held, therefore, that the governing equitable principles required that ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree of fault of those whose conduct proximately caused them." Slip op. at 2.

How can there be a comparison between the manufacturer's fault and the employer's fault, when fault is not the question? If the unreasonably dangerous product is put in commerce and is a proximate cause of injury, how can contribution and indemnification on the basis of the employer's negligence be in proportion to the wrong of a manufacturer?

That strict liability is not based on fault is well recognized. In *Suvada v. White Motor Co.* (1965), 32 Ill. 2d 612, where this State adopted the doctrine as well as

section 402A of the Restatement (Second) of Torts (1965), such considerations as public interest in human life and health, the manufacturer's solicitations to purchase, and the justice of imposing liability on one who creates the risk and reaps the profit, are described as the motivating forces for the adoption of the doctrine. (See also *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.* (1975), 62 Ill. 2d 77, 82; *Greenman v. Yuba Power Products, Inc.* (1963), 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697.) Other policy considerations were the ability of the manufacturer to anticipate some hazards and guard against their recurrence, which the consumer cannot do. (*Brandenburger v. Toyota Motor Sales, U.S.A., Inc.* (1973), 162 Mont. 506, 513-14, 513 P.2d 268, 273; *Santor v. A & M Karagheusian, Inc.* (1965), 44 N.J. 52, 60, 207 A.2d 305, 312; Restatement (Second) of Torts sec. 402A, Comment c (1965).) Stated otherwise, there was the incentive to the manufacturer to enhance the safety of its product. (*Dunham v. Vaughan & Bushnell Manufacturing Co.* (1969), 42 Ill. 2d 339, 344; *Vandermark v. Ford Motor Co.* (1964), 61 Cal. 2d 256, 262, 391 P.2d 168, 171-72, 37 Cal. Rptr. 896, 899-900.) An important consideration was distribution of the cost of injury amongst the public as the cost of doing business. See *Greenman v. Yuba Power Products, Inc.* (1963), 59 Cal. 2d 57, 63, 377 P.2d 897, 901, 27 Cal. Rptr. 697, 701.

That negligence is not part of this doctrine is pointed out by *Suwada v. White Motor Co.* (1965), 32 Ill. 2d 612. There, defendant Bendix, strictly liable in tort as a manufacturer of a component part, the brake system, urged that plaintiffs, truck owners, who had paid sums in settlements of claims brought by injured persons as a result of this defective brake system, were joint tortfeasors or actively negligent. This court, in rejecting that argument, took a position directly contrary to that of the majority here, stating:

“Indemnity here is not, however, premised on any theory of active and passive negligence. (To require proof that Bendix was actively negligent would be the antithesis of strict liability.)” 32 Ill. 2d 612, 624.

Under strict liability, responsibility is imposed because of the character of the product, not because of fault. (*Bachner v. Pearson* (Alaska 1970), 479 P.2d 319, 329; *Bollmeier v. Ford Motor Co.* (1970), 130 Ill. App. 2d 844, 851.) Under the Restatement of the Law of Torts, it is immaterial that the manufacturer has “exercised all possible care in the preparation and sale of his product.” Restatement (Second) of Torts sec. 402A(2)(a) (1965); *Lunt v. Brady Manufacturing Corp.* (1970), 13 Ariz. App. 305, 307, 475 P.2d 964, 966.

In *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.* (1975), 62 Ill. 2d 77, the insurance company, as subrogee for its insured, Charles Machine Works, the manufacturer of the finished product, sued the defendant, the manufacturer of the defective component part, to recover sums it paid in settlements of claims made against Charles Machine Works. This court observed:

“The major purpose of strict liability is to place the loss caused by defective products on those who create the risk and reap the profit by placing a defective product in the stream of commerce, regardless of whether the defect resulted from the ‘negligence’ of the manufacturer. We believe that this purpose is best accomplished by eliminating negligence as an element of any strict liability action, including indemnity actions in which the parties are all manufacturers or sellers of the product.” (62 Ill. 2d 77, 82.)

The court further quoted from Frumer’s and Friedman’s excellent work on products liability (2 L. Frumer & M. Friedman, *Products Liability* sec. 16A(4)(b)(i)):

“As one authority has observed: ‘In many jurisdictions, the right of contribution between joint tortfeasors is denied if they are at equal fault, but not denied if the tortfeasor seeking contribution was only passively negligent. *The difficulty of applying this test to strict liability cases is that negligence is irrelevant for determining liability. It is a liability based upon the placing into commerce of a product which, if defective, is likely to be unreasonably dangerous under normal use.*’ ” (Emphasis added.) 62 Ill. 2d 77, 82.

Contributory negligence on the part of the user is not an issue. (*Williams v. Brown Manufacturing Co.* (1970), 45 Ill. 2d 418, 423.) It should be crystal clear that negligence or any other concept of fault is anathematic to the tenets of strict liability.

California, by judicial fiat, adopted comparative negligence in *Li v. Yellow Cab Co.* (1975), 13 Cal. 3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858. In its modified opinion, the California Supreme Court was careful to delimit the meaning of the word “fault.” In a footnote it stated: “In employing the generic term ‘fault’ throughout this opinion, we follow a usage common to the literature on the subject of comparative negligence. In all cases, however, we intended the term to import nothing more than ‘negligence’ in the accepted legal sense.” (13 Cal. 3d 804, 813 n.6a, 532 P.2d 1226, 1232 n.6a, 119 Cal. Rptr. 858, 864 n.6a.) The significance of this was, according to one authority (V. Schwartz, *Comparative Negligence in California, Li v. Yellow Cab Co.: A Survey of California Practice Under Comparative Negligence*, 7 Pac. L.J. 747, 756 (1976), that “the court was careful not to venture into the land of strict liability.” We agree that such could be the only meaning to be given the modification by a court which not only pioneered but treated more aspects of the doctrine of strict liability in tort than any court.

It is clear that the objectives of the doctrine are to protect the consumer and to make responsible the manufacturers who put in commerce unreasonably dangerous products which cause injury. If these goals are to be accomplished, ultimate liability for injury from the defective product must rest on the manufacturer. Thus, liability has been permitted to flow from the retailer (*Vandermark v. Ford Motor Co.* (1964), 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896) to reach the manufacturer or from the manufacturer of the defective product to the manufacturer of the component part which made the finished product defective (*Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.* (1975), 62 Ill. 2d 77).

These were the compelling reasons why the obligation to produce a reasonably safe product was made nondelegable. (*Rios v. Niagara Machine & Tool Works* (1974), 59 Ill. 2d 79, 85; *Bexiga v. Havir Manufacturing Corp.* (1972), 60 N.J. 402, 410, 290 A.2d 281, 285; *Vandermark v. Ford Motor Co.* (1964), 61 Cal. 2d 256, 262, 391 P.2d 168, 171, 37 Cal. Rptr. 896, 899.) Nondelegable means that the obligation cannot be transferred to others.

It would frustrate the intent of strict liability to permit the manufacturer of the unreasonably dangerous, injury-causing product to pass on his liability to another so that the maker might either be indemnified or obtain some contribution.

The majority opinion treats strict liability as if the manufacturer's responsibility were predicated upon negligence concepts. All cases and surveys referred to in the majority opinion to support its position involve negligent tortfeasors. *Dole v. Dow Chemical Co.* (1972), 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382, the only products case cited, was an action predicated against the manufacturer on negligence, not strict liability. Plaintiff's action there was against a chemical company for negligently labeling a fumigant used by an employer. The

manufacturer's third-party action against the employer was for breach of an independent duty owed plaintiff.

The majority fails to address another threshold question. How can the employer, who cannot be termed a tortfeasor, be sued for apportionment of damages in the nature of contribution or indemnity?

The employer has an absolute liability, irrespective of negligence. The employee's action against the employer is for benefits fixed by section 5 of the Workmen's Compensation Act (Ill. Rev. Stat. 1975, ch. 48, par. 138.5). The employee's action against the third party is for common law damages. It would appear obvious that the difference in character between the two cannot result in a common liability. Even the Uniform Contribution Among Tortfeasors Act defines the joint tortfeasor as a person jointly or severally "liable in tort." (Uniform Contribution Among Tortfeasors Act sec. 1(a).) Prosser states: "The contribution defendant must be a tortfeasor, and originally liable to the plaintiff. If there was never any such liability, *** then he is not liable for contribution." Prosser, Torts sec. 50, at 309 (4th ed. 1971).

It is indispensable in the law of contribution that there be a right of action in tort against both parties, the one seeking contribution and the party from whom contribution is sought. (*William H. Field Co. v. Nuroco Woodwork, Inc.* (1975), 115 N.H. 632, 348 A.2d 716; *Cacchillo v. H. Leach Machinery Co.* (1973), 111 R.I. 593, 305 A.2d 541; *Grove Manufacturing Co. v. Cardinal Construction Co.* (Tex. Civ. App. 1976), 534 S.W.2d 153; 2A A. Larson, Workmen's Compensation sec. 76.21 (1976 & Supp. 1977).) Contribution is a derivative of the plaintiff's cause of action; it is not a new right of action. *Grove Manufacturing Co. v. Cardinal Construction Co.* (Tex. Civ. App. 1976), 534 S.W.2d 153; *William H. Field Co. v. Nuroco Woodwork, Inc.* (1975), 115 N.H. 632, 348 A.2d 716.

Since the employee under a workmen's compensation act has no tort action against his employer, the employer is not a joint tortfeasor with the third party liable to the employee in tort. He does not share a common liability. (*William H. Field Co. v. Nuroco Woodwork, Inc.* (1975), 115 N.H. 632, 348 A.2d 716; *Cacchillo v. H. Leach Machinery Co.* (1973), 111 R.I. 593, 305 A.2d 541; *Grove Manufacturing Co. v. Cardinal Construction Co.* (Tex. Civ. App. 1976), 534 S.W.2d 153; *Kessler v. Bowie Machine Works, Inc.* (8th Cir. 1974), 501 F.2d 617 (applying South Dakota law); 2A A. Larson, *Workmen's Compensation* sec. 76.21 (1976 & Supp. 1977).) In light of these well-established principles, the employer cannot be subject to contribution. Yet the majority ignores these realities.

The majority's opinion, whose vulnerability is evidenced by the want of a single authority to support its position, concludes thus:

"We hold that the third-party complaint, although charging negligence, alleges misuse of the product and assumption of risk and states a cause of action for contribution based on the employer's relative degree of fault which contributed to cause plaintiff's injuries." Slip op. at 9.

As I have observed, this is a novel employment of what the majority terms "assumption of risk." In strict liability actions, assumption of risk is an affirmative defense by the manufacturer or retailer against the injured user only. To assert such defense, the manufacturer must allege and prove that the plaintiff was aware of the product's dangerous nature, that he continued to use the product despite such knowledge, and that this assumption of risk was the proximate cause of his injuries. (*Williams v. Brown Manufacturing Co.* (1970), 45 Ill. 2d 418, 430; *Sweeney v. Max A.R. Matthews & Co.* (1970), 46 Ill. 2d 64, 66 *aff'g* 94 Ill. App. 2d 6; see *Scott v. Dreis & Krump Manufacturing Co.* (1975), 26 Ill. App. 3d 971, 990;

Ferraro v. Ford Motor Co. (1966), 423 Pa. 324, 327, 223 A.2d 746, 748; Restatement (Second) of Torts sec. 402A, Comment *n* (1965).) The test in true assumption of risk cases is subjective. (*Williams v. Brown Manufacturing Co.* (1970), 45 Ill. 2d 418, 430.) It is whether the particular person knew or ought to have known of the defect, and nonetheless, having knowledge of the dangers which would result from the use of the product, embarked upon its employment. *Williams v. Brown Manufacturing Co.* (1970), 45 Ill. 2d 418, 423.

Assumption of risk first developed in master and servant cases. It has now been abrogated by the Workmen's Compensation Act (Ill. Rev. Stat. 1975, ch. 48, par. 138.1 *et seq.*). It appeared on the scene in 1837 in *Priestly v. Fowler* (Exch. 1837), 3 Mees. & W. 1, 150 Eng. Rep. 1030, 19 Eng. Rul. Cas. 102. In 1953, Mr. Justice Black described it thus:

"Perhaps the nature of the present problem can best be seen against the background of one hundred years of master-servant tort doctrine. Assumption of risk is a judicially created rule which was developed in response to the general impulse of common law courts at the beginning of this period to insulate the employer as much as possible from bearing 'human overhead' which is an inevitable part of the cost—to someone—of the doing of industrialized business." *Tiller v. Atlantic Coast Line R.R. Co.* (1943), 318 U.S. 54, 58, 87 L. Ed. 610, 613, 63 S. Ct. 444, 447.

Assumption of risk is today limited in negligence actions to situations where a contractual relationship exists. *Barrett v. Fritz* (1969), 42 Ill. 2d 529, 533-34.

Yet, never since 1837 has assumption of risk been the basis of an original action. Assumption of risk is by its nature a defense in an action by an injured person, be it assumption of risk as it is known in common law

negligence or in strict liability in tort. Nor are we told by the majority opinion how assumption of risk can be the basis of an action against a third party.

An examination of the third-party complaints in these cases reveals much. In *Skinner*, the manufacturer alleged that in 1959 it had fabricated the particular machine, and that between that date and August 3, 1972, the date of the occurrence, the machine had been sold and resold to successive users. It further urged that the unreasonably dangerous character of the machine was caused by the third-party defendant, as well as the intervening owners. Obviously, these facts, if true, constituted a defense to the original action. The product must be substantially in the same condition at the time it causes injury as at the time it left the manufacturer's possession, and, at the time of the injury, it must have been used for a reasonably foreseeable purpose if liability is to attach to the manufacturer.

The third-party complaint alleges that plaintiff's injuries resulted from a combination of the conduct of both defendants, so that they were co-tortfeasors. As we have seen, the manufacturer's liability arises not from his conduct but from putting into commerce an unreasonably dangerous product. Nor, as has been pointed out, can an employer be a co-tortfeasor under the Workmen's Compensation Act.

In *Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, the manufacturer urged that it was not liable to the user because it was without knowledge of the use to which the machine was put, and, specifically, that a mentally retarded person might be employed to use it. It further alleged that it was the employer's duty to use care in the operation of the machine, and that its liability was secondary to that of the employer. Partial indemnification was sought. Obviously, the manufacturer was chargeable with all foreseeable uses of the product, and its liability cannot be passive. Active and passive care concepts have

no relevancy here. When tortfeasors are each chargeable with active or affirmative negligence, as is the case here, total indemnification is never permissible. (41 Am. Jur. 2d *Indemnity* sec. 21 (1968).) Under the theory of the majority, the third-party complaint could not be maintained.

In *Robinson v. International Harvester Co.* (1977), 70 Ill. 2d 47, the manufacturer, which sold a product without safety devices, sought indemnification from an employer for purchasing a product in this condition. Obviously, putting into commerce an article without safety devices is a violation of the manufacturer's nondelegable duty. (*Bexiga v. Havir Manufacturing Corp.* (1972), 60 N.J. 402, 290 A.2d 281.) It is a classical violation of the duty imposed by the strict liability teaching.

To arrive at its conclusion, the third-party complaints have been rewritten by the majority so as to state the theme of the opinions.

I am realistic enough to know that in every instance where an employee is injured, the manufacturer of a defective injury-causing product, to avoid liability or spread the risk, will charge the employer with multiple aspects of negligence. The negligence may be in failing to instruct the employee as to the use of the product or in not having an adequate number of persons engaged in the operation in which the product was employed. Again, it may be in not inspecting the product for defects, although such inspection is not required under the doctrine of strict liability. (Restatement (Second) of Torts sec. 402A, Comment *n* (1965); *Sweeney v. Max A.R. Matthews Co.* (1968), 94 Ill. App. 2d 6, 21, *aff'd* (1970), 46 Ill. 2d 64.) Or it may be in buying a machine which the manufacturer saw fit to sell without protective components as was the case in *Robinson v. International Harvester Co.* (1977), 70 Ill. 2d 47. Yet this is but an example of putting into commerce an unreasonably dangerous product. The

aspects of negligence which the fertile mind of the skilled trial lawyer will conjure are countless.

It has been estimated that 85% of all products liability suits come from products employed in work-related situations. (Insurance Co. of North America, Products Liability: Some Professional Considerations, Booklet HH-8306-3 (1976), INA Corp., Philadelphia.) The manufacturer who puts in commerce an unreasonably dangerous injury-causing product and who, under this strict liability doctrine, was to bear the cost of injury, now has an escape hatch. He is the employer. This is the party who is to contribute or to indemnify. Indemnification, of course, means absorption of the entire loss. Yet how can transition to the employer of the manufacturer's liability be consistent with the compelling reasons for the teaching? I refer to imposition of liability on the profit-maker, distribution of the cost of injury among the public as a cost of doing business, and the incentive for safer products.

What about the Workmen's Compensation Act, which, in return for a guarantee of protection to the employee for work-related injuries, immunized the employer against common law actions? Ill. Rev. Stat. 1975, ch. 48, par. 138.5(a).

Section 5(a) of the Workmen's Compensation Act (Ill. Rev. Stat. 1975, ch. 48, par. 138.5(a)) provides:

“(a) No common law or statutory right to recover damages from the employer [or] his insurer *** for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act ***.”

Larson (2A A. Larson, Workmen's Compensation sec. 76.21 (1976 & Supp. 1977) states: “The great majority of jurisdictions have held that the employer whose concurring negligence contributed to the employee's injury cannot be

sued or joined by the third party as a joint tortfeasor, whether under contribution statutes or at common law.” This proposition is found in many jurisdictions. Alaska: *Golden Valley Electric Association, Inc. v. City Electric Service, Inc.* (Alaska 1974), 518 P.2d 65; Connecticut: *A.A. Equipment, Inc. v. Farnoil, Inc.* (Super. Ct. Hartford County 1974), 31 Conn. Supp. 322, 330 A.2d 99; Georgia: *Georgia Power Co. v. Diamond* (1973), 130 Ga. App. 268, 202 S.E.2d 704; Hawaii: *Kamali v. Hawaiian Electric Co.* (1972), 54 Hawaii 153, 504 P.2d 861; Iowa: *Iowa Power & Light Co. v. Abild Construction Co.* (1966), 259 Iowa 314, 144 N.W.2d 303; Louisiana: *LeJeune v. Highlands Insurance Co.* (La. App. 1973), 287 So. 2d 531, *aff’d* (1974), 290 So. 2d 903; Maryland: *Baltimore Transit Co. v. State* (1944), 183 Md. 674, 39 A.2d 858; Michigan: *Husted v. Consumers Power Co.* (1965), 376 Mich. 41, 135 N.W.2d 370; New Hampshire: *William H. Field Co. v. Nuroco Woodwork, Inc.* (1975), 115 N.H. 632, 348 A.2d 716; New Jersey: *Ruvolo v. United States Steel Corp.* (1975), 133 N.J. Super. 362, 336 A.2d 508; Nevada: *Outboard Marine Corp. v. Schupbach* (1977), 93 Nev. 158, 561 P.2d 450; North Carolina: *Hunsucker v. High Point Bending & Chair Co.* (1953), 237 N.C. 559, 75 S.E.2d 768; Ohio: *Bankers Indemnity Ins. Co. v. Cleveland Hardware & Forging Co.* (1945), 77 Ohio App. 121, 62 N.E.2d 180, *appeal dismissed* (1945), 145 Ohio St. 615, 62 N.E.2d 251; Rhode Island: *Cacchillo v. H. Leach Machinery Co.* (1973), 111 R.I. 593, 305 A.2d 541; South Dakota: *Kessler v. Bowie Machine Works, Inc.* (8th Cir. 1974), 501 F.2d 617 (applying South Dakota law); Tennessee: *Dawn v. Essex Conveyors, Inc.* (6th Cir. 1974), 498 F.2d 921 (applying Tennessee law); Washington: *Montoya v. Greenway Aluminum Co.* (1974), 10 Wash. App. 630, 519 P.2d 22; Wisconsin: *A. O. Smith Corp. v. Associated Sales & Bag Co.* (1962), 16 Wis. 2d 145, 113 N.W.2d 562.

It has been stated: "Products that don't work as they should, which now rival automobile accidents as the nation's No. 1 cause of litigation, were responsible for an estimated 500,000 court cases last year, compared with 100,000 five years ago, and many expect the annual total to reach 1,000,000 by 1985." *Wall Street Journal*, Nov. 3, 1972, at 1, col. 6.

Our workmen's compensation rates are now the highest in Illinois history. A claim for the death of a husband and father earning \$20,000 annually, leaving a widow and four children under 16 years old, runs as high as \$250,000 (Ill. Rev. Stat. 1975, ch. 48, par. 138.7).

It is common knowledge that the high cost of workmen's compensation insurance is driving industry out of this State. (*Chicago Daily News*, Feb. 25, 1977, at 5, col. 2; *Chicago Sun-Times*, Feb. 3, 1977, at 115, col. 2; June 11, 1977, at 47, col. 1; June 20, 1977, at 62, col. 1; *Chicago Tribune*, Feb. 26, 1977, sec. 2, at 7, col. 5; June 11, 1977, at 5, col. 4.) Under the majority concept, the workmen's compensation premium will be miniscule as compared to the cost of the employer's insurance for products coverage—if he can get it. On him will be dumped the manufacturer's liability. And all because a majority of this court believed that the manufacturer should be permitted to pass on his liability to another.

While the majority's position may appear to demonstrate "kitchen equity," it clashes with those precepts which govern our actions, those of inferior courts, and last, but certainly not least, those of the litigants. Legal principles are not mere hollow sounds. They create rights, define obligations, and determine the mechanics for the realization of such rights and obligations. Principles, it must never be forgotten, have a pragmatic effect on the law in action. The admissibility of all evidence is determined by principles, common law or statutory, which control the particular action. So also the fact-finder, be it court or

jury, is governed by principles in arriving at its conclusion.

The underlying concept of the majority is that equity and fairness dictate its conclusion. Apart from the fact that principles must control, one court, in denying the manufacturer of a defective product indemnity against the employer of injured employees, made these pithy observations:

“It is argued that if indemnity is not allowed the result is manifestly inequitable since the jury found Outboard to be only twenty-five percent at fault while the employers each were found to be thirty-seven and one-half percent at fault. Consequently, as a matter of fairness, the employers should not be insulated completely. Although this contention has some appeal, it is one to be submitted to the legislature rather than to us. To date, the legislature has insulated the contributing employer and has voided indemnity absent an independent duty owing from the employer to the third party.” (*Outboard Marine Corp. v. Schupbach*) (1977), 93 Nev. 158, 165, 561 P.2d 450, 454.

Many will undoubtedly urge that the contentions of the majority are for the legislature. I only know they are not for us. We must be governed by reason, not sentiment. We have no license to experiment with novel concepts because they might appeal to a personal sense of justice.

The distinction between contribution and indemnity is ignored by this trio, *Skinner*, *Stevens* and *Robinson*. In two of the cases, *Skinner* and *Stevens*, the third-party complaints are treated by this court as seeking contribution or “partial indemnity,” whatever that is. In *Robinson*, the third-party complaint sought total indemnification.

Contribution is the distribution or the spreading of a loss between two or more persons who are jointly liable for having committed a tort against a third party. In

accordance with the general rule, one who is compelled to pay the whole or more than his just share of the loss, upon which several persons are liable, is entitled to contribution against the others from the payment of their respective shares. *Phillips-Jones Corp. v. Parmley* (1937), 302 U.S. 233, 82 L. Ed. 221, 58 S. Ct. 197; *Gottschalk v. Gottschalk* (1921), 222 Ill. App. 56; Restatement of Restitution sec. 81 (1937).

Indemnity, on the other hand, shifts the entire loss from one tortfeasor to another who, by express contract or by operation of law, is deemed responsible for making full payment. *Chicago & Illinois Midland Ry. Co. v. Evans Construction Co.* (1965), 32 Ill. 2d 600, 603; see also *Karas v. Snell* (1957), 11 Ill. 2d 233, 248.

We have already noted how contribution and indemnity, two distinct concepts, are often confused. See *Gertz v. Campbell* (1973), 55 Ill. 2d 84, 87; *Suvada v. White Motor Co.* (1965), 32 Ill. 2d 612, 624; W. Prosser, Torts sec. 51, at 310 (4th ed. 1971).

The apparent effect of the majority is to abolish indemnity. "Total indemnification" (*Robinson*), "partial indemnification" (*Skinner and Stevens*) and "contribution" are all treated interchangeably.

Absent from the majority opinion is any definition of what constitutes contribution or "partial indemnity." Wanting also are guidelines for what the court holds. Standards will be impossible to formulate in the absence of some clear definition of the position of the majority other than the abolition of the rule of no contribution. An opinion so wide sweeping in character must offer something constructive. Opened up, but unresolved, are a series of important queries.

What is the status of the tortfeasor who had a right to *bona fide* indemnity, not contribution? Has this right been impaired? Has the active-passive criterion of implied

indemnity been abolished?

What is the effect of the holding upon the Structural Work Act (Ill. Rev. Stat. 1975, ch. 48, par. 60 *et seq.*)? There are many areas of potential contribution there. To list a few: between owner, general contractor, subcontractor, architect and employer; between general contractor, subcontractor and employer; between owner and architect; and between general contractor and architect. The combination is almost endless.

What about the Dramshop Act (Ill. Rev. Stat. 1975, ch. 43, par. 94 *et seq.*)? Can there be contribution between the dramshop keeper and the intoxicated person? Can there be contribution between the dramshop operator and the owner of the premises?

Suppose one tortfeasor enters into a settlement with the plaintiff. Is he entitled to recover contribution from other defendants whose liability remains vital, notwithstanding the settlement? Or what about the insurer who discharges the liability of its tortfeasor insured? Is it subrogated to a right of contribution?

What will be the vehicle of apportionment of damages between wrongdoers? Will it be by third-party action, by counterclaim between defendants, by independent actions, or by all such vehicles?

What is the basis of contribution? Will it be according to a payment of more than a *pro rata* share? Or will it be on the basis of "pure" contribution with the amount of fault being determined at 100%? The majority opinion has an ethereal mystique so that neither judges nor lawyers can know how to give it meaning.

When a court undertakes to announce a new doctrine which is a departure from the past not only in principle but in practice, it would seem it has the obligation to spell out in detail how this new teaching shall be put into practice. See *Hoffman v. Jones* (Fla. 1973), 280 So. 2d 431, and *Li v. Yellow Cab Co.* (1975), 13 Cal. 3d 804, 532

P.2d 1226, 119 Cal. Rptr. 858, where the Florida and California Supreme Courts, in adopting by judicial fiat comparative negligence, spelled out in detail how the doctrine shall be applied.

I predict that this trio, *Skinner, Stevens* and *Robinson*, will generate a proliferation of much meritless litigation. Every action against the manufacturer or retailer in strict liability in tort will mean another action whereby the manufacturer or retailer will seek "indemnity" or "contribution" against some third party outside the distributive chain, so that the manufacturer's responsibility may be taken over or at least shared.

Proliferation of such litigation is unwholesome. The trial of a lawsuit against the manufacturer in strict liability, with the manufacturer focusing on the negligence of the employer, will be complex. The manufacturer will use the employer's negligence as a defense to the original action—the objective of the third-party actions before us. More than that, such litigation will fill the halls of justice with obstacles, make litigation an even rarer luxury, and add additional trial days to a docket already struggling under a near fatal burden.

Like Jefferson, I believe "law and institutions must go hand in hand with the progress of the human mind." Like Jefferson, I do not believe in deviation from recognized principles for expediency. This is far too violent a wrench in the law.

The effect of the majority's opinion will be far reaching unless the General Assembly manifests greater wisdom than this court. A statute insulating the employer from all liability to the employee other than for workmen's compensation benefits, including third-party actions, is needed for the preservation of the employer. He should not be saddled with the responsibilities of the manufacturers.

For these reasons I would affirm the judgments of the

appellate courts in *Skinner v. Reed-Prentice Division Package Machinery Co.*, *Stevens v. Silver Manufacturing Co.*, and *Robinson v. International Harvester Co.*

(No. 48974. [REDACTED])

RONALD STEVENS v. SILVER MANUFACTURING COMPANY *et al.*, Appellants.—(General Box Company, Appellee.)

Opinion filed December 12, 1977.—Modified on denial of rehearing January 26, 1978.—Opinion modified March 1, 1978.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

WARD, C.J., and UNDERWOOD and DOOLEY, JJ., dissenting.

[REDACTED]

John M. Lamont and Timothy J. Reuland, of Reid, Ochsenschlager, Murphy & Hupp, of Aurora (James F. Whitfield, of Wheaton, of counsel), for appellants.

Elliot R. Schiff (Marvin Riman, Richard Sawislak, and Francis J. Marasa, of Sweeney & Riman, Ltd., of Chicago, of counsel), for appellee.

MR. JUSTICE GOLDENHERSH delivered the opinion of the court:

Plaintiff, Ronald Stevens, filed this action in the circuit court of Kane County seeking to recover damages for personal injuries suffered while operating a shredding machine manufactured by defendant Silver Manufacturing Company, d/b/a Industrial Shredder and Cutter Company, and which had been assembled and installed by defendant Steelcraft Corporation upon the premises of General Box Company. Silver and Steelcraft filed third-party complaints against General Box, by whom plaintiff was employed at the time of his injury. The circuit court denied General Box's motion to dismiss the third-party complaints and pursuant to Rule 308 (58 Ill. 2d R. 308) certified four questions for appeal. The appellate court allowed General Box's application for leave to appeal and reversed without remandment (41 Ill. App. 3d 483), and we have allowed Silver and Steelcraft's petition for leave to appeal.

The pleadings are described in detail and the questions certified are set forth verbatim in the opinion of the appellate court and need not be repeated here. It suffices to say that the plaintiff sought to recover on the basis of strict liability in tort while the third-party complaints

allege negligence and wilful and wanton misconduct on the part of General Box. In each instance the third-party plaintiff seeks indemnity from General Box "of all or part" of the sum that it was required to pay in settlement of plaintiff's claim, together with expenses and attorney's fees incurred in its defense. Silver and Steelcraft contend that the appellate court erred in holding that their third-party complaints did not state a cause of action and that, although total indemnity would be an appropriate result in this case, "the Illinois law of strict product liability has developed concepts of fault which invite equitable apportionment of the economic risk of loss among all responsible parties." They argue that indemnity "through equitable apportionment is a workable and just solution to third-party practice in Illinois" and that unjust and harsh results follow the application of the rules enunciated by the appellate court. General Box contends that the third-party complaints fail to state a cause of action, that where the original liability is based on strict liability in tort indemnity is limited to "upstream" actions, and that the "qualitative distinctions in negligence do not serve as a basis for indemnity for strict liability in tort actions." They argue too that a manufacturer's liability arising in strict tort liability is qualitatively "active."

In *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, upon consideration of contentions similar to those made here, we concluded that on the facts there alleged and for purposes of the motion admitted, there was no sound reason for the application of the no-contribution rule. We held, therefore, that the governing equitable principles required that ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them.

We consider next General Box's contention that "indemnity and product liability is limited to 'upstream'

actions.” Citing *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.*, 62 Ill. 2d 77, it argues that the major purpose of strict liability is to place the loss caused by defective products on those who created the risk and reaped the profit from placing the product in the stream of commerce. It contends that indemnity should therefore be limited to those whose handling of the defective product was “upstream” or prior to that of the third-party plaintiff, and that no indemnity has been permitted nor should be permitted against “downstream” or subsequent users or consumers. We do not agree. As we said in *Skinner*: “Misuse of the product or assumption of the risk by a user will serve to bar his recovery (*Williams v. Brown Manufacturing Co.*, 45 Ill. 2d 418), and indemnity is not available to one who misuses the product or assumes the risk of its use (*Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.*, 62 Ill. 2d 77). We are of the opinion that if the manufacturer’s third-party complaint alleges that the employer’s misuse of the product or assumption of the risk of its use contributed to cause plaintiff’s injuries, the manufacturer has stated a cause of action for contribution.” 70 Ill. 2d 1, 15.

Citing the majority view of the Study Committee (see *Study Committee Report on Indemnity, Third Party Actions and Equitable Contributions*, 1976 Report of the Illinois Judicial Conference), General Box argues that the increase in workmen’s compensation benefits can be construed to indicate the legislative intent that employers not be subjected to actions for contribution. We do not agree. As we said in *Skinner*: “The fact that the employee’s action against the employer is barred by the Workmen’s Compensation Act (Ill. Rev. Stat. 1975, ch. 48, pars. 138.5, 138.11) would not preclude the manufacturer’s third-party action against the employer for indemnification (*Miller v. DeWitt*, 37 Ill. 2d 273) and should not serve to bar its action for contribution.”

Although the third-party complaints are couched in terms of negligence and wilful and wanton misconduct, they allege misuse of the product and assumption of risk. Although stated in terms of partial indemnity rather than contribution, the prayer for relief clearly seeks contribution based on the relative degree to which the employer's misuse of the product or assumption of the risk contributed to cause plaintiff's injuries. For the reasons stated, the judgment of the appellate court is reversed and the cause is remanded to the circuit court of Kane County for further proceedings consistent with this opinion.

On the court's own motion, the decision in this cause will apply prospectively to causes of action arising out of occurrences on and after March 1, 1978. See *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1.

Reversed and remanded.

MR. CHIEF JUSTICE WARD, dissenting:

I dissent for the reasons stated in my dissenting opinion in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 17.

MR. JUSTICE UNDERWOOD, dissenting:

For the reasons set forth in my dissent in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 20, I cannot agree with the court here.

MR. JUSTICE DOOLEY, dissenting:

I dissent for the reasons stated in my dissenting opinion in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 22.

(No. 49205. [REDACTED])

ELBRIDGE ROBINSON v. INTERNATIONAL HAR-
VESTER COMPANY, Appellant.—(United States
Steel Corporation, Appellee.)

*Opinion filed December 12, 1977.—Opinion modified
January 26, 1978.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

WARD, C.J., and UNDERWOOD and DOOLEY, JJ., dissenting.

Pope & Driemeyer, of Belleville (W. Thomas Coghill, Jr., of counsel), for appellant.

Walker & Williams, of Belleville (Robert L. Gagen and David B. Stutsman, of counsel), for appellee.

MR. JUSTICE MORAN delivered the opinion of the court:

The third-party plaintiff, International Harvester Company (plaintiff), appeals the judgment of the appellate court affirming the St. Clair County circuit court's dismissal of its second amended third-party complaint filed against United States Steel Corporation (44 Ill. App. 3d 439). The third-party complaint sought indemnification for any damages due Elbridge Robinson, an employee of United States Steel Corporation (employer), as a result of injuries received by him while operating an industrial truck manufactured by plaintiff. We granted plaintiff leave to appeal.

Robinson filed a two-count complaint against plaintiff alleging that he was injured when the rear portion of the industrial truck raised off the ground, and crushed him between the truck and a low ceiling. Count I of his complaint alleged, among other things, that the truck was not reasonably safe when sold or leased, in that it was not equipped with a protective canopy. Count II alleged, among other things, that plaintiff was negligent in failing

to equip the industrial truck with a protective canopy.

Plaintiff's third-party complaint alleged that the industrial truck was sold as a multipurpose piece of equipment and that various optional standard devices, including a protective canopy, were made available to the employer. It further alleged the employer knew that a protective canopy was available for purchase; that the employer's management determined the canopy was necessary for the protection of the operator; that the employer knew or should have known of the dangers associated with operating the truck in the given location, but that it failed to purchase the device and placed the vehicle into operation without installing one of its own.

Count I of the complaint alleged negligence and count II alleged willful and wanton misconduct. Both counts sought total indemnification.

Plaintiff argues that where a manufacturer is held liable for injuries sustained by an employee by reason of its failure to install certain optional safety equipment, such manufacturer should be entitled to maintain an action for indemnity or contribution against the purchaser-employer who refused or failed to purchase the devices. The employer, on the other hand, argues that plaintiff proceeded on its theory of indemnification in the trial court and, therefore, should be estopped from raising the issue of contribution in this court. It further argues that, under present law, a manufacturer is not entitled to maintain an action against a third-party purchaser for either contribution or indemnity where the manufacturer's liability is premised on strict liability in tort.

The primary issue presented in this appeal has been discussed and decided in *Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, and *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1. In these cases, this court held that, as between the manufacturer and a purchaser-employer, a manufacturer is

entitled to maintain an action for contribution on a theory of comparative liability where it is alleged that the employer's misuse of the product and/or assumption of risk contributed to the employee's injury.

Plaintiff's request for indemnification, rather than contribution, is not a fatal pleading defect which requires dismissal of the complaint. We note that at the time plaintiff's complaint was filed, an action for contribution or indemnification was not permissible under then-existing law. In *Stevens*, this court allowed the cause of action based on contribution, even though the plaintiff had pleaded negligence and willful and wanton misconduct and had sought partial indemnity. (*Stevens v. Silver Manufacturing Co.* (1977), 70 Ill. 2d 41, 46.) Here, as in *Stevens*, plaintiff's pleadings are couched in terms of negligence and willful and wanton misconduct, but, in essence, allege misuse of the product and/or assumption of risk. The fact plaintiff's prayer for relief requests total indemnification, rather than partial indemnification, as in *Stevens*, does not require the dismissal of the complaint under the circumstances presented here.

Accordingly, the judgments of the circuit and appellate courts are reversed and the cause is remanded to the circuit court of St. Clair County for further proceedings consistent with this opinion.

On the court's own motion, the decision in this cause will apply prospectively to causes of action arising out of occurrences on and after March 1, 1978. See *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 16-17.

Reversed and remanded.

MR. CHIEF JUSTICE WARD, dissenting:

I dissent for the reasons stated in my dissenting opinion in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 17.

MR. JUSTICE UNDERWOOD, dissenting:

For the reasons set forth in my dissent in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 20, I cannot agree with the court here.

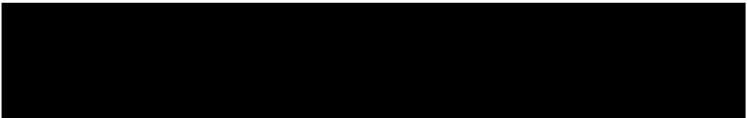
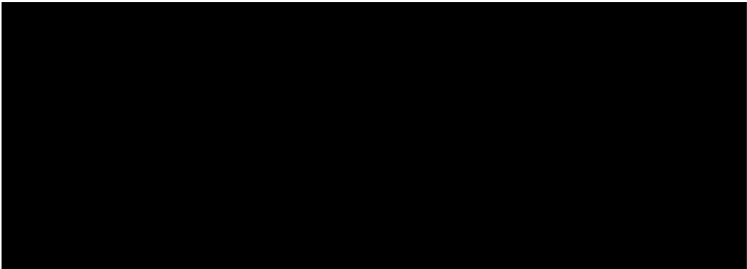
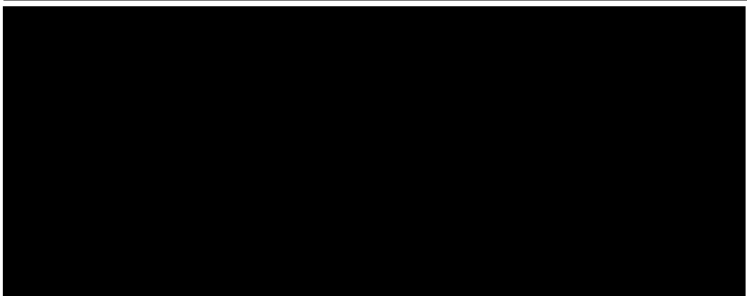
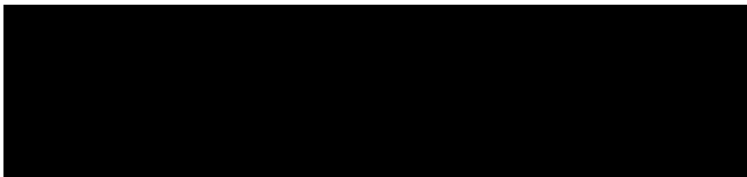
MR. JUSTICE DOOLEY, dissenting:

I dissent for the reasons stated in my dissenting opinion in *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, 22.

(Nos. 48949, 48956 cons.—

MARIE BUEHLER *et al.*, Appellees, v. DEBRA GOODMAN WHALEN *et al.*, Appellants.

Opinion filed December 12, 1977.—Opinion modified March 14, 1978.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

GOLDENHERSH, J., took no part.

[REDACTED]

[REDACTED]

Ray Freeark, of Freeark & Harvey, of Belleville, for appellant Debra Goodman Whalen.

Dunham, Boman, Leskera & Churchill, of East St. Louis (Allen D. Churchill and Francis D. Morrissey, of counsel), for appellant Ford Motor Company.

Hodson & Pennock and Crain, Hall & Cooksey, both of Centralia, and C. E. Heiligenstein, of Belleville, for appellees Marie Buehler *et al.*

MR. JUSTICE DOOLEY delivered the opinion of the court:

Plaintiffs Marie Buehler and the First National Bank of Belleville, as guardian of the estates of her sons Richard and Michael, brought suit against defendants, Debra Goodman Whalen and Ford Motor Company, to recover damages for injuries suffered when the automobile in which the Buehlers were riding caught fire after being struck by a car driven by Whalen. The other plaintiff, Gerrell Forth, was burned while helping the occupants leave the car.

The action against Whalen was predicated on negligence, while suit against Ford, the manufacturer of the Buehler car, was in strict liability in tort. It was alleged that the automobile was defectively designed.

The jury found for all plaintiffs against both defendants. Judgment was entered on the verdicts. Both defendants appealed. The appellate court affirmed. (41 Ill. App. 3d 446.) Pursuant to Rule 315 (58 Ill. 2d R. 315), we granted petitions for leave to appeal filed by both defendants.

The issues for decision are: (1) the liability of an automobile manufacturer in strict liability in tort for injuries sustained by passengers in a collision allegedly

caused by the vehicle's defective design; (2) sanctions which should be imposed for failure to comply with discovery procedures; (3) whether a joint tortfeasor is entitled to an apportionment of damages under these circumstances; and (4) the propriety of a given instruction.

The circumstances of the accident are virtually undisputed. On January 3, 1971, while the Buehler car, driven by Mr. Buehler, was traveling south on a two-lane highway headed toward the Buehler residence, Buehler had to make a left turn to enter a driveway leading to his residence on the east side of the road. When he was from 300 to 400 feet north of the driveway, he reduced his speed and turned on his left-turn signals.

The deceleration of the Buehler car caused a line of five other cars to form behind it. The last of these cars was that of defendant Whalen. She drove her car into the northbound lane to pass the line of cars ahead. As she reached a point two car lengths north of the Buehler car, she observed it was about to cross the northbound lane. Then traveling at 65 miles an hour, the posted limit, she applied her brakes and swerved to avoid hitting the Buehler car. The effort failed and the left front of her car struck the left rear of the Buehler car.

Upon impact, the rear of the Buehler car burst into flames. It came to rest on its side in a ditch bordering the side of the highway. Forth had observed the accident from his car, one of those lined up behind the Buehler car. He and others righted the car, and helped the passengers out. It was stipulated that the injuries of the plaintiffs were caused entirely by burns.

Subsequently the gas cap of the Buehler car was found near the scene. The ears securing it to the filler spout of the tank were missing. They were found within the gas tank. The filler spout had been displaced from its normal position and was extending at or below the level of the rear bumper.

Buehler's car was a 1966 Ford Fairlane sedan. It was equipped with what is called a flange-mounted gas tank, as contrasted with a strap-mounted tank. The latter model is placed below and separated from the floor of the trunk compartment. The top of the flange-mounted tank, on the other hand, serves as the floor of the trunk. The tank is held rigidly to the car structure by screws. The gas filler spout runs through the trunk into an opening in the license plate bracket area above the rear bumper. The distance between tank and bumper is about 2½ inches.

The flange-mounted tank was not used in any American automobile prior to 1960. In that year Ford started using it in some models. General Motors and Chrysler continued to use the strap-mounted tank in their cars. Sometime after 1970 Ford changed back to that model.

The 1966 Fairlane had no shielding between the trunk compartment and the passenger compartment other than a fiberboard panel and the padding of the rear seat.

Expert testimony made it apparent that the fire in the Buehler car arose out of its being struck by Whalen's car, and that the occurrence of the fire in the trunk, as well as its rapid spread into the passenger compartment, was due to the design of the Fairlane model.

Paul O'Shea, head of a company called California Automotive Research, which does work in automotive design and testing, testified on the basis of his inspection of the Buehler car and of a crash test that the impact on the Buehler car, at an estimated impact velocity of 35 miles an hour, knocked the tank cap off.

William Eddie, chief engineer at St. Louis Testing Laboratory, was of the opinion that the impact of the collision caused a sudden change in the configuration of the tank and a surge of its contents which in turn forced off the cap.

Derwyn Severy is a research engineer in the Department of Transportation and Traffic Engineering at the

College of Engineering at the University of Southern California who has done considerable research into automobile crashes, including test crashes as well as some 6,000 actual crashes. He has also done studies on fires occurring after collision between cars. He stated that the abrupt acceleration of the Buehler car as a result of the collision caused the gasoline in the tank to surge to the rear of the tank, forcing off the cap, and introducing atomized gas into the trunk. This gas was then ignited by sparks generated in the collision by contact between the metal of the car and the pavement.

Both O'Shea and Severy testified that if the car had had a firewall between the trunk and the passenger compartment, the spread of the fire would have been delayed long enough to permit the occupants to get out without suffering serious injury.

According to Severy, the design of the Fairlane rendered it susceptible to fire originating in the gas tank upon a rear-end collision for several reasons. There was the close proximity of the tank to the rear bumper, making likely the release of the contents of the tank in a rear-end impact. Another was that the rigid method by which the tank was attached to the car made the tank particularly subject to stress from the impact, with the result that the tank would be warped and the filler neck displaced from its normal position. The lack of a fire wall, the use of which he had recommended to the automotive industry, including Ford, was a contributing fact. Severy concluded that the design of the fuel tank in the 1966 Ford Fairlane constituted an unreasonably dangerous condition for occupants of the vehicle.

The probability of rear-end accidents was established by the testimony. O'Shea stated that 50% of all automobile collisions were of that type. The percentage of rear-end collisions resulting in fires was also in evidence. O'Shea estimated a figure of one-half of one percent,

whereas Severy stated that more recent data indicated the figure was 4%. Severy also testified, however, that in about 12% of collisions where gas spillage occurs, the gas ignites.

Ford contends it had no duty to design a vehicle that would prevent injuries to plaintiffs under the occurrences of this case. Ford argues that while the injury complained of may have been foreseeable, it was not one which it was "objectively reasonable to expect." It relies on *Mieher v. Brown* (1973), 54 Ill. 2d 539, and *Cunis v. Brennan* (1974), 56 Ill. 2d 372.

In *Mieher* a car driven by decedent collided with the rear of a truck manufactured by International Harvester Company. Decedent's car was propelled underneath the bed of the truck. Plaintiff's negligence action was based on alleged negligence in the design of the truck, since there was no bumper or shield to prevent a car from passing underneath its body in the event of a collision. *Mieher*, involving the duties of the manufacturer of a vehicle to a nonuser, described the issue as whether the manufacturer's duty was to "design a vehicle with which it is safe to collide." (54 Ill. 2d 539, 543.) The manufacturer's duty, this court concluded, did not extend to this "highly extraordinary" occurrence. (54 Ill. 2d 539, 545.) Actually, it would seem that the question is far broader. Does the manufacturer have a duty to so design a vehicle as to avoid unreasonable risk of injury in the event of collision regardless of whether the injured is within or without the automobile?

Incisively in point is *Nanda v. Ford Motor Co.* (1974), 509 F.2d 213, a decision by the Seventh Circuit Court of Appeals applying Illinois law, and involving what appears to be the same design defect as the one in the present case. Plaintiff was driving a 1967 Ford Cortina. He had stopped in the northbound lane of a highway preparatory to making a left turn. He was struck in the rear by another vehicle traveling about 10 miles per hour, and his car was

pushed into the southbound lane, where it was hit by a third vehicle. There was evidence from which the jury could have found that the first collision caused a small fire in the rear of plaintiff's car. The fire then increased in size upon the second collision, engulfing the car in flames and seriously burning plaintiff.

Plaintiff's action was based on design defects in the gas tank. As here, the top of the tank also served as part of the floor of the trunk, and there was no shielding between the trunk and the passenger compartment except for a piece of cardboard. In addition, expert testimony showed that the filler neck of the tank tended to be displaced into the tank, and that the tank neck and cap were extremely vulnerable to impact.

The court of appeals affirmed a judgment for plaintiff. After reviewing the decisions of this court in *Mieher* and *Cunis*, the court concluded:

“Application of the principles stated in the *Mieher* and *Cunis* opinions requires affirmance here. Viewing the evidence in the light most favorable to the plaintiff, it does not appear to us to be ‘highly extraordinary’ that the absence of a firewall or shield between the fuel tank and the passenger compartment and the condition of the filler-pipe assembly would bring about the harm for which plaintiff sues. The jury could have found that those conditions, in the words of the *Mieher* opinion, constituted an ‘unreasonable danger’ and subjected the user of the product to ‘an unreasonable risk of injury.’ A rear-end collision is the most common of highway mishaps, and it is not ‘extraordinary,’ ‘bizarre,’ ‘unique,’ or ‘freakish and *** fantastic’ for such a collision to impel the victim vehicle into a collision with a third vehicle.” 509 F.2d 213, 218.

There is a series of decisions imposing liability for escape of gasoline and consequent fires after a rear-end collision involving cars with similar fuel tank installations. (*Self v. General Motors Corp.* (1974), 42 Cal. App. 3d 1, 116 Cal. Rptr. 575; *Grundmanis v. British Motor Corp.* (E.D. Wis. 1970), 308 F. Supp. 303; *Johnson v. American Motors Corp.* (N.D. 1974), 225 N.W.2d 57; *Polk v. Ford Motor Co.* (8th Cir. 1976), 529 F.2d 259; *Turcotte v. Ford Motor Co.* (1st Cir. 1974), 494 F.2d 173.) These cases illustrate what is shown by the evidence in the present case, namely, that cars equipped with a fuel system of the type used on the Fairlane represent a design defect because of the vulnerability of the tank to impact and the risk of fire spreading into the passenger compartment. Given the frequency of rear-end collisions we cannot say that the injuries here were not objectively reasonable for the manufacturer to anticipate.

Probably the first case to adopt the position that the manufacturer is liable for defects which enhance the injuries received in an accident is *Larsen v. General Motors Corp.* (8th Cir. 1968), 391 F.2d 495. The design defect in *Larsen* was in the steering assembly, which caused the wheel to be displaced rearward in a head-on collision, striking plaintiff in the head. The trial court had granted a summary judgment for defendant relying on the decision of the Seventh Circuit in *Evans v. General Motors Corp.* (1966), 359 F.2d 822, that the manufacturer has no duty to design a car that will be accident-proof, and that participation in a head-on collision is not an intended use of the car.

The Eighth Circuit disagreed. It stated:

“Automobiles are made for use on the roads and highways in transporting persons and cargo to and from various points. This intended use cannot be carried out without encountering in varying degrees the statistically proved hazard of injury-

producing impacts of various types. The manufacturer should not be heard to say that it does not intend its product to be involved in any accident when it can easily foresee and when it knows that the probability over the life of its product is high, that it will be involved in some type of injury-producing accident." 391 F.2d 495, 501-02.

The views expressed in *Larsen* find support in Prosser, Torts 644-46 (4th ed. 1971), and 2 Restatement (Second) of Torts secs. 398, 435 (1965), which states:

"Sec. 398. Chattel Made Under Dangerous Plan or Design

A manufacturer of a chattel made under a plan or design which makes it dangerous for the uses for which it is manufactured is subject to liability to others whom he should expect to use the chattel or to be endangered by its probable use for physical harm caused by his failure to exercise reasonable care in the adoption of a safe plan or design."

"Sec. 435. Foreseeability of Harm or Manner of Its Occurrence

(1) If the actor's conduct is a substantial factor in bringing about harm to another, the fact that the actor neither foresaw nor should have foreseen the extent of the harm or the manner in which it occurred does not prevent him from being liable.

(2) The actor's conduct may be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm."

Succinctly stated, under *Larsen* the manufacturer's duty is to use reasonable care in the design and manufacture of its product, bearing in mind that the intended and actual use of automobiles results in collisions. The cases adopting *Larsen's* position are legion. (*Knippen v. Ford Motor Co.* (D.C. Cir. 1976), 546 F.2d 993; *Ford Motor Co. v. Evancho* (Fla. 1976), 327 So. 2d 201;

Passwaters v. General Motors Corp. (8th Cir. 1972), 454 F.2d 1270 (applying Iowa law); *Garst v. General Motors Corp.* (1971), 207 Kan. 2, 484 P.2d 47; *Volkswagen of America, Inc. v. Young* (1974), 272 Md. 201, 321 A.2d 737; *Frericks v. General Motors Corp.* (1976), 278 Md. 304, 363 A.2d 460 (applying North Carolina law); *Rutherford v. Chrysler Motors Corp.* (1975), 60 Mich. App. 392, 231 N.W.2d 413; *Perez v. Ford Motor Co.* (5th Cir. 1974), 497 F.2d 82 (applying Louisiana law); *Polk v. Ford Motor Corp.* (8th Cir. 1976), 529 F.2d 259 (applying Missouri law); *Brandenberger v. Toyota Motor Sales, U.S.A., Inc.* (1973), 162 Mont. 506, 513 P.2d 268; *Friedrich v. Anderson* (1974), 191 Neb. 724, 217 N.W.2d 831; *Bolm v. Triumph Corp.* (1973), 33 N.Y.2d 151, 305 N.E.2d 769, 350 N.Y.S.2d 644; *Johnson v. American Motors Corp.* (N.D. 1974), 225 N.W.2d 57; *McMullen v. Volkswagen of America* (1976), 274 Ore. 83, 545 P.2d 117; *Dyson v. General Motors Corp.* (E.D. Pa. 1969), 298 F. Supp. 1064 (applying Pennsylvania law); *Mickle v. Blackmon* (1969), 252 S.C. 202, 166 S.E.2d 173; *Engberg v. Ford Motor Co.* (1973), 87 S.D. 196, 205 N.W.2d 104; *Dreisonstok v. Volkswagenwerk, A.G.* (4th Cir. 1974), 489 F.2d 1066 (applying Virginia law); *Baumgardner v. American Motors Corp.* (1974), 83 Wash. 2d 751, 522 P.2d 829; *Arbet v. Gussarson* (1975), 66 Wis. 2d 551, 225 N.W.2d 431.) Each of the foregoing is predicated on negligence, and many on both negligence and the wholly dissimilar strict liability in tort doctrine.

In *Lewis v. Stran Steel Corp.* (1974), 57 Ill. 2d 94, an action in negligence as well as strict liability, this court held the defendant manufacturer responsible to a bystander. When its product was transported by a purchaser's employee on the purchaser's premises on a fork lift truck, the wheel of the fork lift went into a hole in the floor and caused sheets of flooring to fall and strike plaintiff, a bystander.

In the appeal by defendant Whalen she objects to the refusal of the trial court to instruct the jury to "apportion" damages by assessing all of them against Ford and none against her. This request was based on the fact that the only injuries to plaintiffs consisted of burns resulting from the fire within the car.

What defendant Whalen would overlook is her obviously negligent driving which caused the collision, the precipitating cause of the fire. We have here a classic case of concurrent tortfeasors whose separate acts combine to produce a single individual injury. Under these circumstances there is no apportionment. Prosser, Torts, sec. 52, at 315-16 (4th ed. 1971); Restatement (Second) of Torts sec. 433A, comment *i*.

Gertz v. Campbell (1973), 55 Ill. 2d 84, on which Whalen relies, is not apposite. There plaintiff's leg was injured when he was hit by defendant's car. Following the accident plaintiff consulted a doctor. Although examination showed that immediate surgery was required, the treating doctor negligently delayed performance of the surgery for 17 hours, with the result that amputation became necessary. Under *Chicago City Ry. Co. v. Saxby* (1904), 213 Ill. 274, defendant was liable not only for those injuries immediately arising out of the collision, but also for the additional injuries attributable to the doctor's negligence. When plaintiff brought suit against defendant, the latter accordingly filed a third-party complaint against the doctor seeking indemnification for such damages as defendant might be required to pay which arose out of the third-party defendant's negligence. The court held that the third-party complaint stated a cause of action for what the appellate court had described as an "equitable apportionment" and what two judges, specially concurring, described as a form of subrogation. 55 Ill. 2d 84, 86, 94.

Here, however, Whalen filed no third-party action. Had she done so, her own active negligence would have

prohibited any claim of indemnity from Ford. In effect, she would now escape responsibility for injuries caused in part by her negligence. It is settled, however, that each of two concurrent tortfeasors may be held liable for the total damages incurred. See *Carver v. Grossman* (1973), 55 Ill. 2d 507, 511; *Reese v. Chicago, Burlington & Quincy R.R. Co.* (1973), 55 Ill. 2d 356, 363; *Miller v. DeWitt* (1967), 37 Ill. 2d 273, 289; *Chicago & Illinois Midland Ry. Co. v. Evans Construction Co.* (1965), 32 Ill. 2d 600, 603.

We are aware of *Skinner v. Reed-Prentice Division Package Machinery Co.* (1977), 70 Ill. 2d 1, filed this day. However, *Skinner's* applicability is prospective only, covering occurrences arising on and after March 1, 1978. Accordingly, this litigation remains unaffected.

Whalen asserts error in the refusal of the trial court to grant her motion to strike the pleadings of Ford and enter a default judgment against it. That motion was based on the failure of Ford to comply with discovery mandated by our rules.

On July 8, 1971, an order was entered against Ford directing it to produce all reports relative to the litigation. On May 26, 1972, prior to trial, plaintiffs submitted the following interrogatory to Ford:

"Please list all tests performed, of every nature and description whatsoever, and whether performed by the defendant or not, along with results and analyses and interpretations thereof, which were made on the 1966 Ford Fairlane 500 or any Ford preceding it if it was not dissimilar, in which the automobile was subjected to any form of impact collision, upset, fire or other force of any sort whatsoever, or in which the tank or gas was subjected to such force or pressure, and giving the following information:

- (a) Where and when performed;
- (b) By whom performed and for whom;
- (c) Nature of the tests;
- (d) Results of the tests;
- (e) Analyses of the tests;

(f) Interpretations of the tests.”

Ford's answer under oath was “None.”

Subsequent to the filing of this answer, on October 5, 1972, Gilford Gorker, an engineer employed by Ford, testified in a discovery deposition that Ford had conducted tests of rear-end-collision impacts on cars having flange-mounted tanks. Plaintiffs' counsel thereupon requested the test reports. Some were front-end-impact and rear-end-impact tests. But no rear-end tests conducted at speeds greater than 21.4 miles per hour were furnished. Some of these were supplied in December 1972. A second set of test reports was supplied one day before trial.

Other interrogatories submitted to Ford asked whether any employee of Ford or of a subsidiary had ever submitted a report or opinion recommending against the use of a fuel system like that used on the 1966 Fairlane, or any warning of any hazards in its use. To these interrogatories Ford answered that to its knowledge it had not received any such report.

On June 13, 1973, plaintiffs filed a motion to admit facts and documents. The answer of Ford admitted that Ian Tampen, a research engineer at Ford Motor Company, Ltd. (a British subsidiary), had been investigating accidents involving Ford products since August of 1966. Ford's response also admitted that on October 16, 1969, Tampen had prepared a document reading as follows:

“A similar case [of a rear-end collision resulting in fire] occurred recently in U.S.A. The Cortina tank burst and caused an immediate conflagration. No further details are available, however it does indicate that the floor mounted tank is hazardous and should be carefully reviewed and tested in each new model.”

The Cortina also employed a flange-mounted tank.

Tampen described the flange-mounted tank as “hazardous” following his investigation of the rear-end collision and fire involving a Ford Cortina. Ford, notwithstanding

that the interrogatories embraced "its subsidiaries," when confronted with this document in the motion to admit, sought to pass off "this matter as a finding of an employee of Ford Motor Corporation, Ltd."

On the trial of this cause Gilford Gorker, a "house expert" for the Ford Motor Corporation, denied there had been conducted "any 30 m.p.h. rear end impact tests of Ford Fairlanes and Ford Mustangs with a similar tank arrangement." On cross-examination by Whalen's counsel Gorker was confronted with a record of the tests of Ford Motor Corporation up to 1959. This exhibit, amongst others, embraced test No. 253, wherein a 1966 Ford Fairlane was rear ended at 30 m.p.h. After this impact the fuel tank was deformed causing the tank to leak fuel. Another test, No. 301, on a Mustang at 30 m.p.h. resulted in 26 inches of structural collapse and a leaking gas tank.

This was vital information which had been withheld by defendant Ford Motor Corporation. Whalen's attorney had obtained this Ford record from some litigation other than the instant one—a sad commentary on the effectiveness of the discovery here.

Whalen made a motion in the trial court to strike Ford's pleadings and enter a default judgment against it because of Ford's false answer to the interrogatory concerning crash tests, and failure to provide her with the records requested. In lieu of this sanction authorized under Rule 219(c) (58 Ill. 2d R. 219(c)), the trial court held a hearing for the purpose of determining whether Ford should be held in contempt. The trial court's memorandum of opinion included the following:

"The court feels, however, that Ford Motor Co. did withhold evidence it could have easily discovered and then made available to the other parties. The court has found the defendant Ford not guilty of contempt only because of the technical language of the various requests made to Ford to produce certain information."

We find no "technical language" in the requested discovery. And we cannot condemn too severely the conduct of the Ford Motor Corporation in the discovery procedures here. It gave false answers to interrogatories under oath. It secreted evidence damaging to its case. Under the circumstances, the trial court would have been justified in striking the answer of this defendant and submitting to the jury only the issue of damages.

Our discovery procedures are meaningless unless a violation entails a penalty proportionate to the gravity of the violation. Discovery for all parties will not be effective unless trial courts do not countenance violations, and unhesitatingly impose sanctions proportionate to the circumstances. These are already in Rule 219(c). It provides for varied sanctions, including contempt proceedings. But a contempt procedure is hardly a sanction in reality. The order can, of course, be appealed. The worst penalty is the payment of a nominal fine. Meanwhile, the opposing party may well have been forced to trial without truth, and truth is the heart of all discovery.

Disclosure is the object of all our discovery procedures. It is the opinion of this court that trial courts should make disclosure a reality. Here discovery has long since been completed. Had the jury here found in favor of Ford, a civil contempt adjudication would have given little satisfaction to plaintiffs. As a minimum, it would have been proper to grant plaintiffs a new trial solely on the issue of damages. And even that relief, with the time and money involved, is pragmatically inadequate. Here, of course, judgment was entered in favor of plaintiffs. Under these circumstances we think that denial of Whalen's motion for a new trial lay within the discretion of the trial court.

We note that the record shows house counsel of Ford was responsible for providing Ford's trial counsel with the materials requested in discovery procedures. On the oral

[REDACTED]

argument of this cause all parties to this suit were careful to disclaim any wrongdoing on the part of Ford's trial counsel, who enjoys a reputation as an honorable practitioner. However, attorneys who wish to conduct the practice of law on a long-distance basis should advise their clients that Illinois courts will not tolerate fractional discovery or fractional disclosure.

Defendant Ford also complains of instructing the jury to the effect that unfavorable inferences could be drawn because of failure to produce documents. (Illinois Pattern Jury Instruction, Civil, No. 5.01 (2d ed. 1971).) It was Ford's conduct which brought about the giving of this instruction. Under the circumstances of this case it was justified.

The judgment is accordingly affirmed.

Judgment affirmed.

MR. JUSTICE GOLDENHERSH took no part in the consideration or decision of this case.

[REDACTED]

(No. 50090.-[REDACTED])

CHARLES MUELLER, Ex'r, Appellant, v. DOROTHY
NICKEL, Appellee.

Supervisory order entered January 26, 1978.

[REDACTED]

RYAN, J., took no part.

Gerald M. Hunter, of Oglesby, for appellant.

No appearance for appellee.

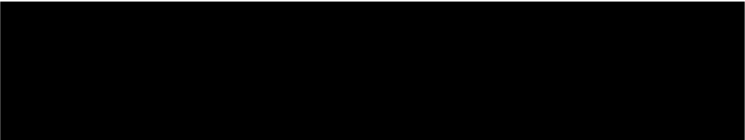
PER CURIAM: In the appeal from the circuit court of La Salle County the notice of appeal was erroneously sent to the clerk of the appellate court, instead of the clerk of the trial court, within the 30-day period for filing the notice. The clerk of the appellate court sent it to the trial court after the 30-day period expired, and the appellate court dismissed the appeal for failure to file the notice within time. Leave to appeal is allowed, and in the exercise of this court's supervisory jurisdiction the appellate court is directed to reinstate the appeal.

Supervisory order entered.

(No. 50175.—

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,
v. MICHAEL PANKOFF, Appellant.

Supervisory order entered January 26, 1978.

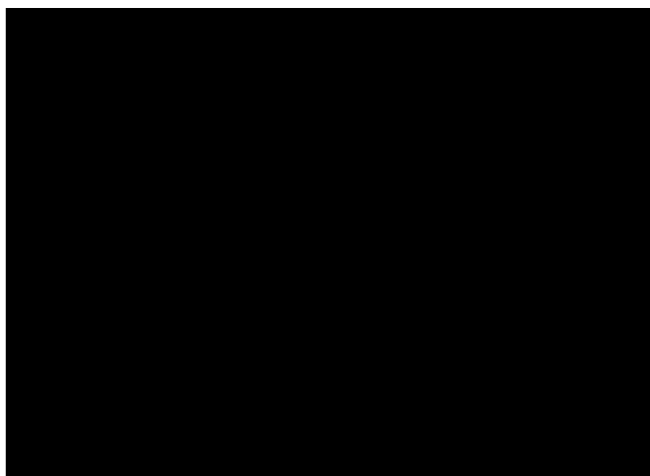


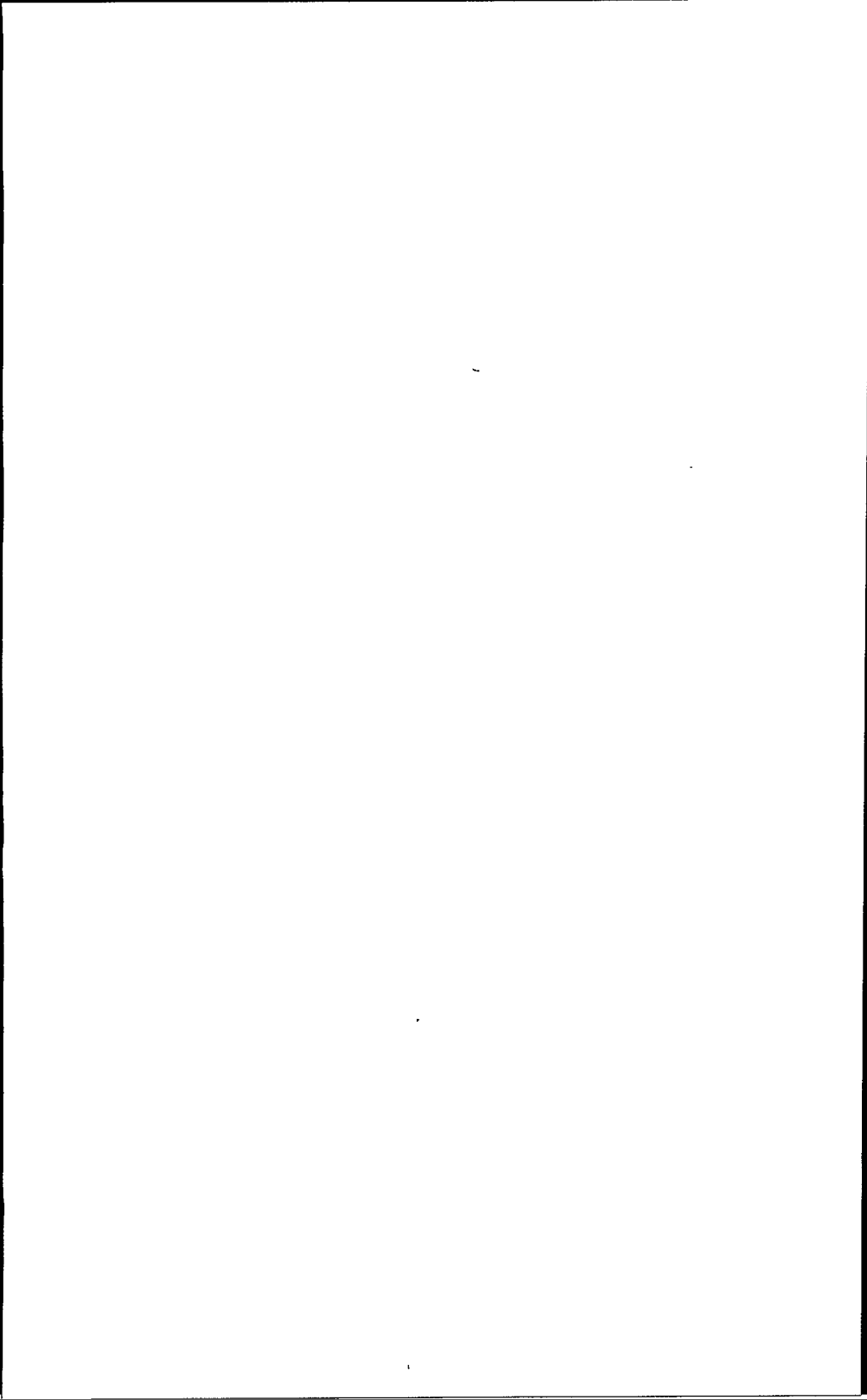
Alan D. Blumenthal, of Chicago, for appellant.

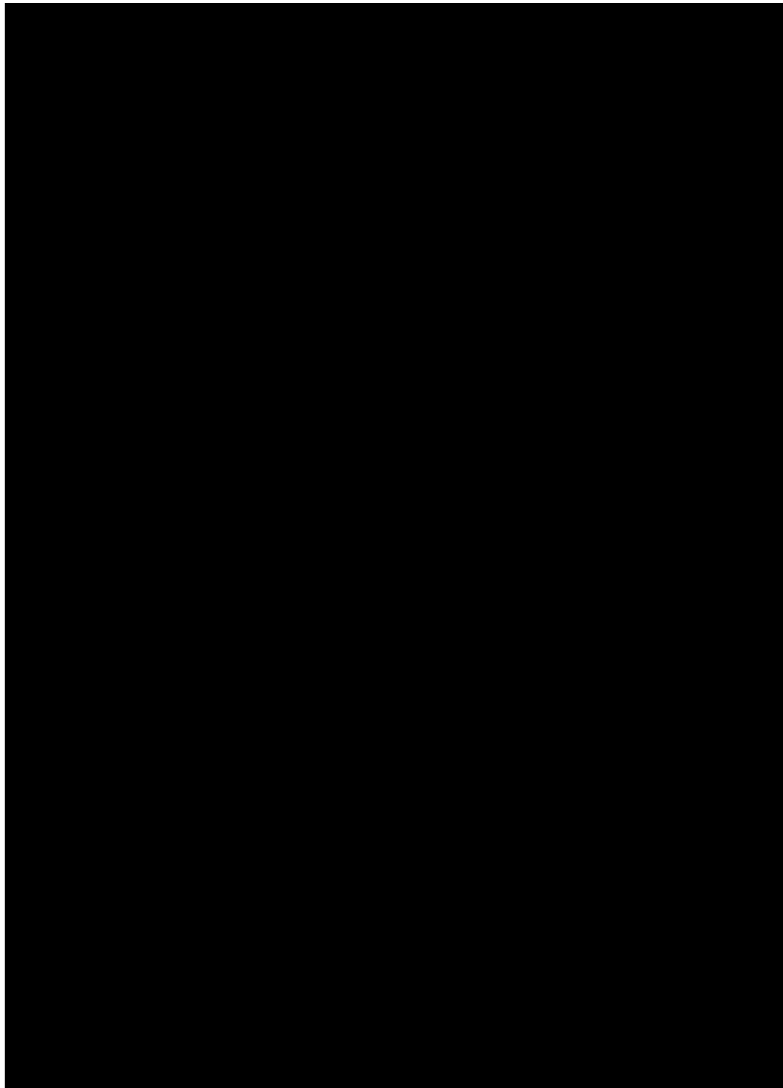
No appearance for the People.

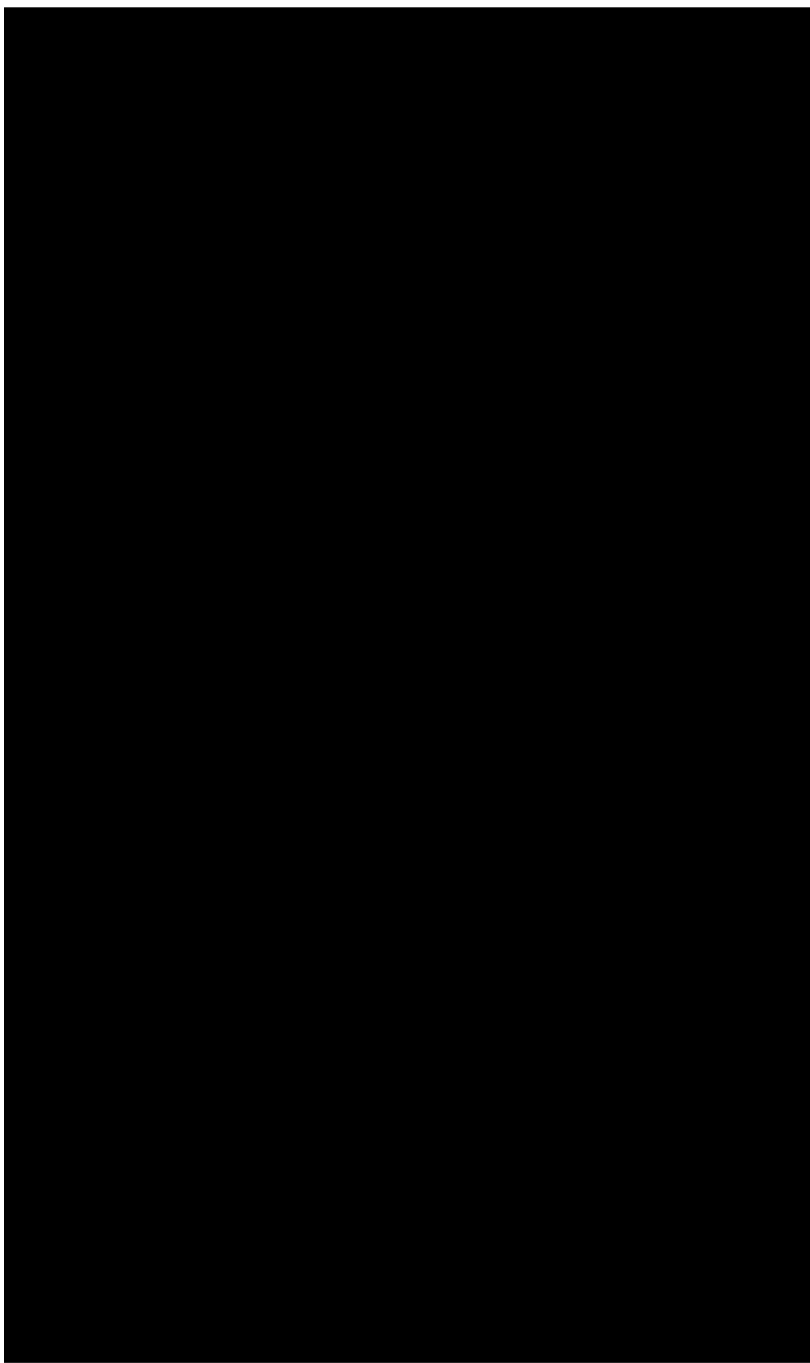
PER CURIAM: In this case the trial court denied a free transcript for appeal on the ground that defendant was at liberty on a \$60,000 appeal bond, for which his family had posted \$6,000 cash. The appellate court also denied his request. Leave to appeal is allowed and, in the exercise of this court's supervisory jurisdiction, the trial court is directed to consider defendant's motion for a free transcript without regard to the fact that defendant is at liberty on bail. See *People ex rel. Baker v. Power* (1975), 60 Ill. 2d 151.

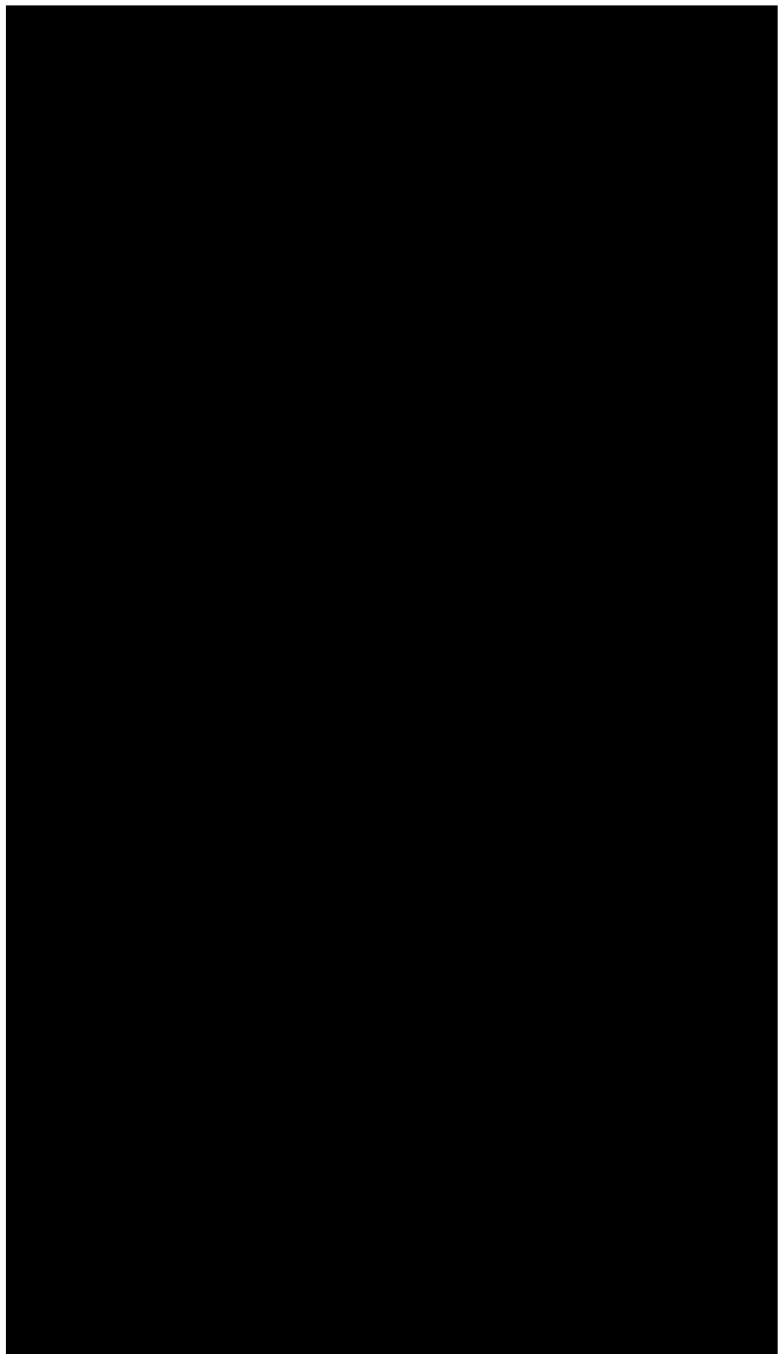
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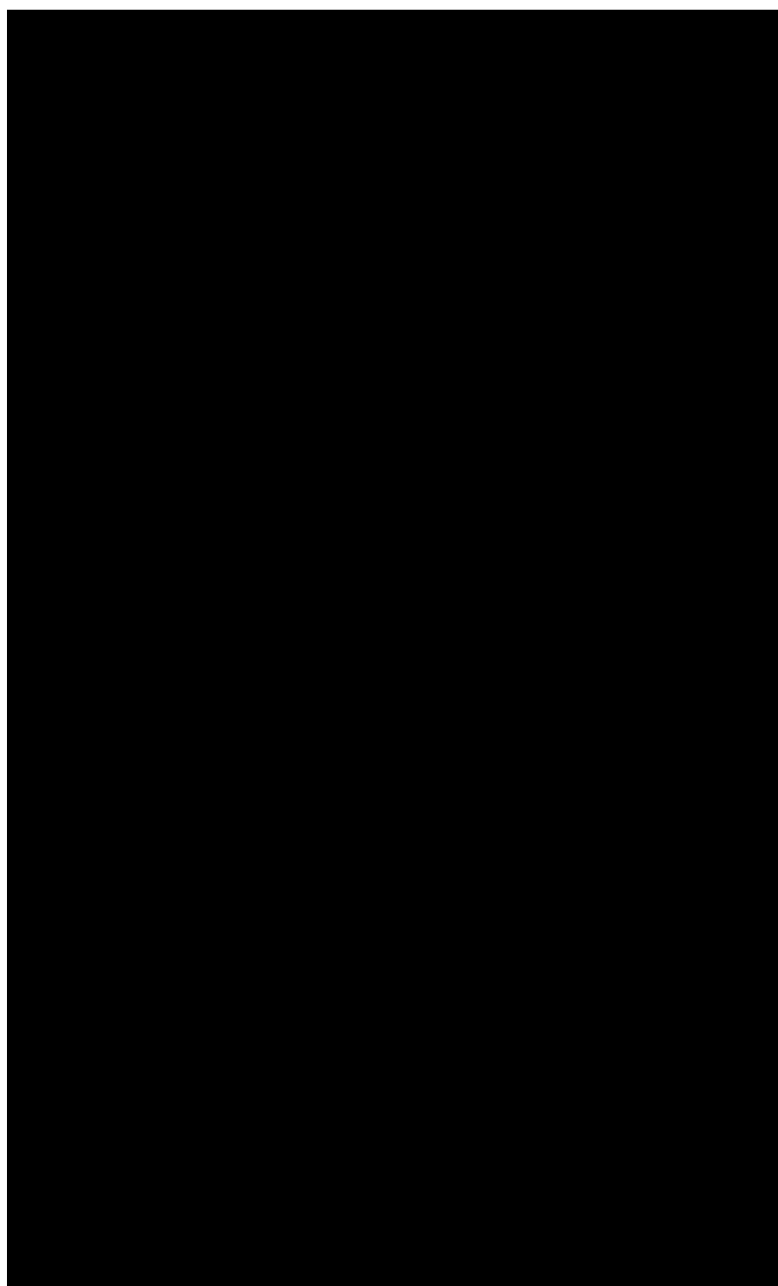


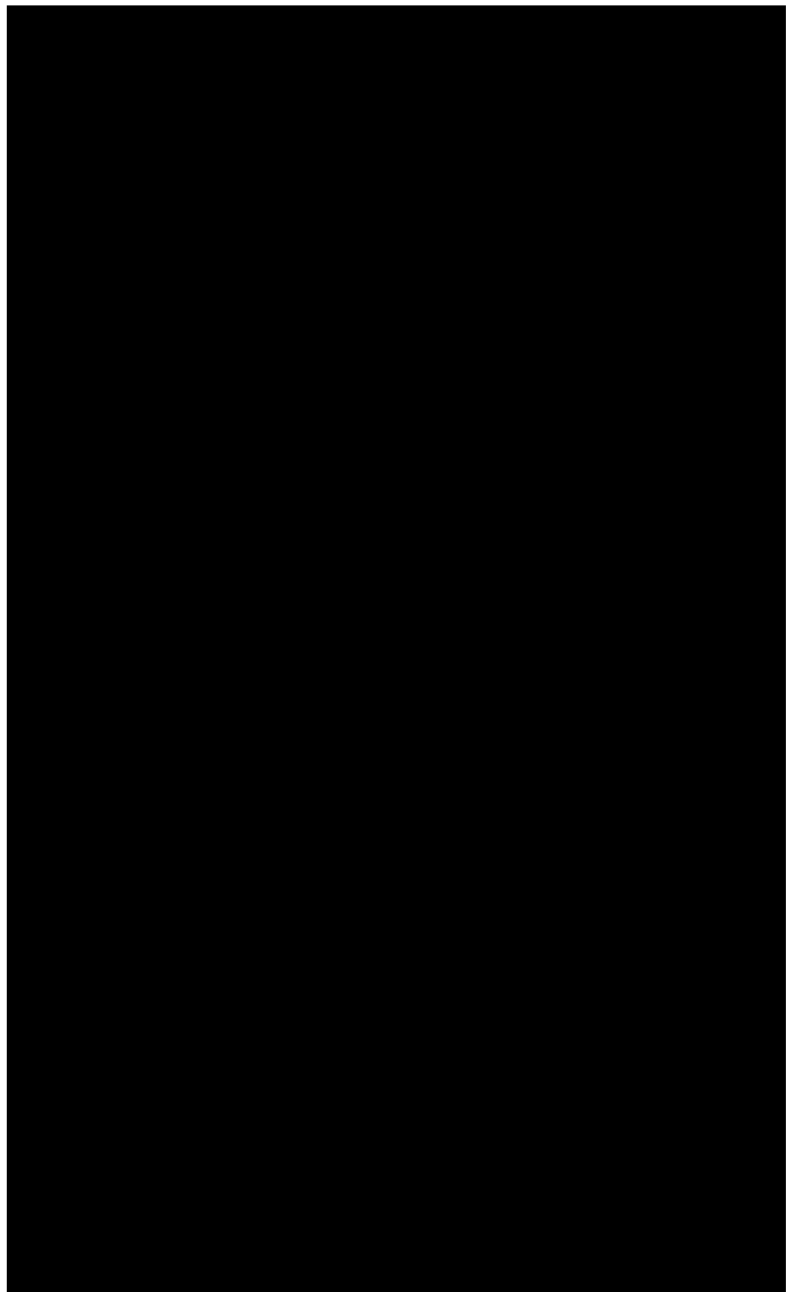


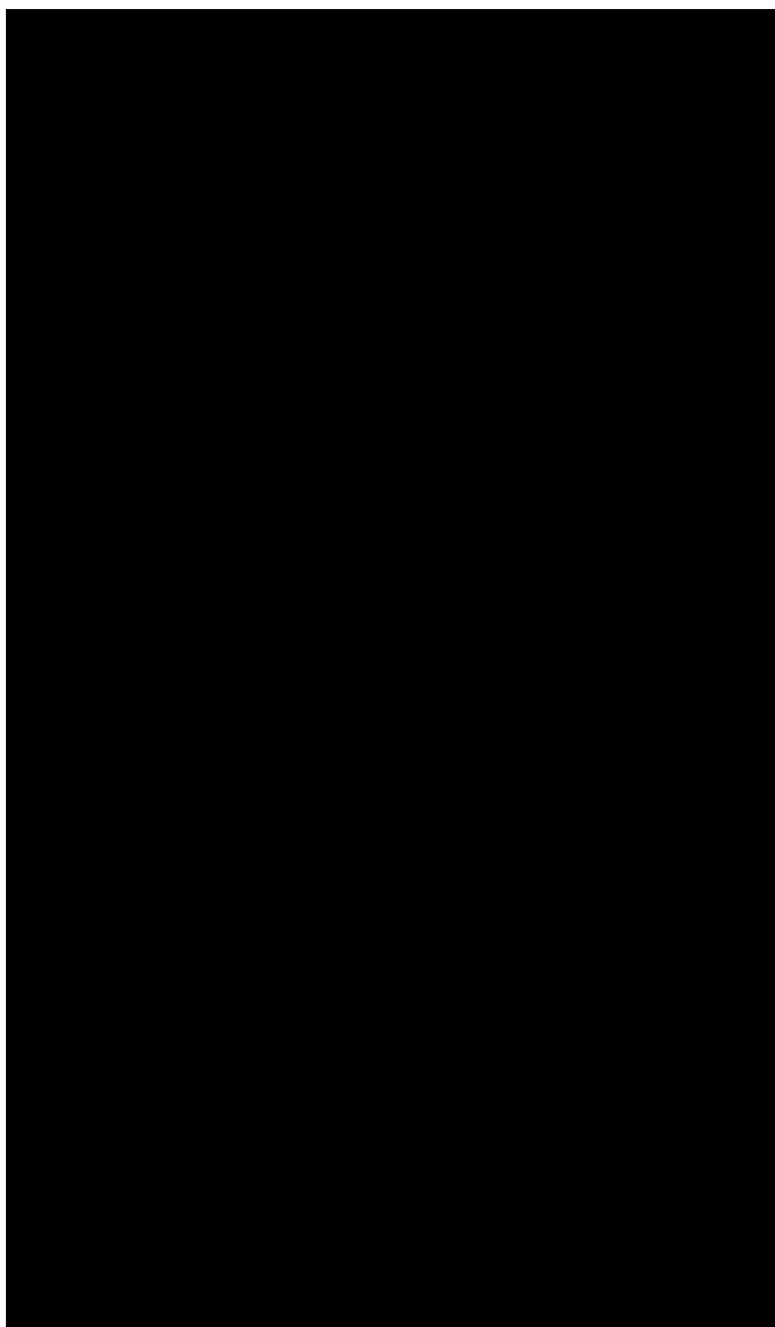


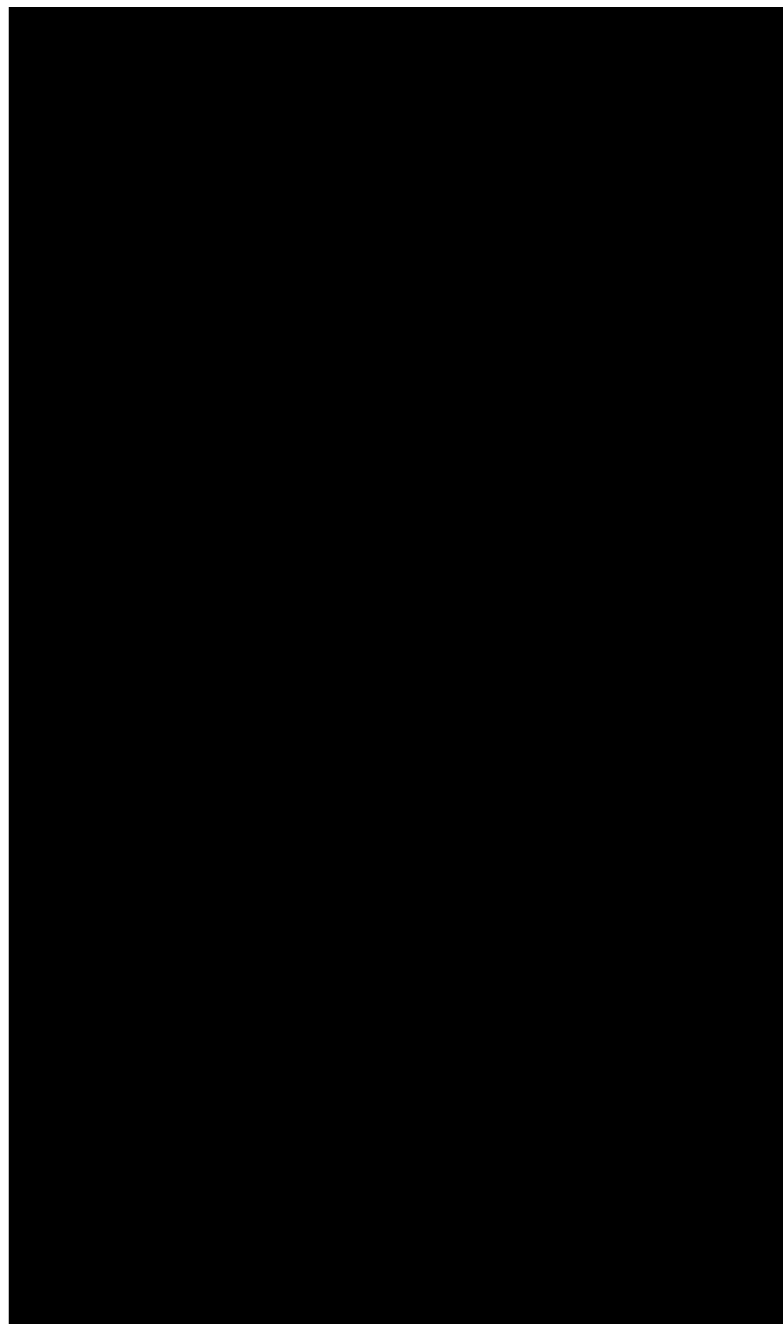


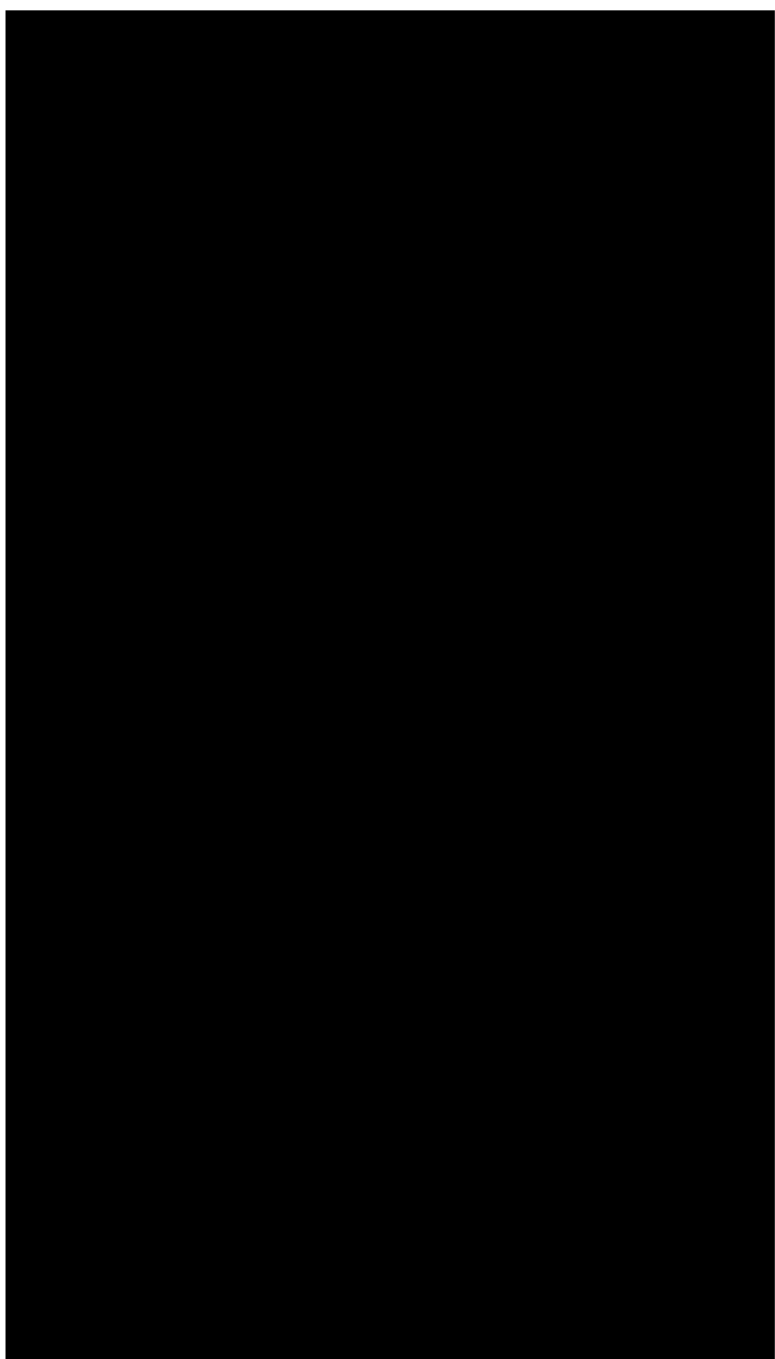


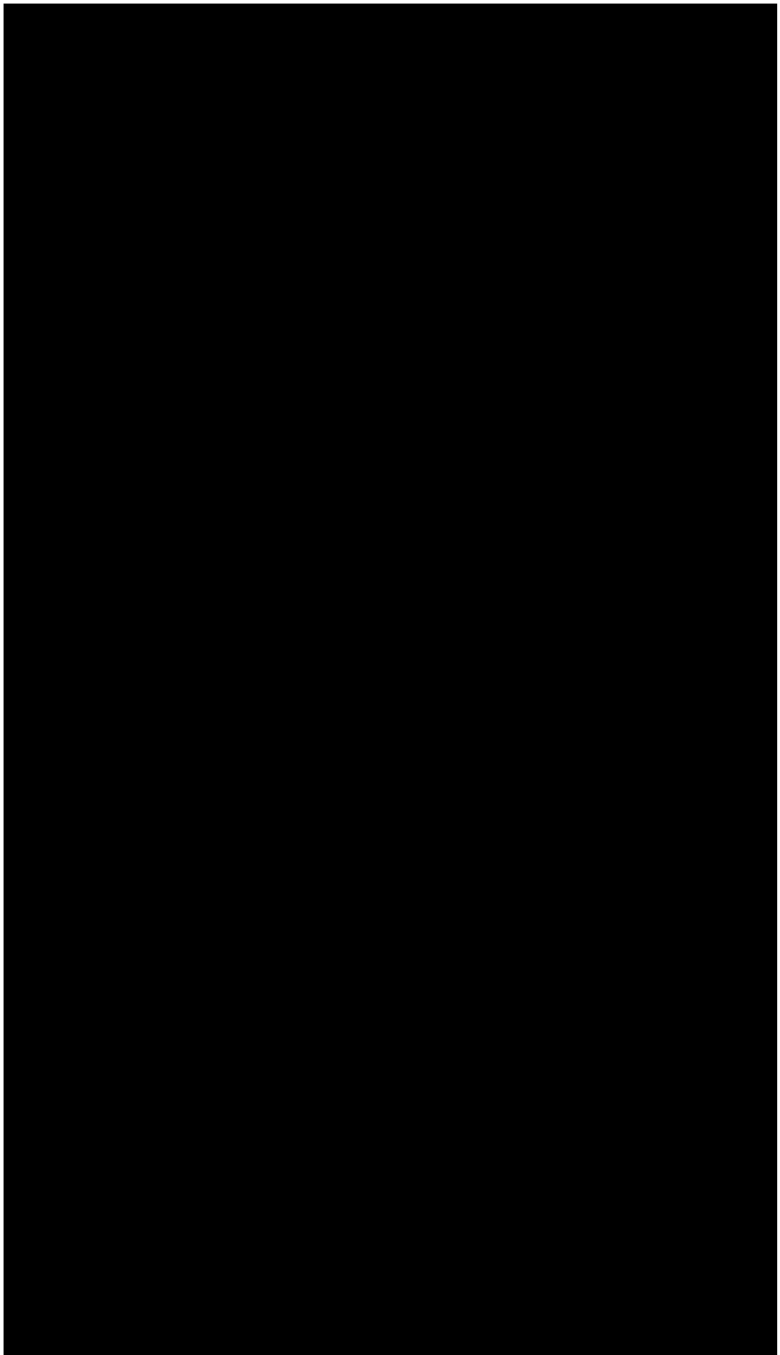


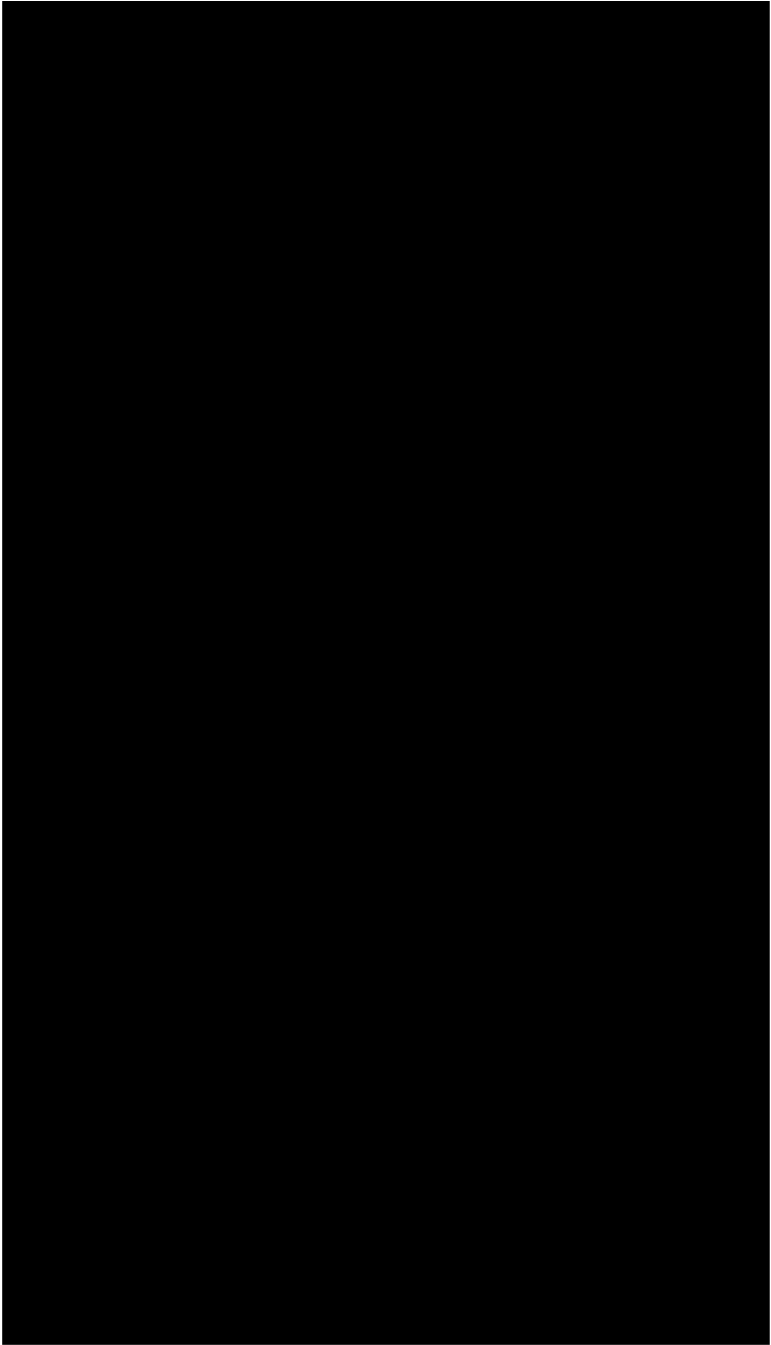


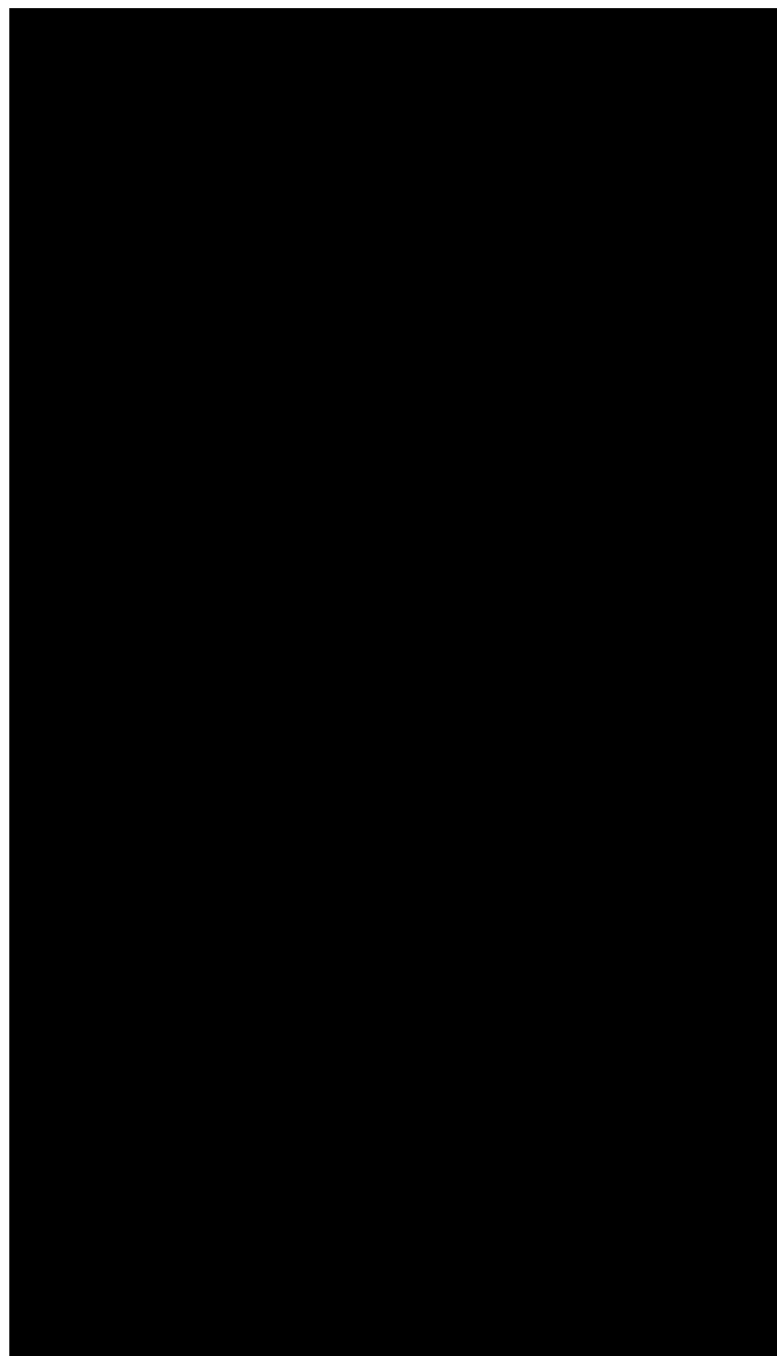


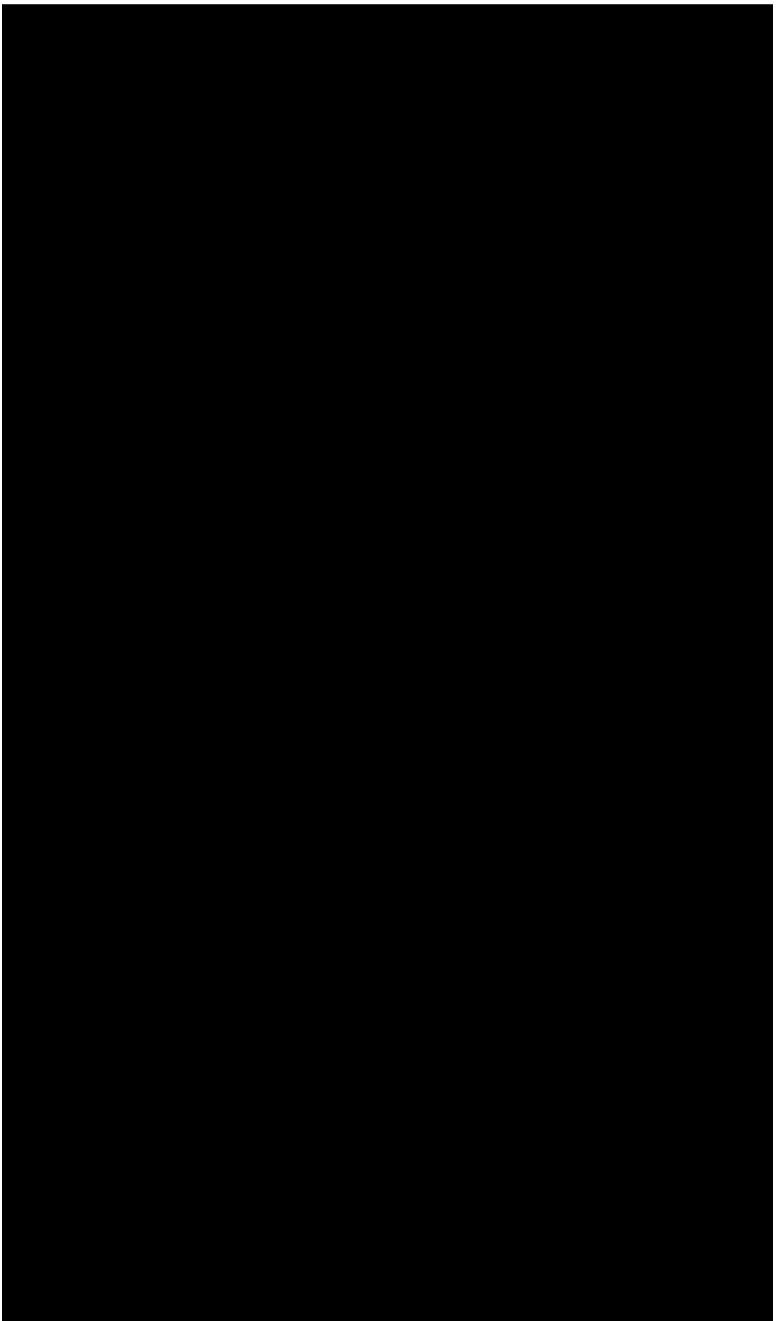


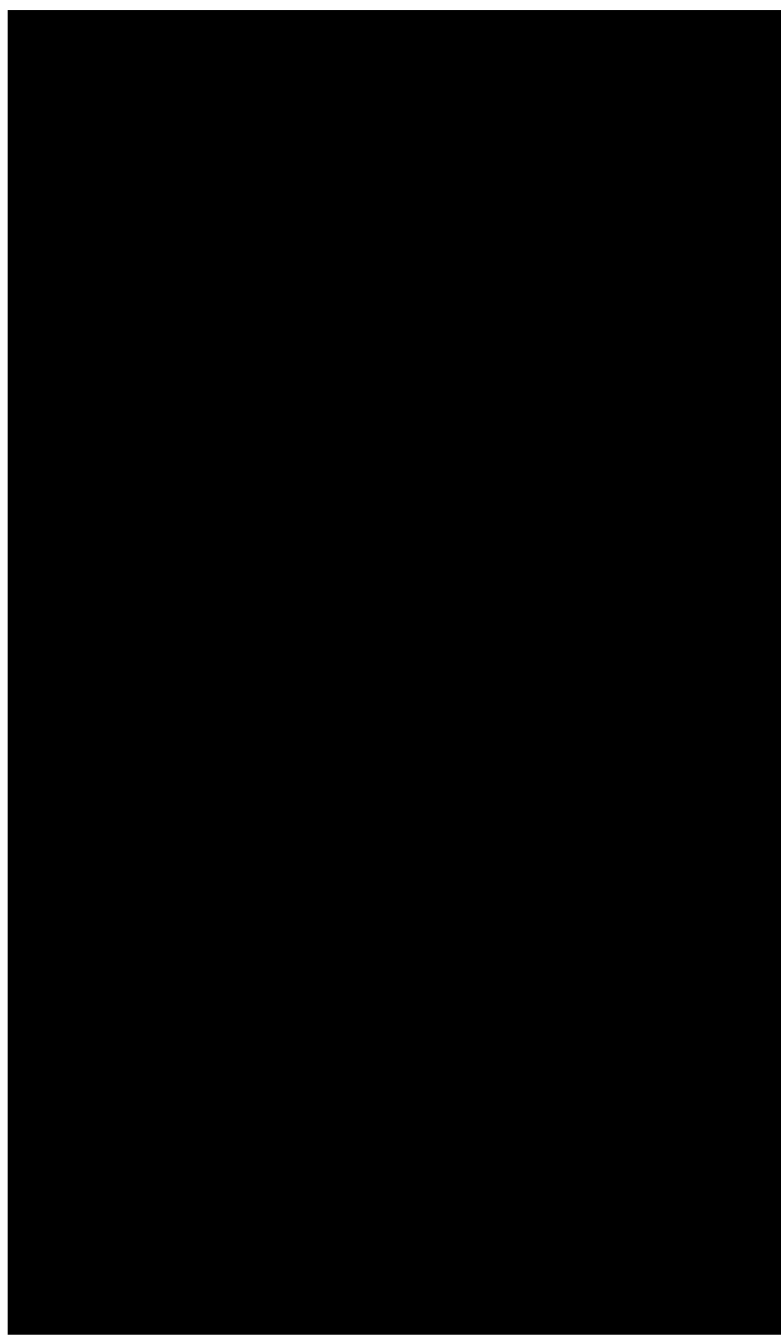


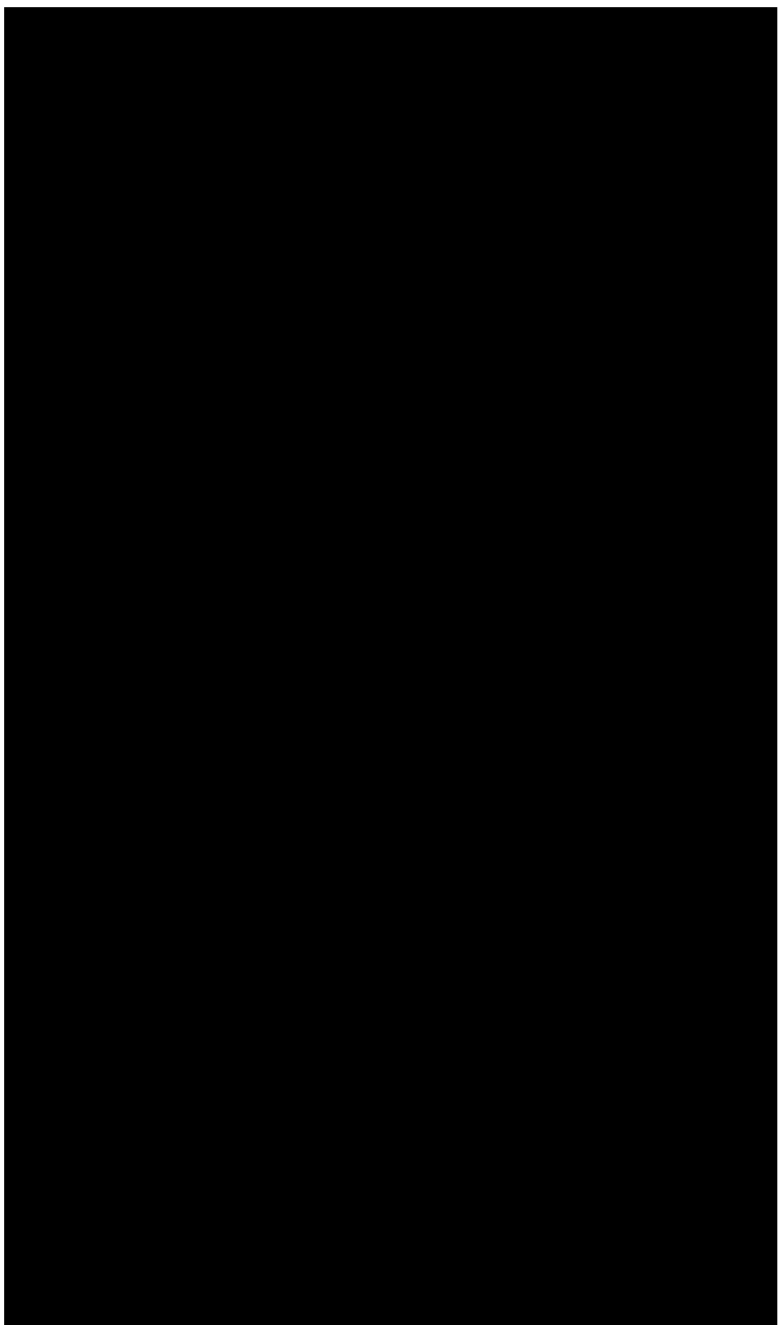


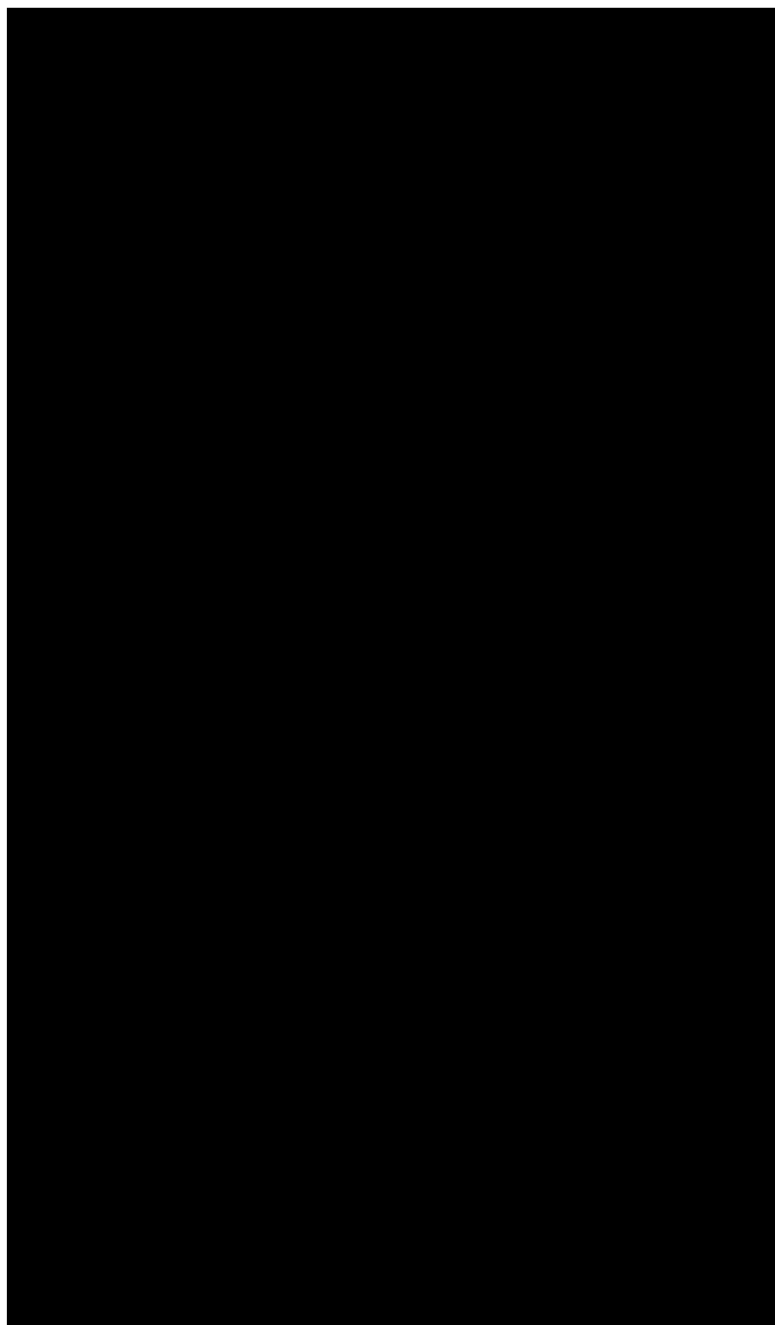


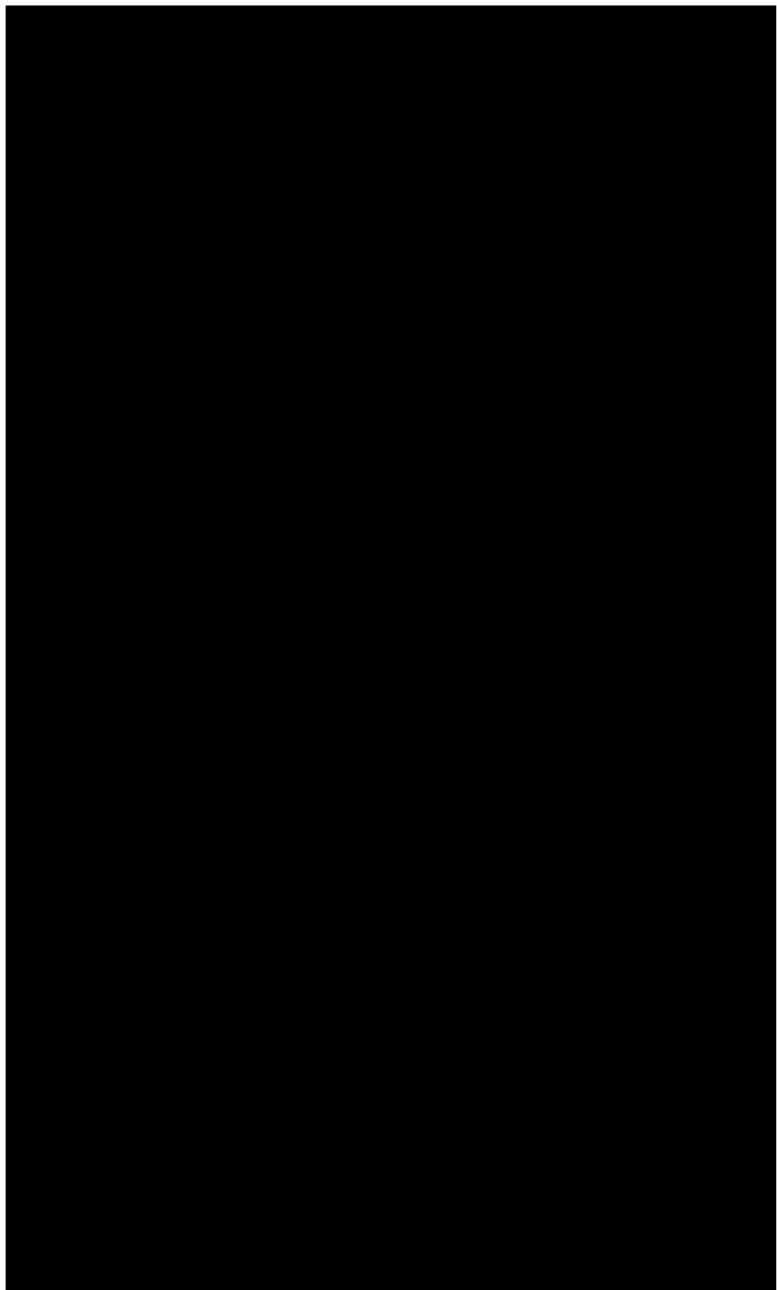


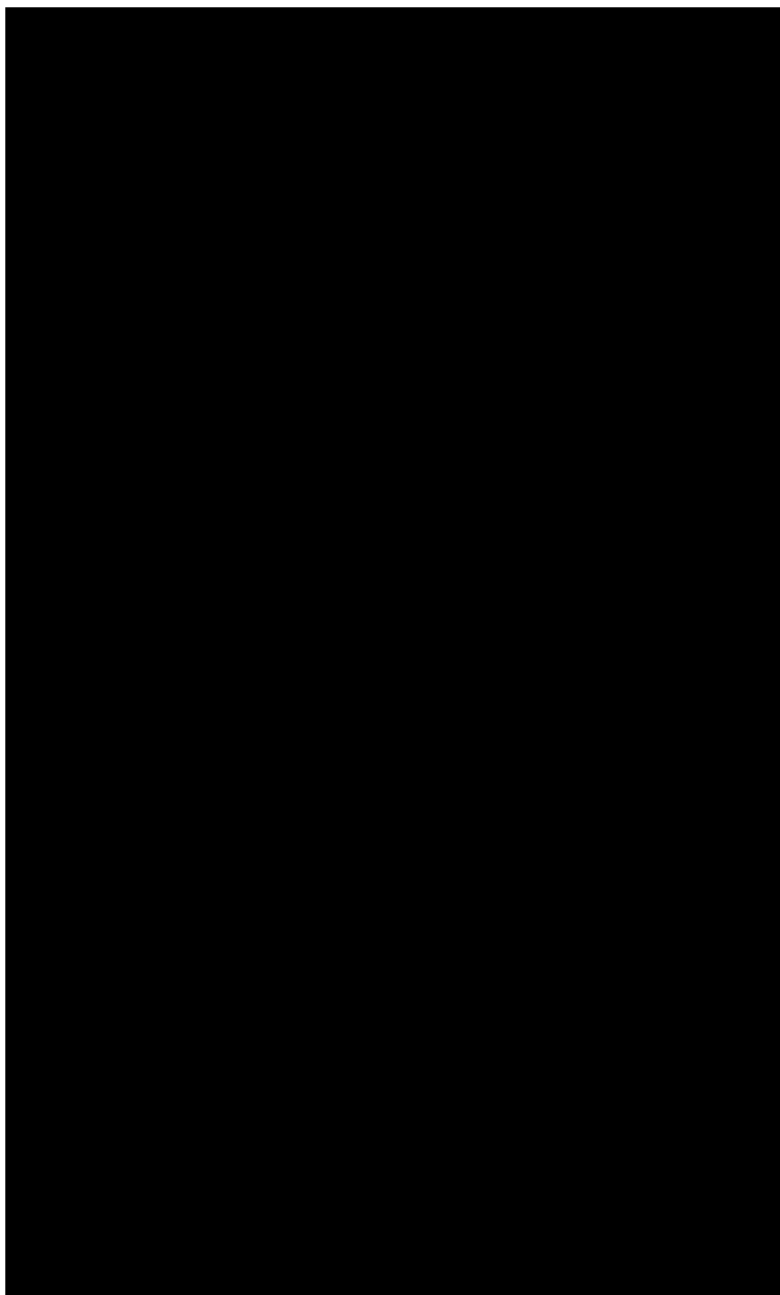


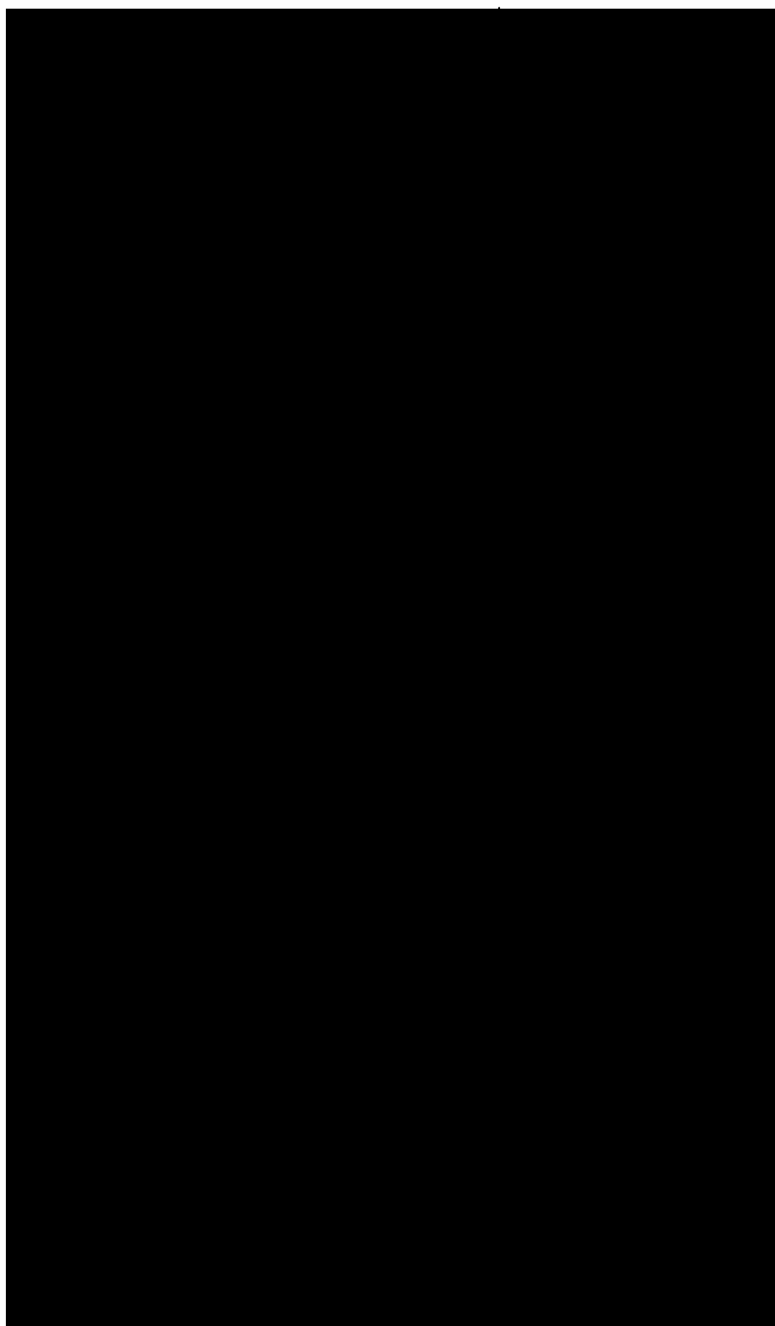




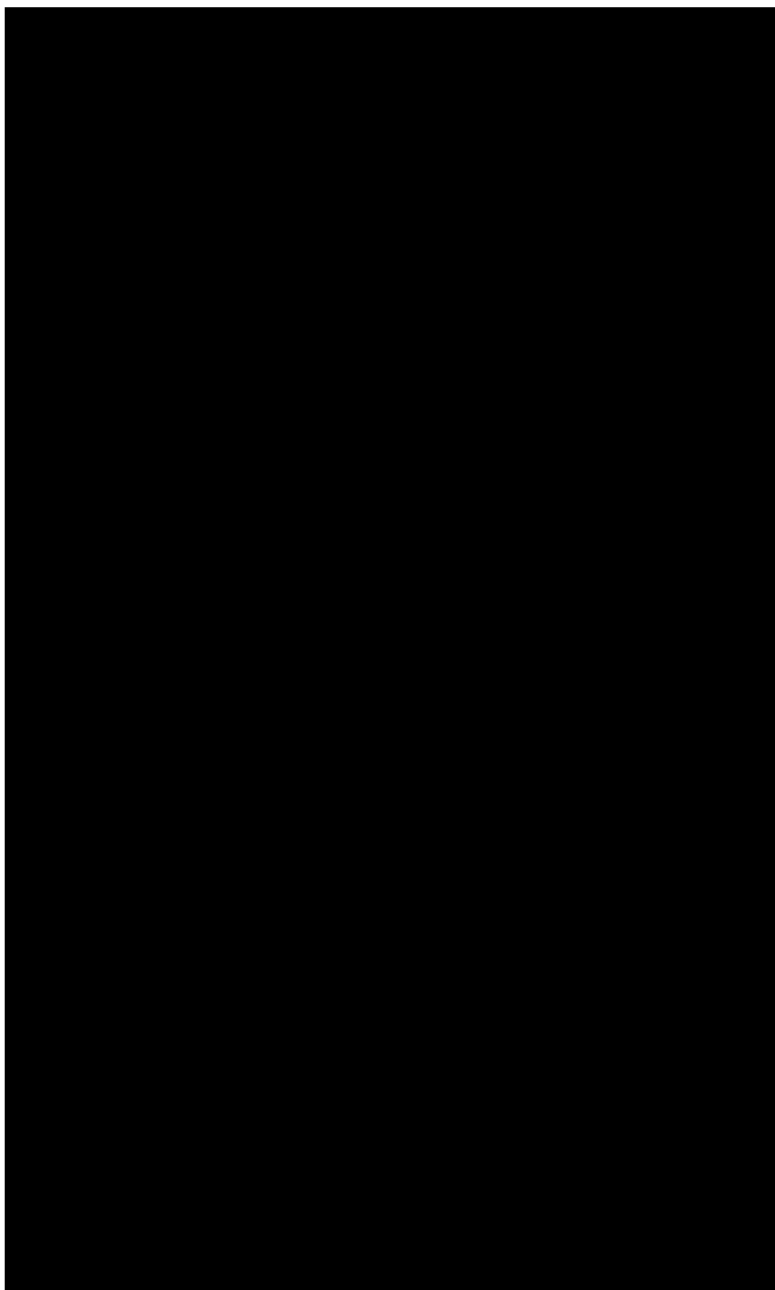


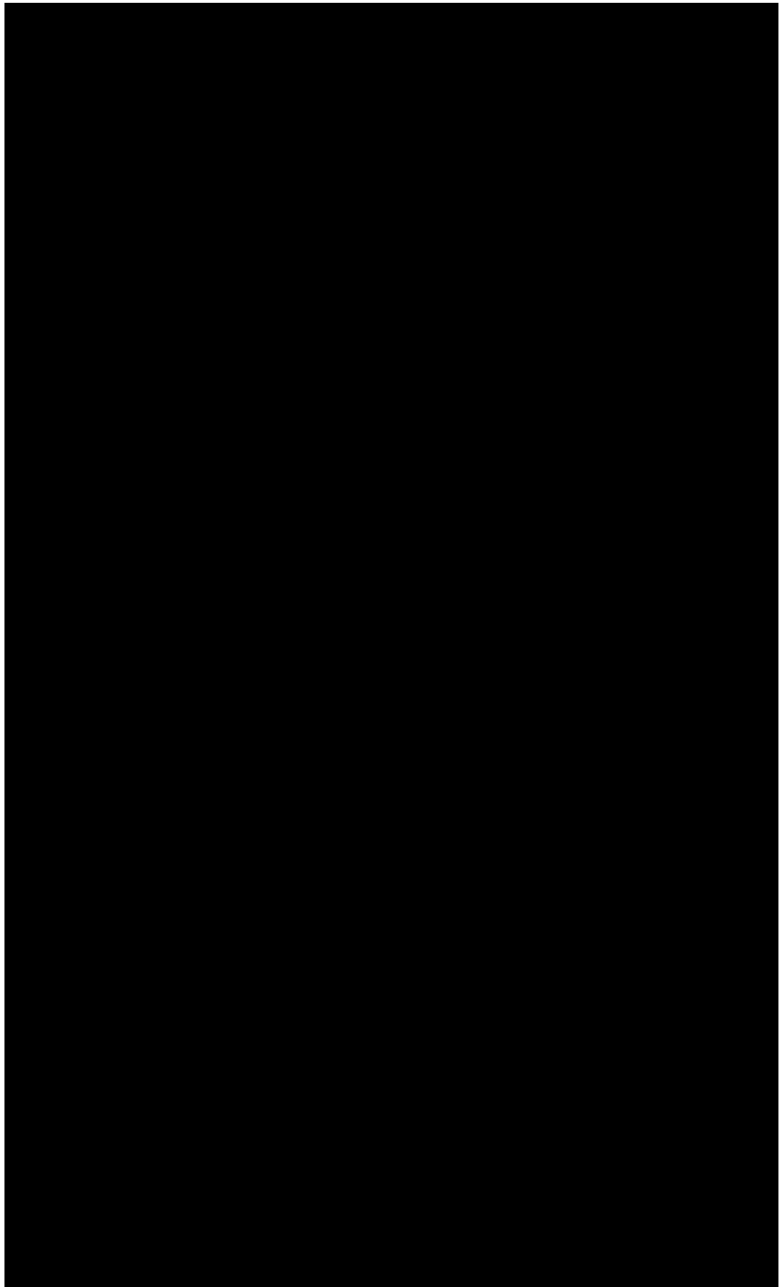


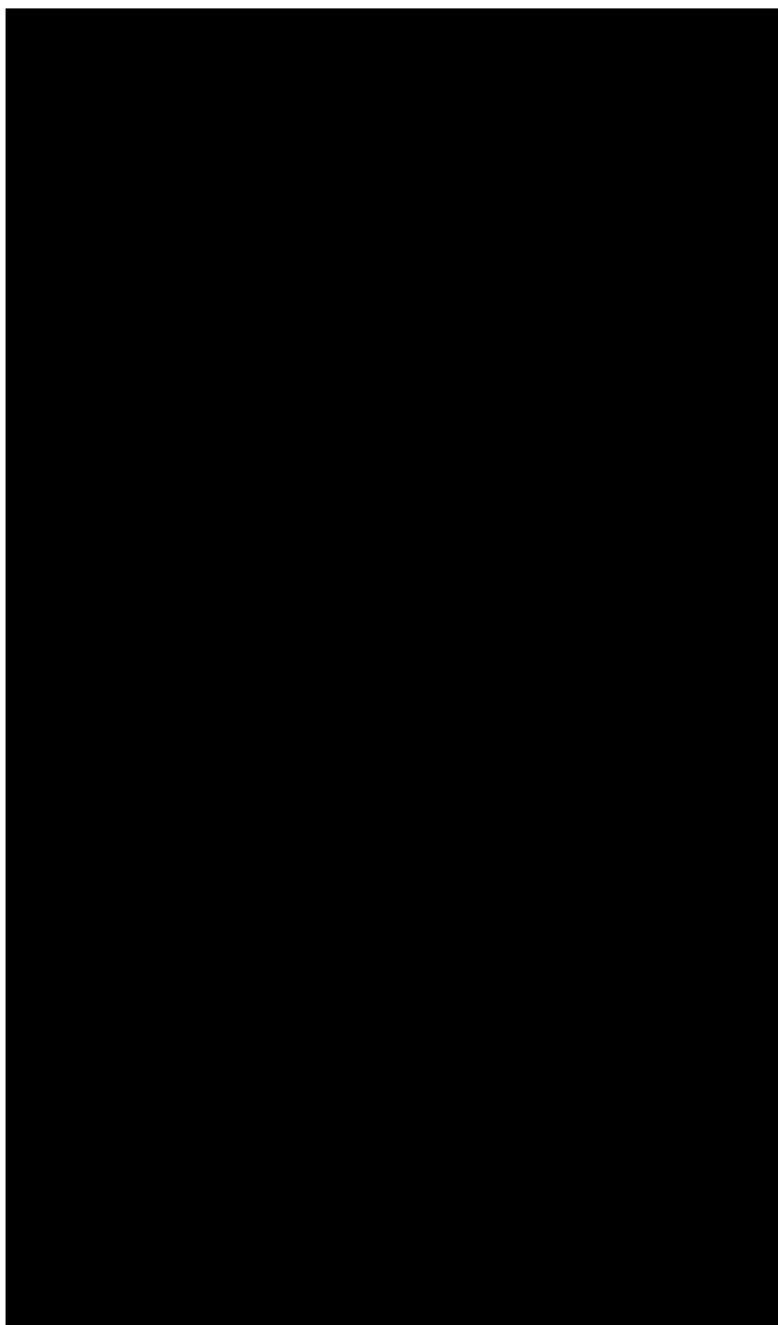


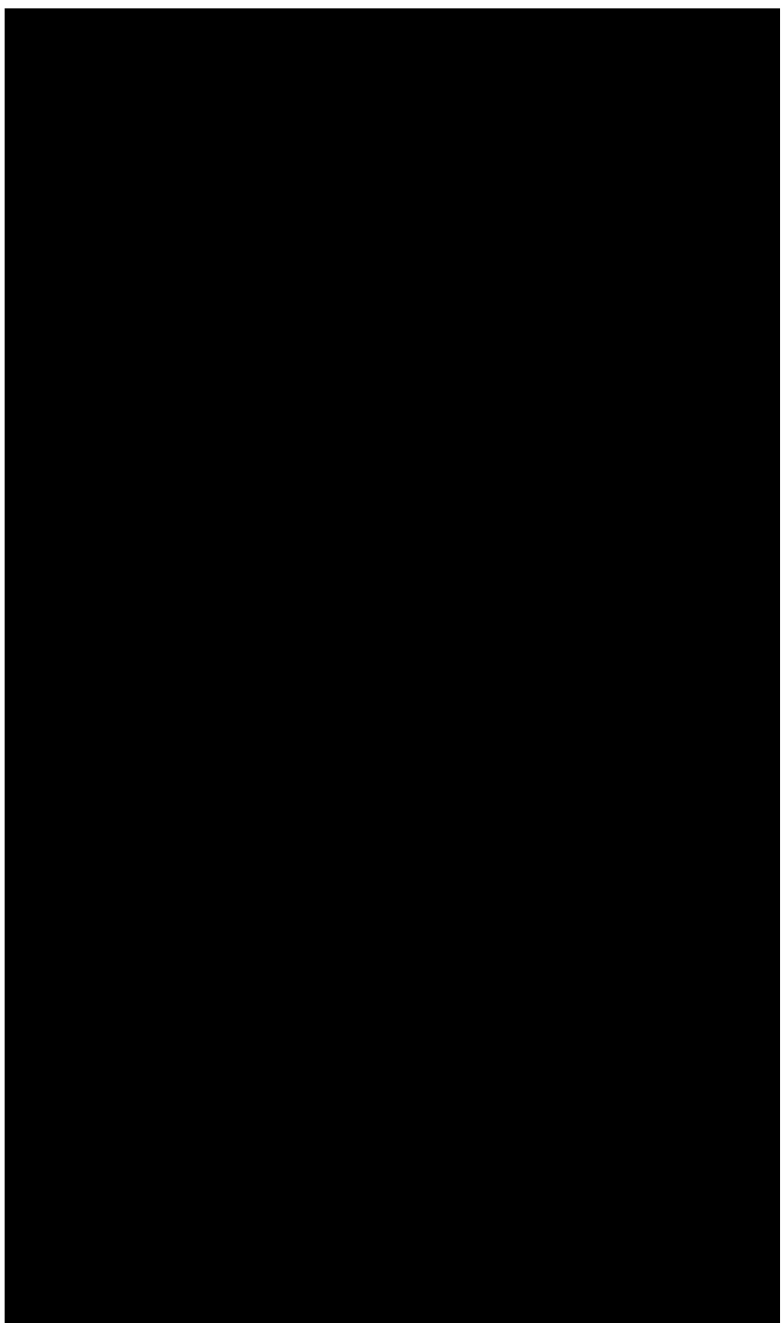


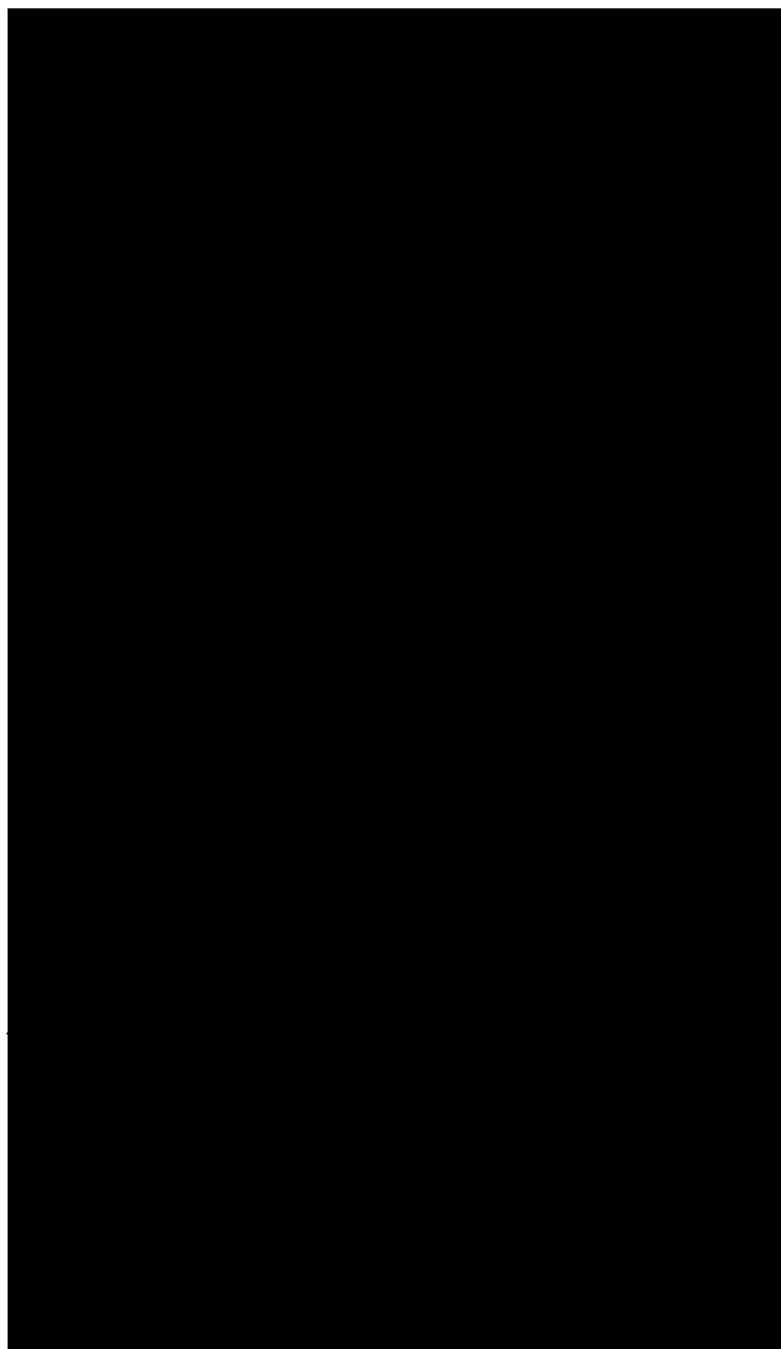


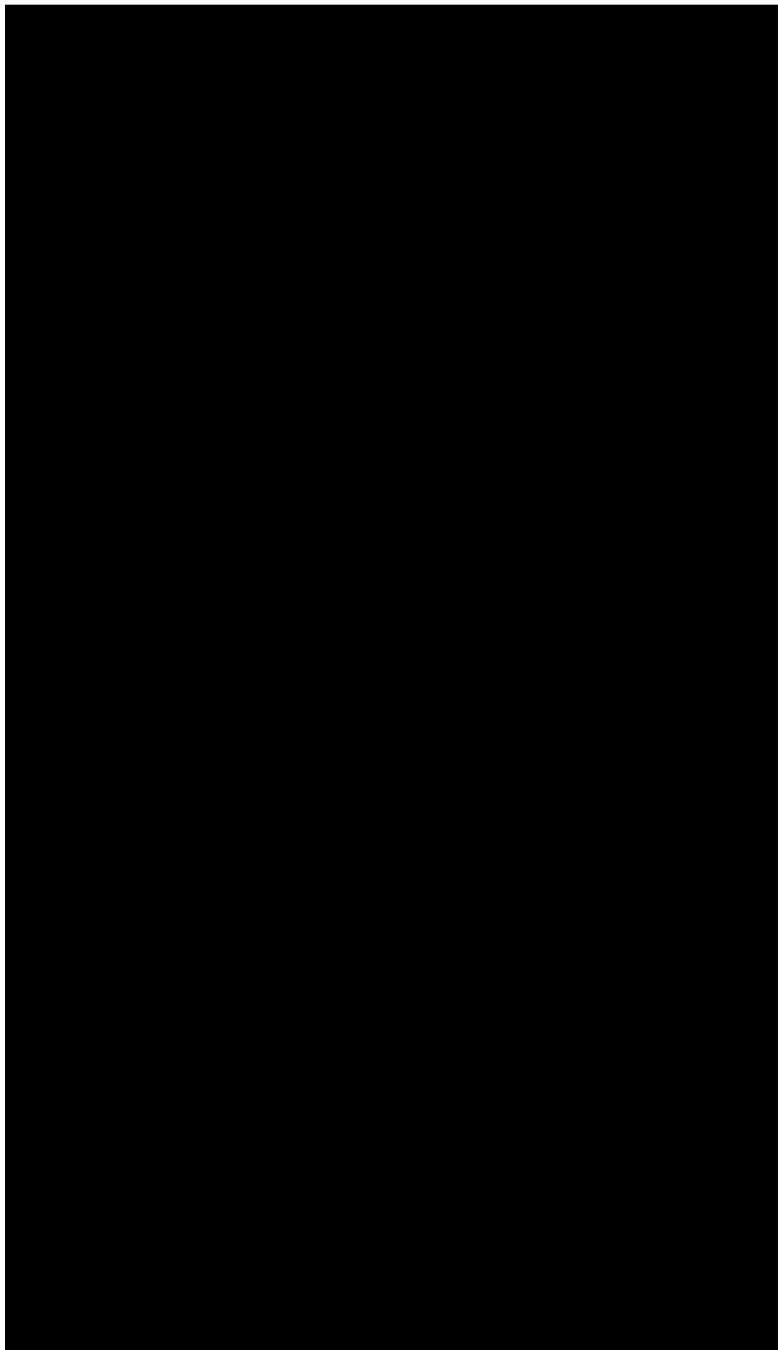


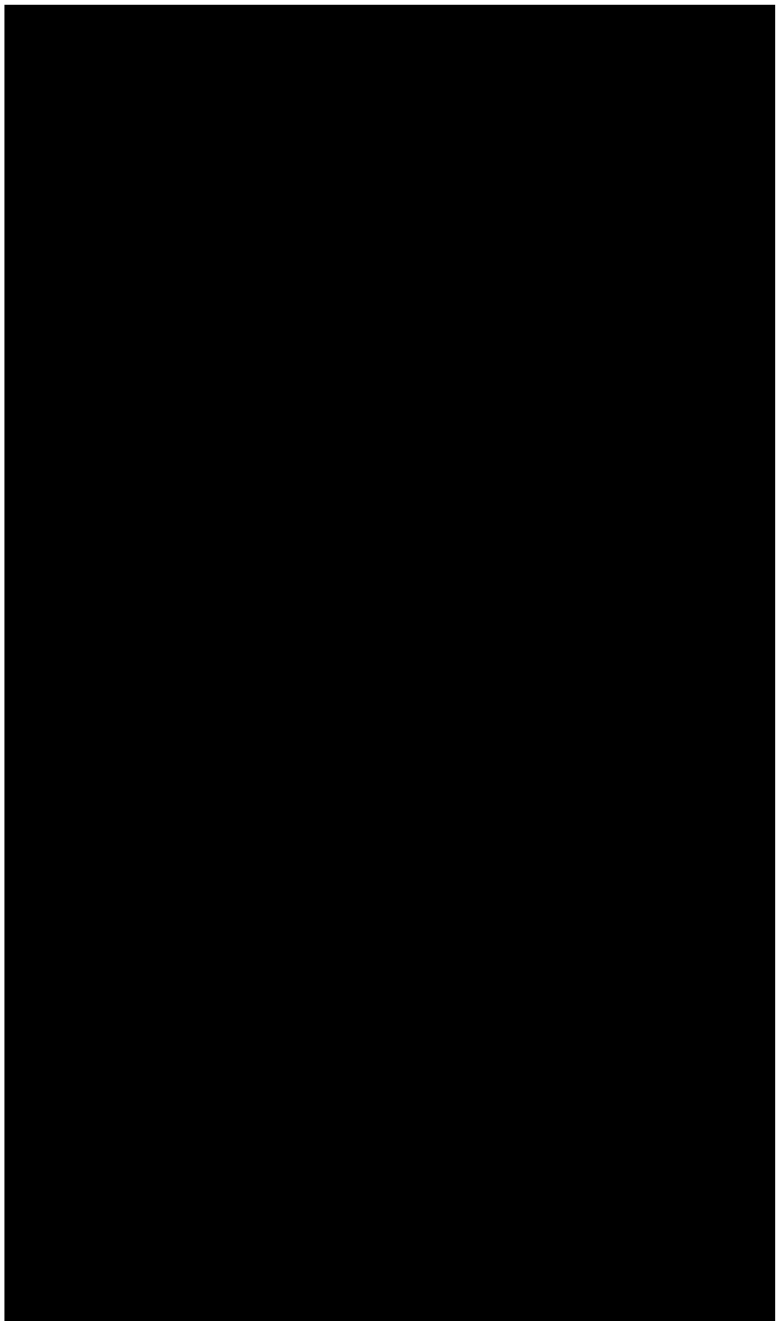


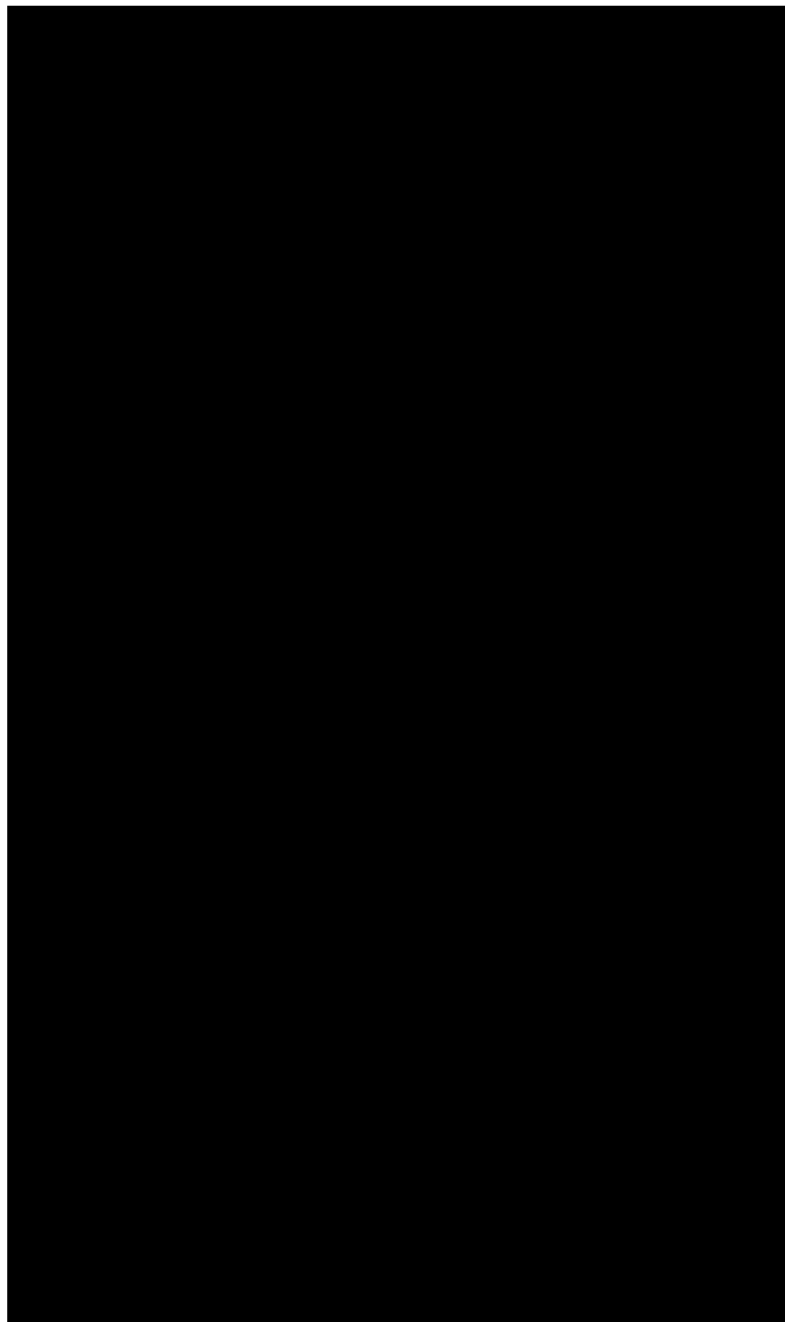






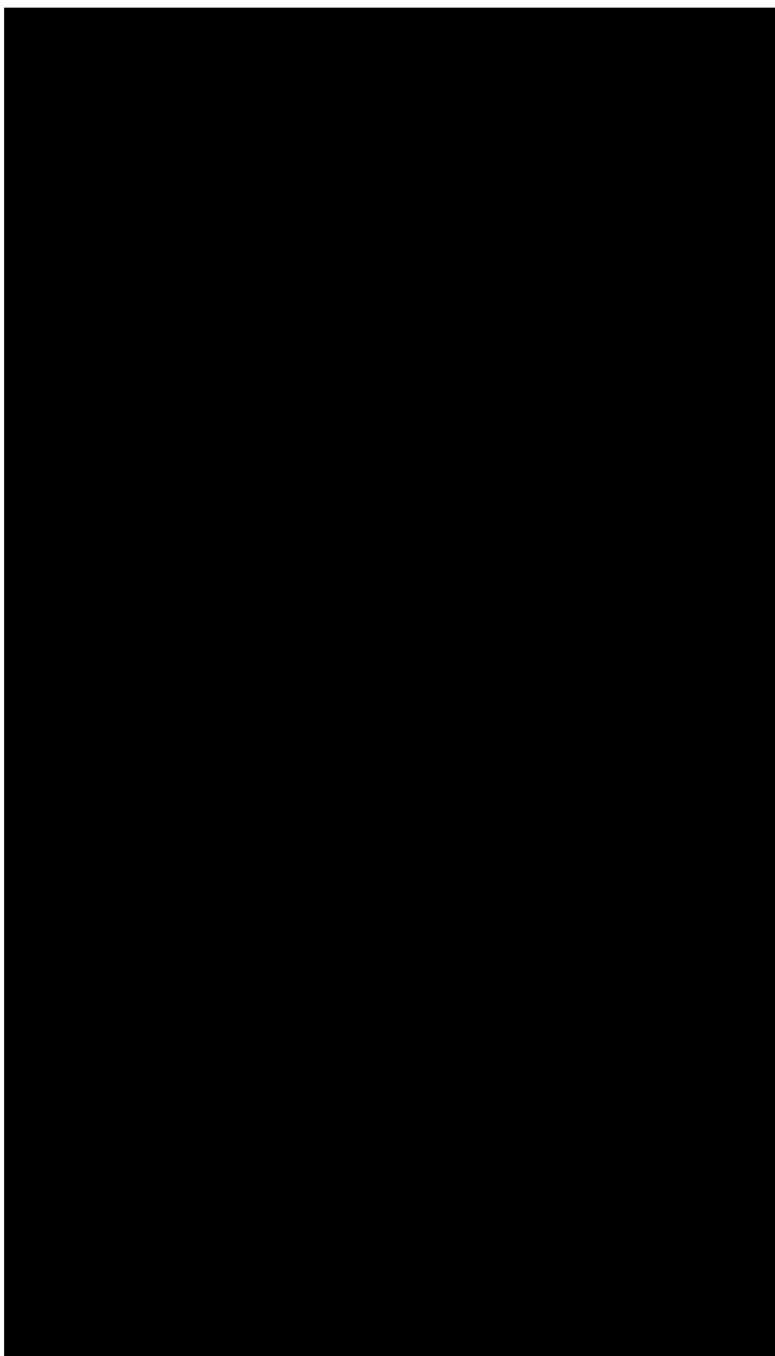


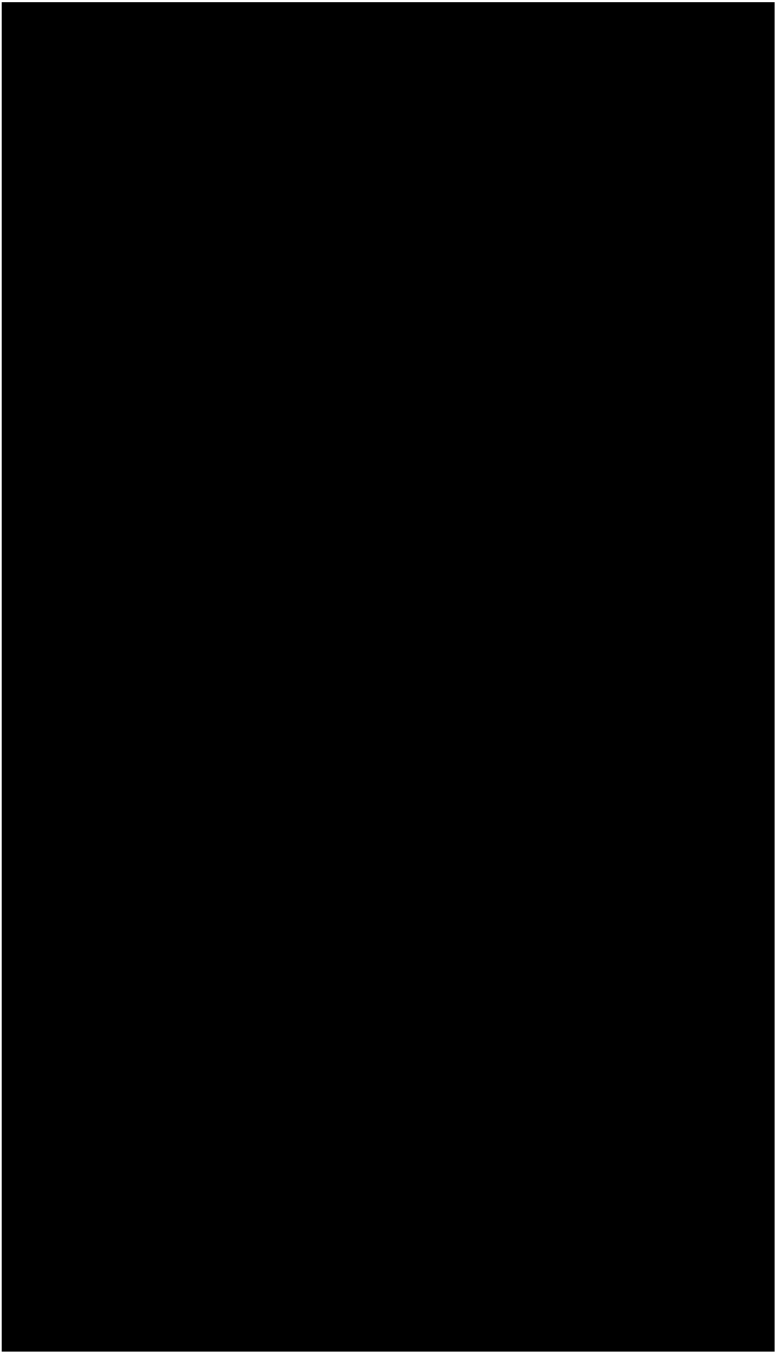


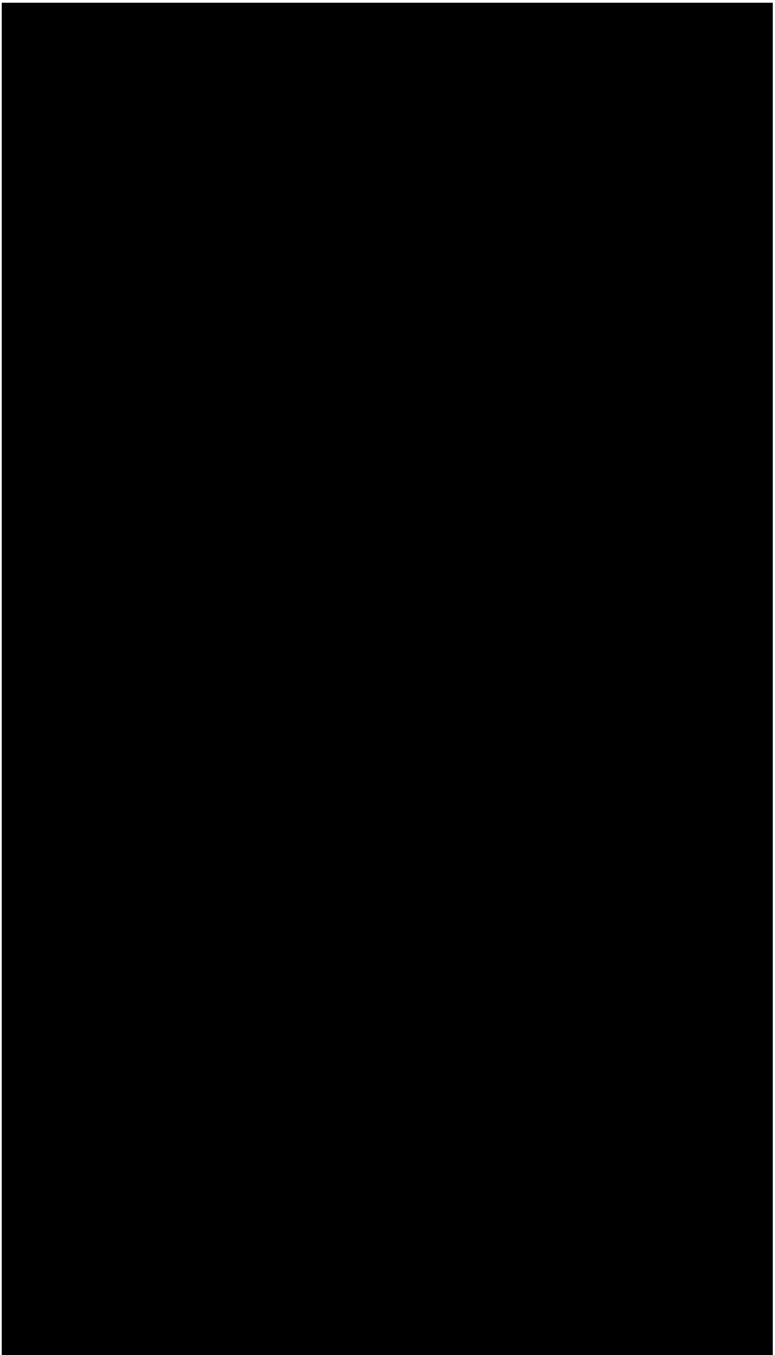


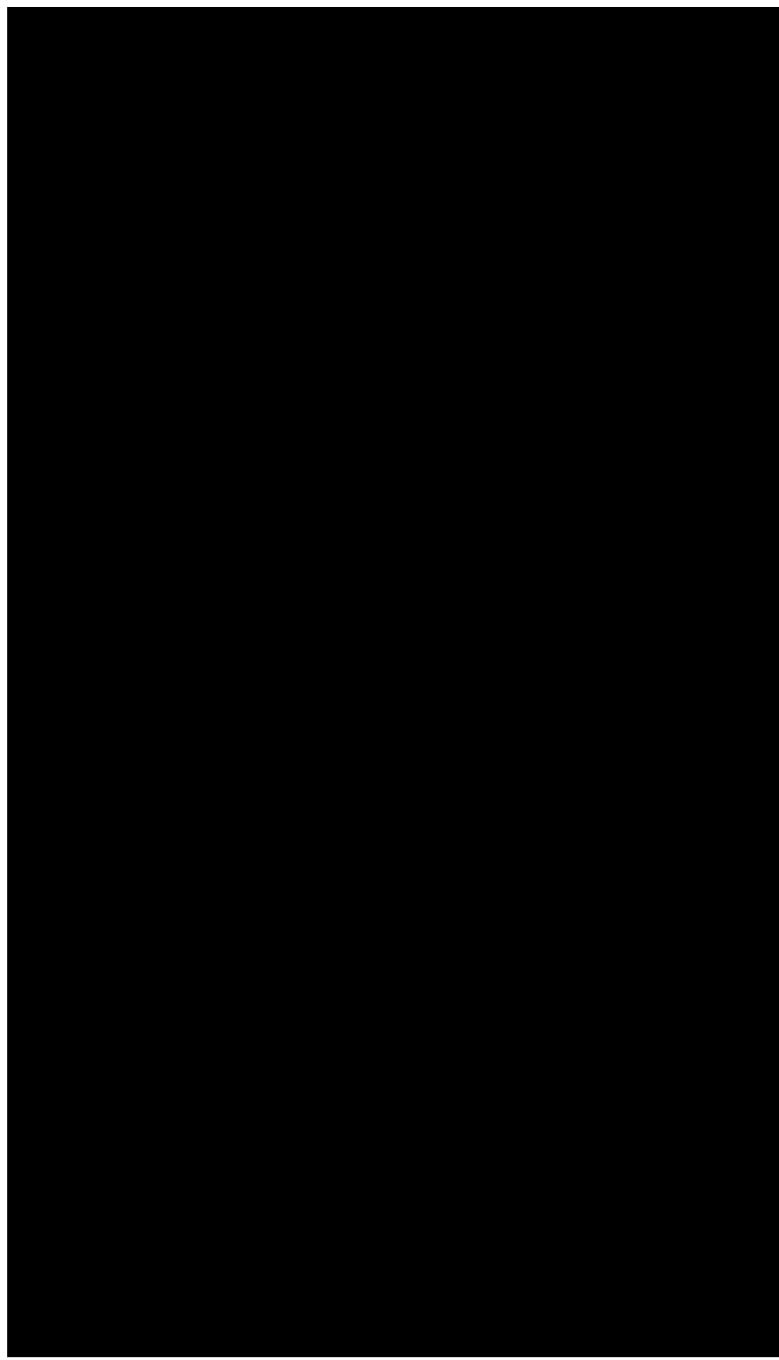




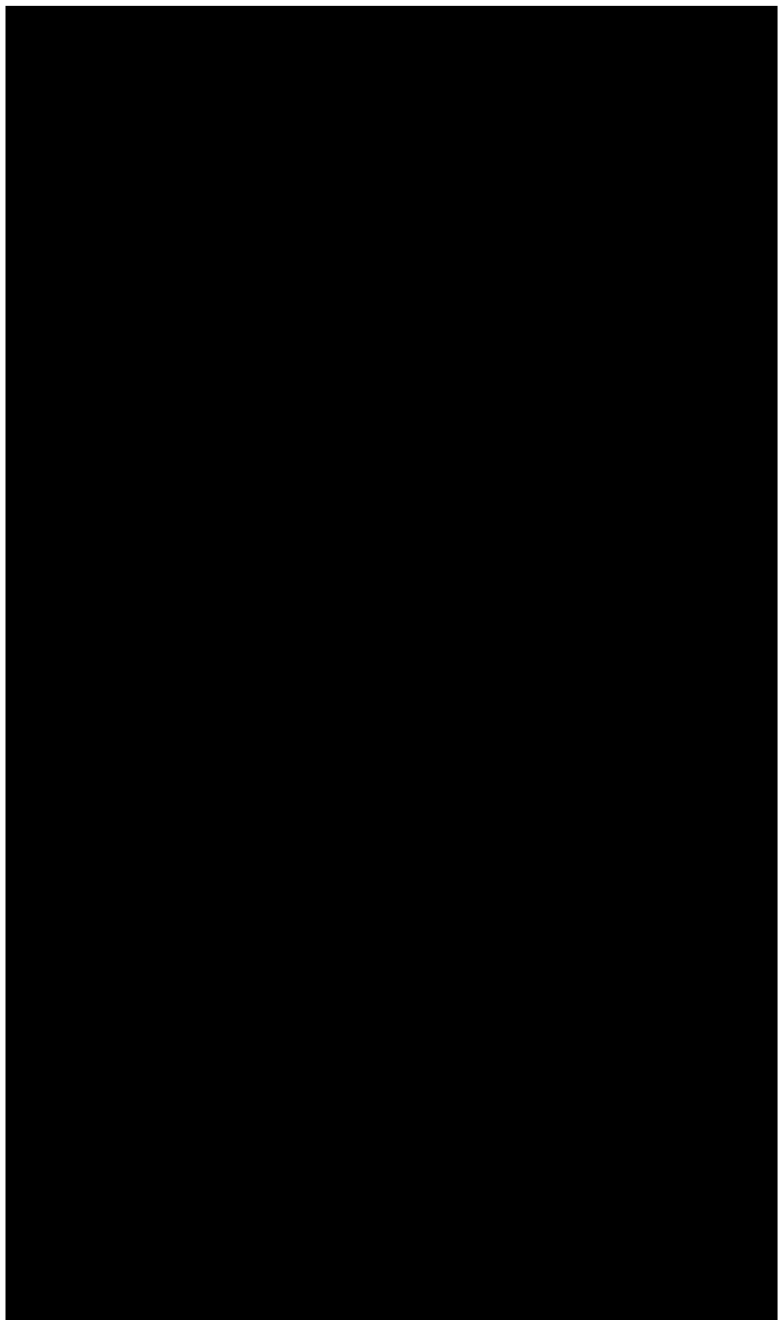


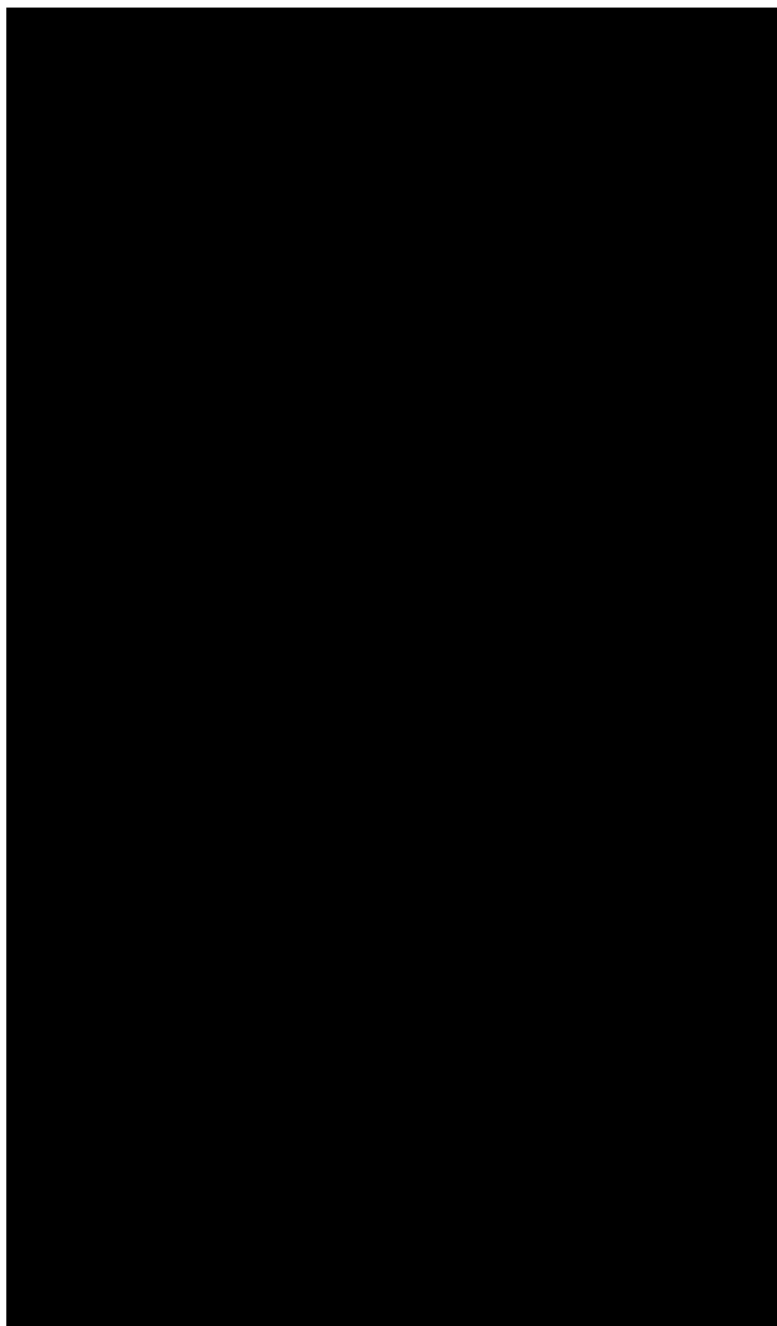


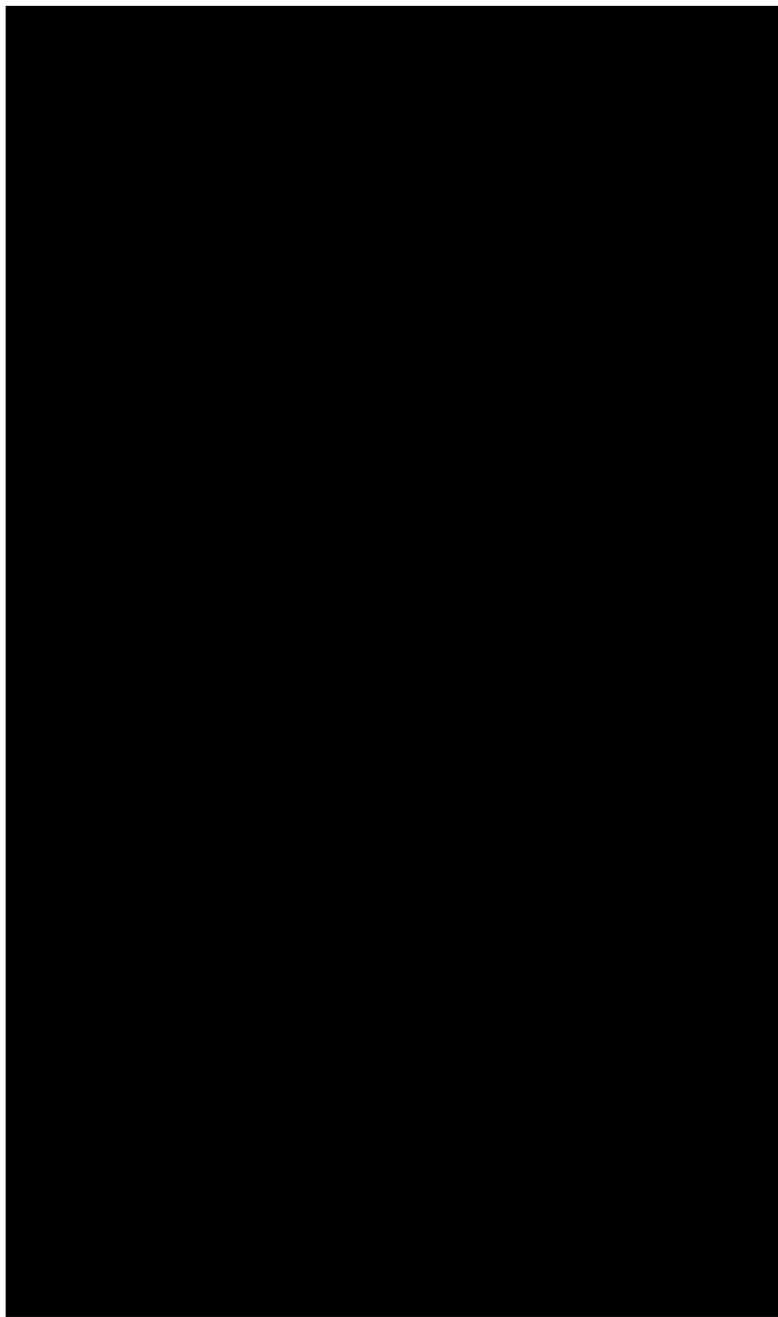


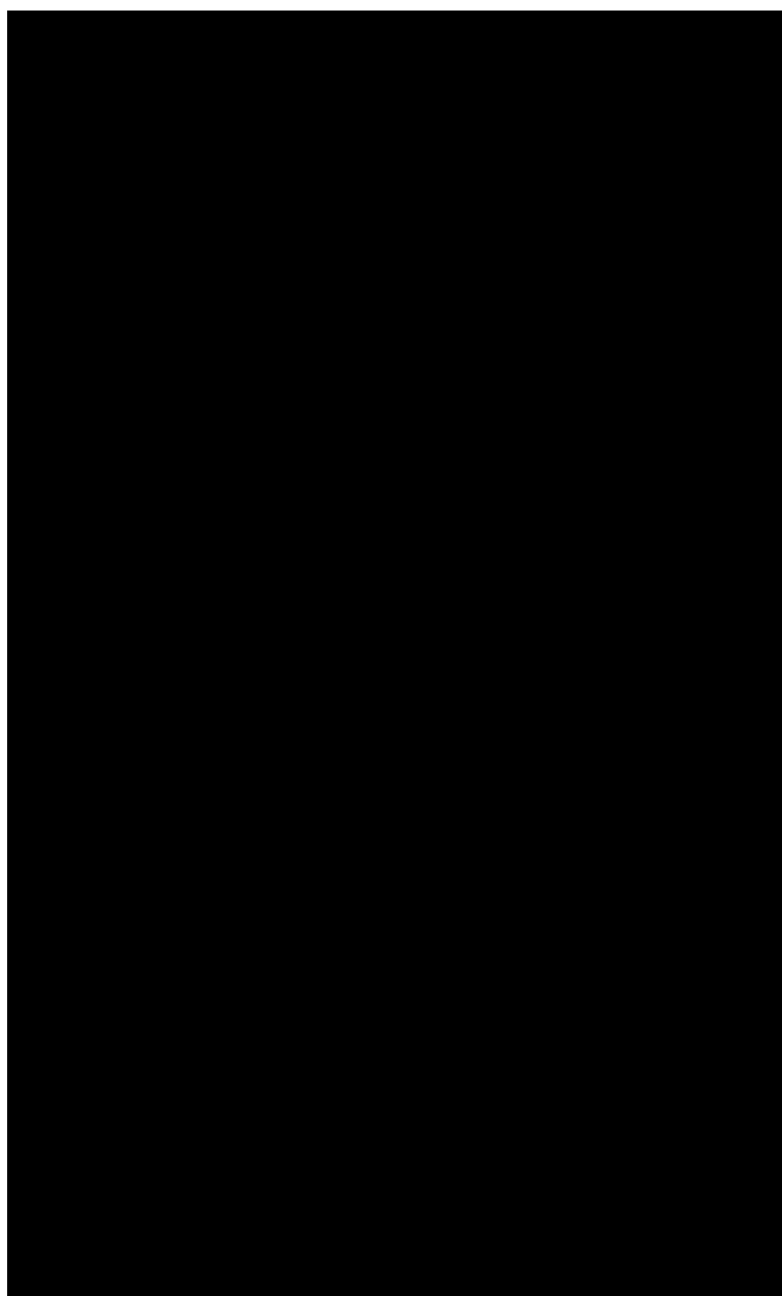




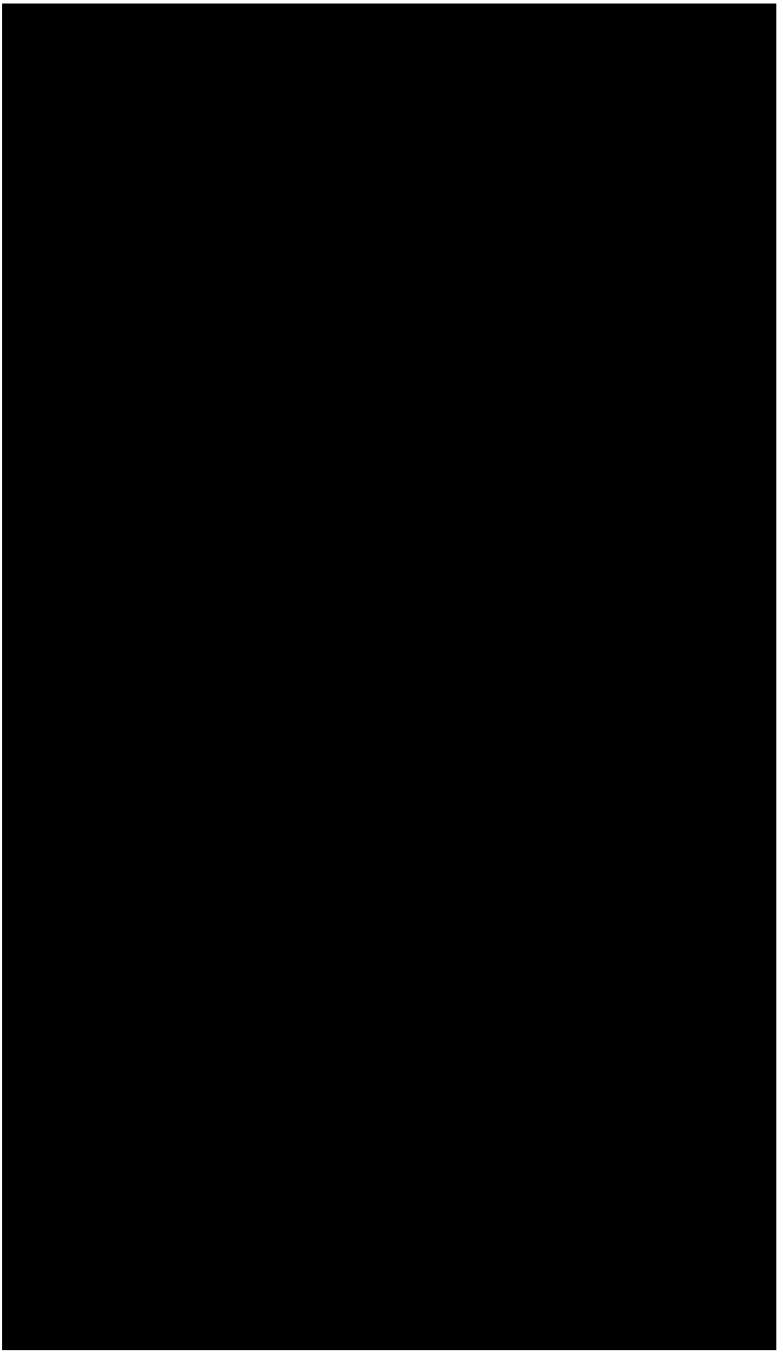


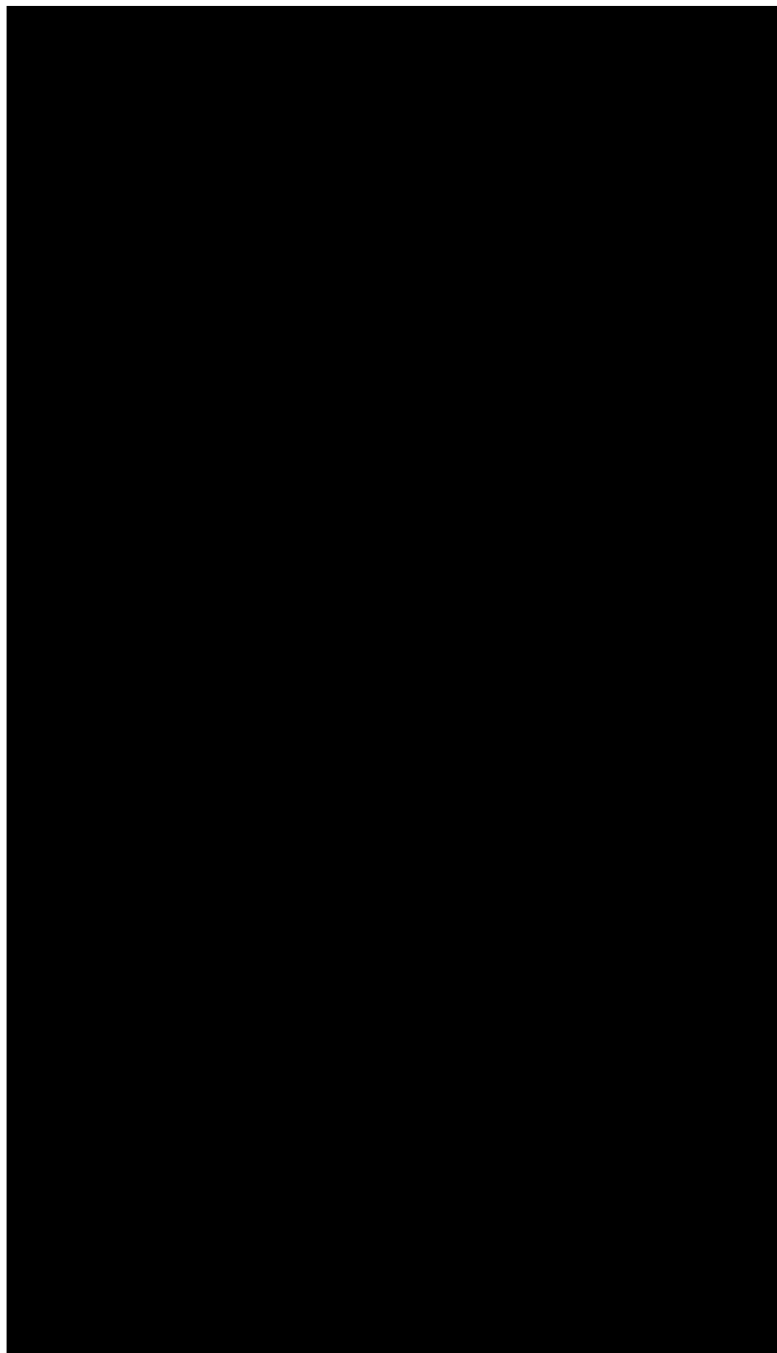


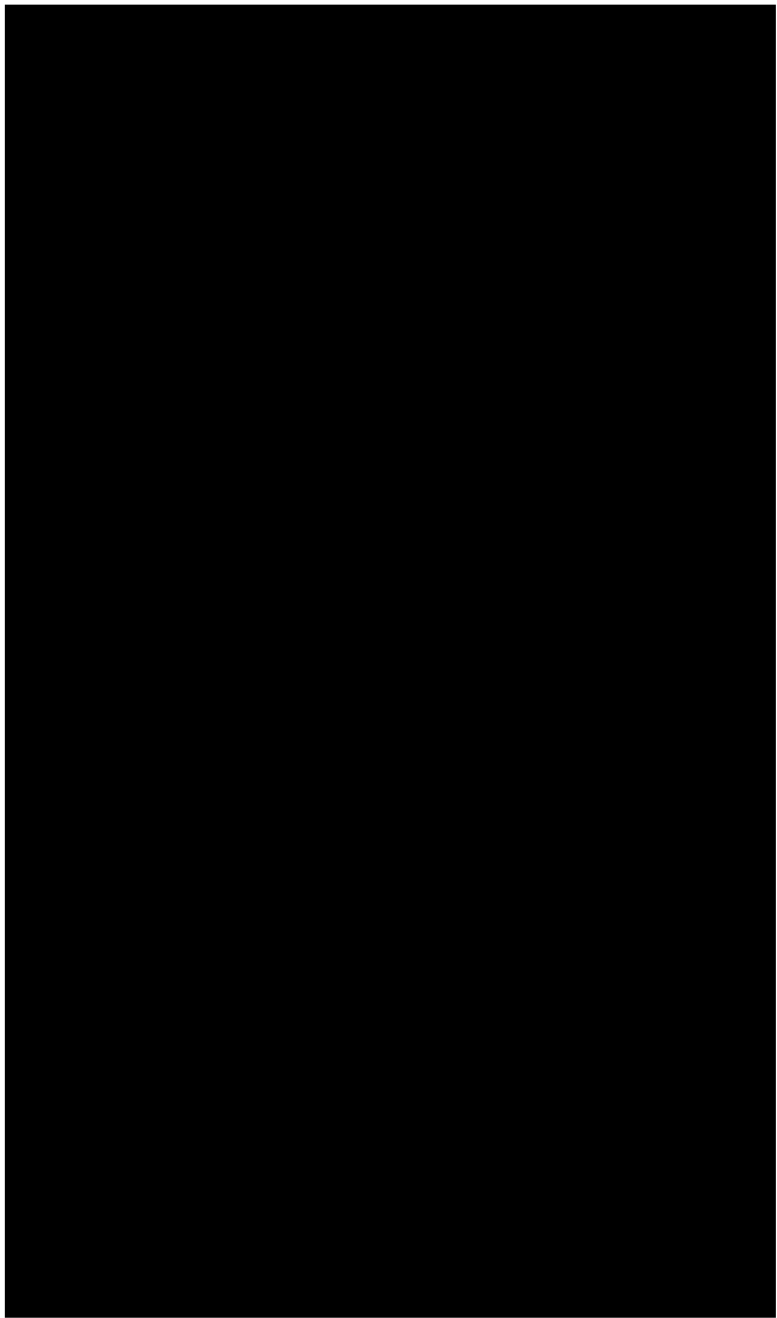


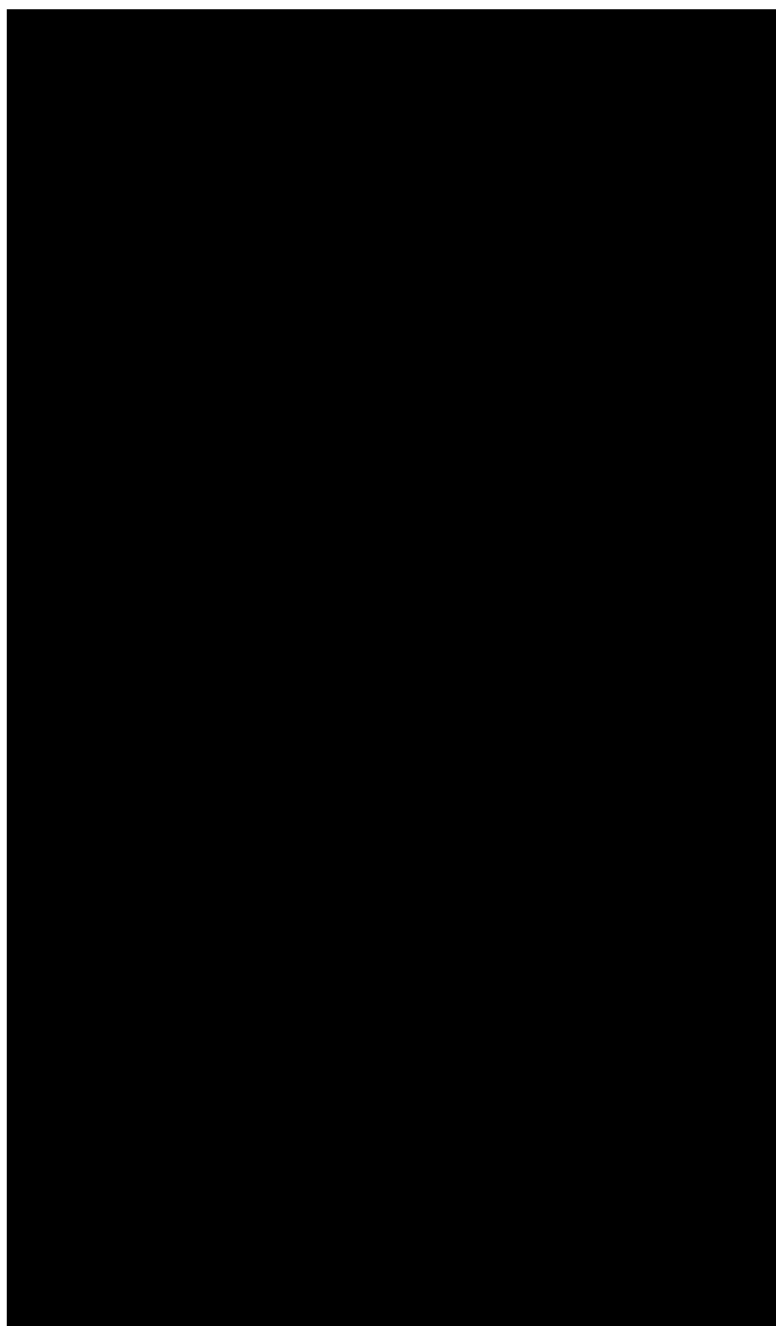


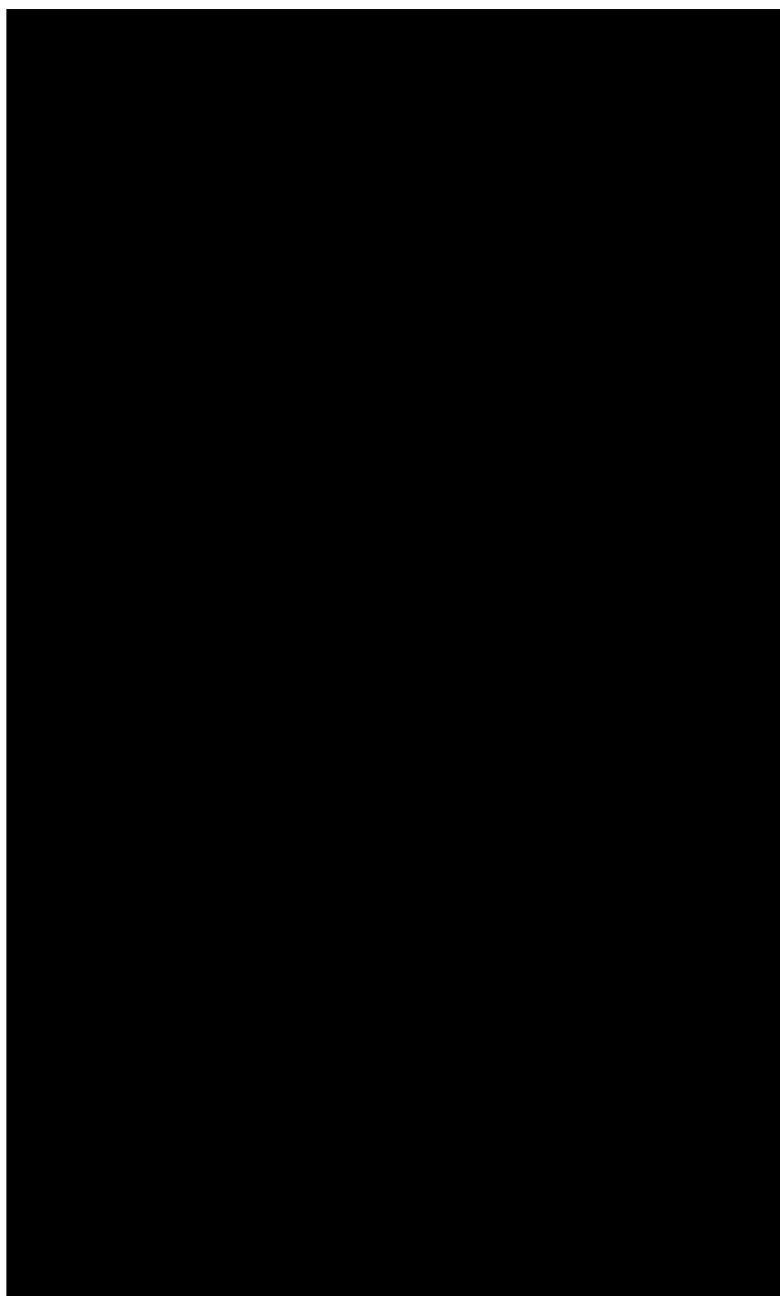


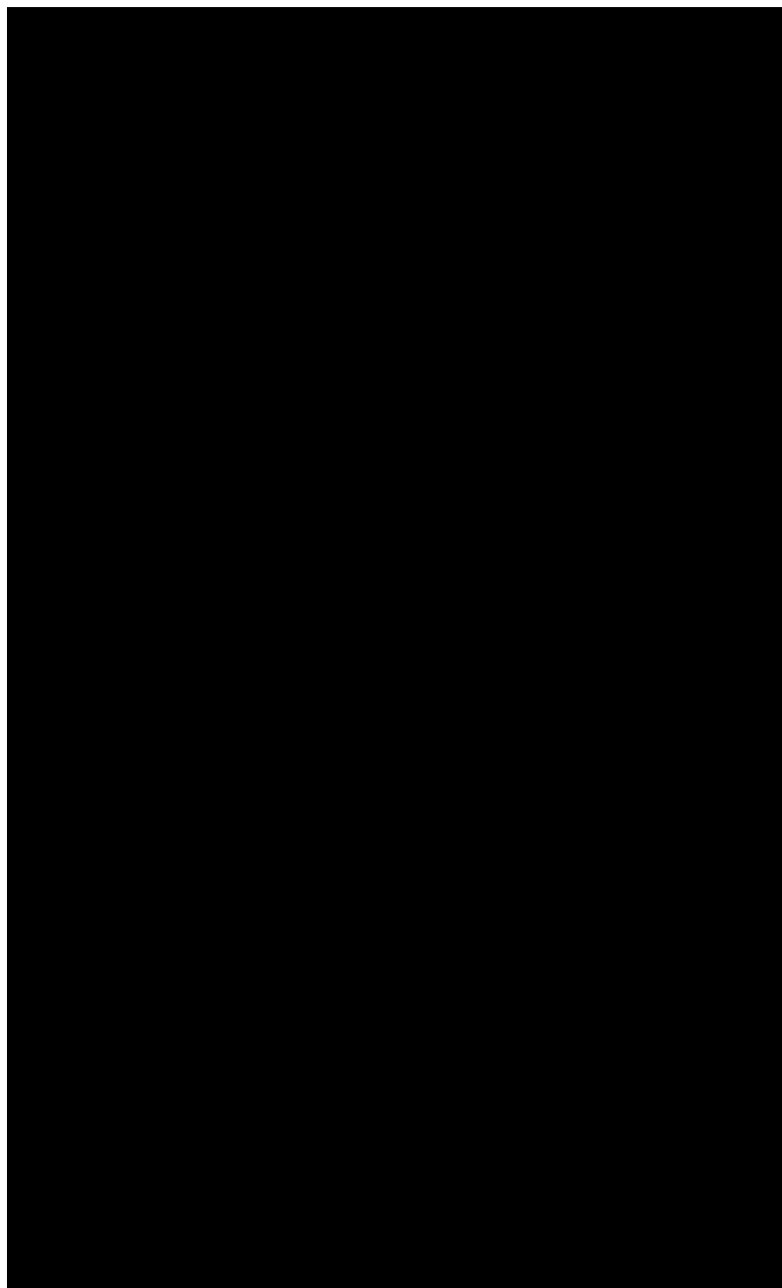




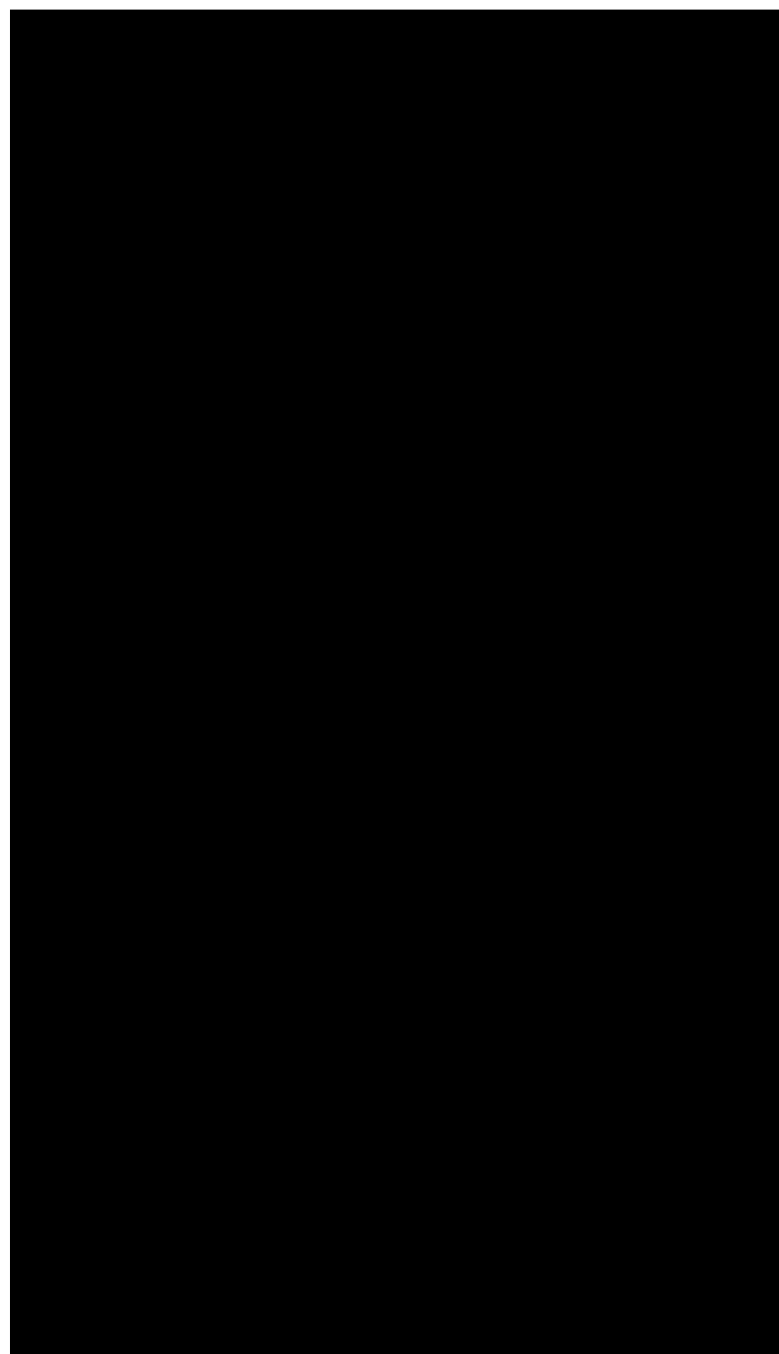


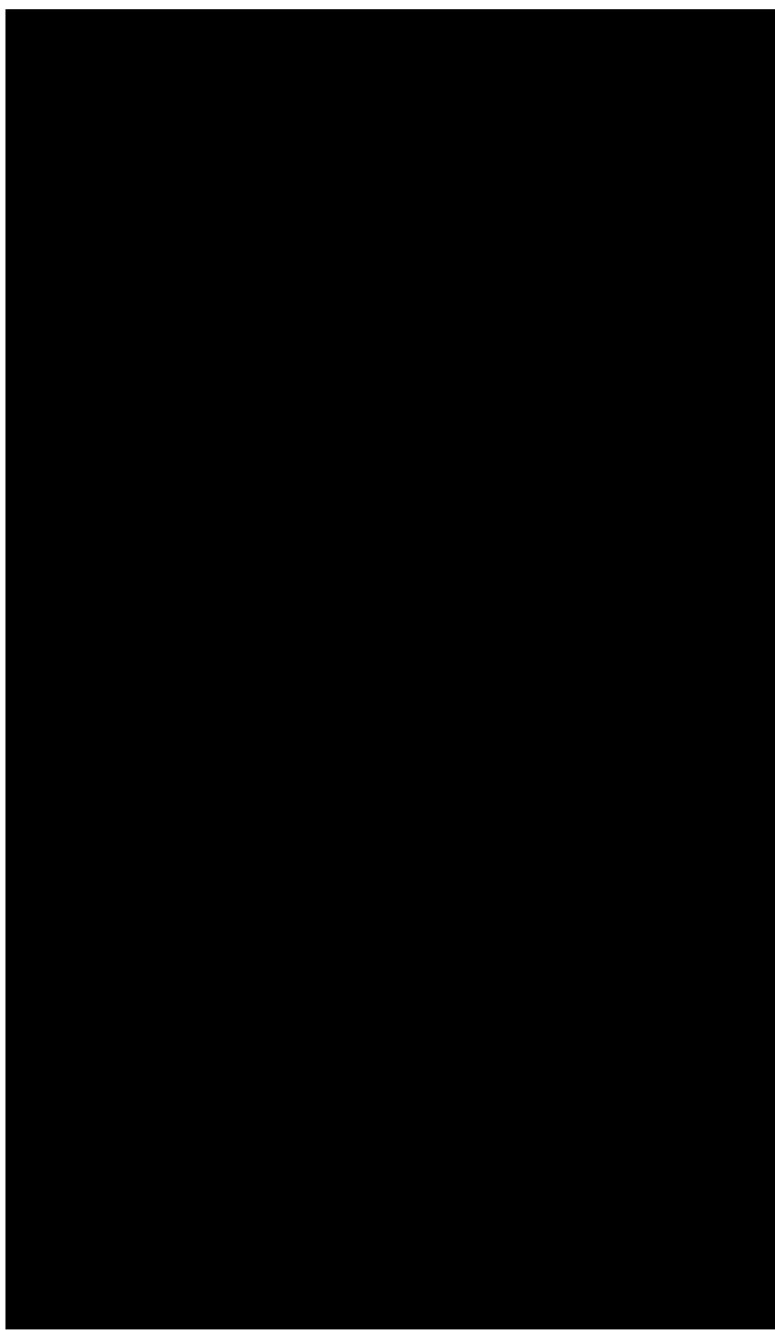




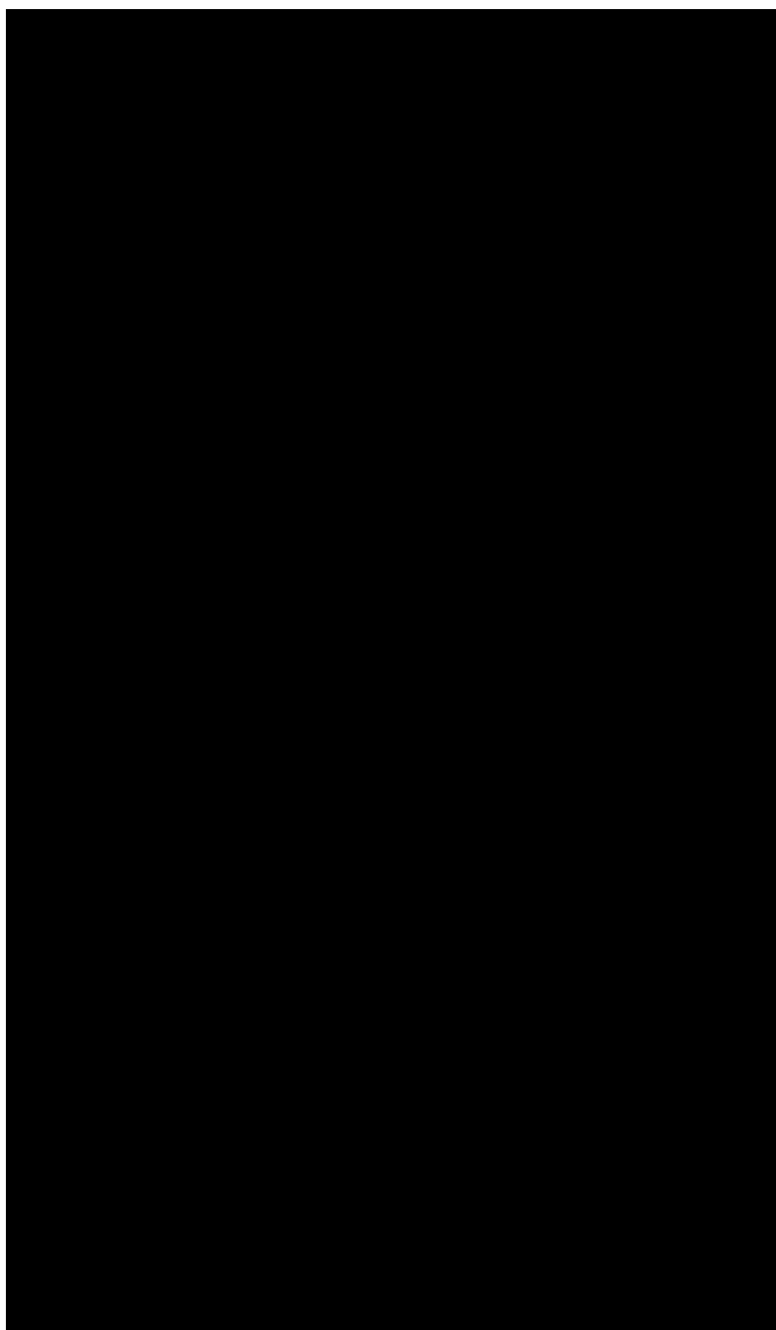


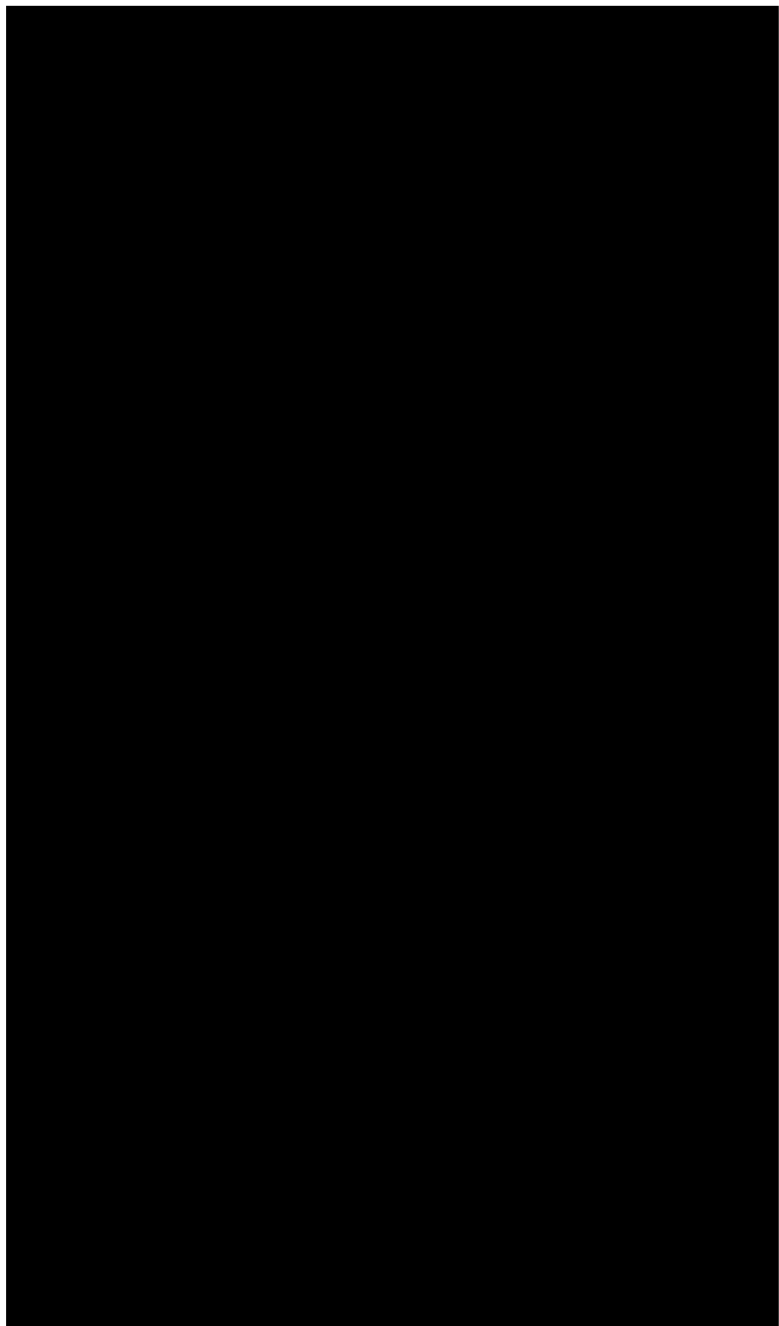


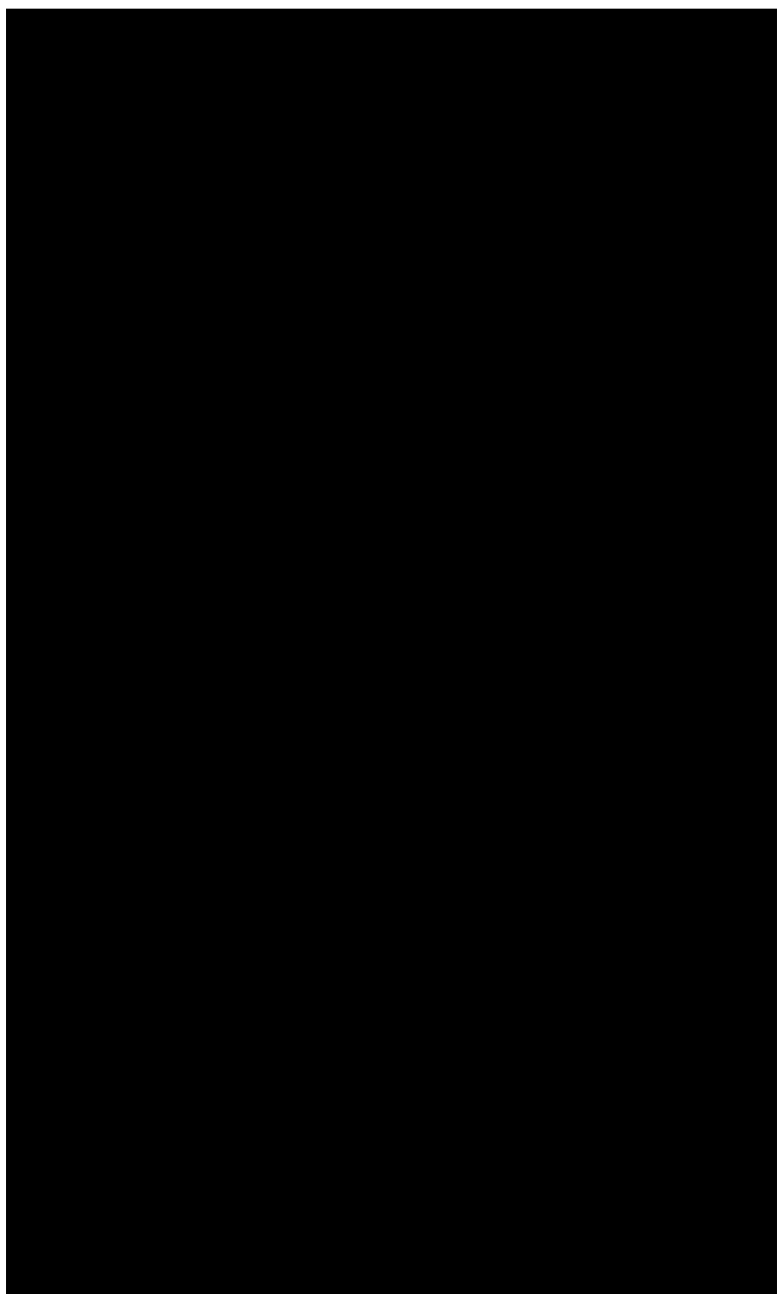


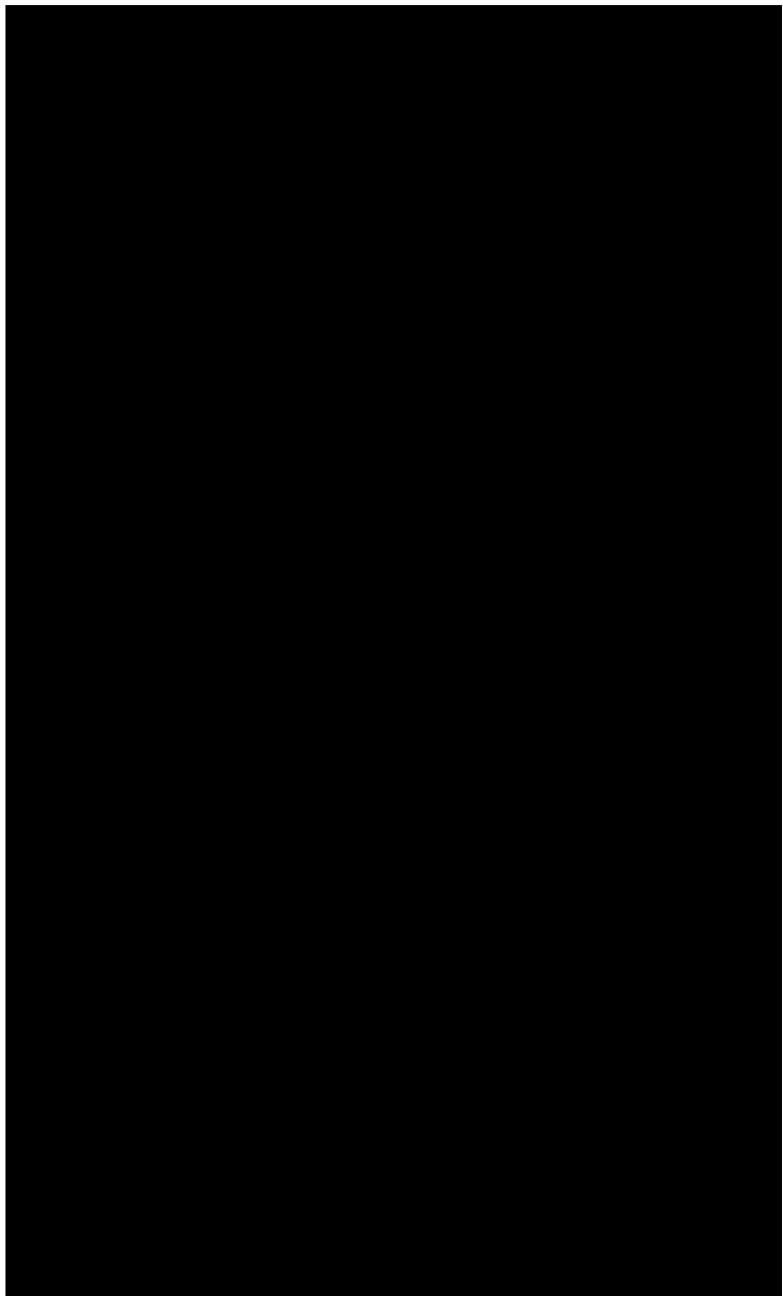






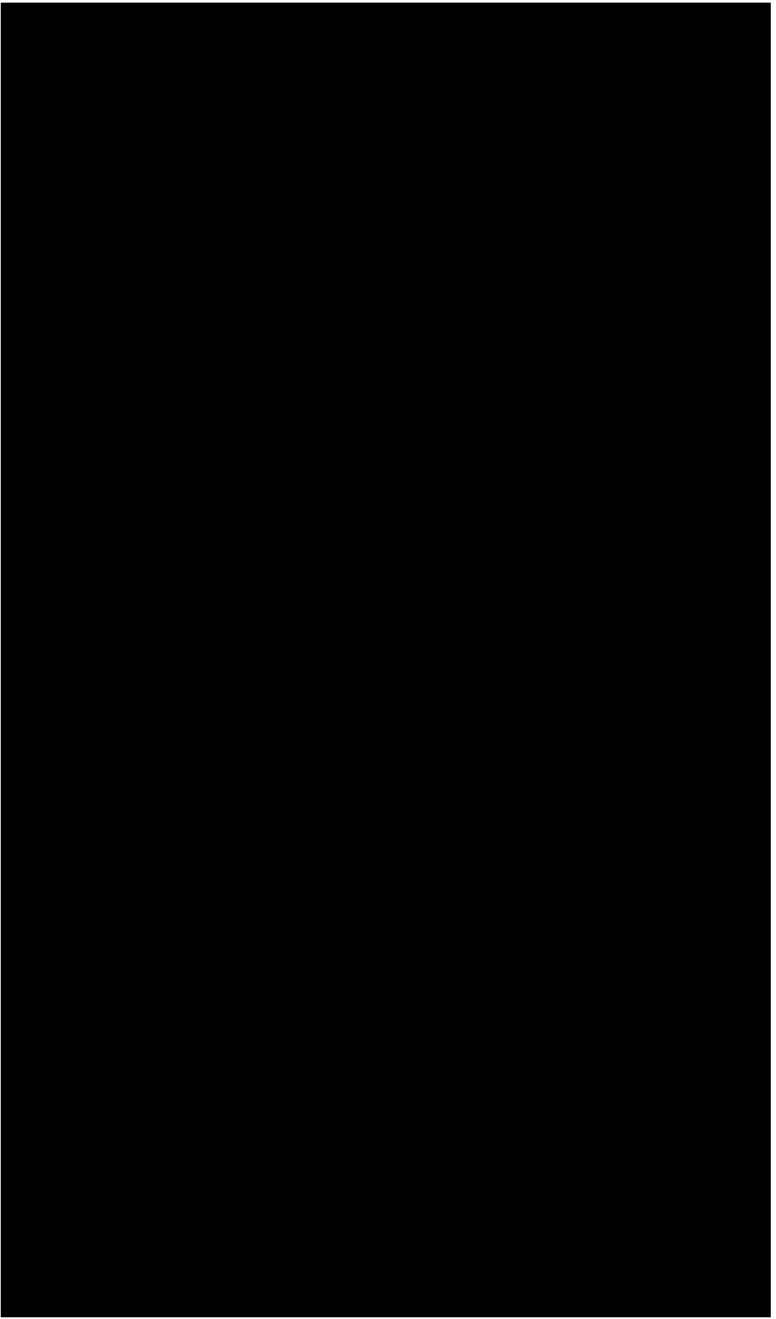


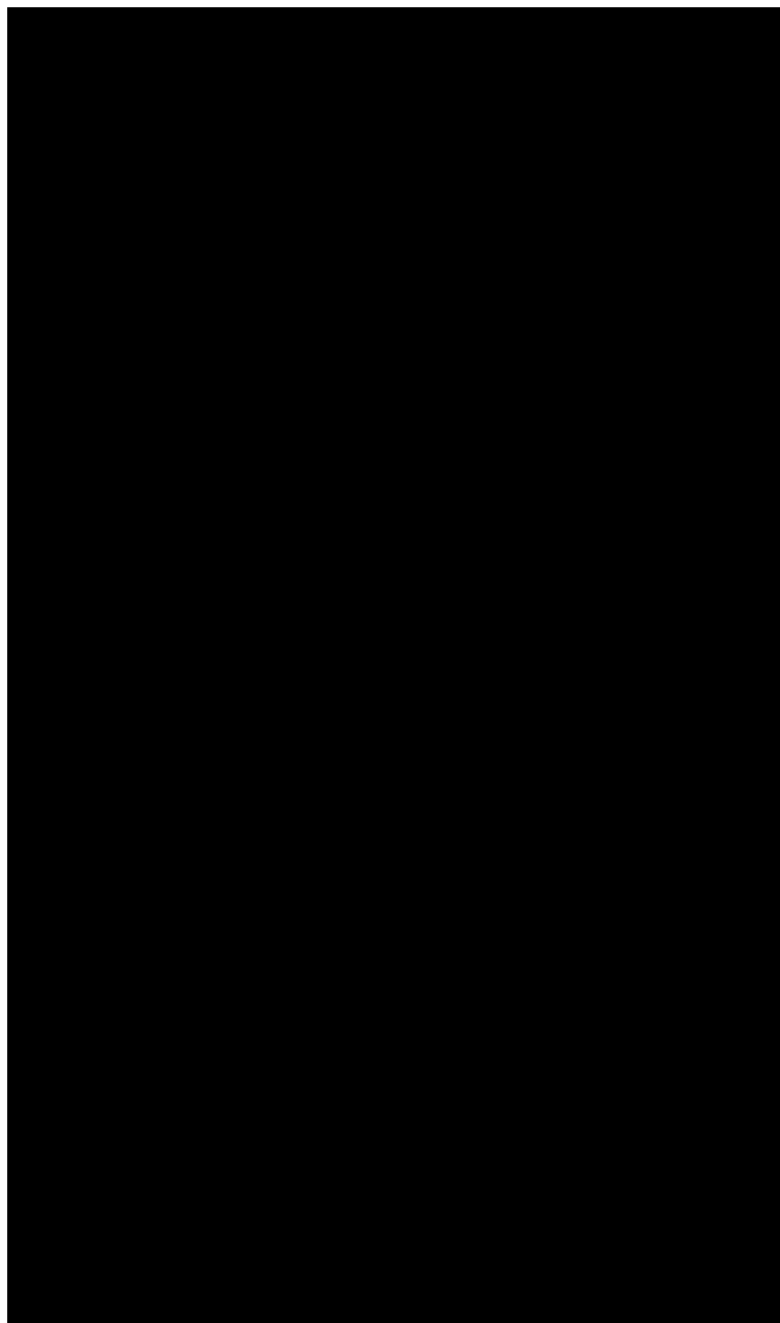


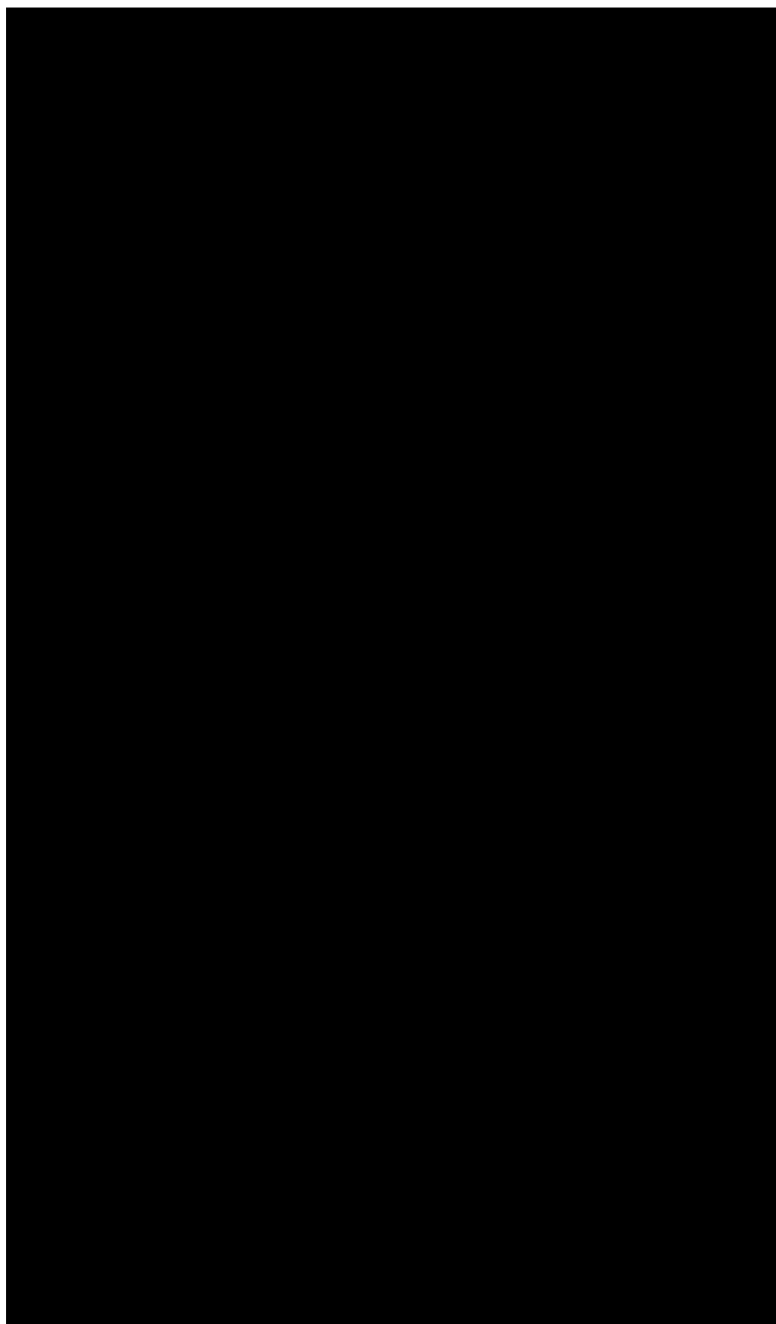


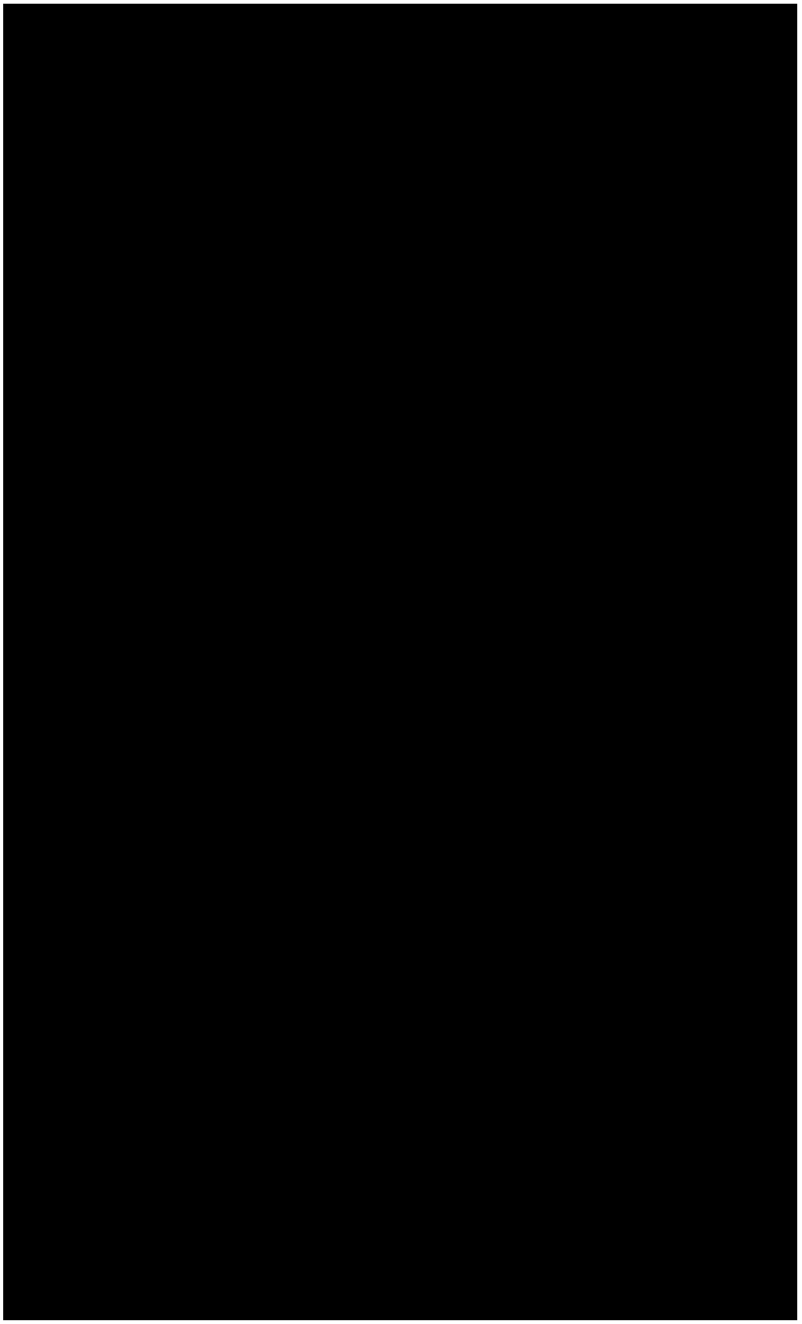




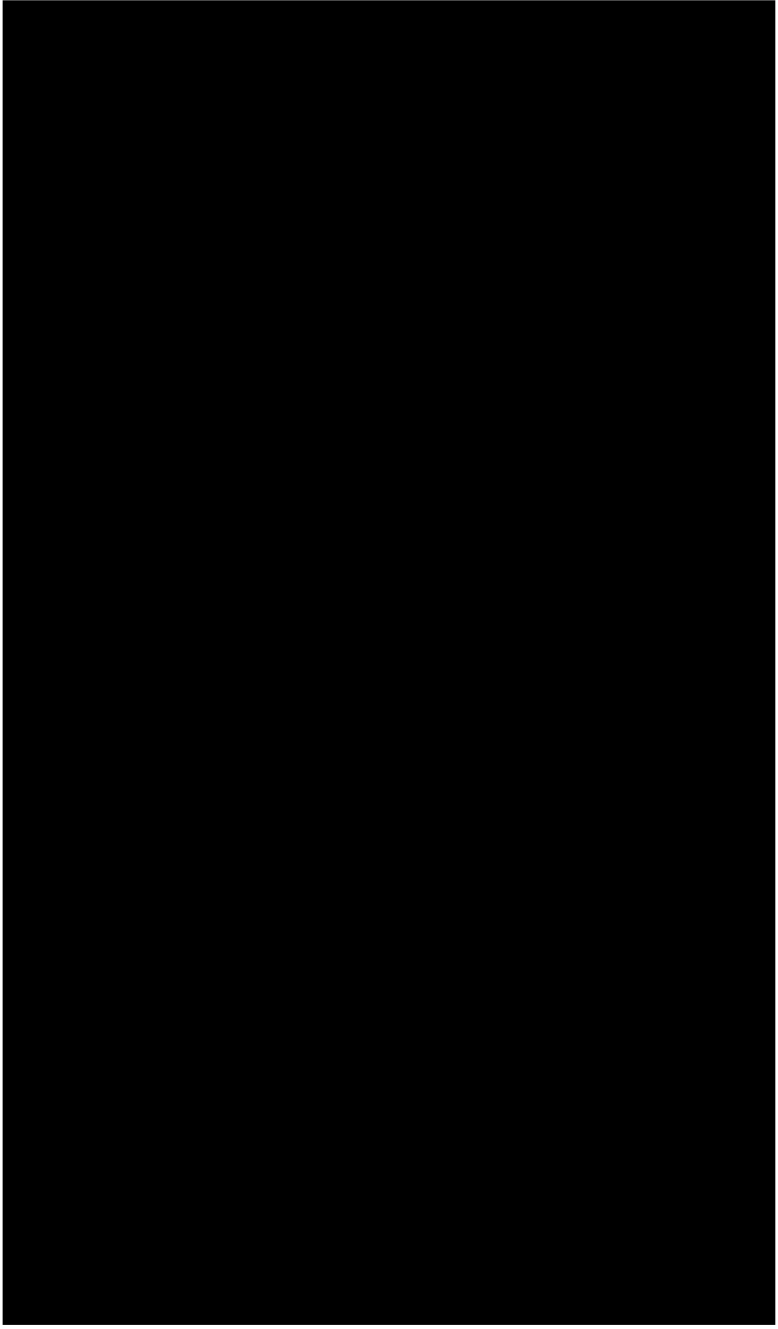


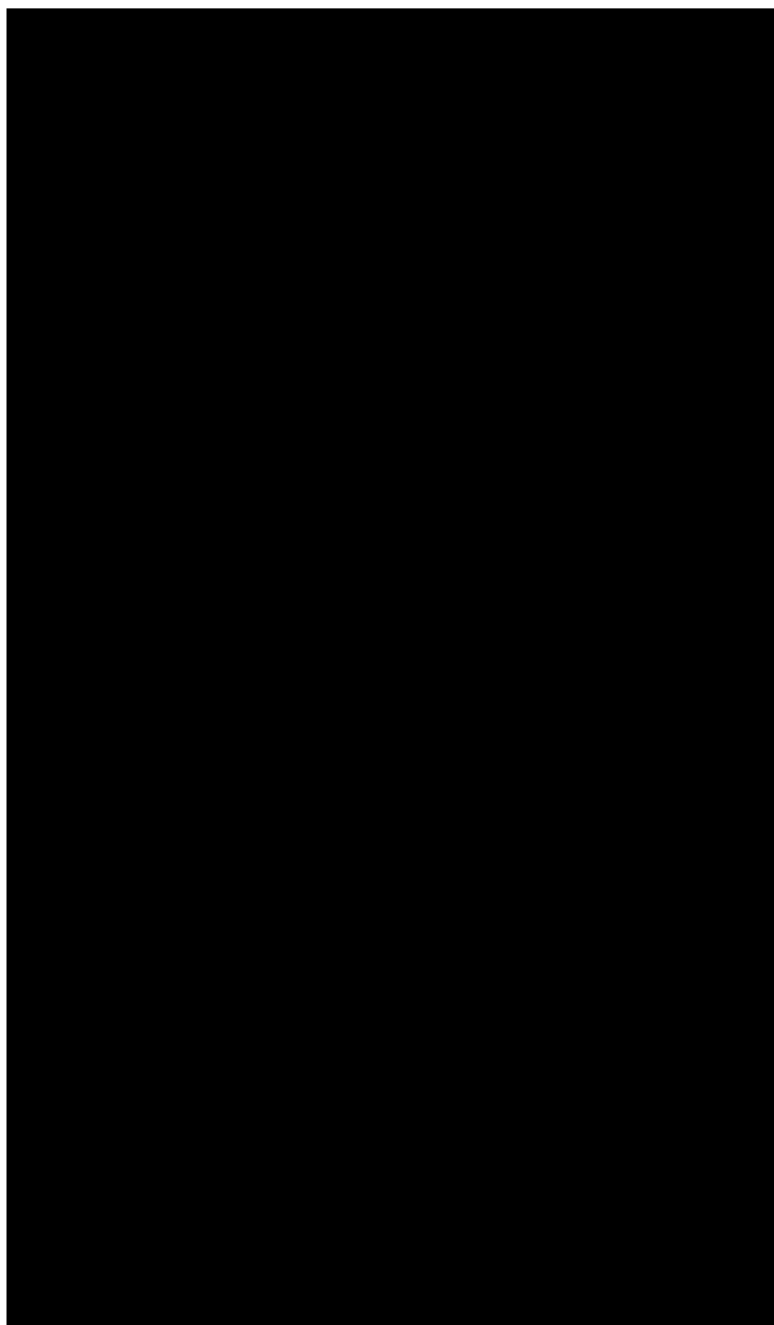


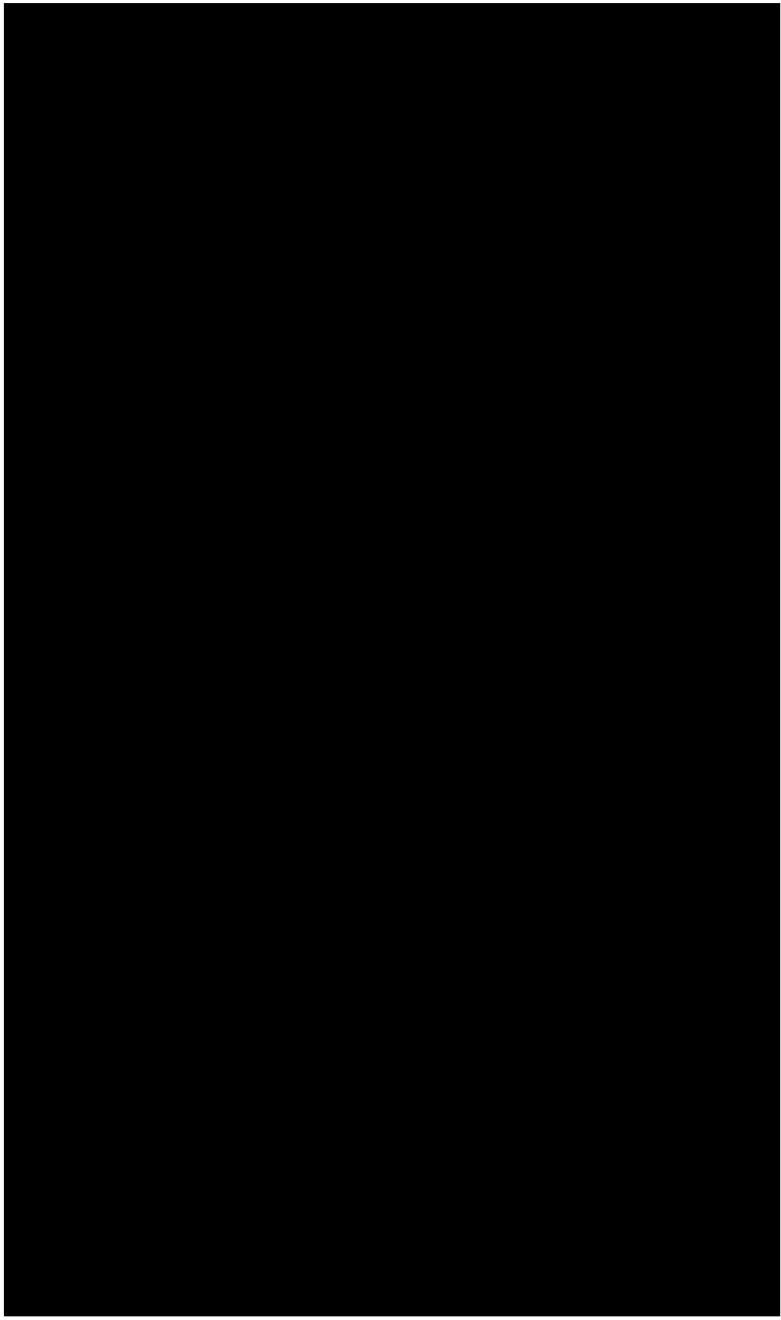


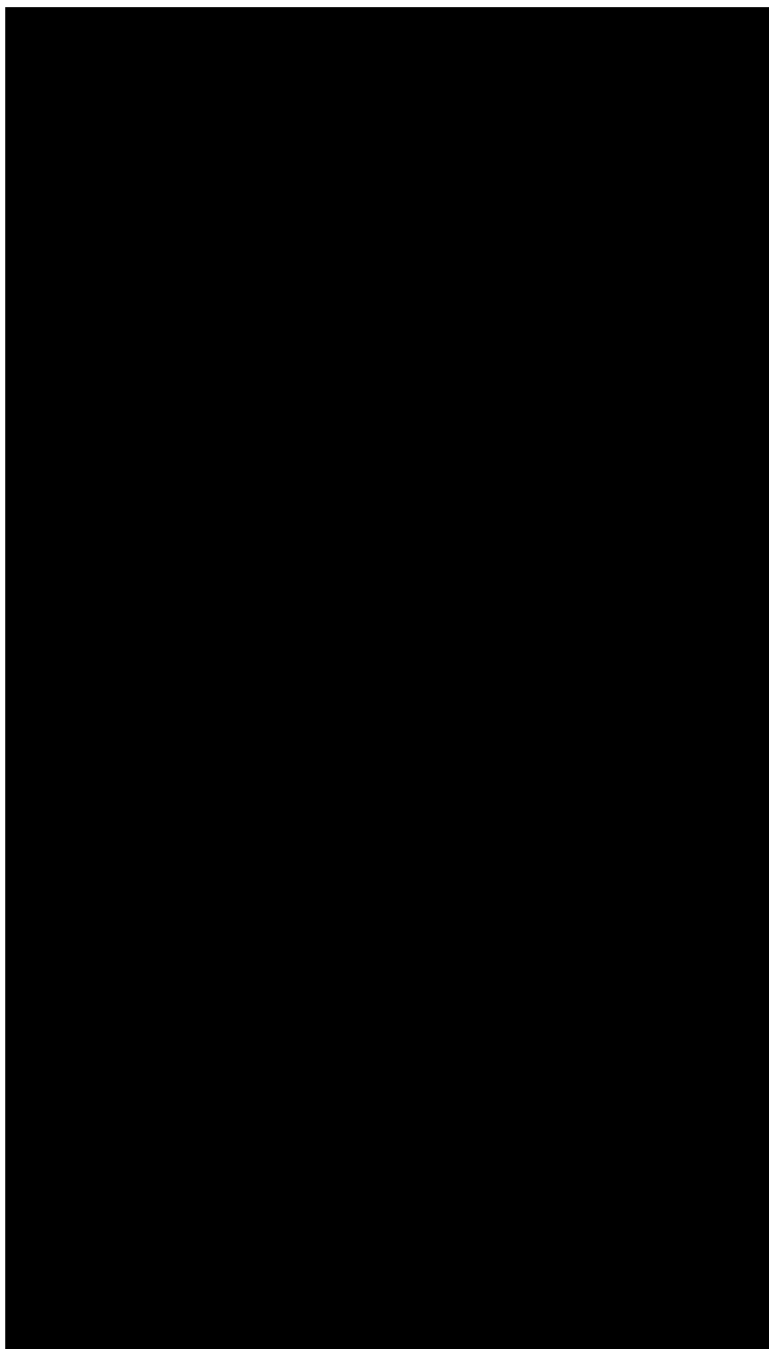




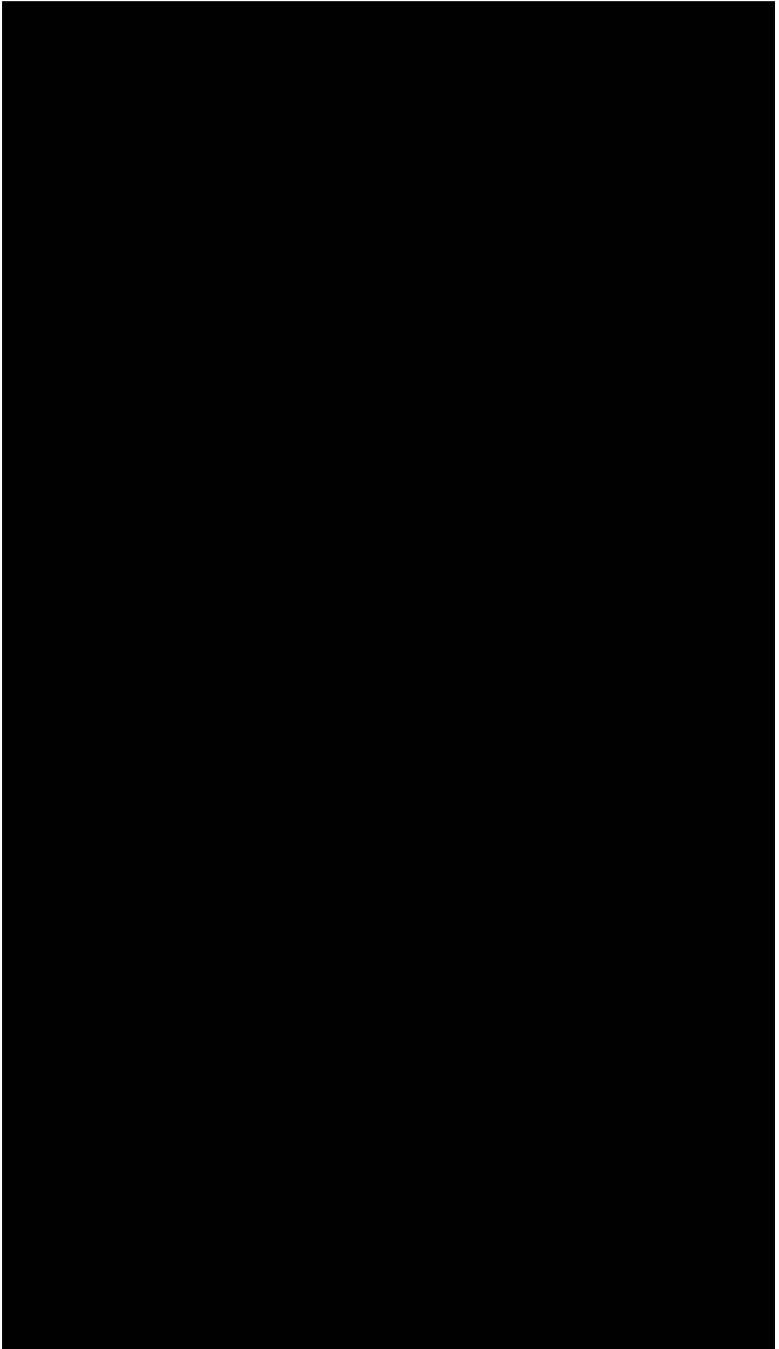




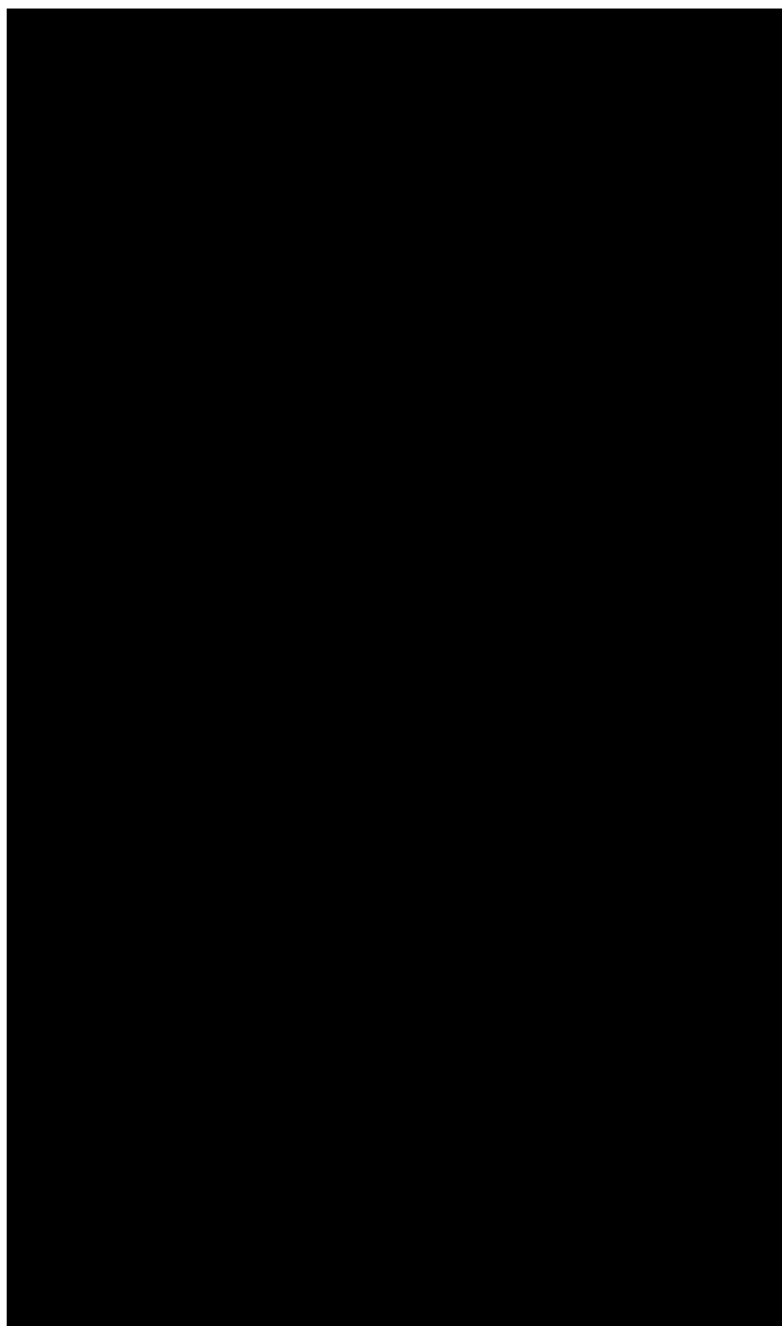


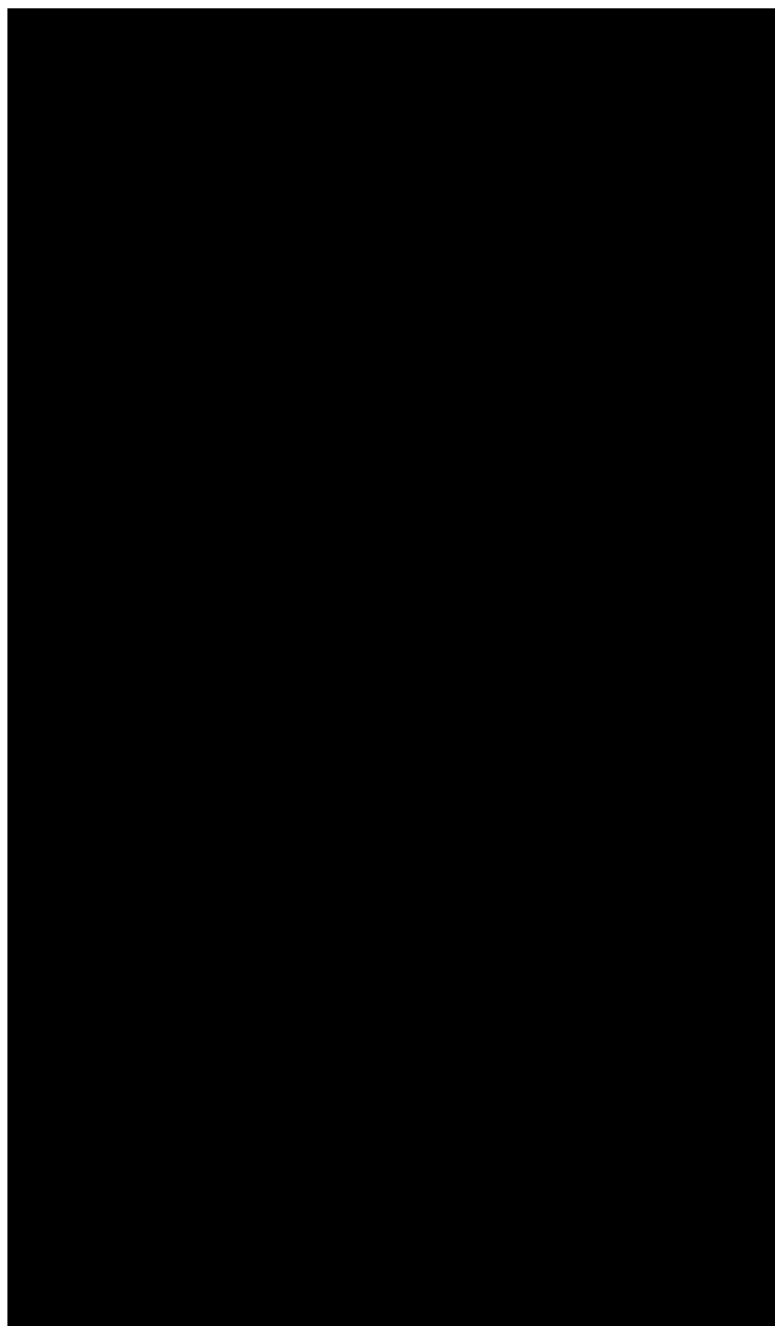


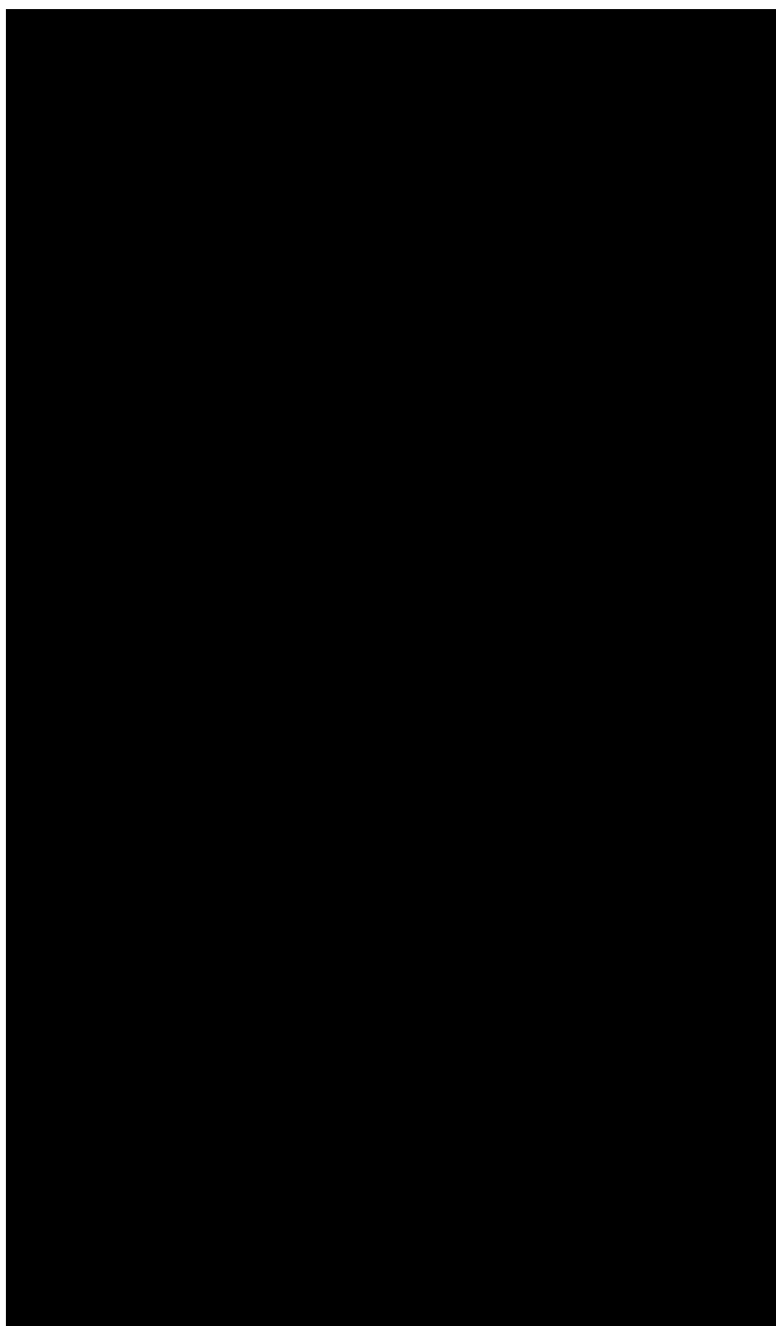


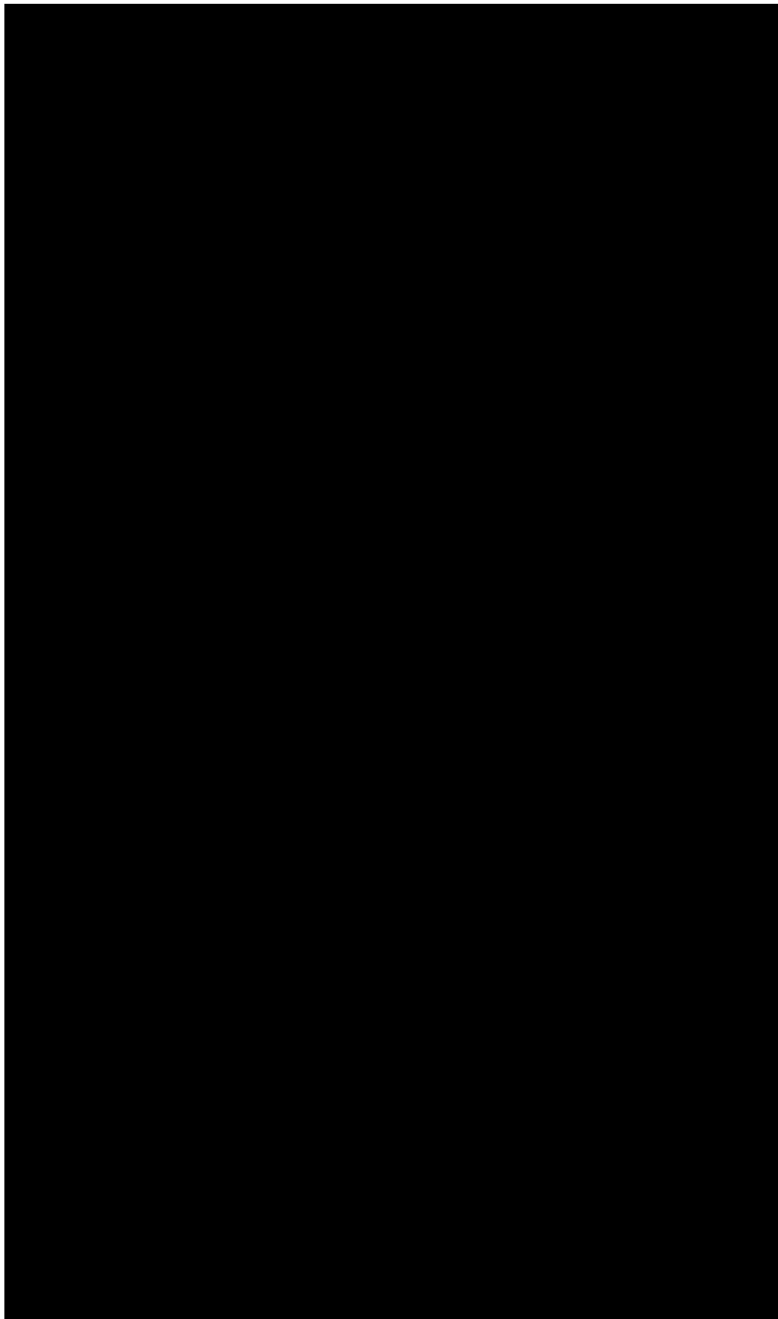


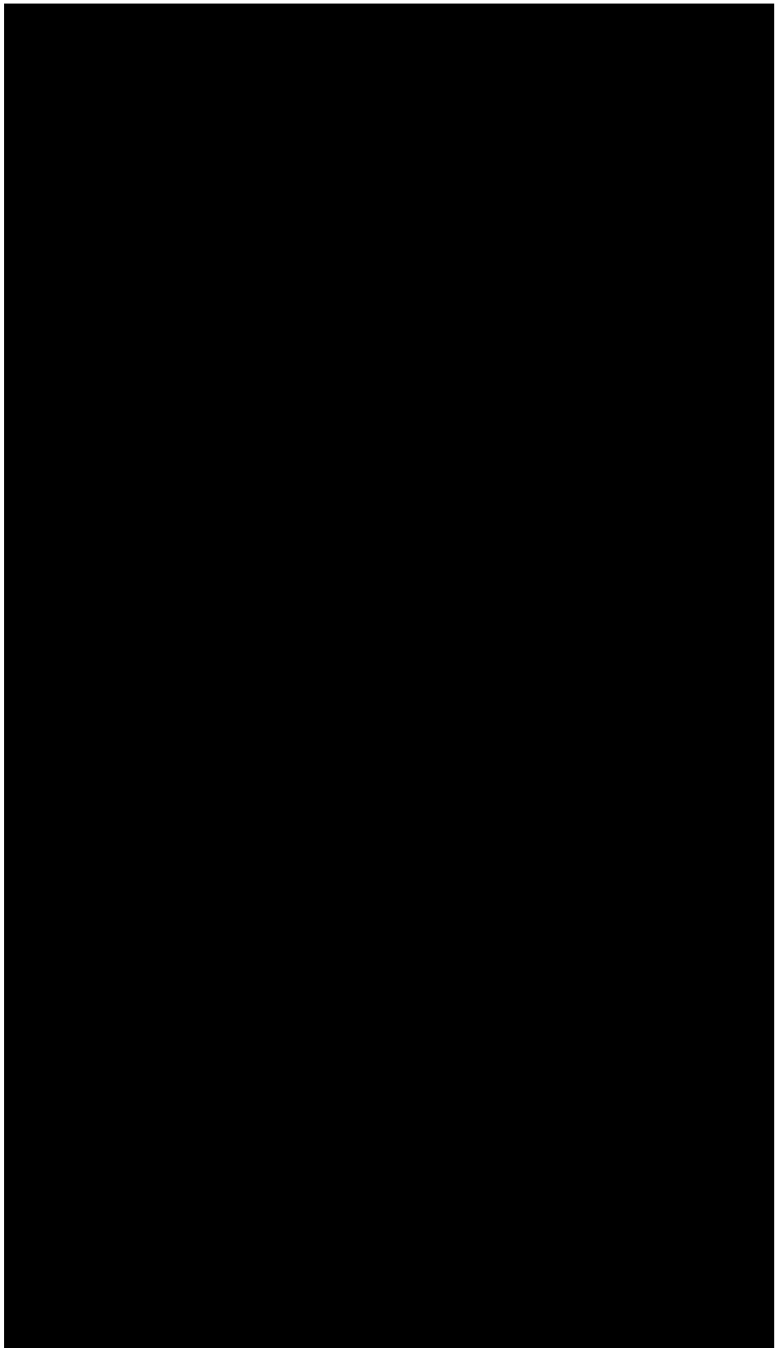


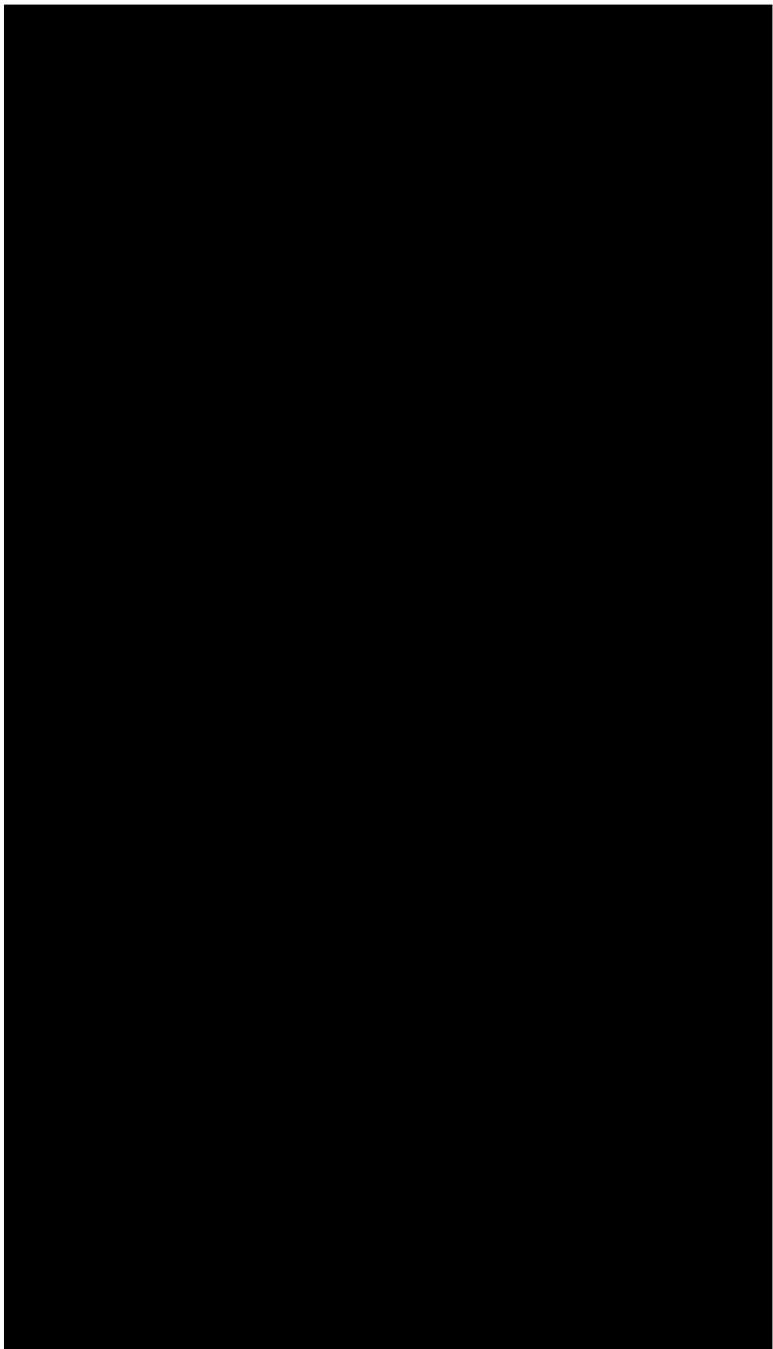


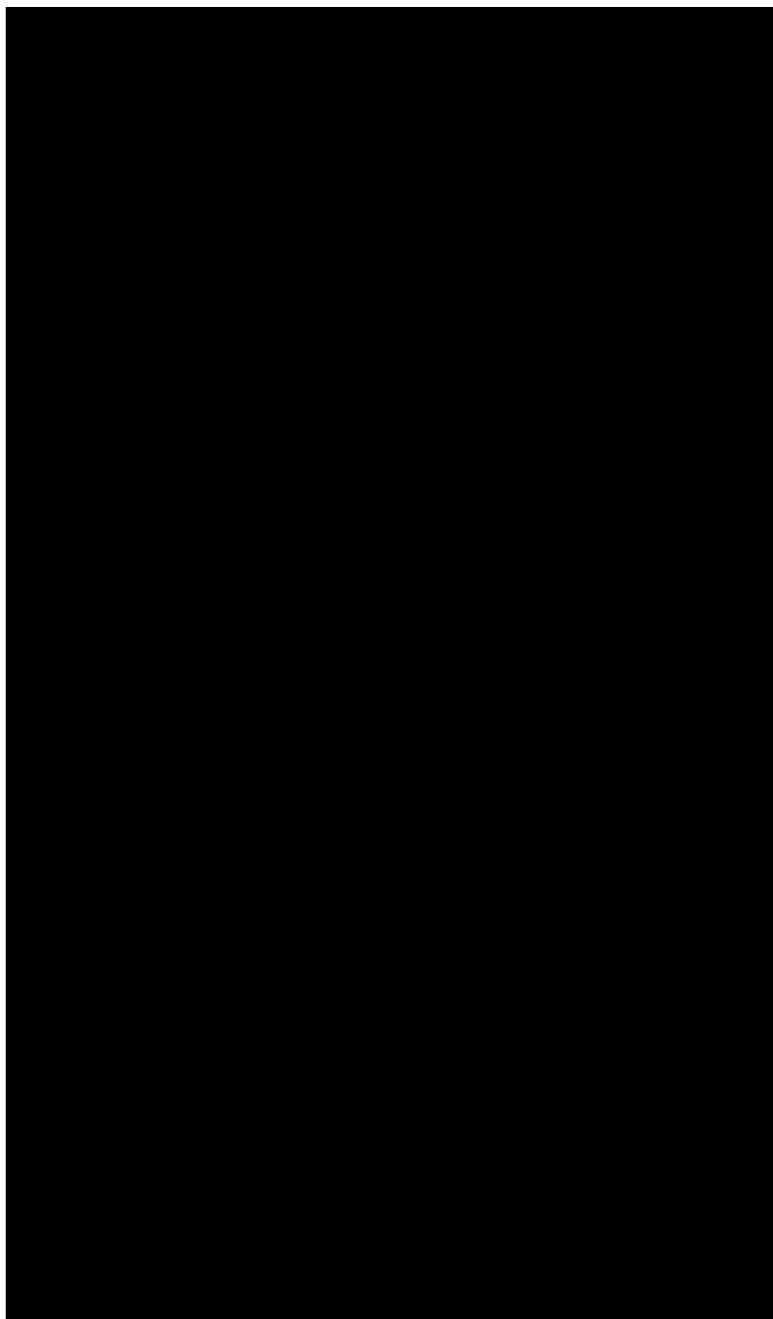




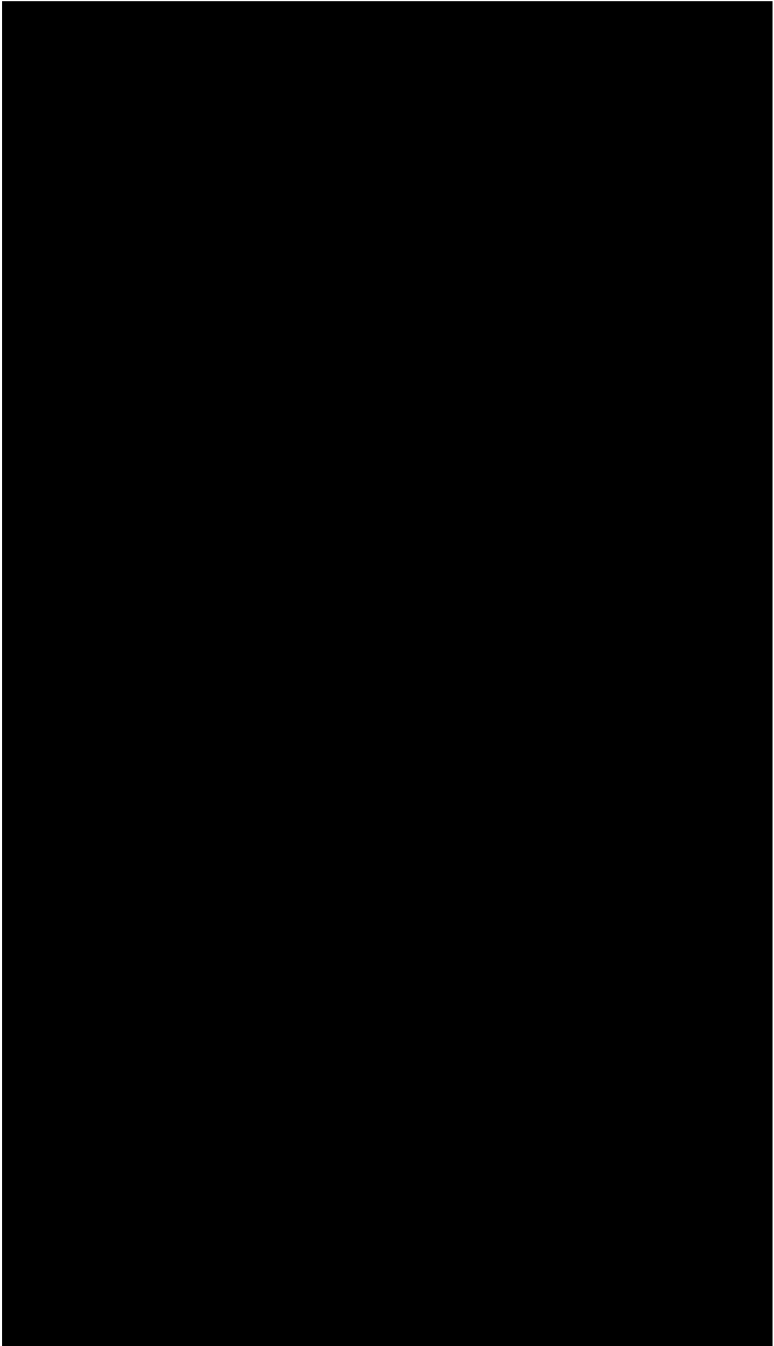


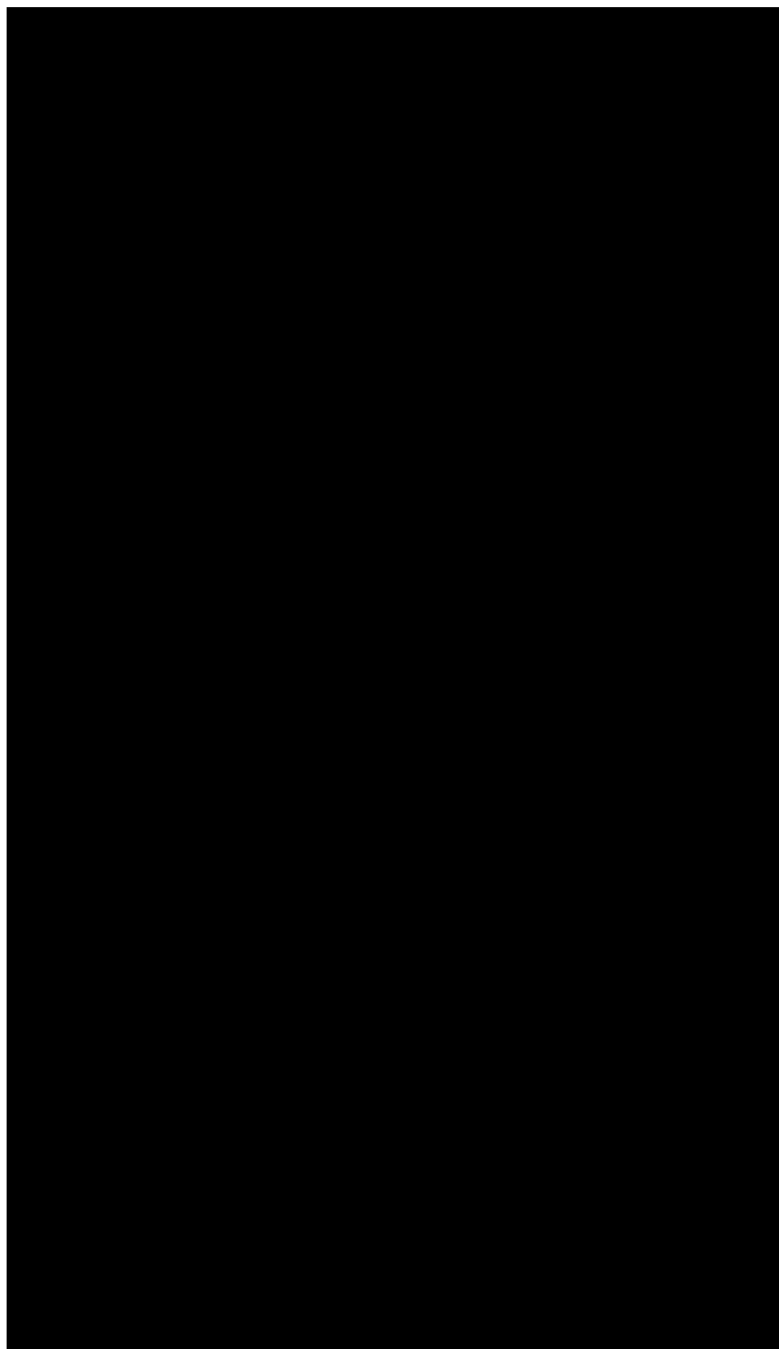


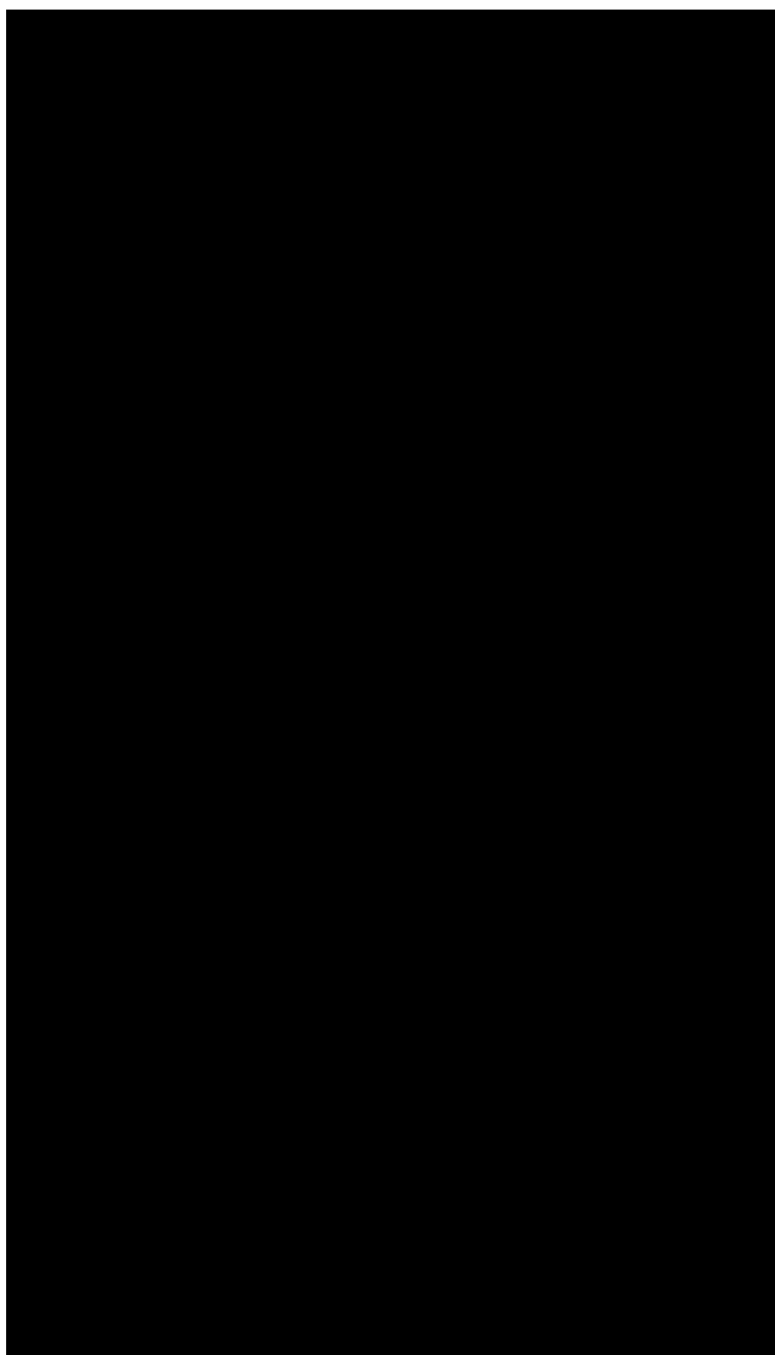


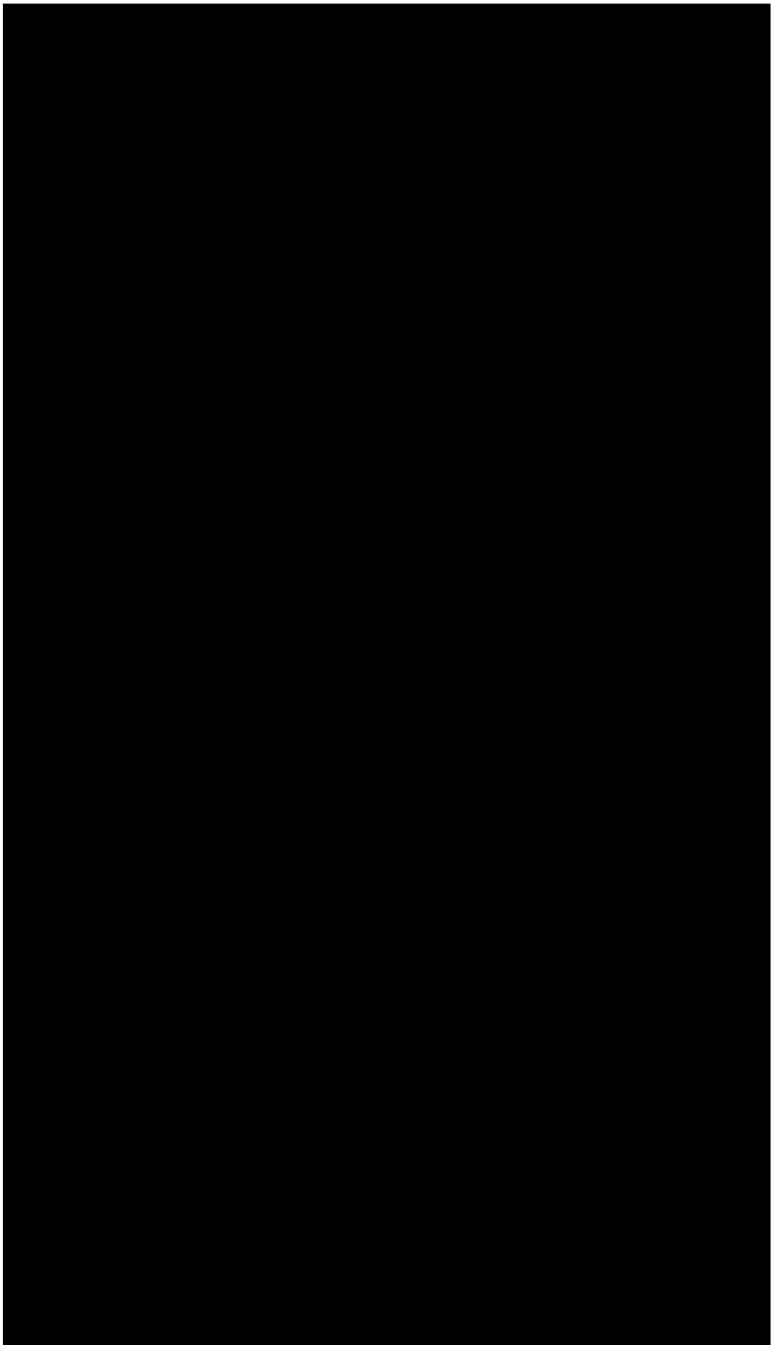


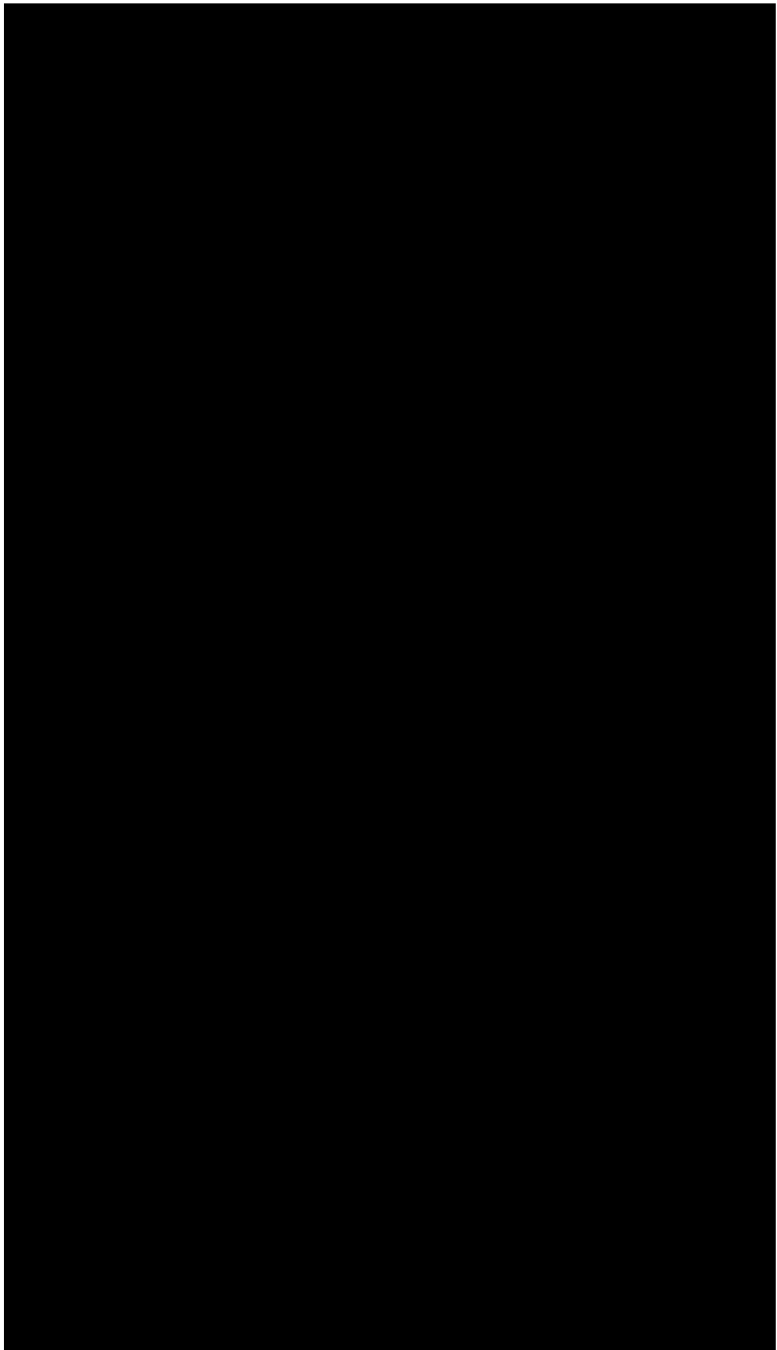


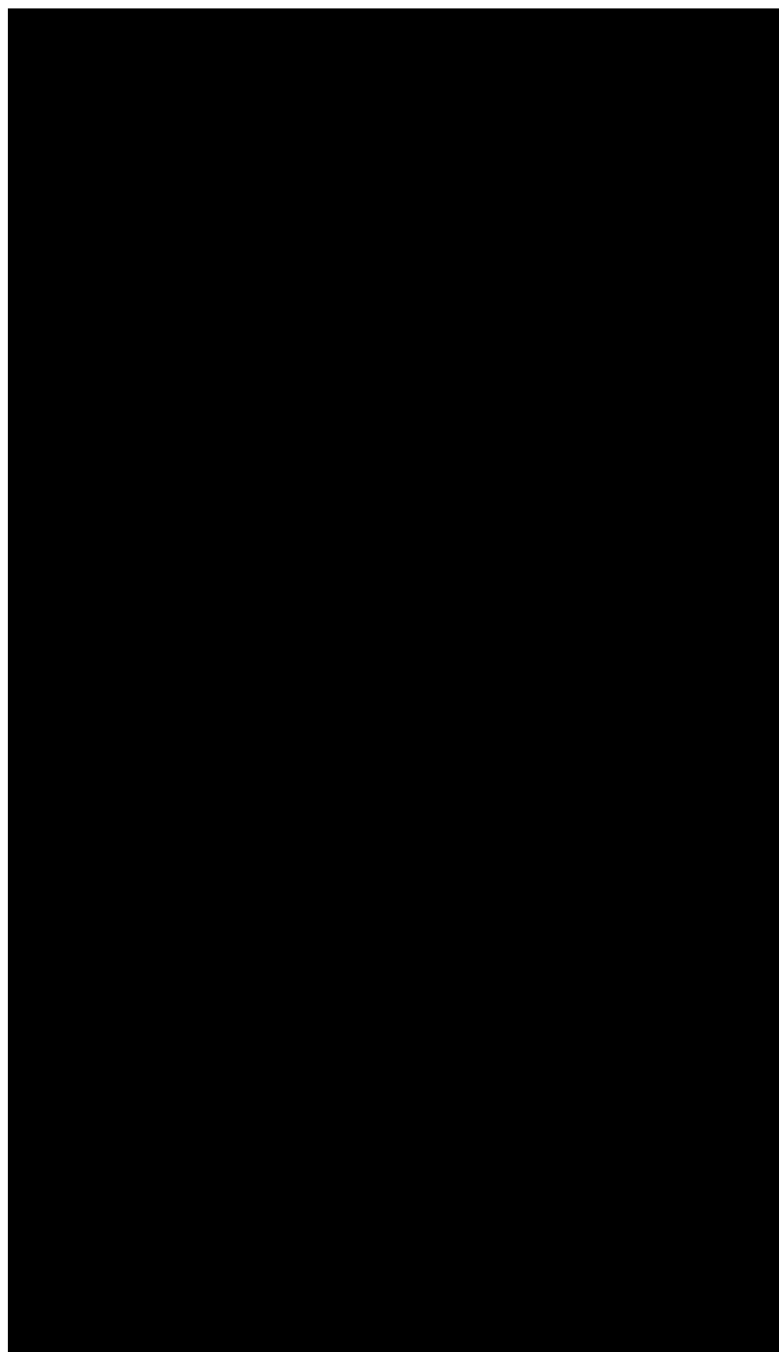


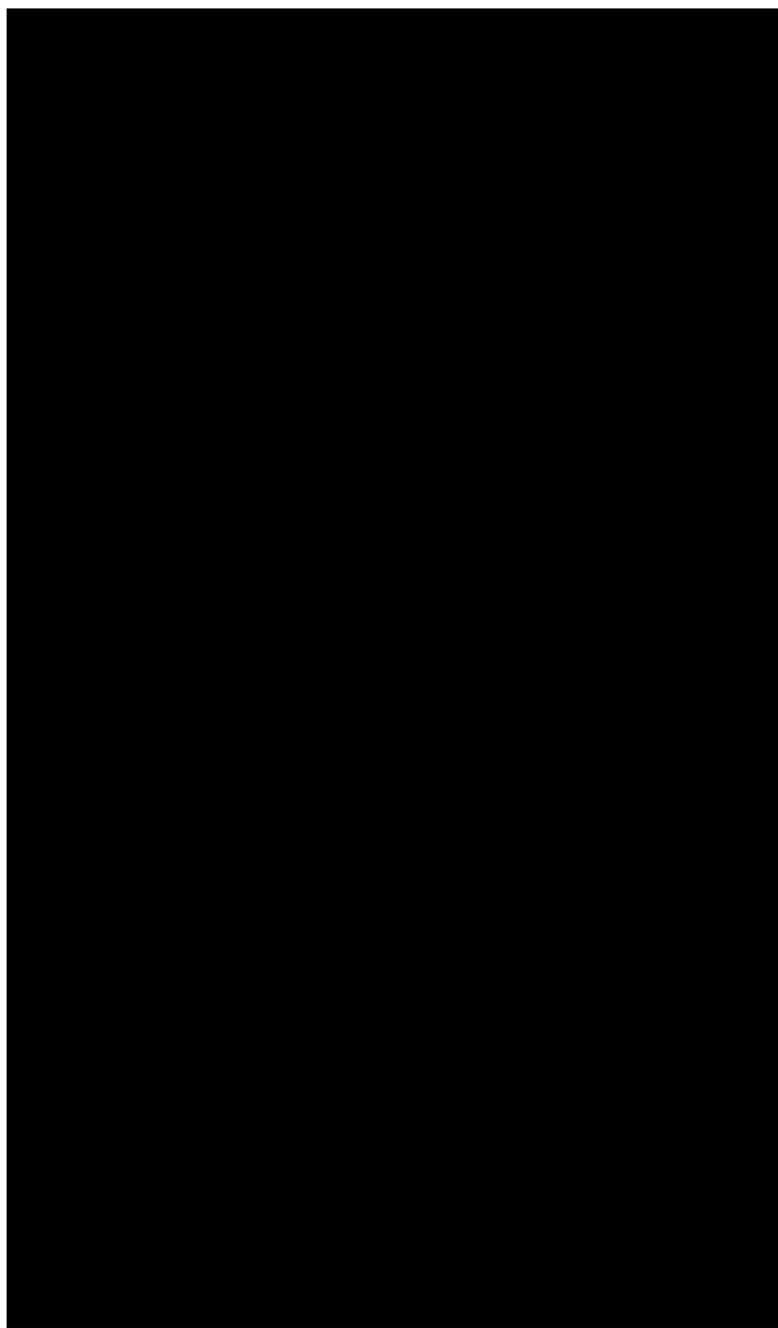


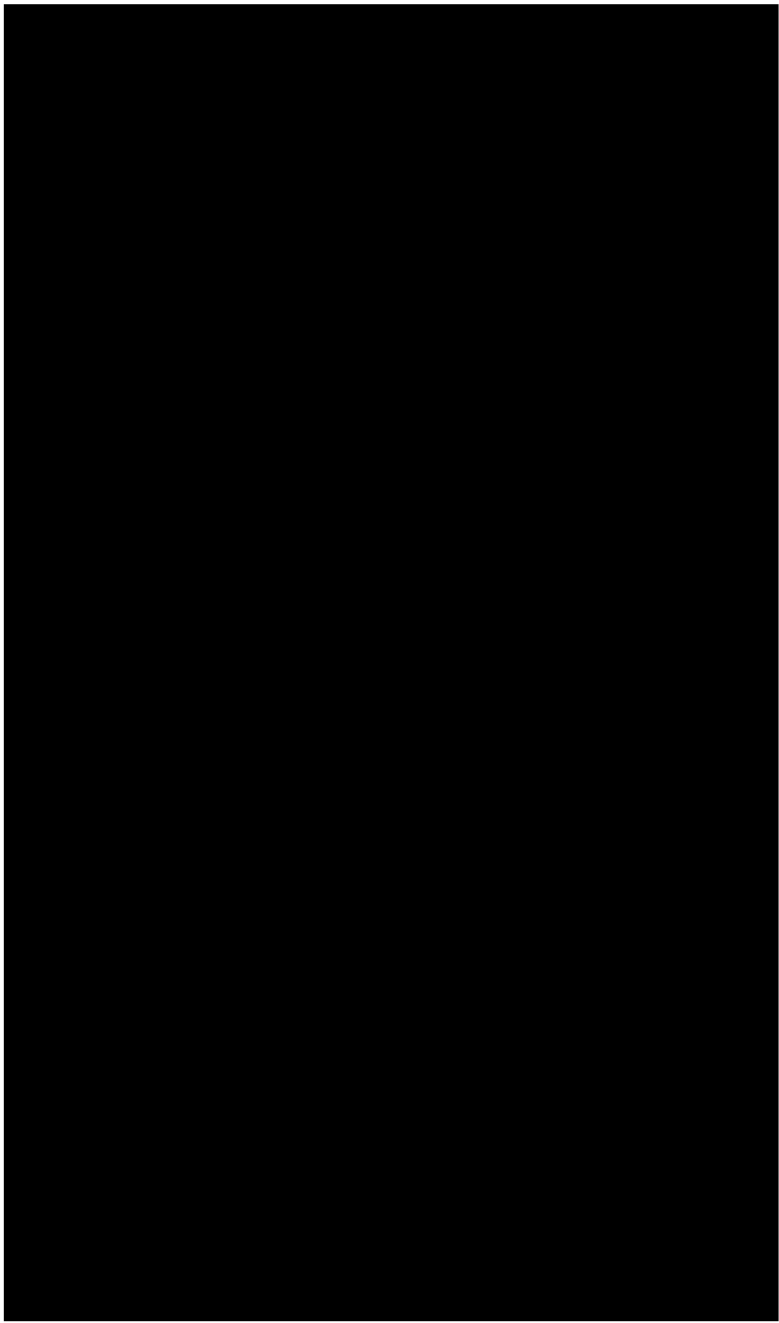


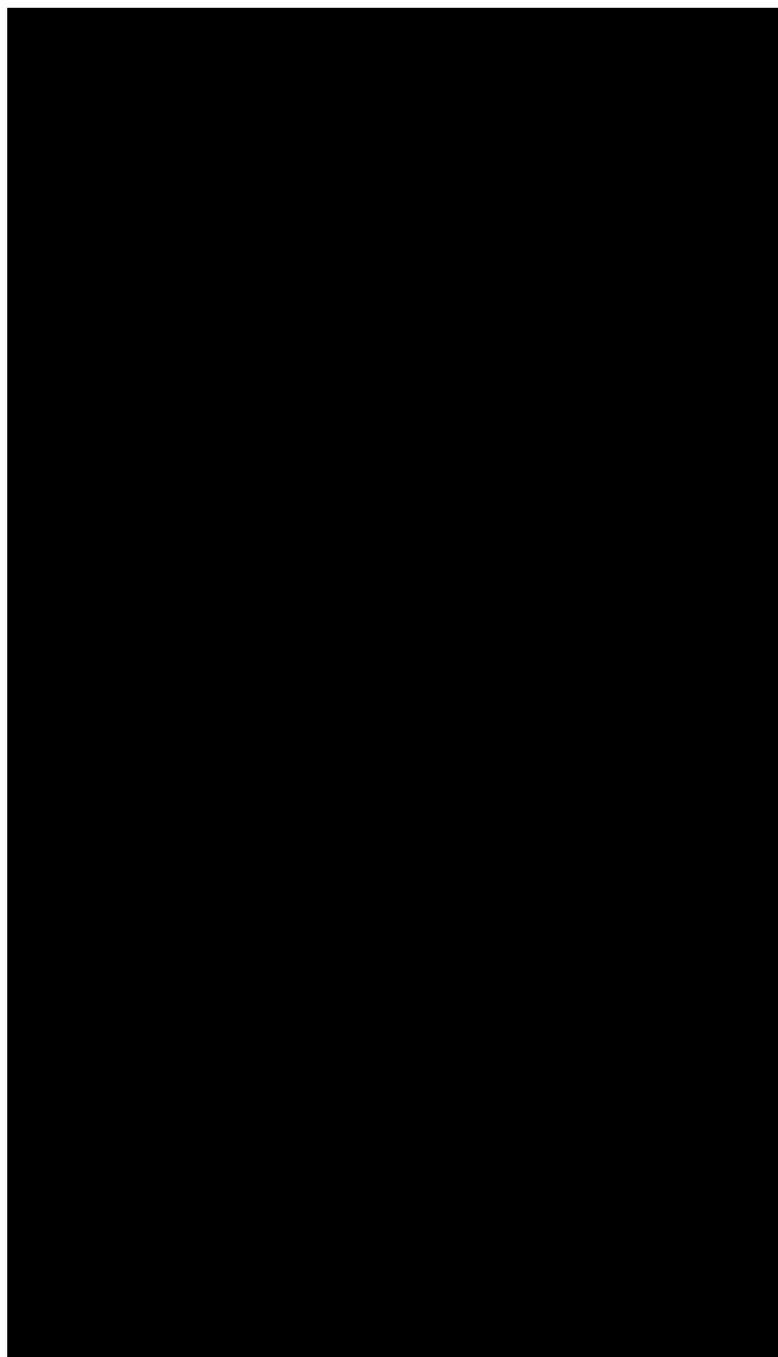




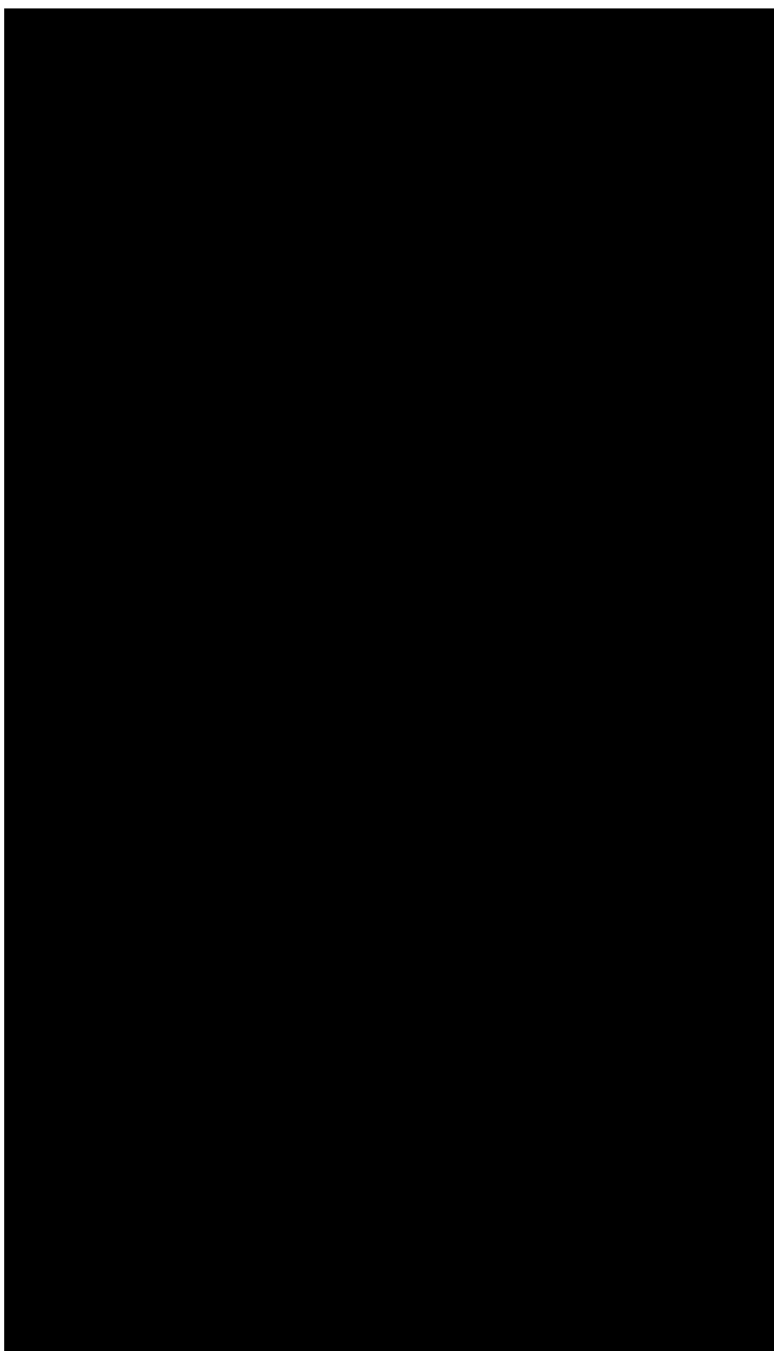


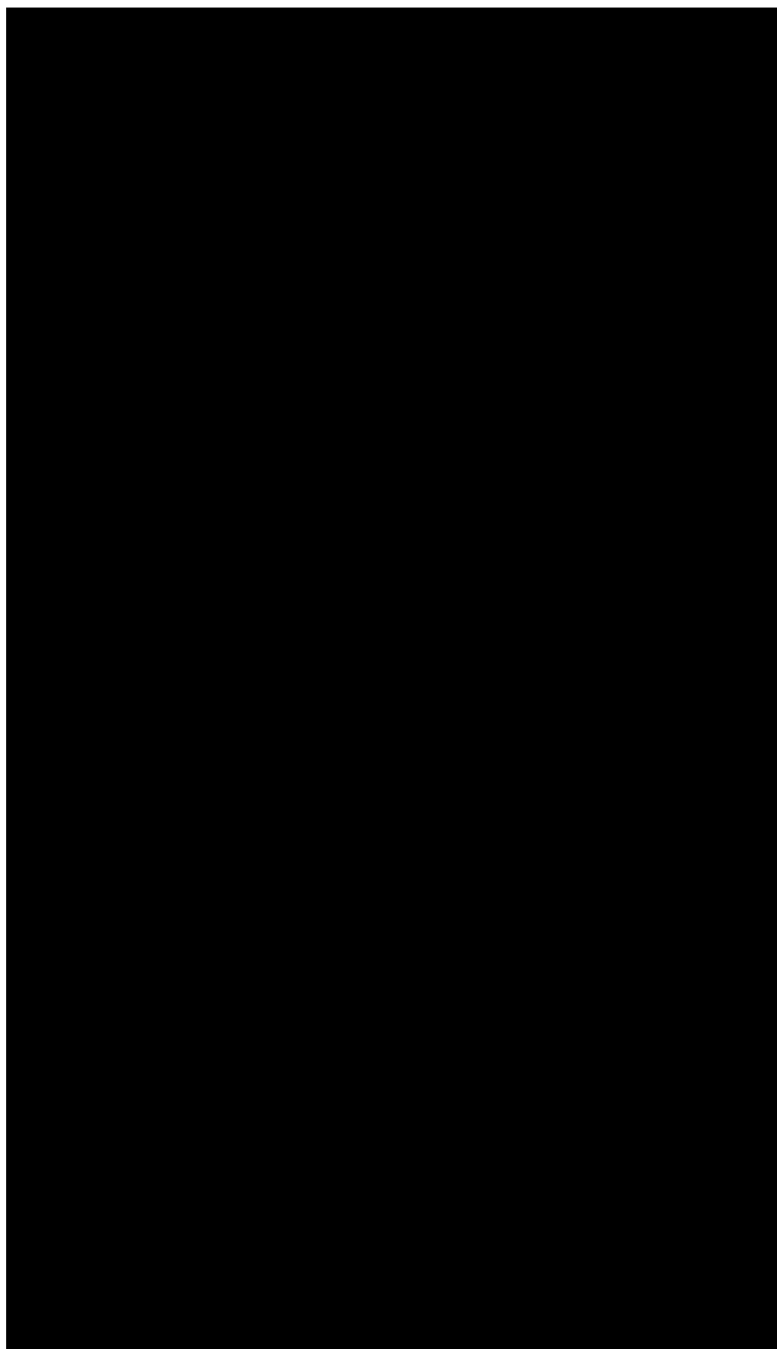


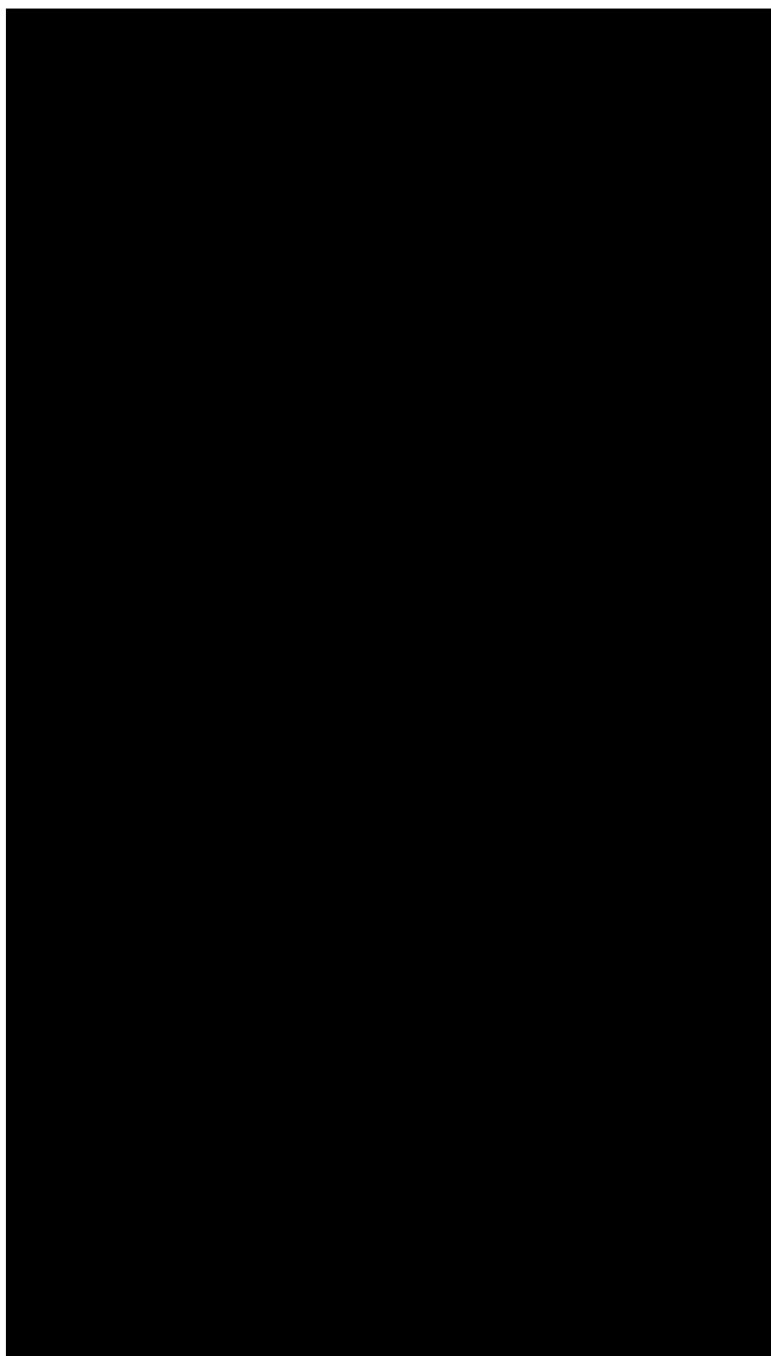




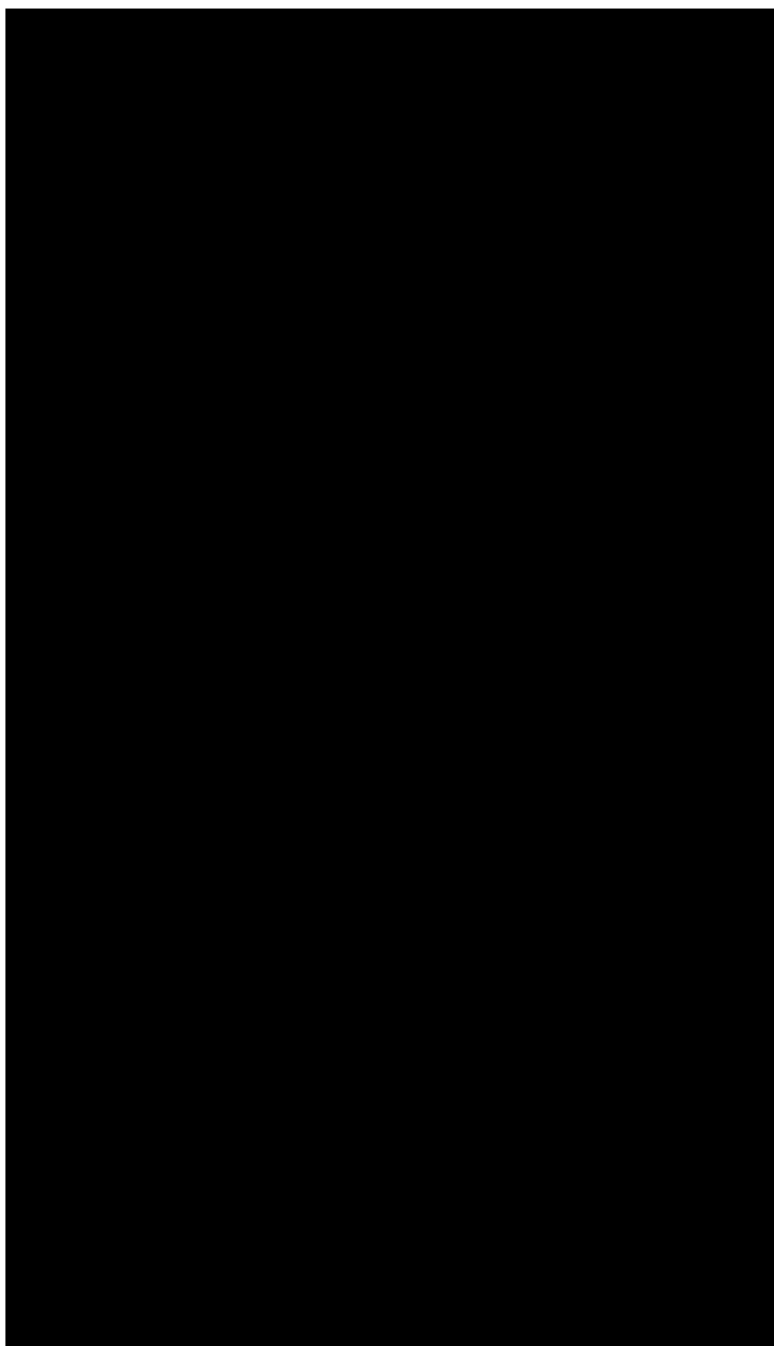


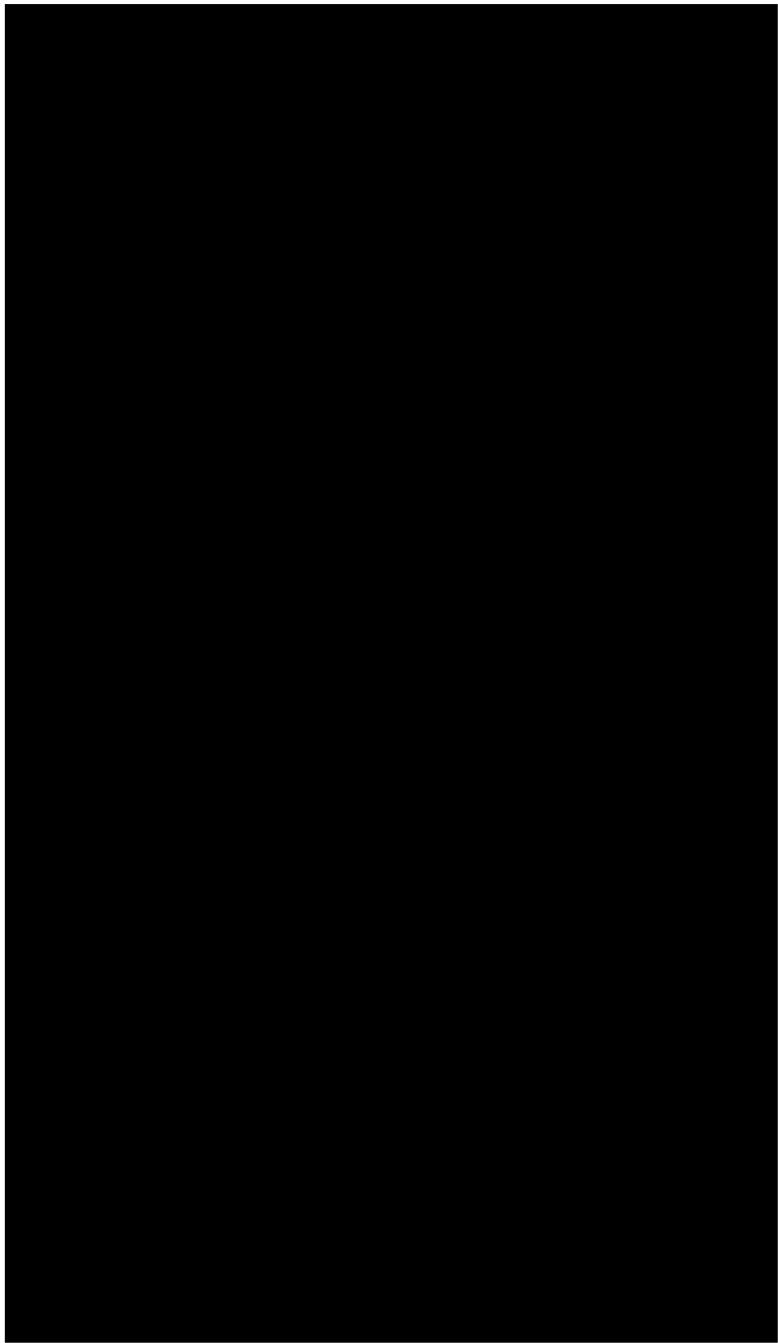


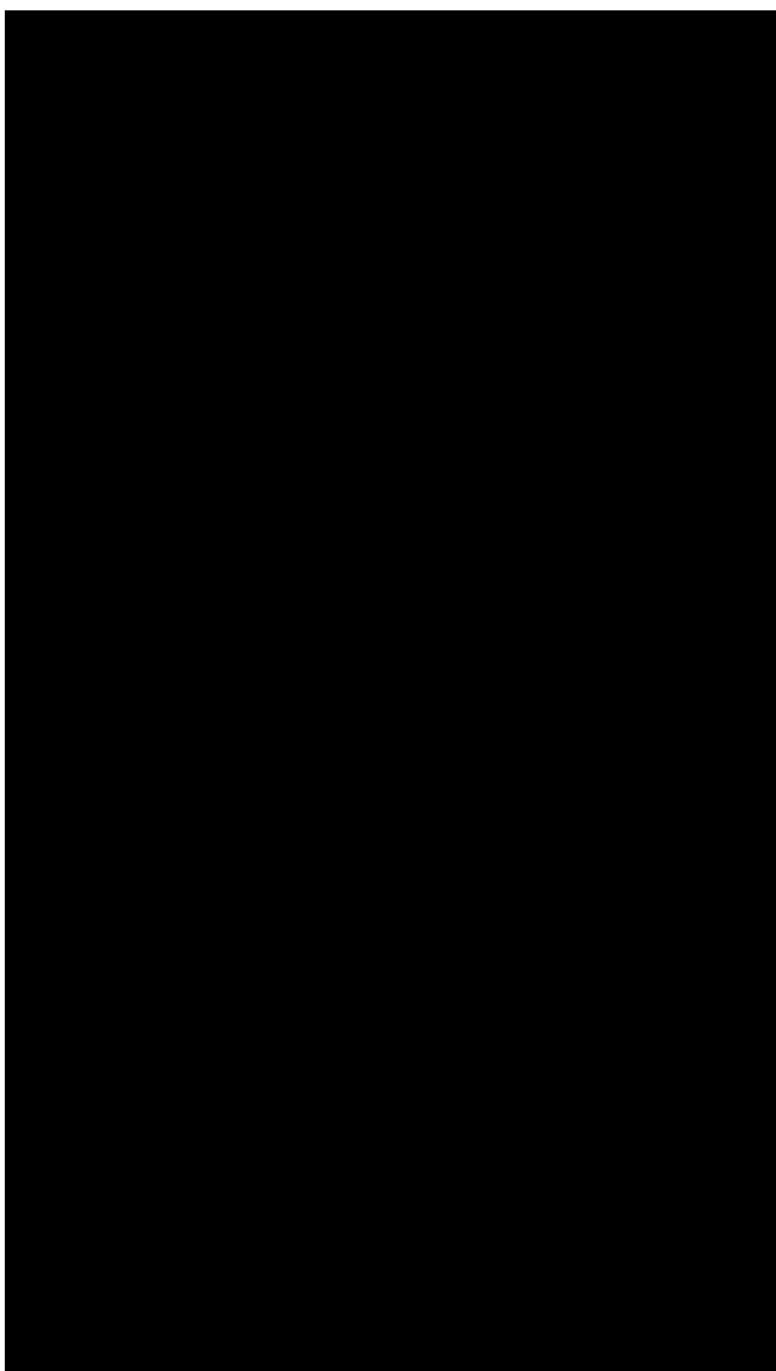


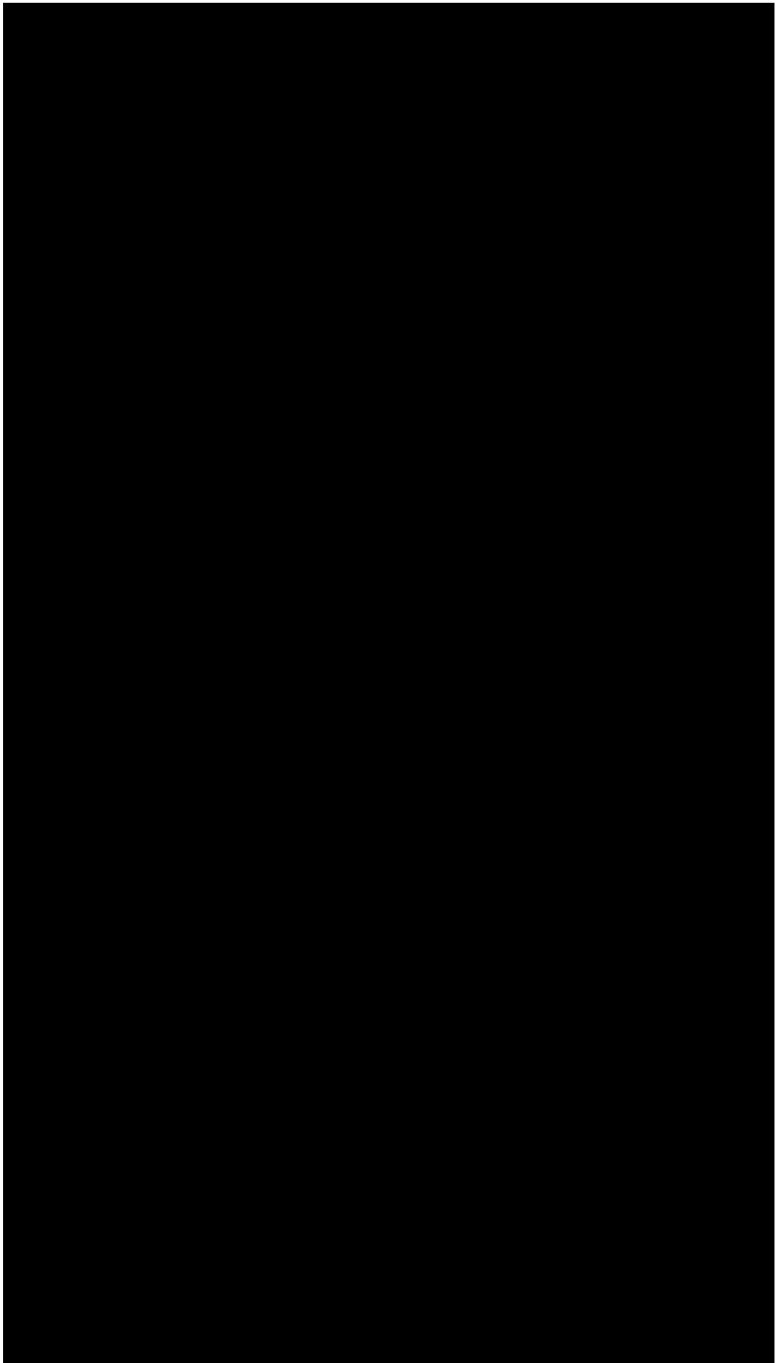


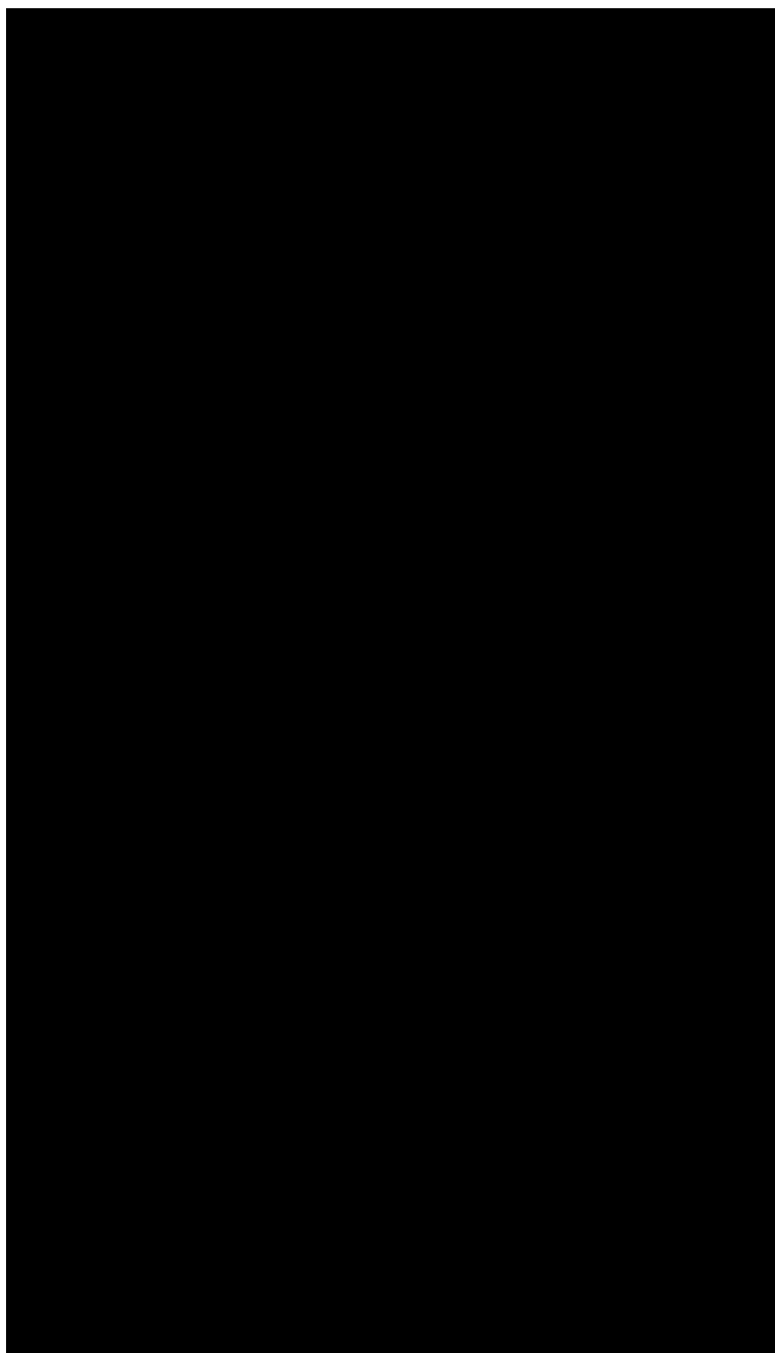


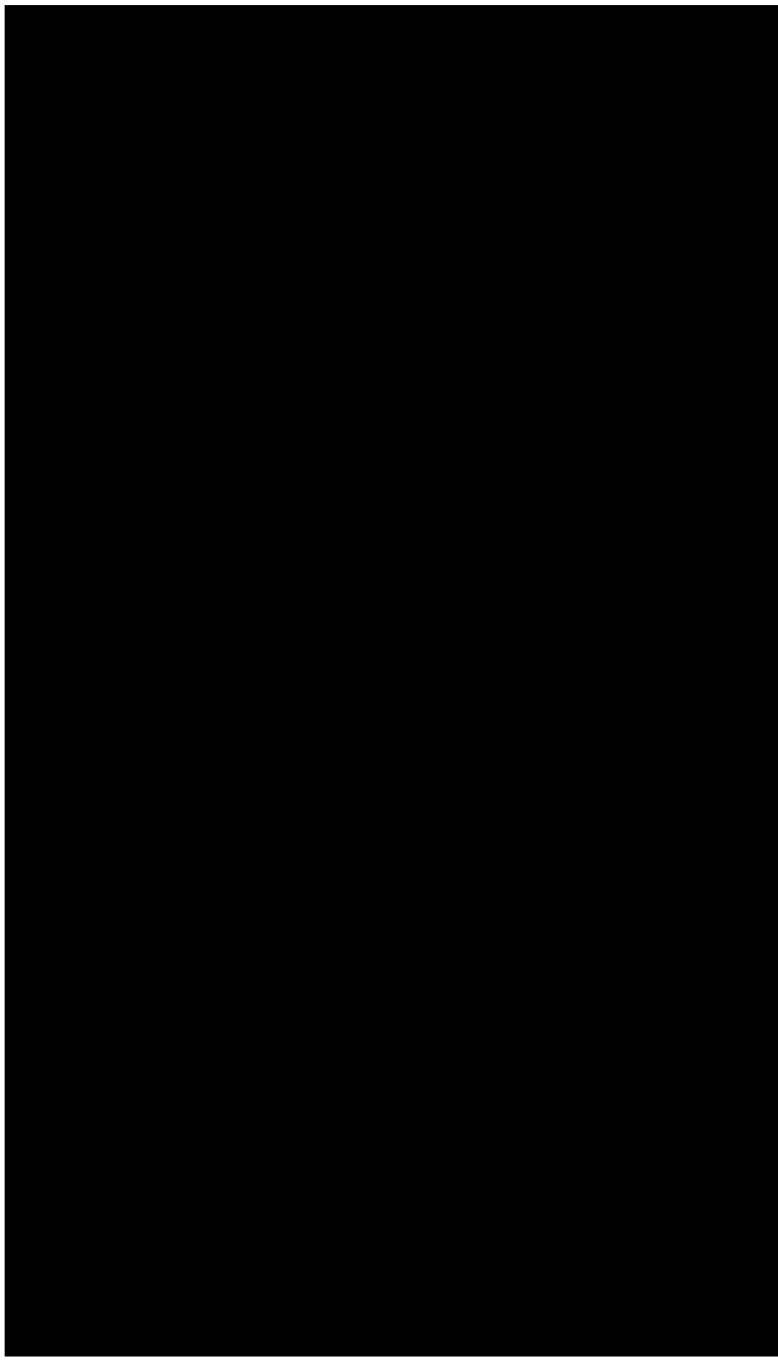






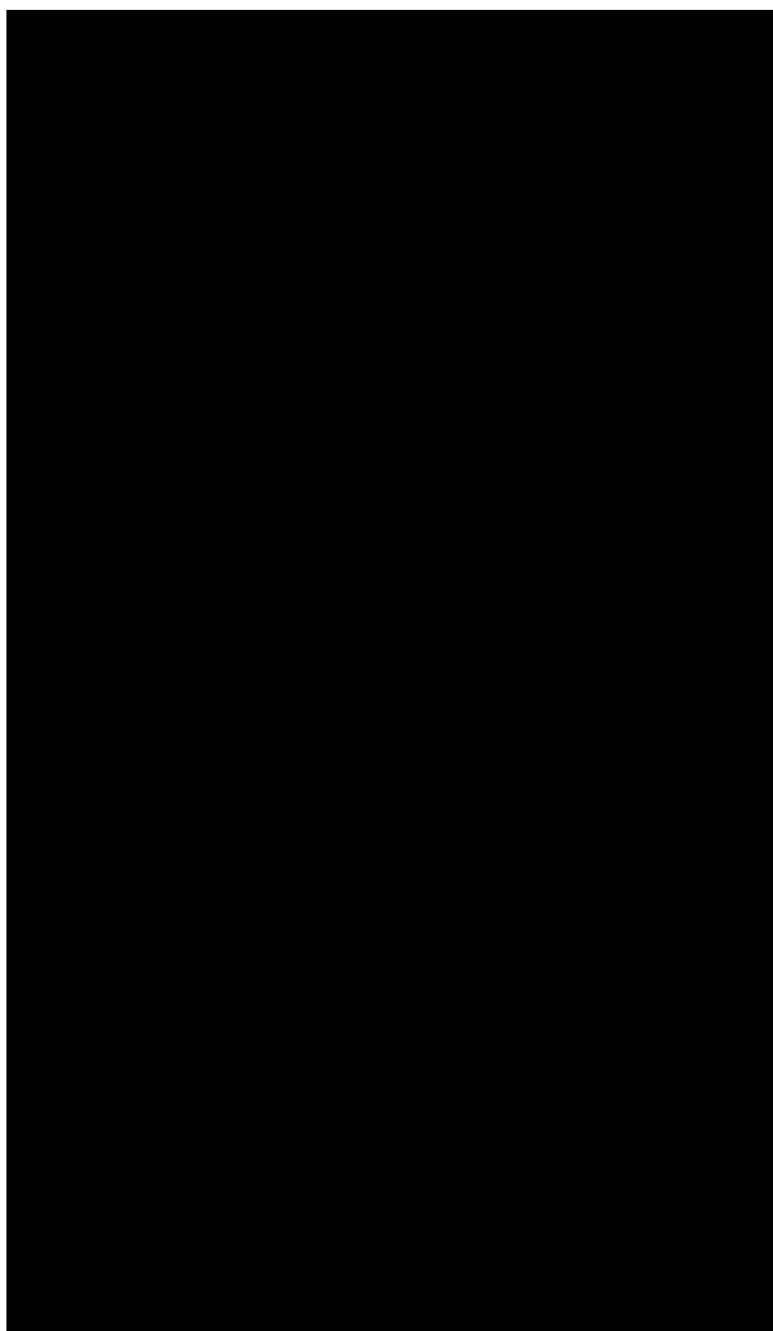


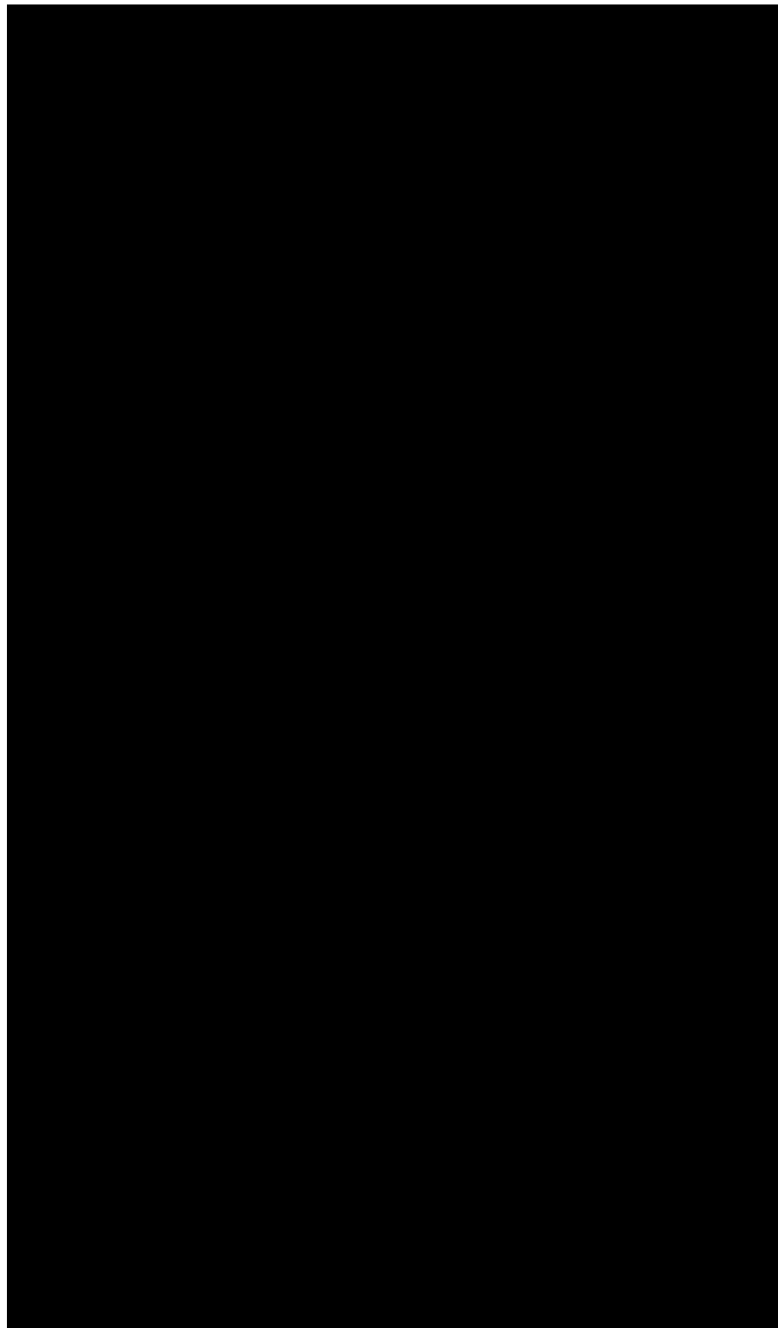


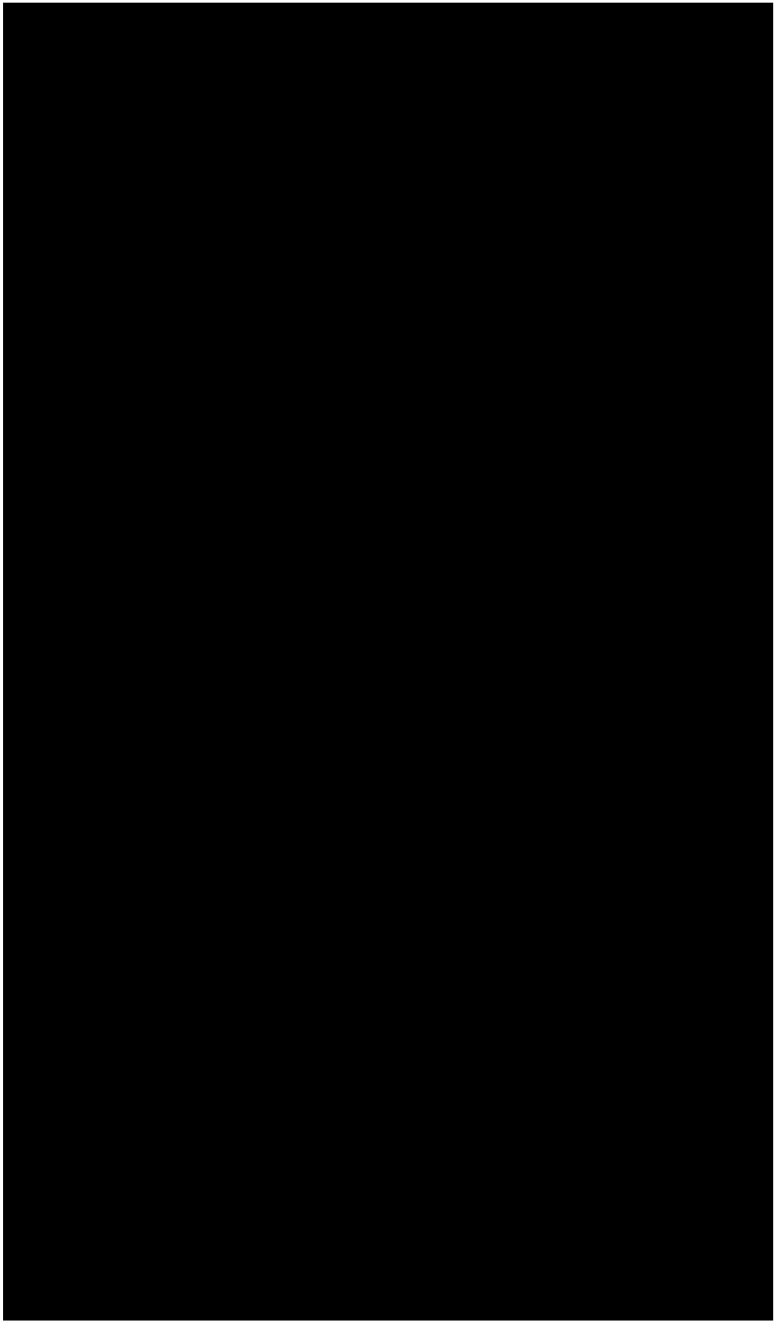


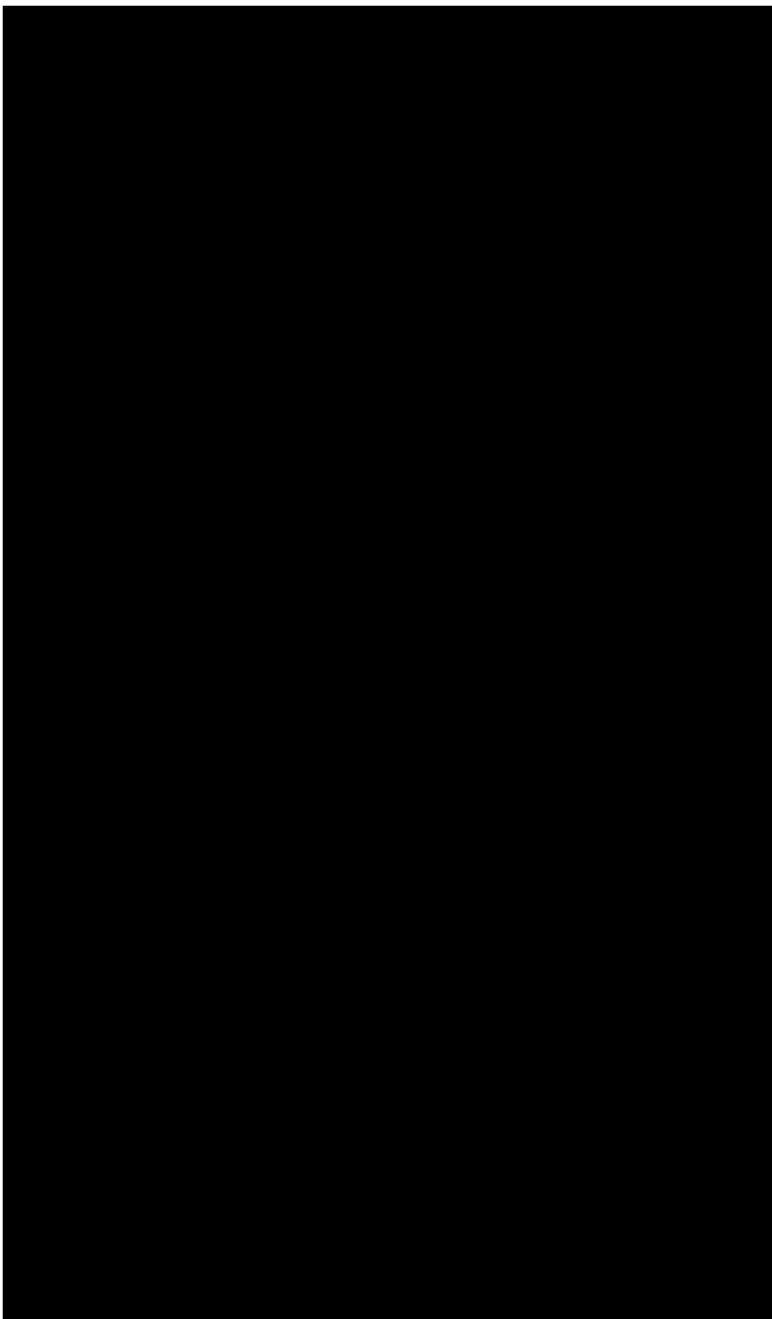


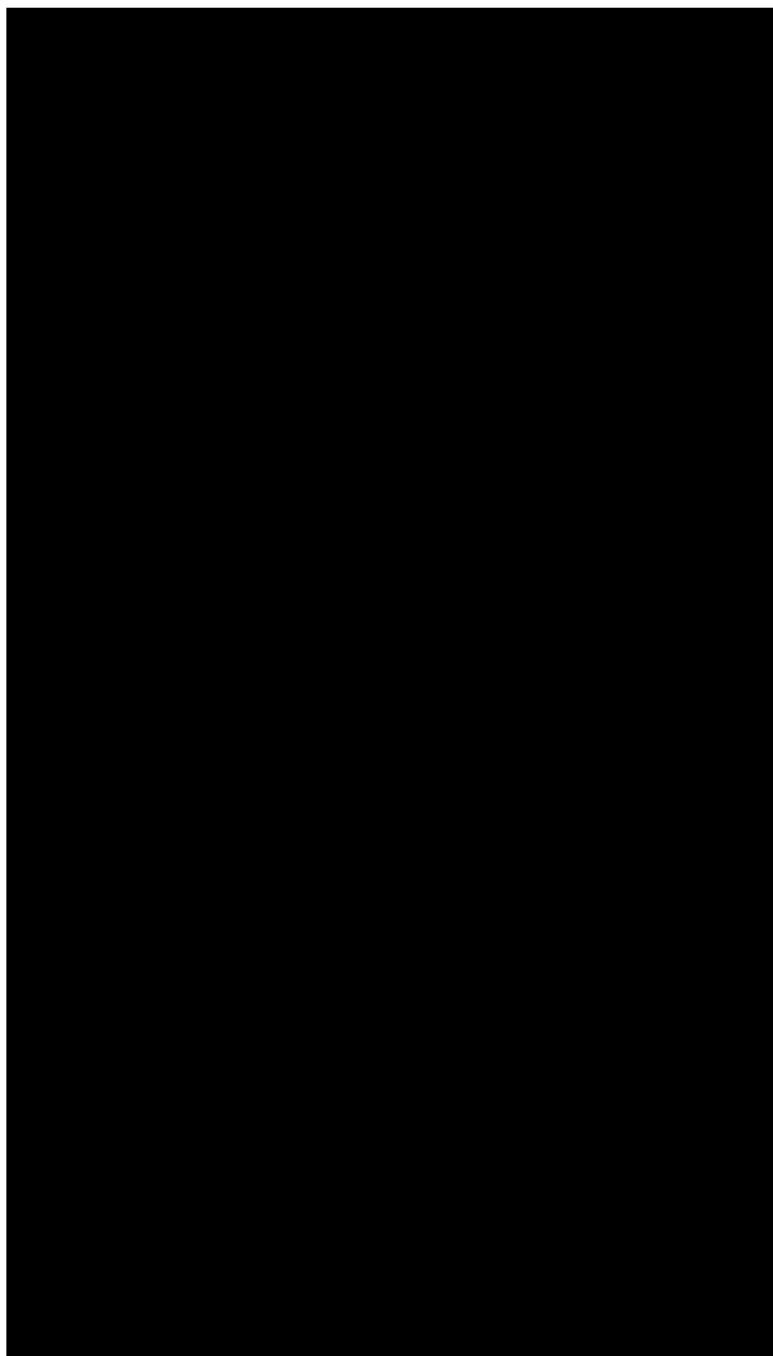


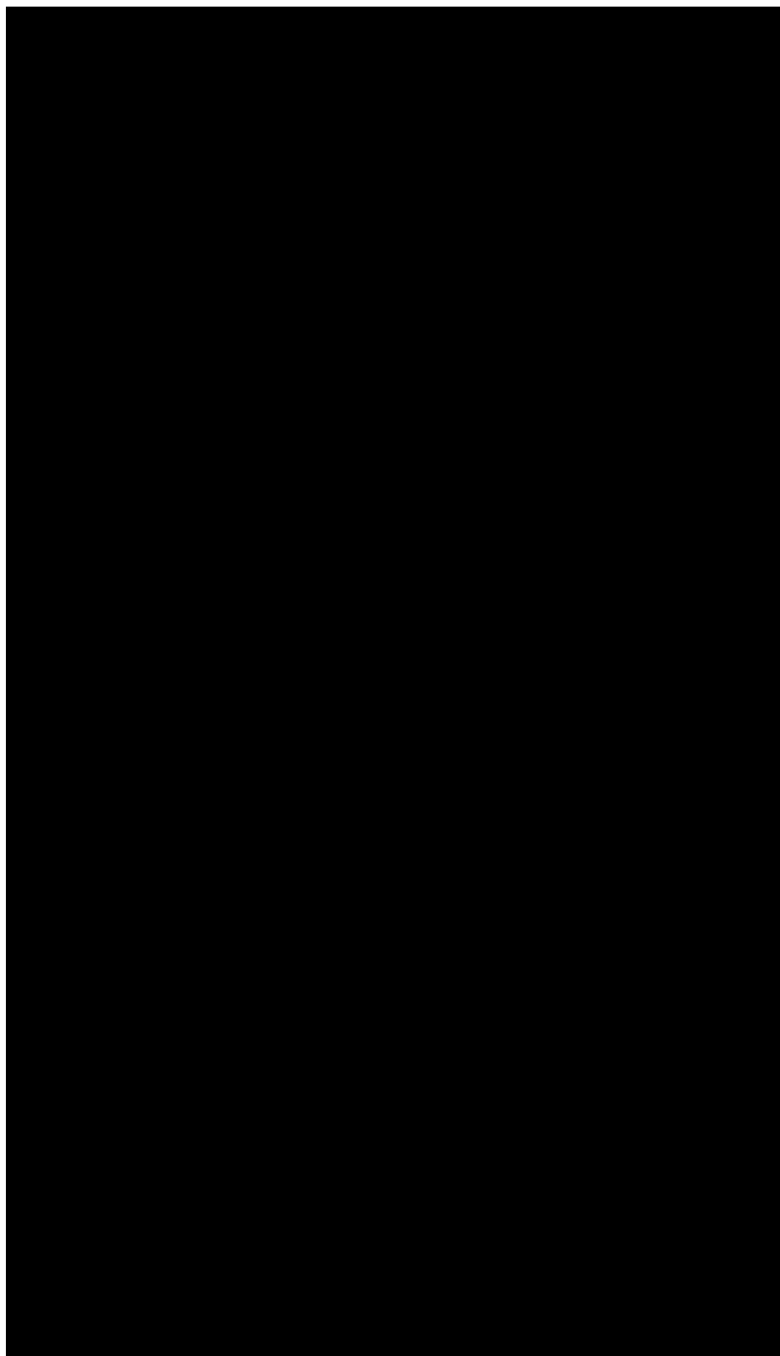


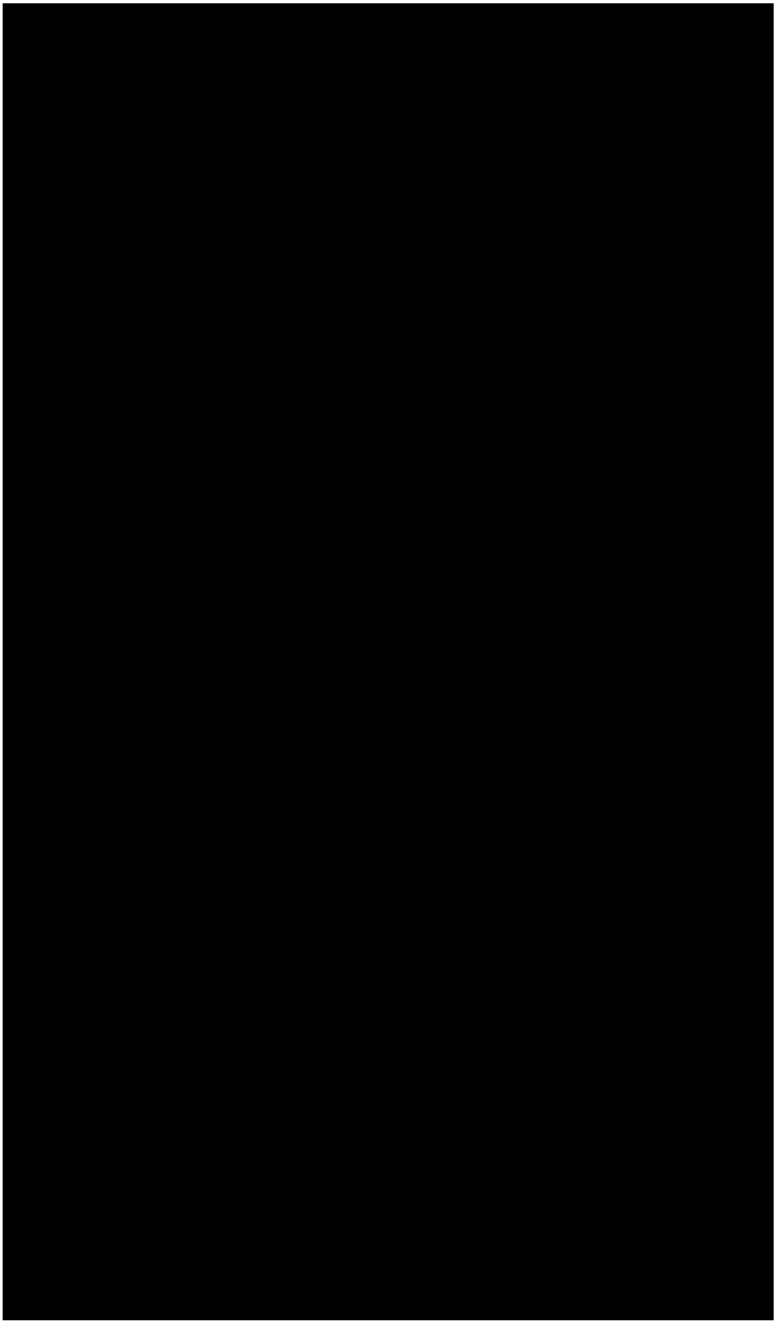


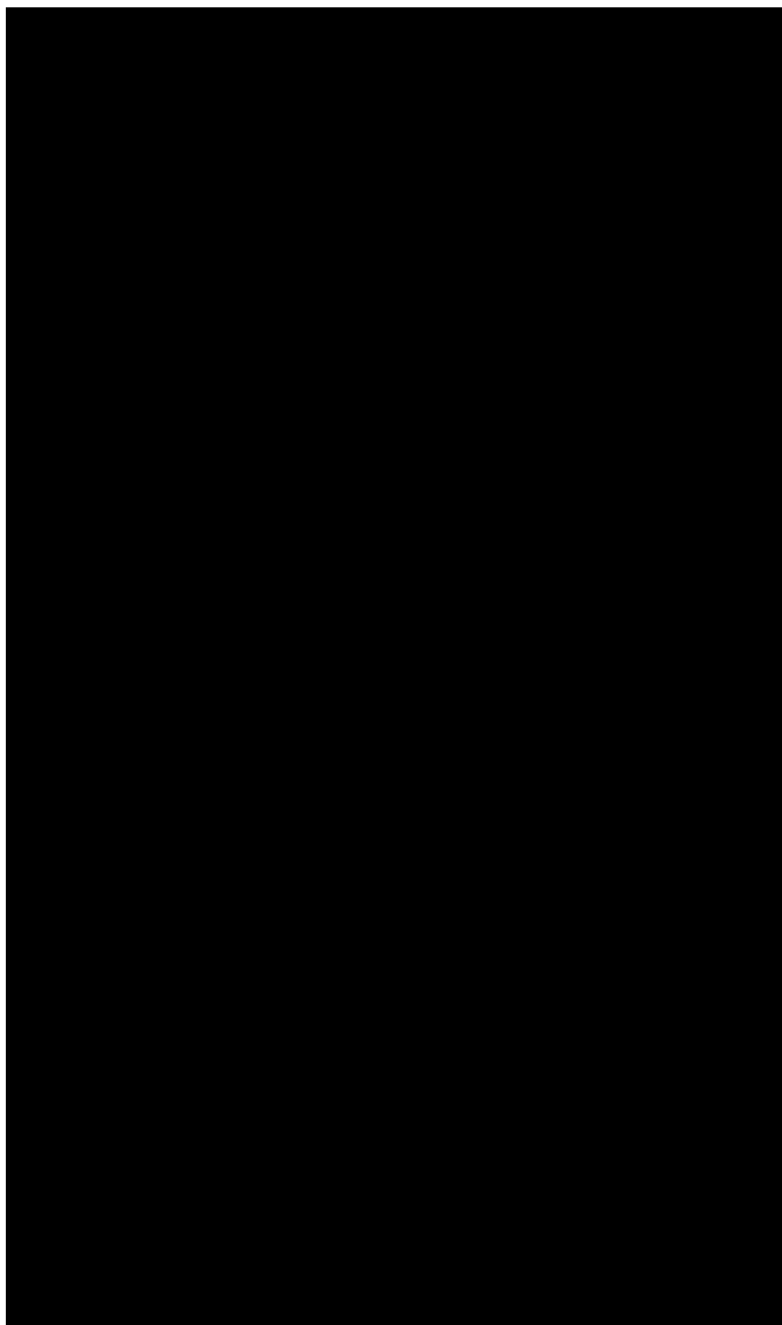


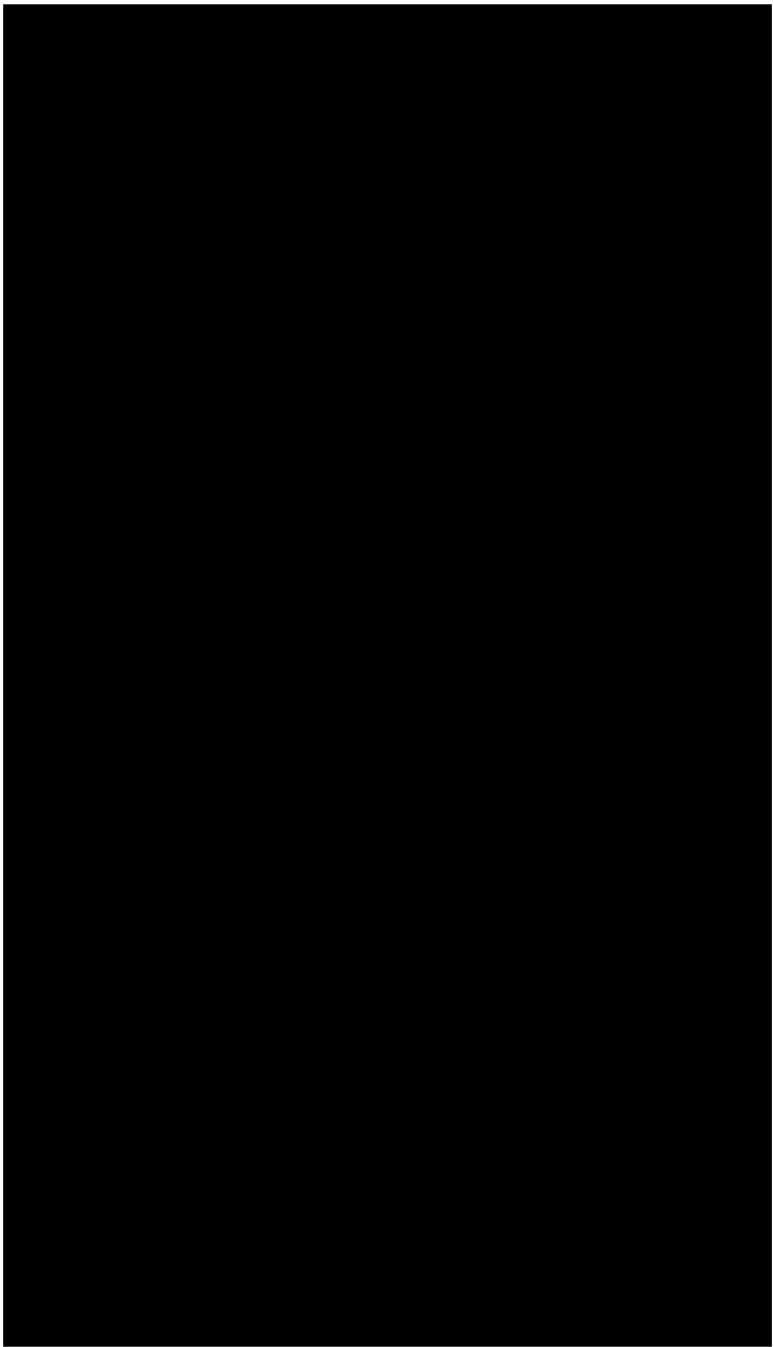




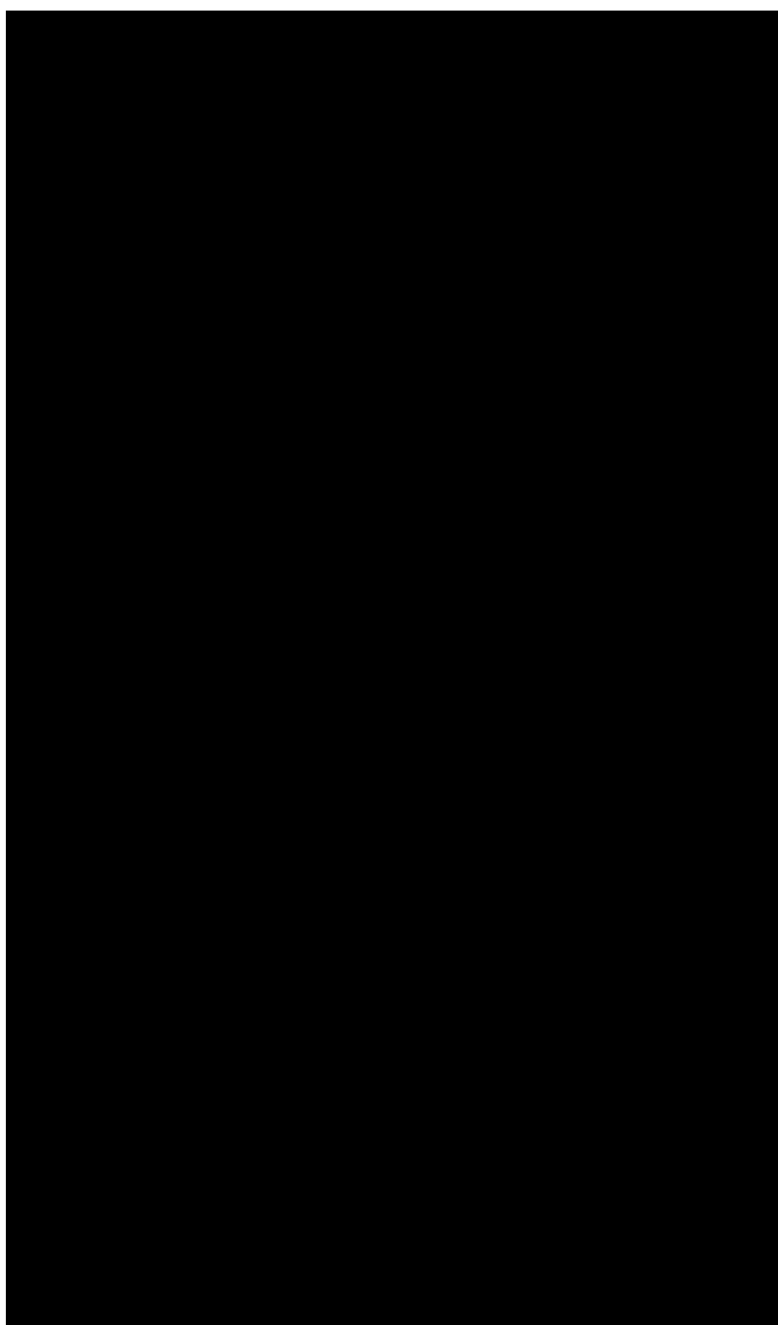


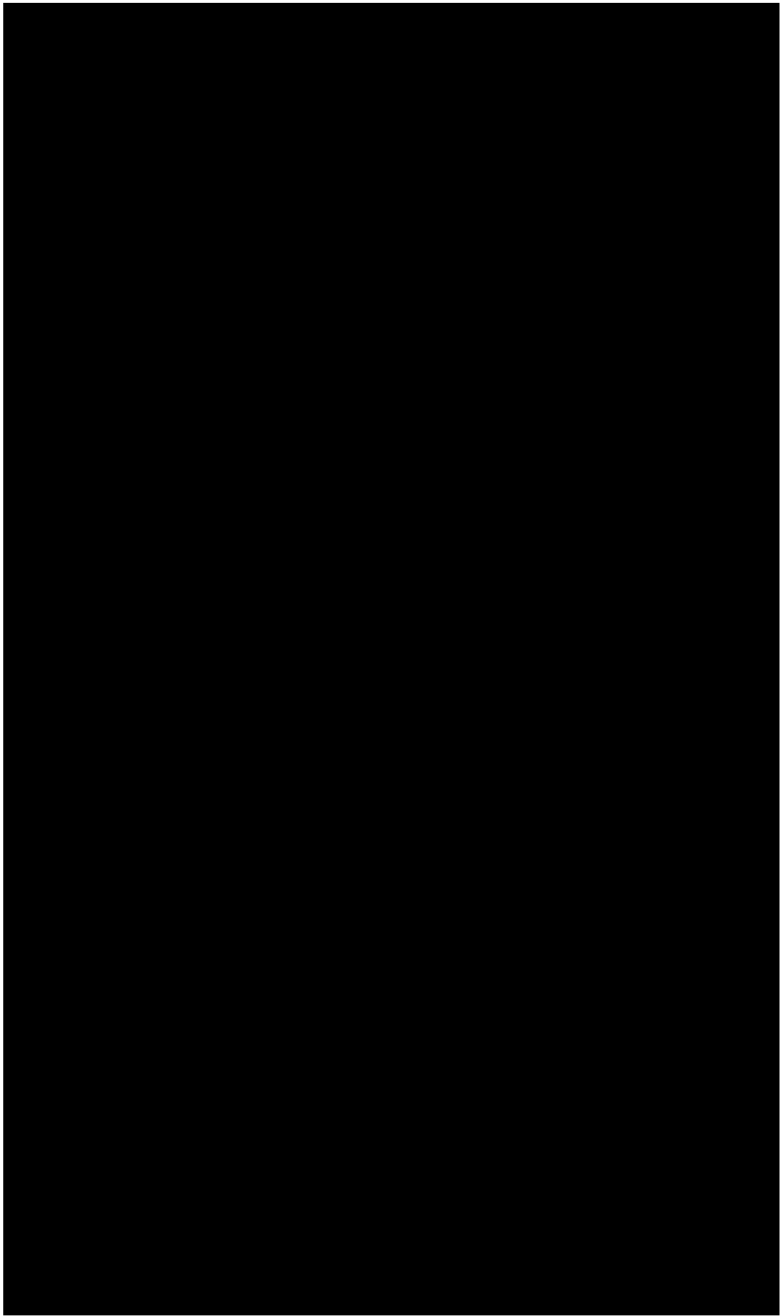


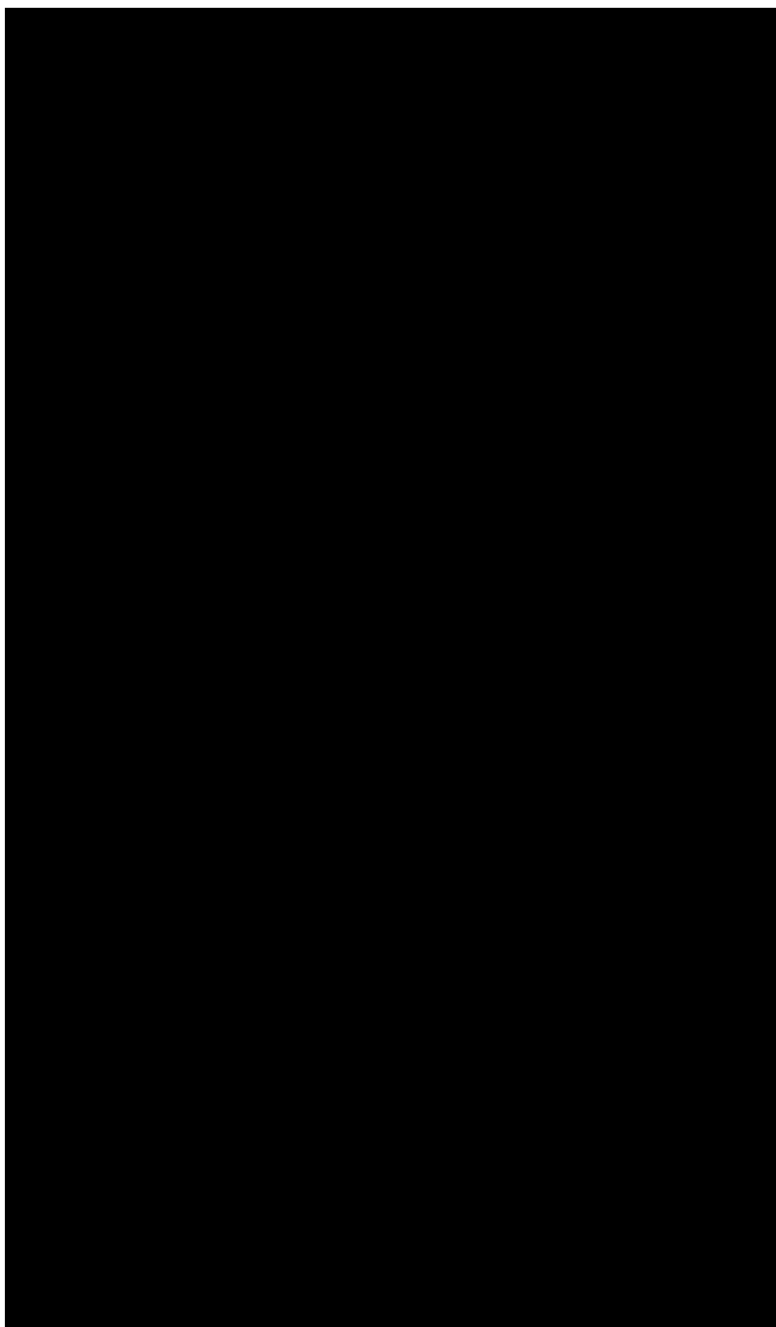


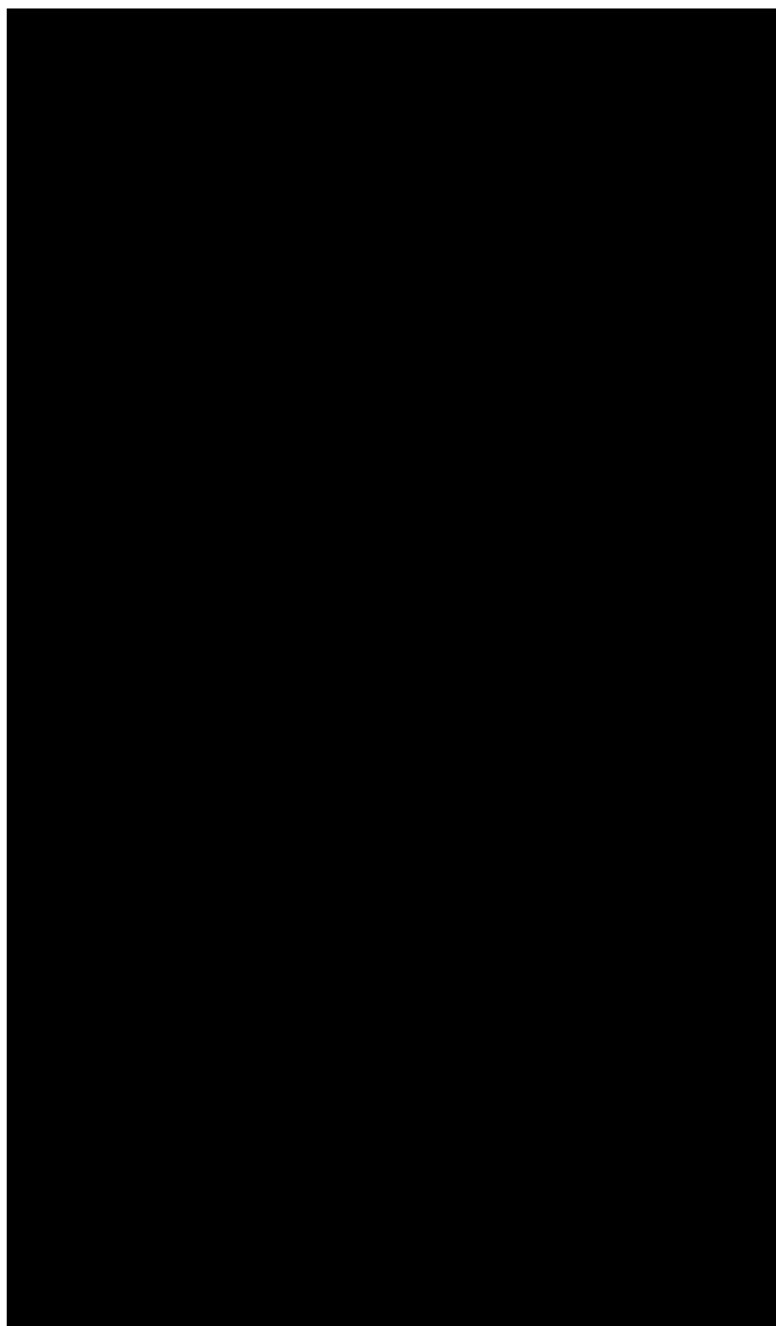


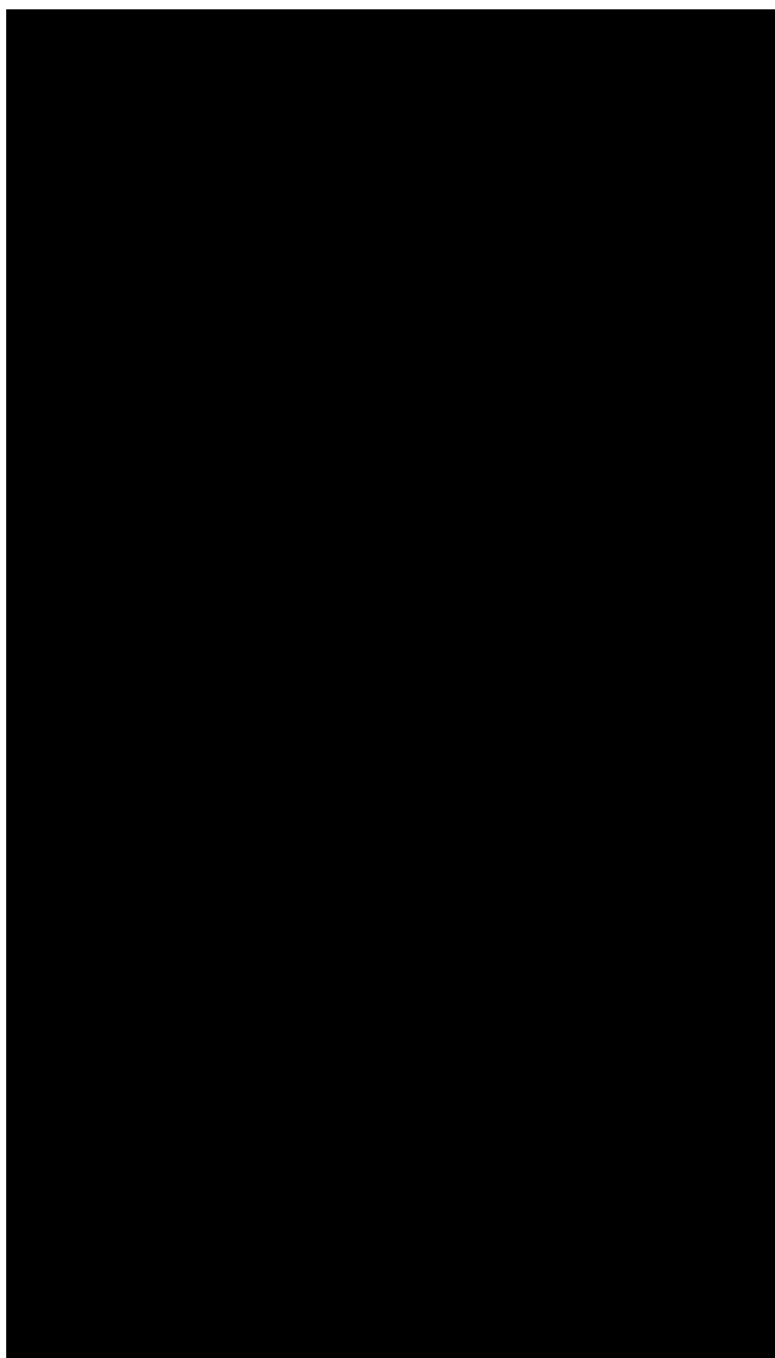


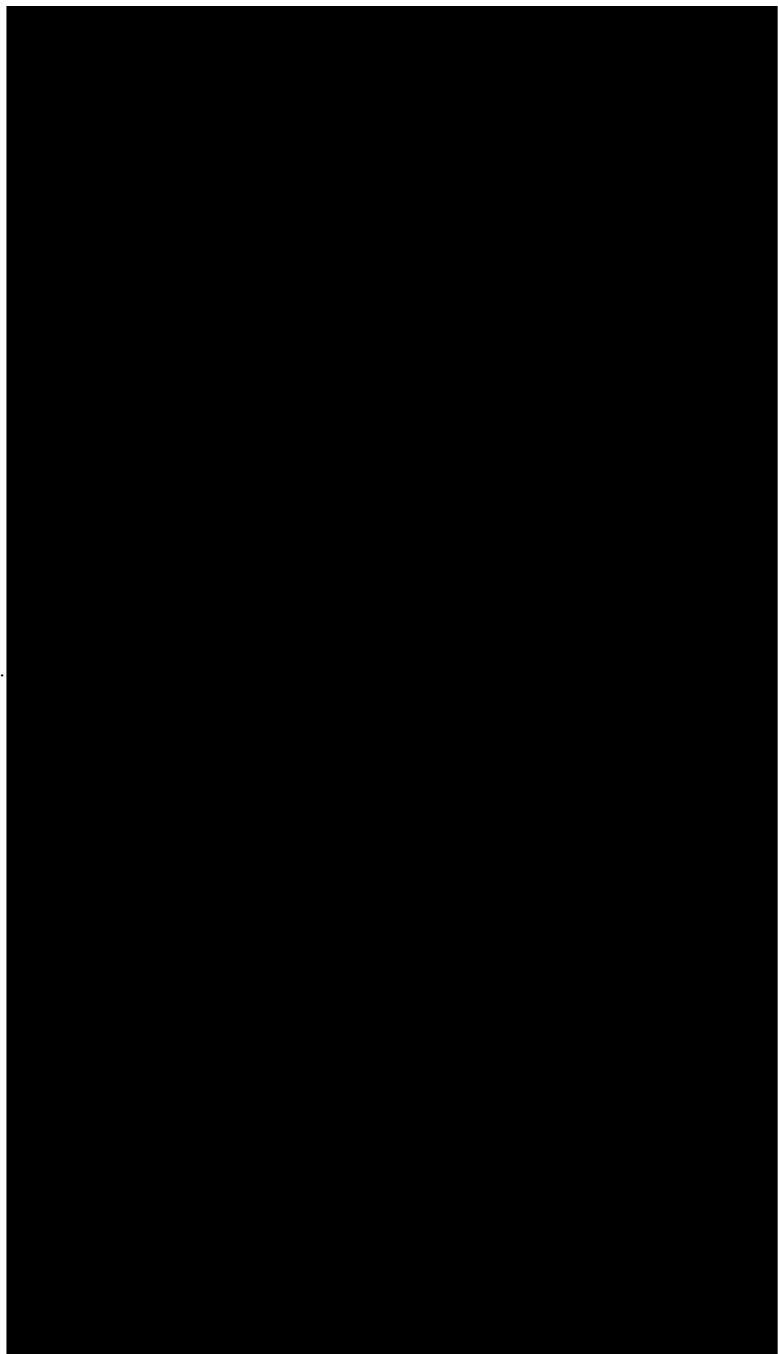


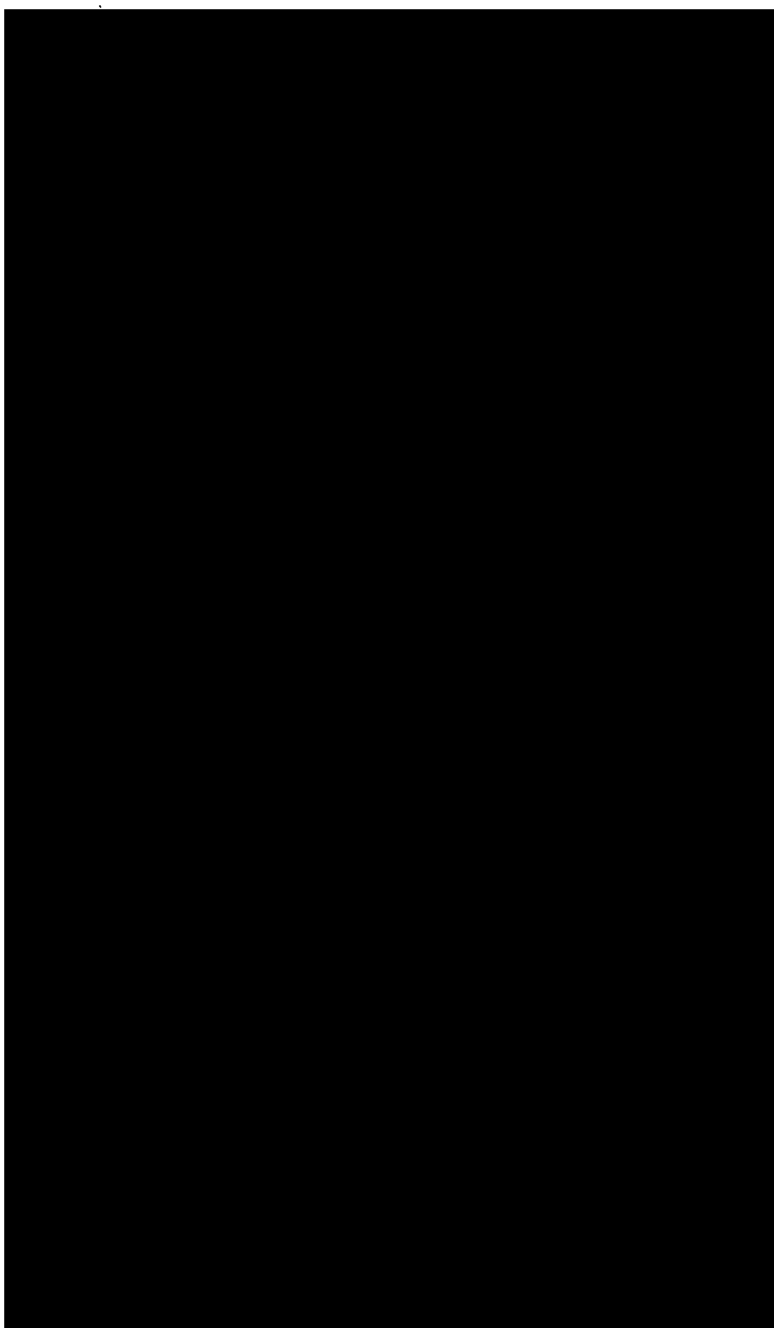


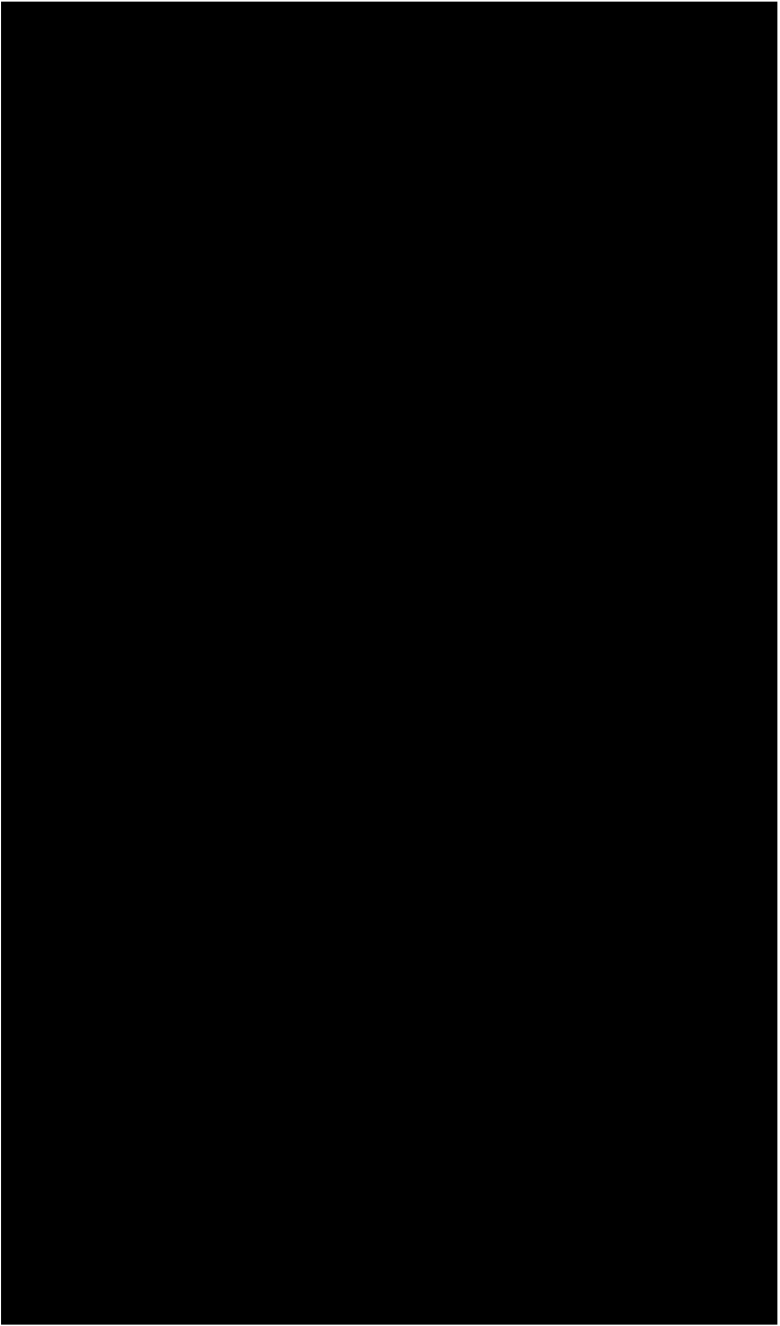


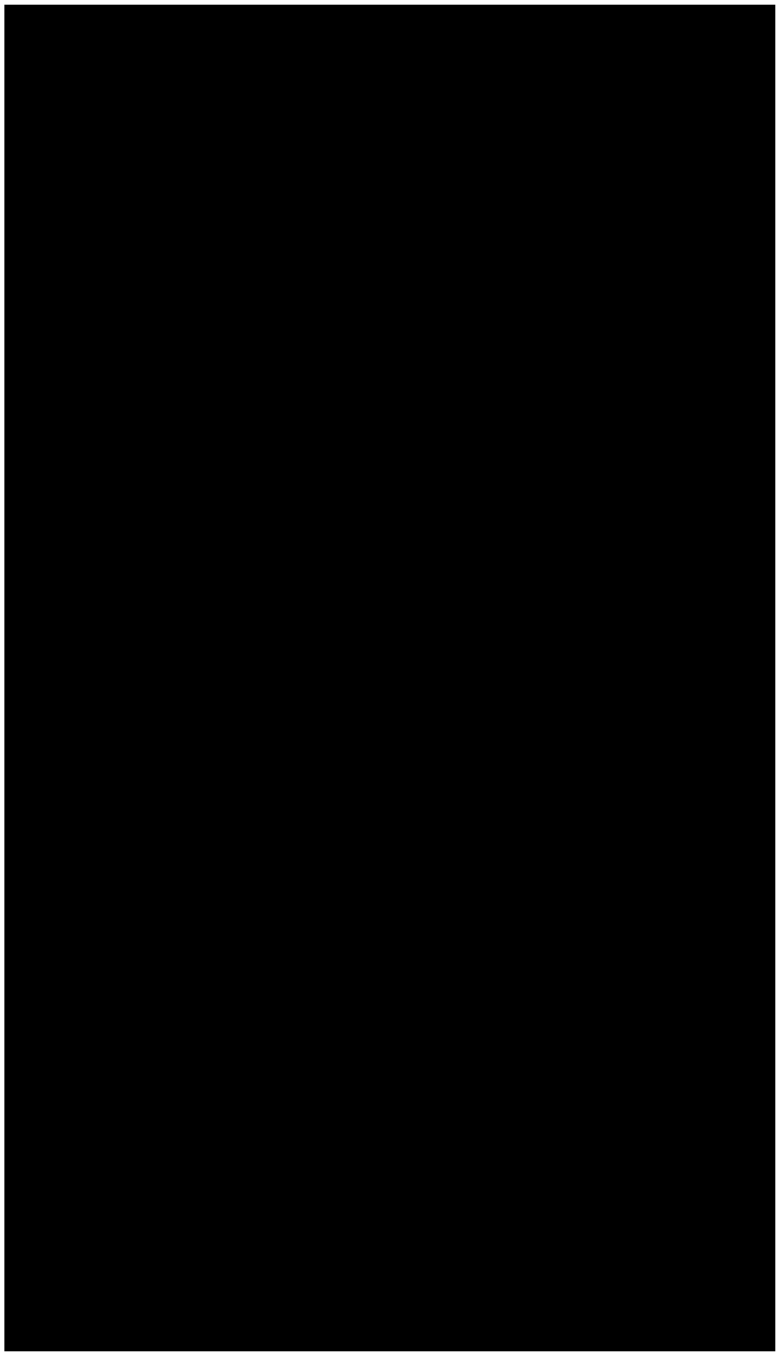




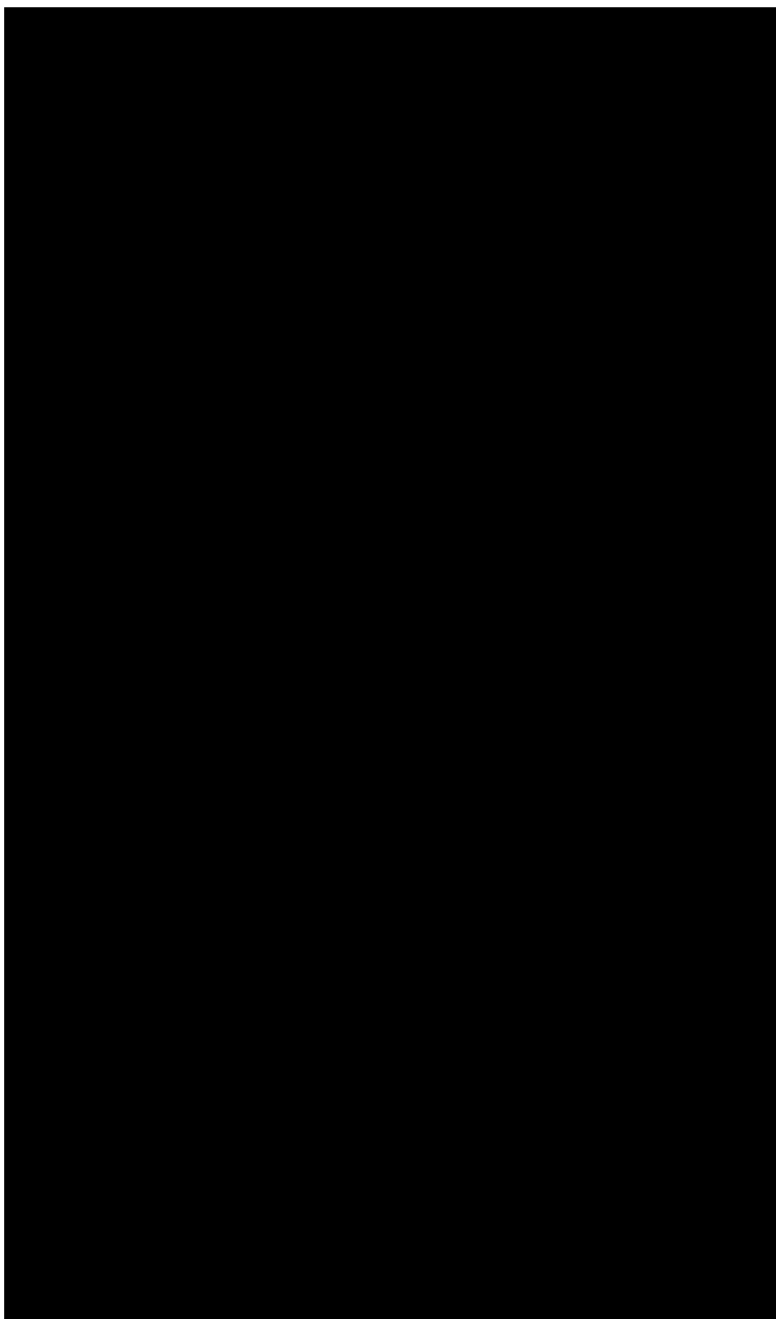


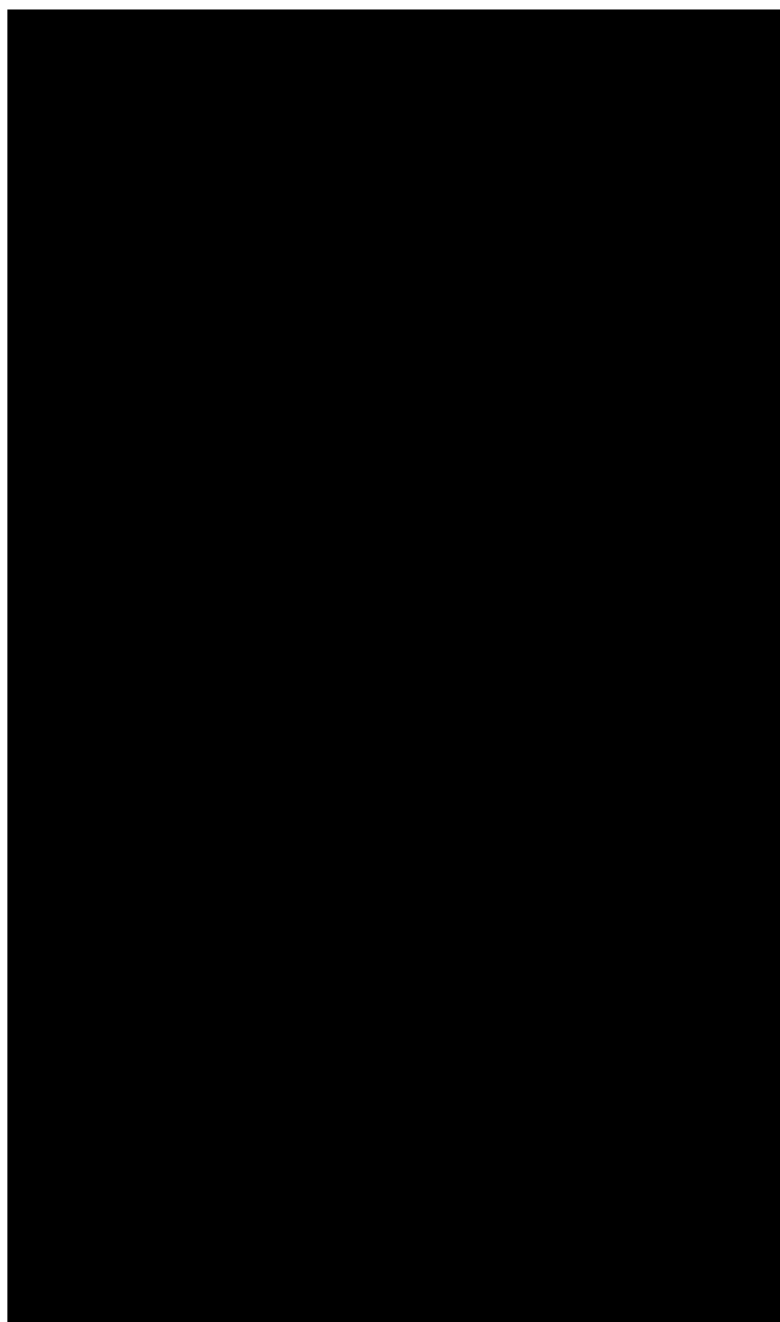


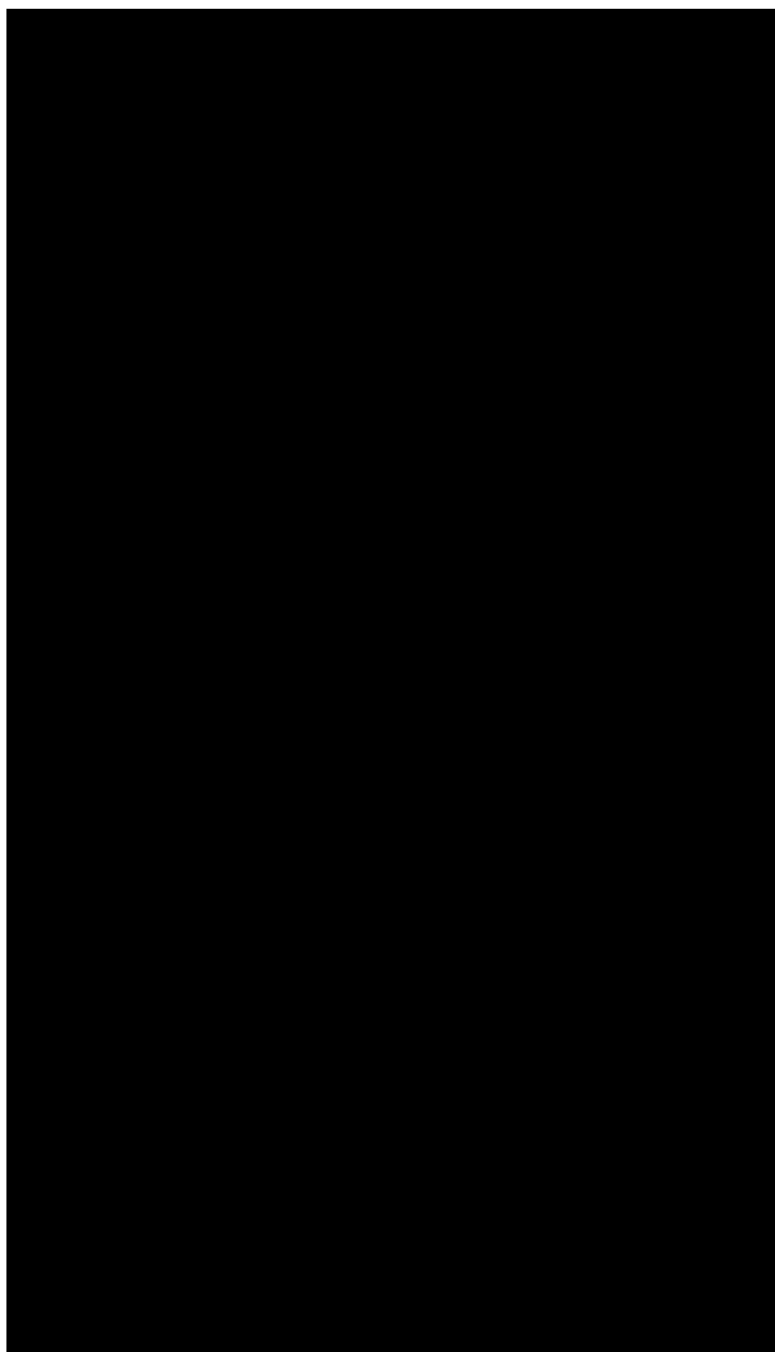


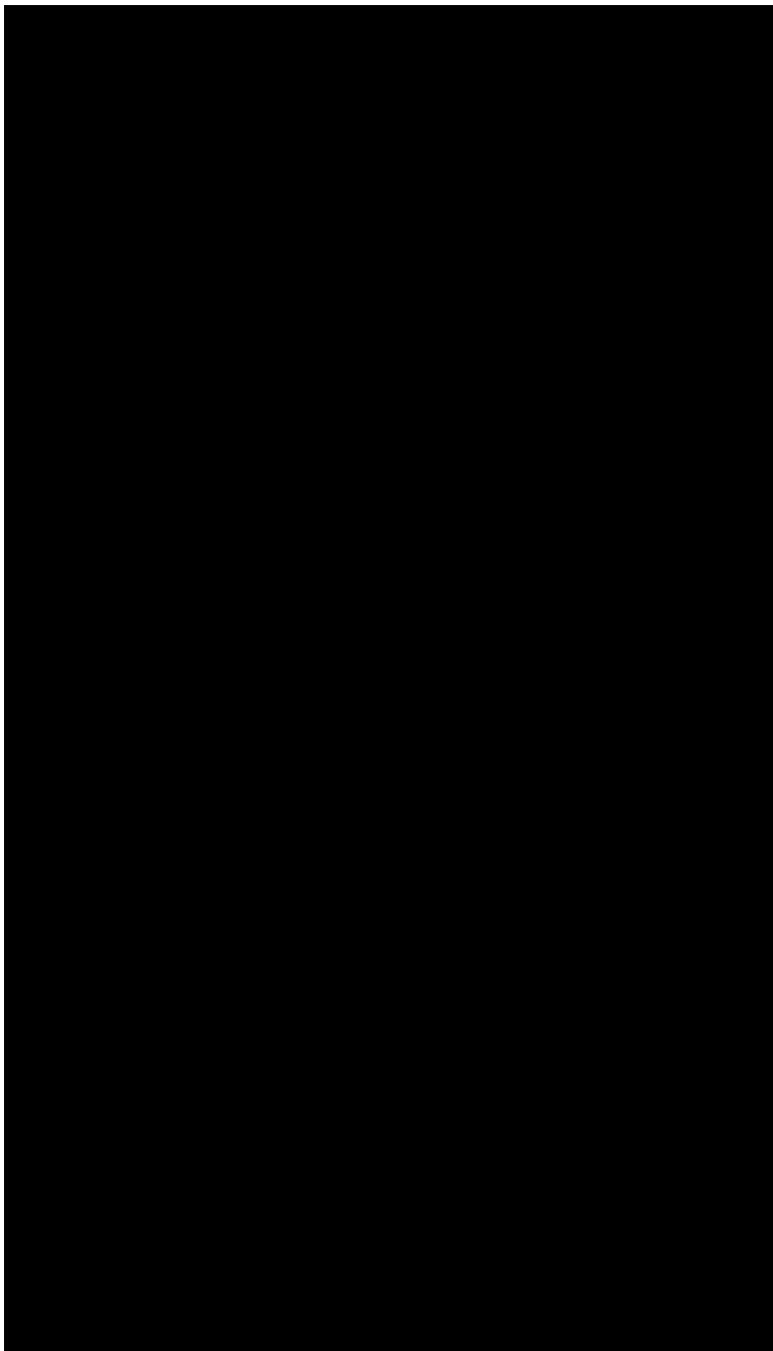


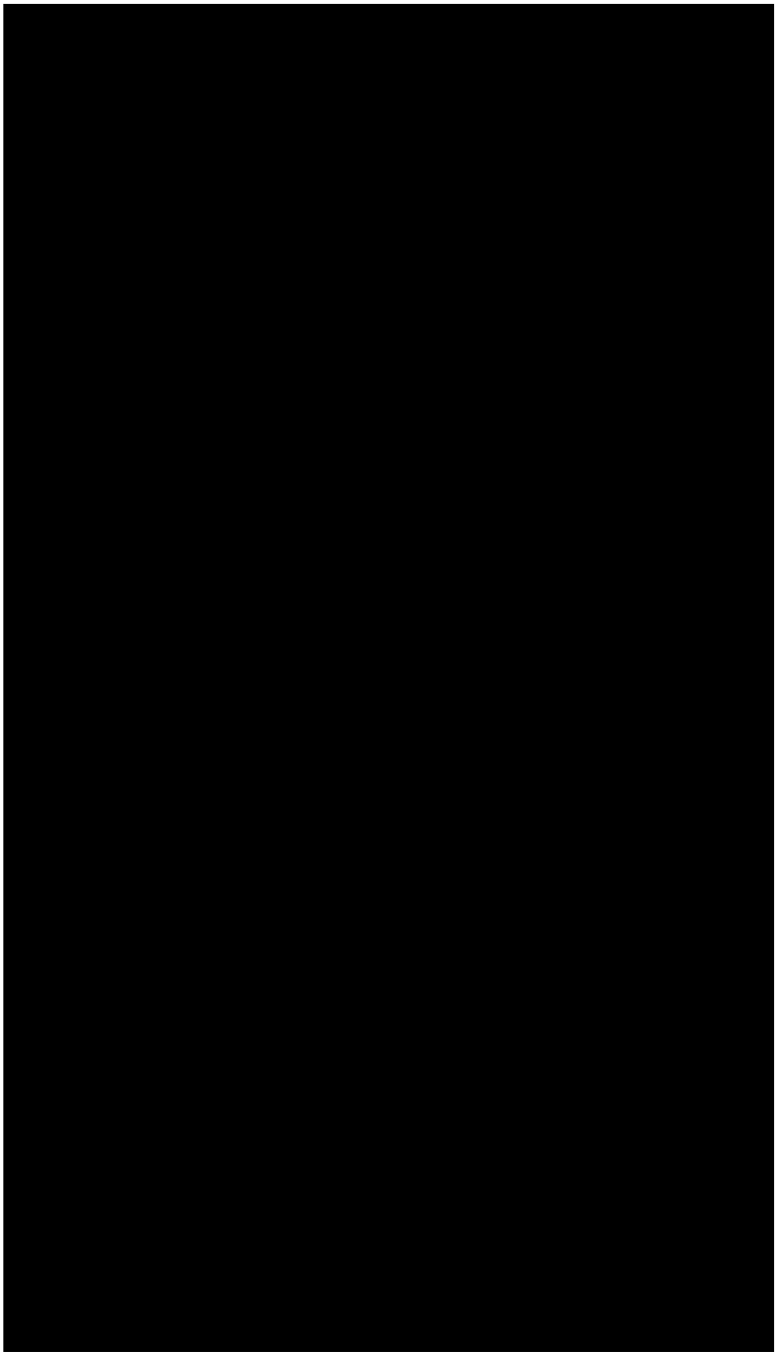


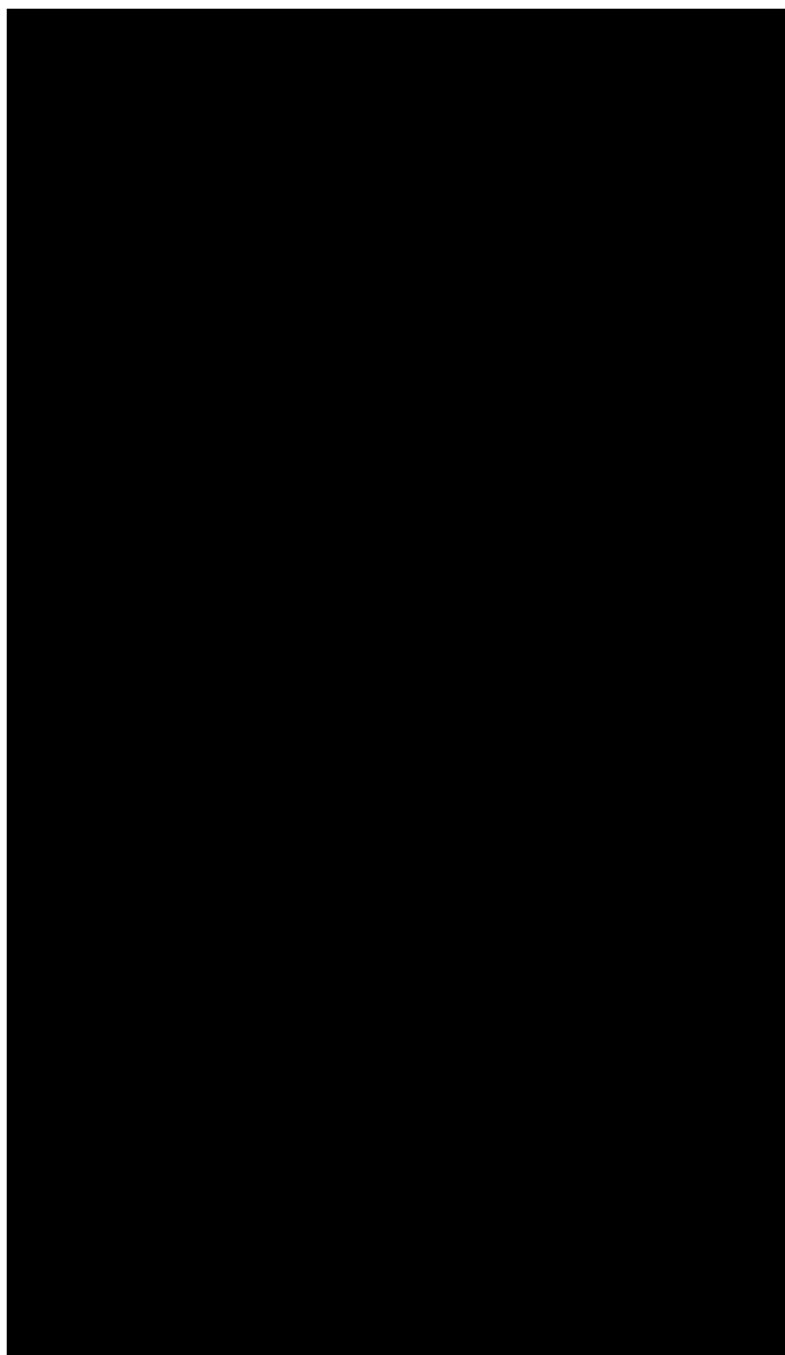


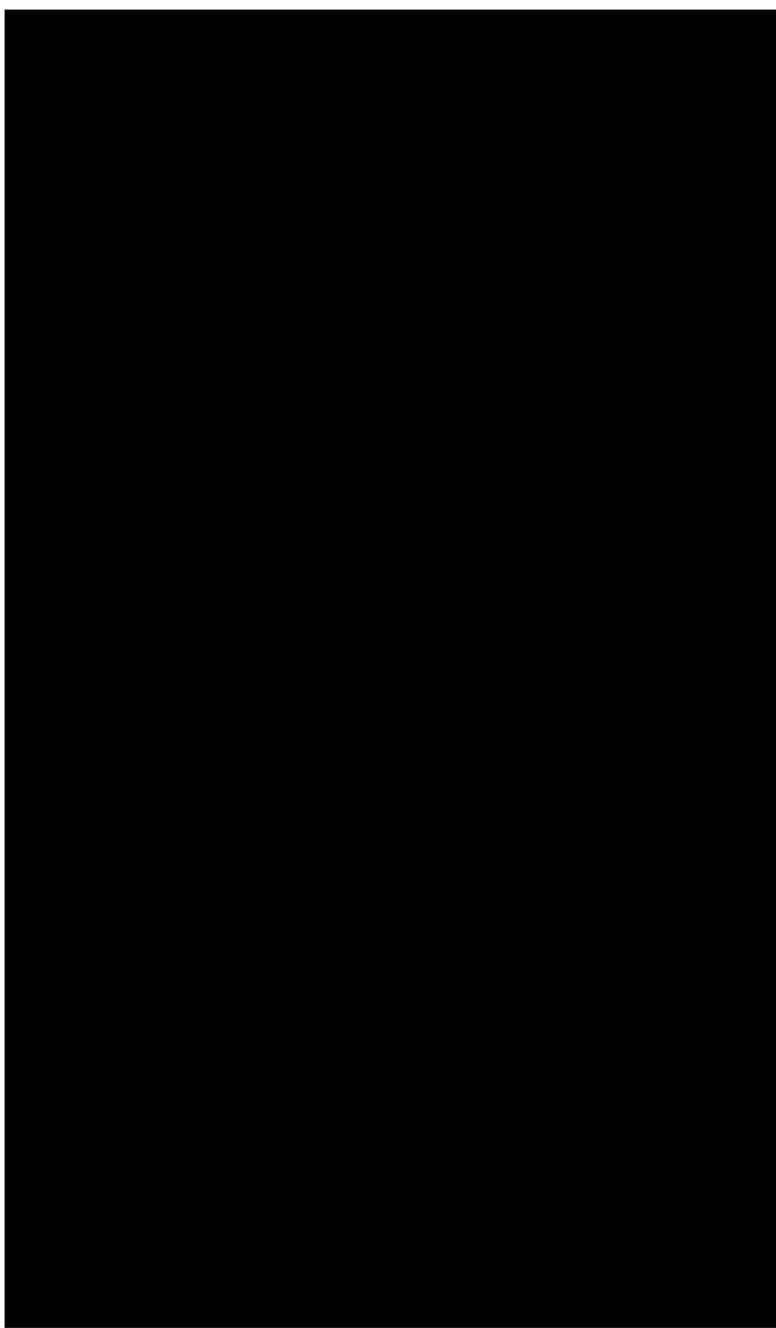


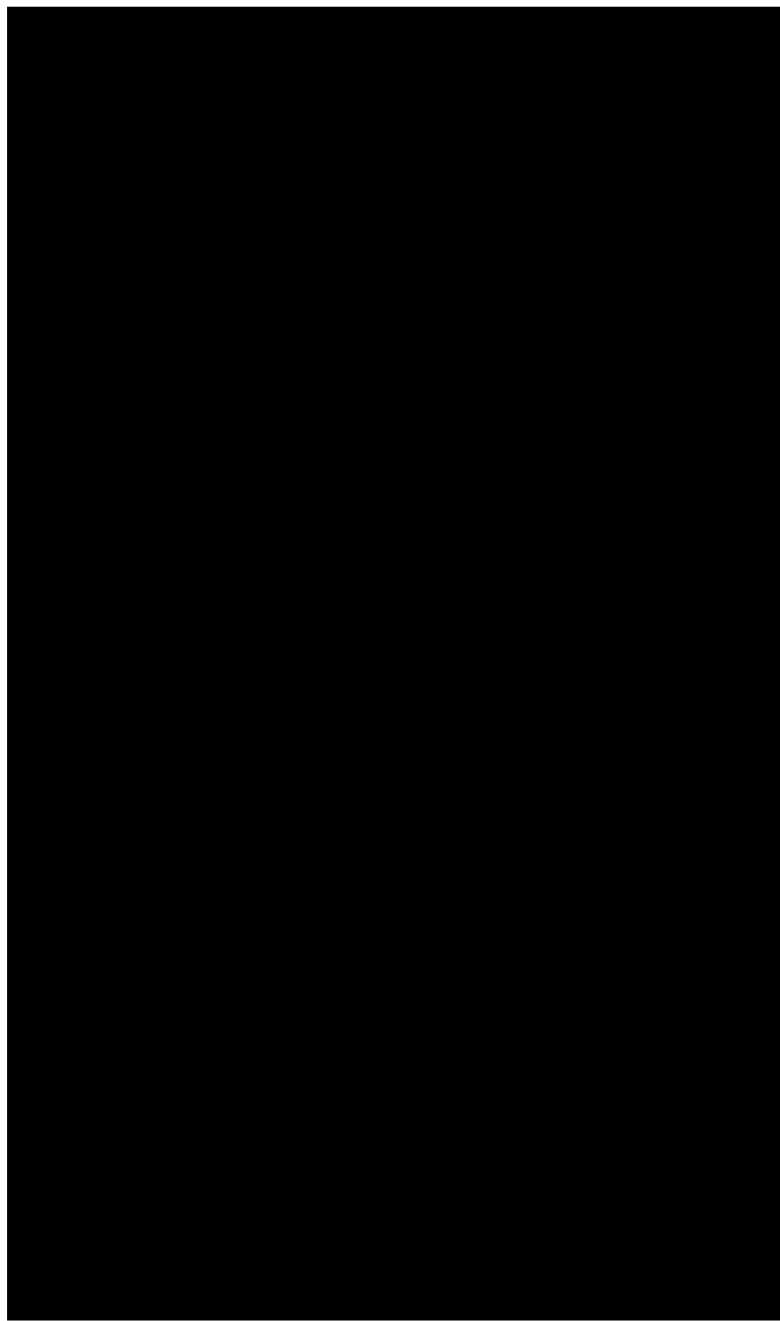


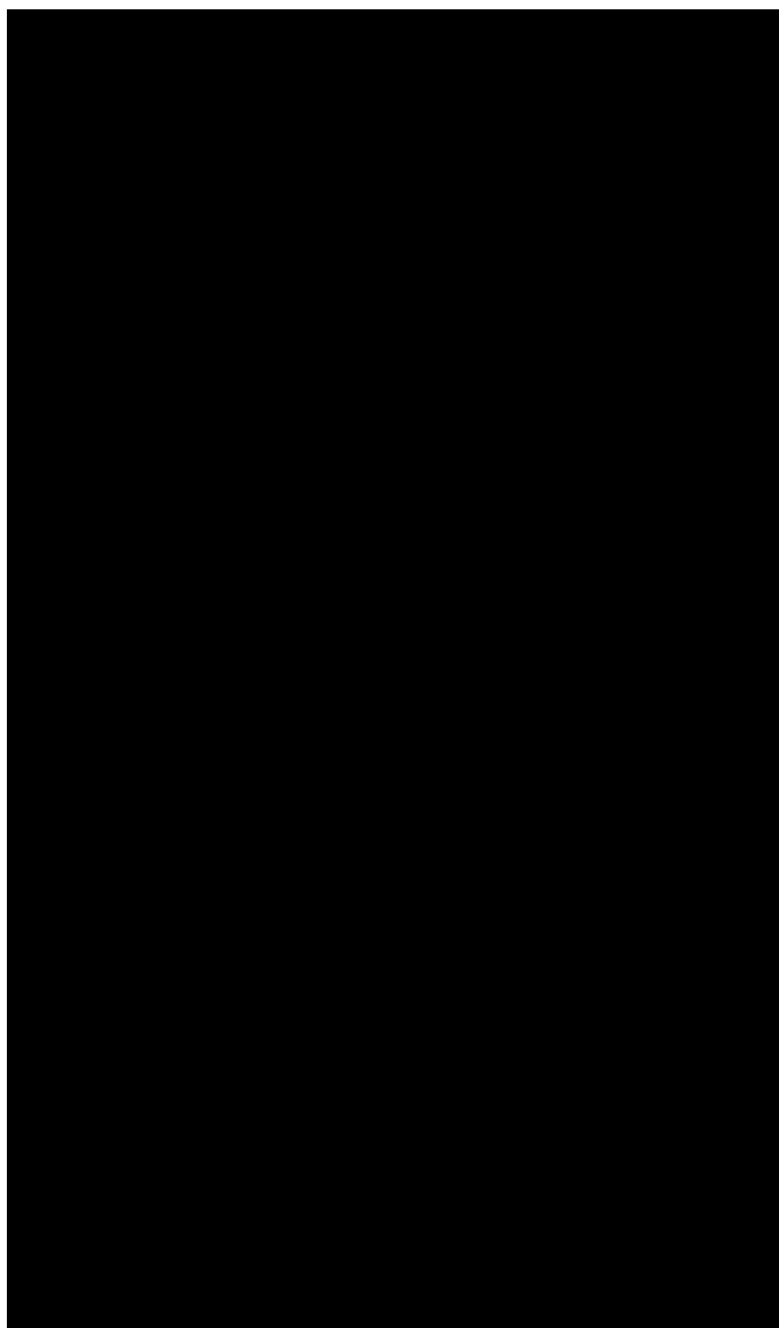


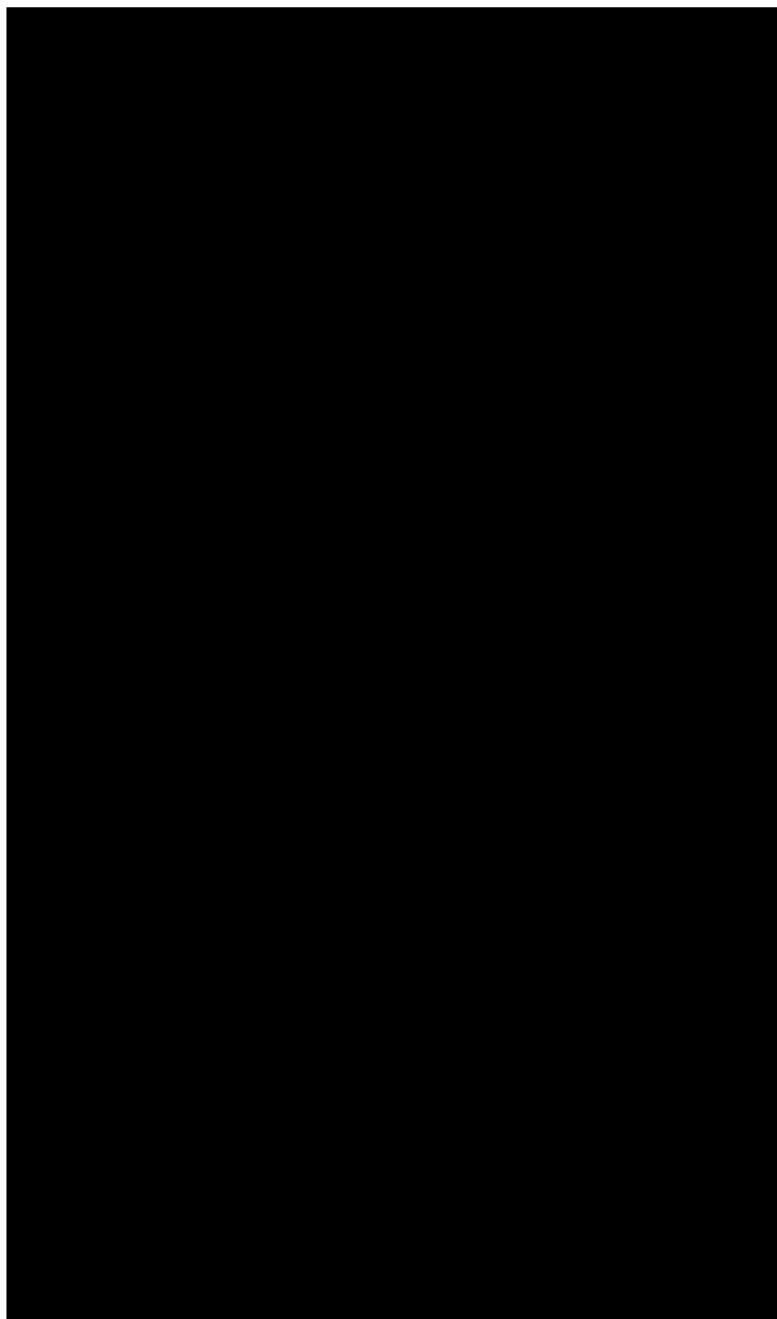




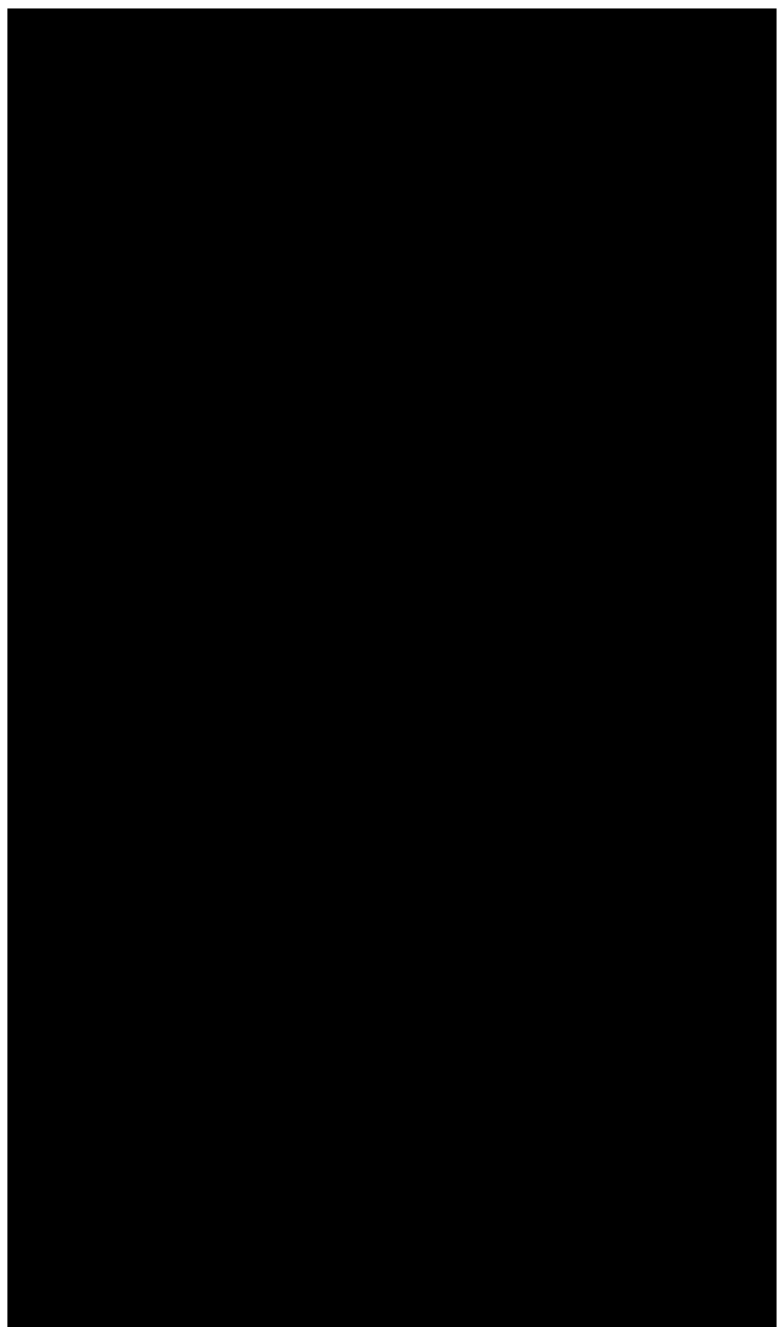


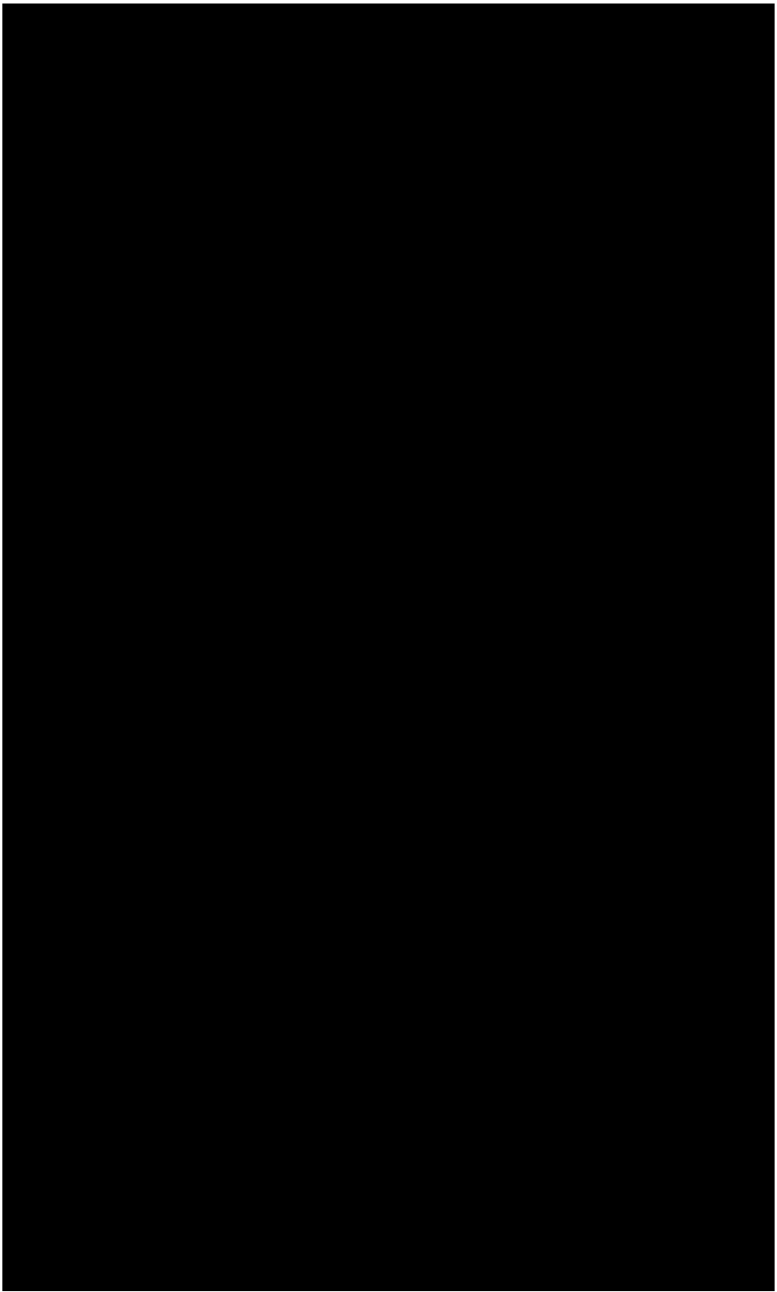


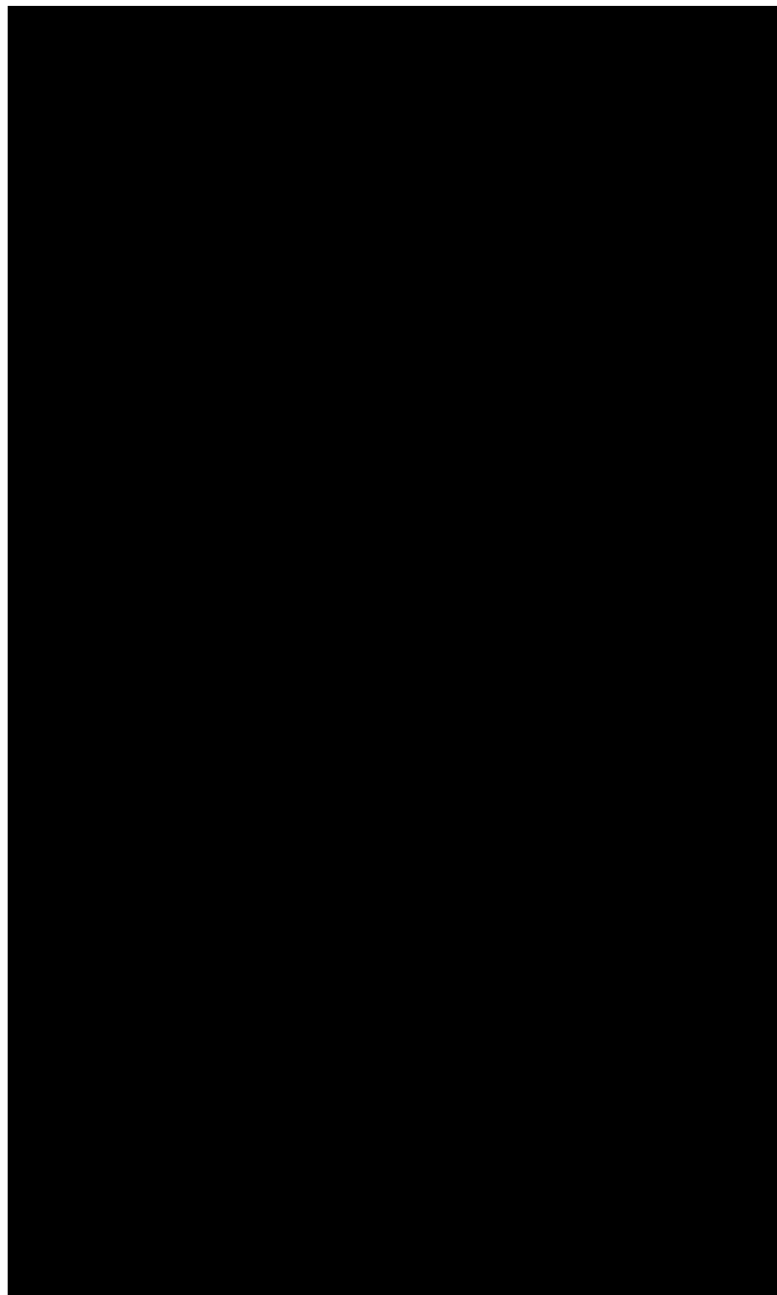


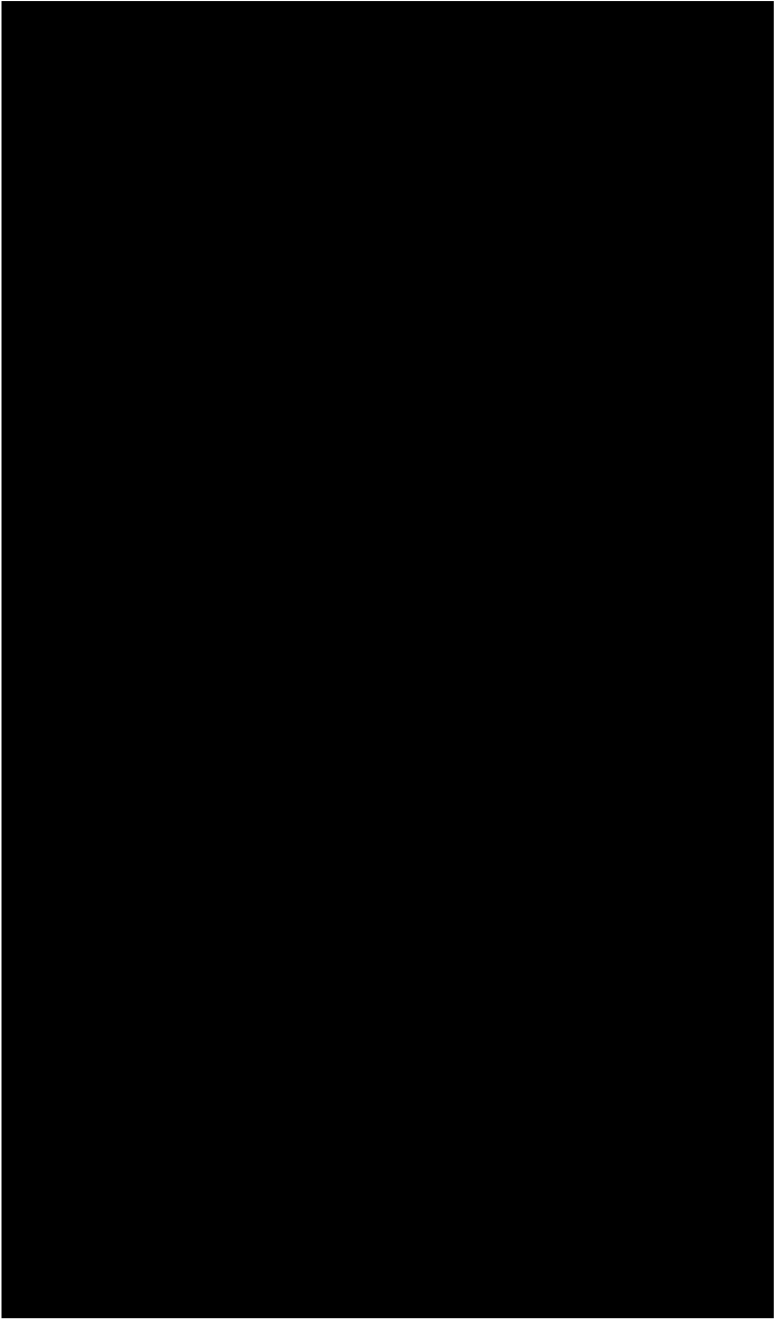


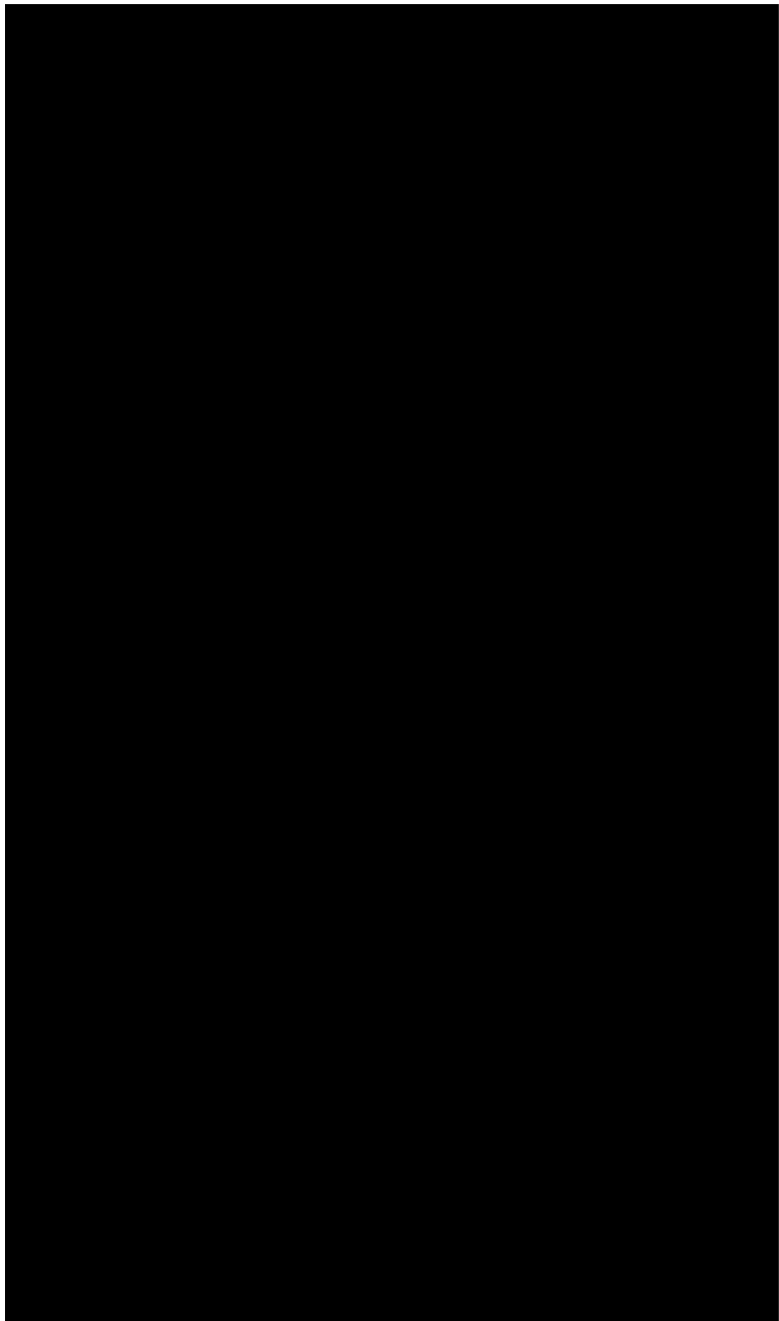


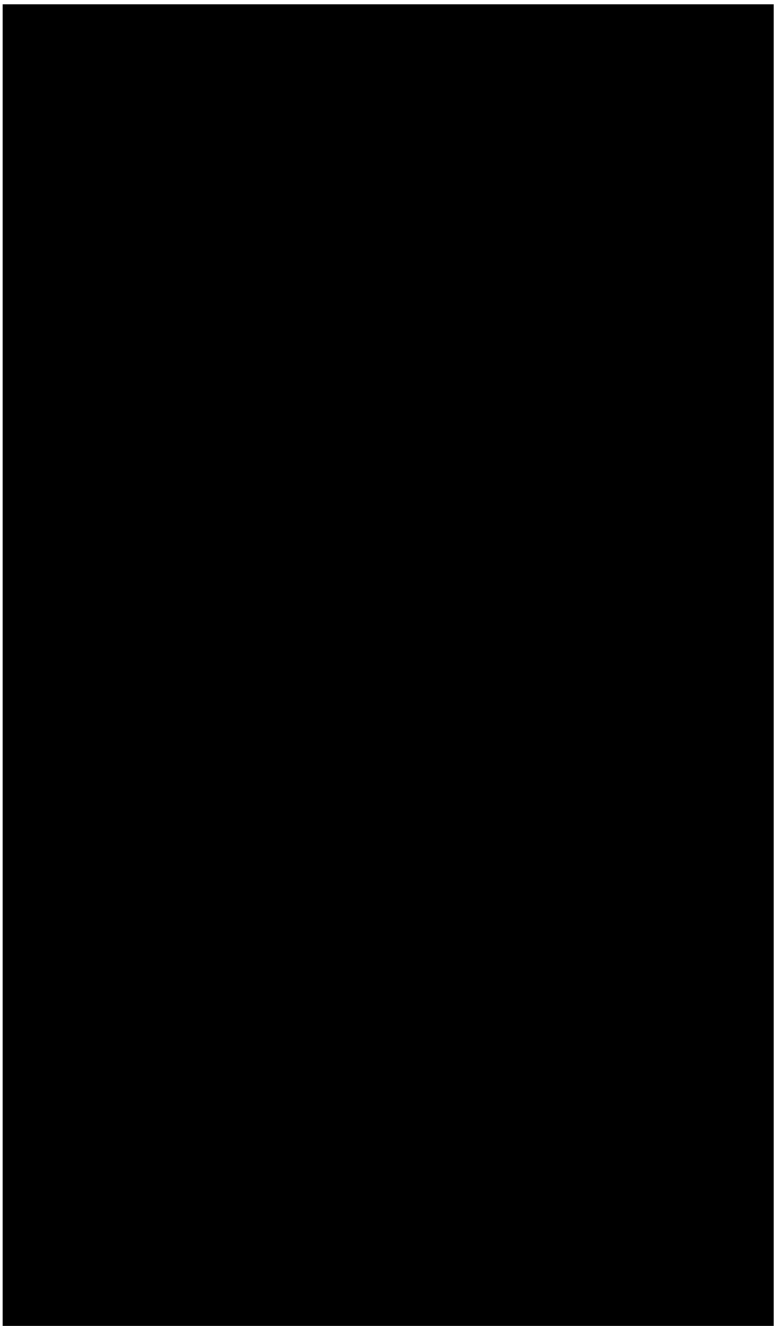


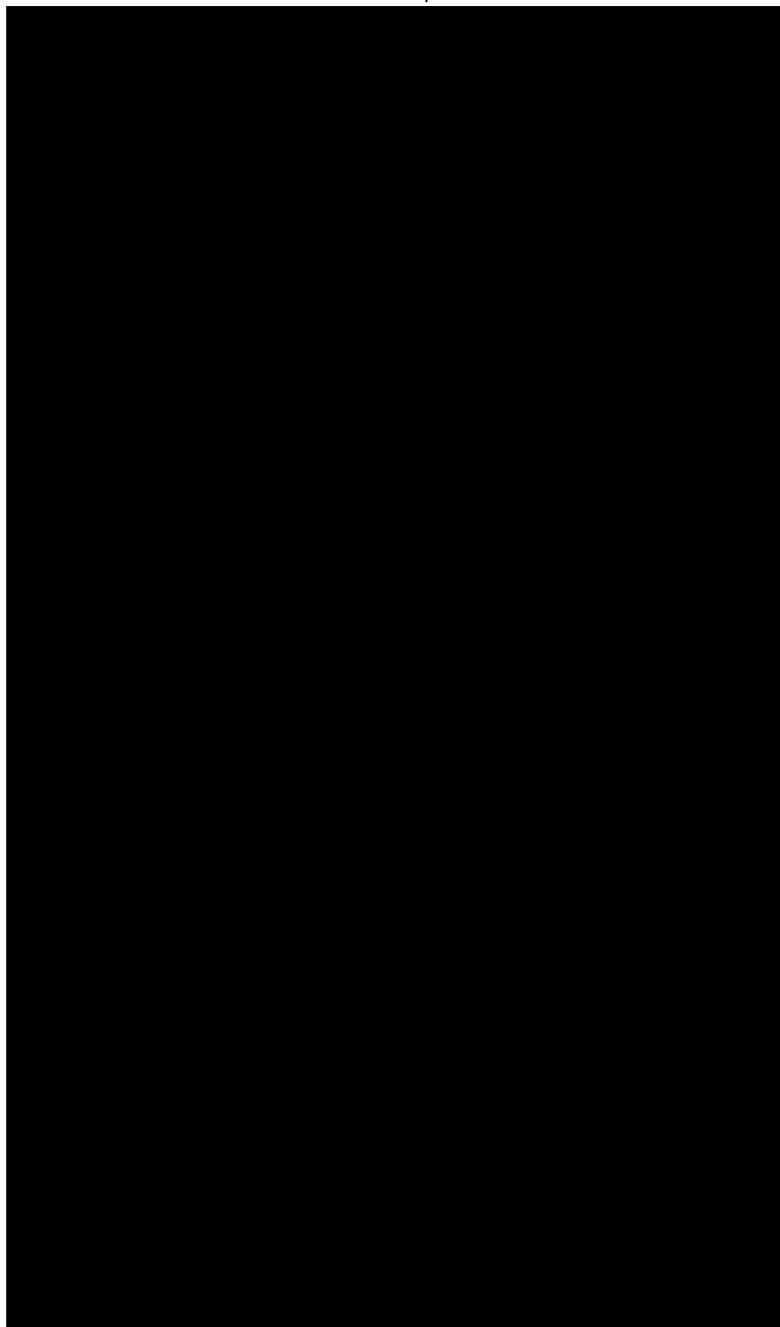


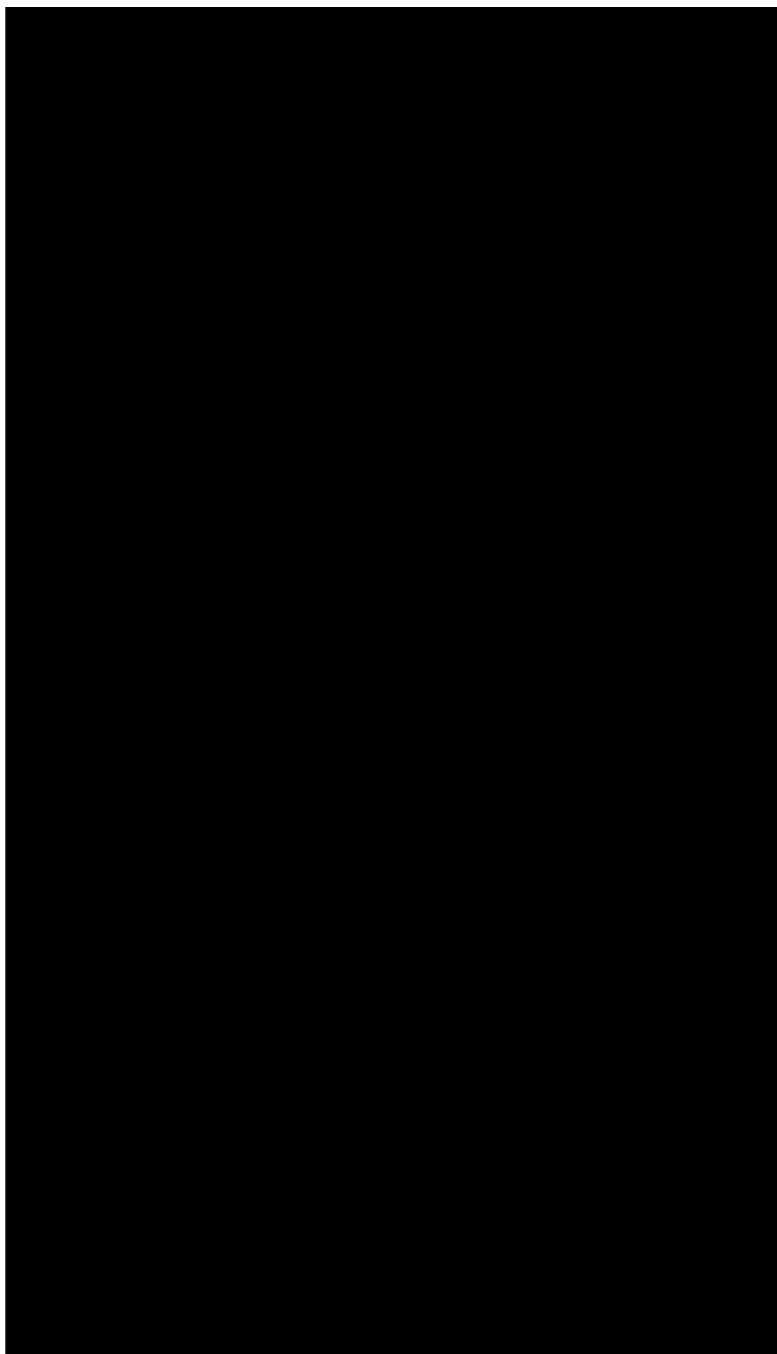


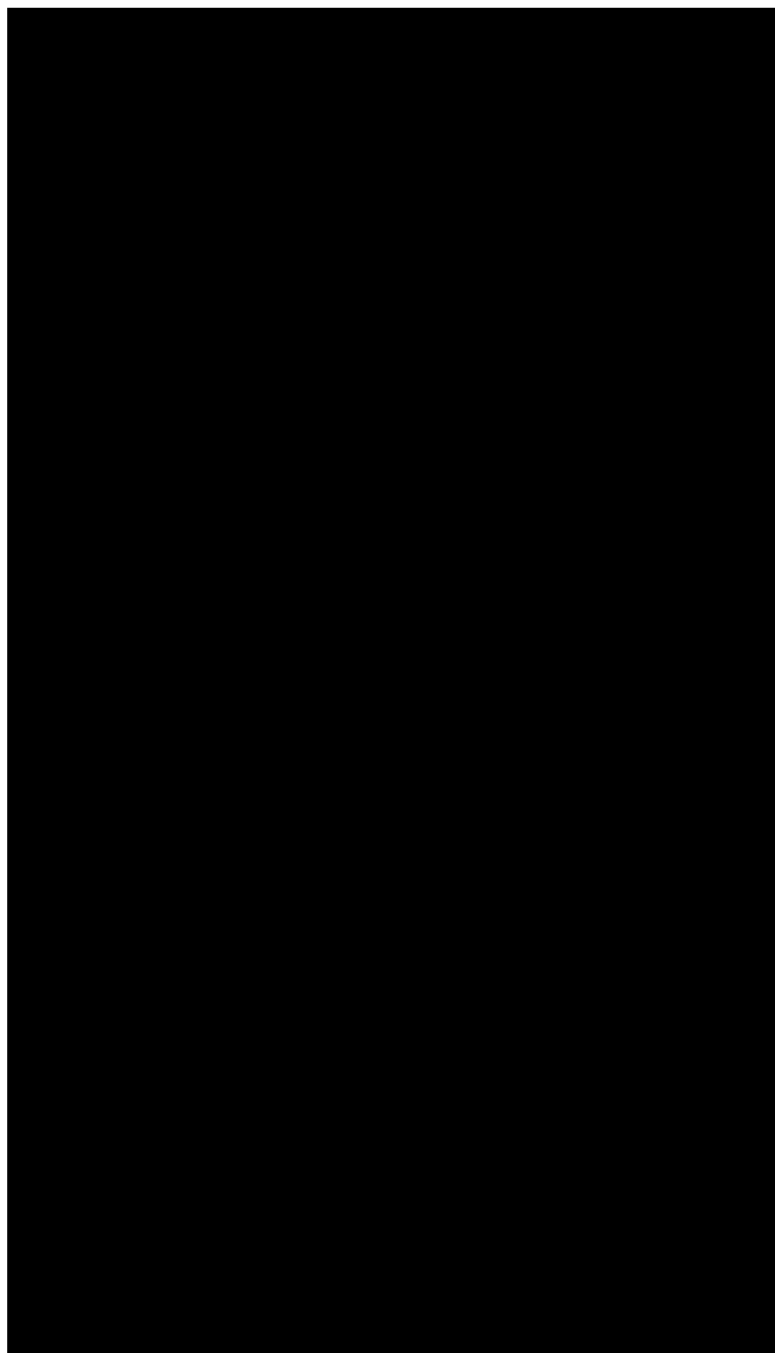


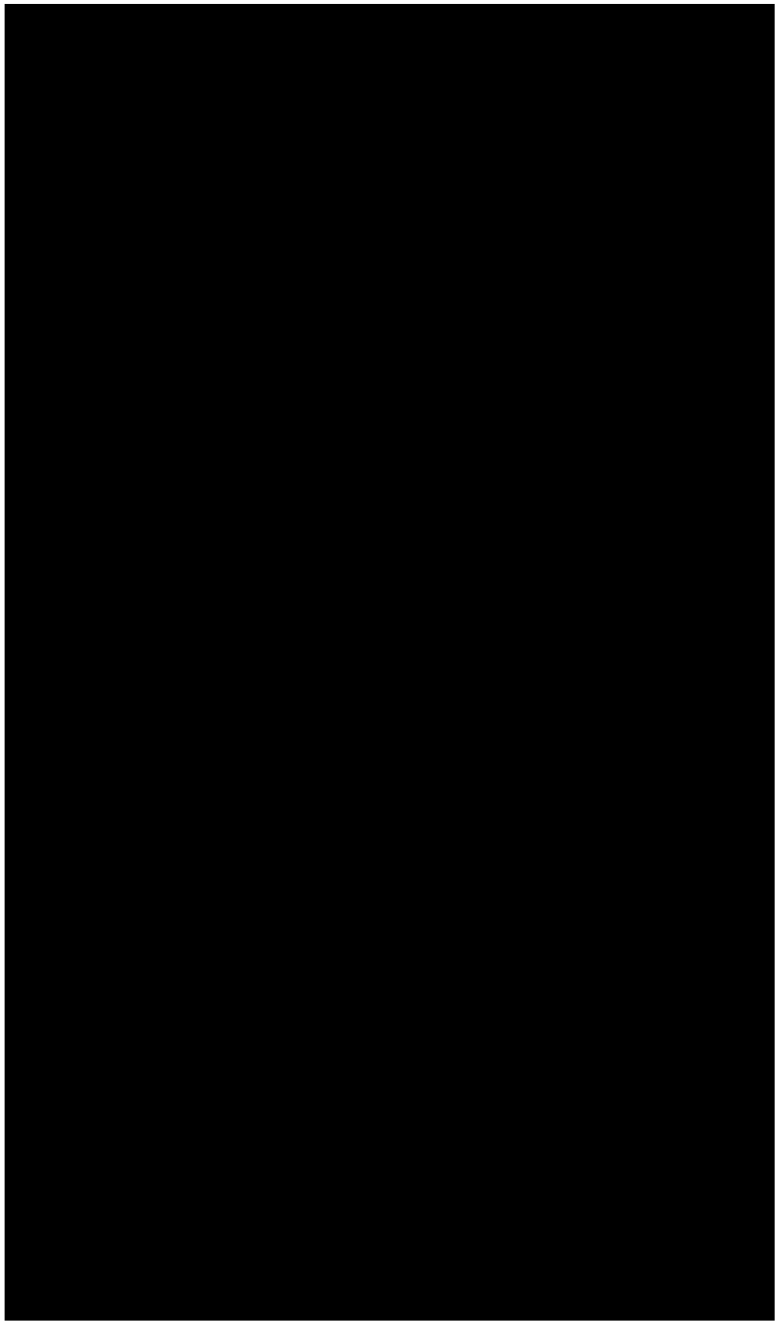


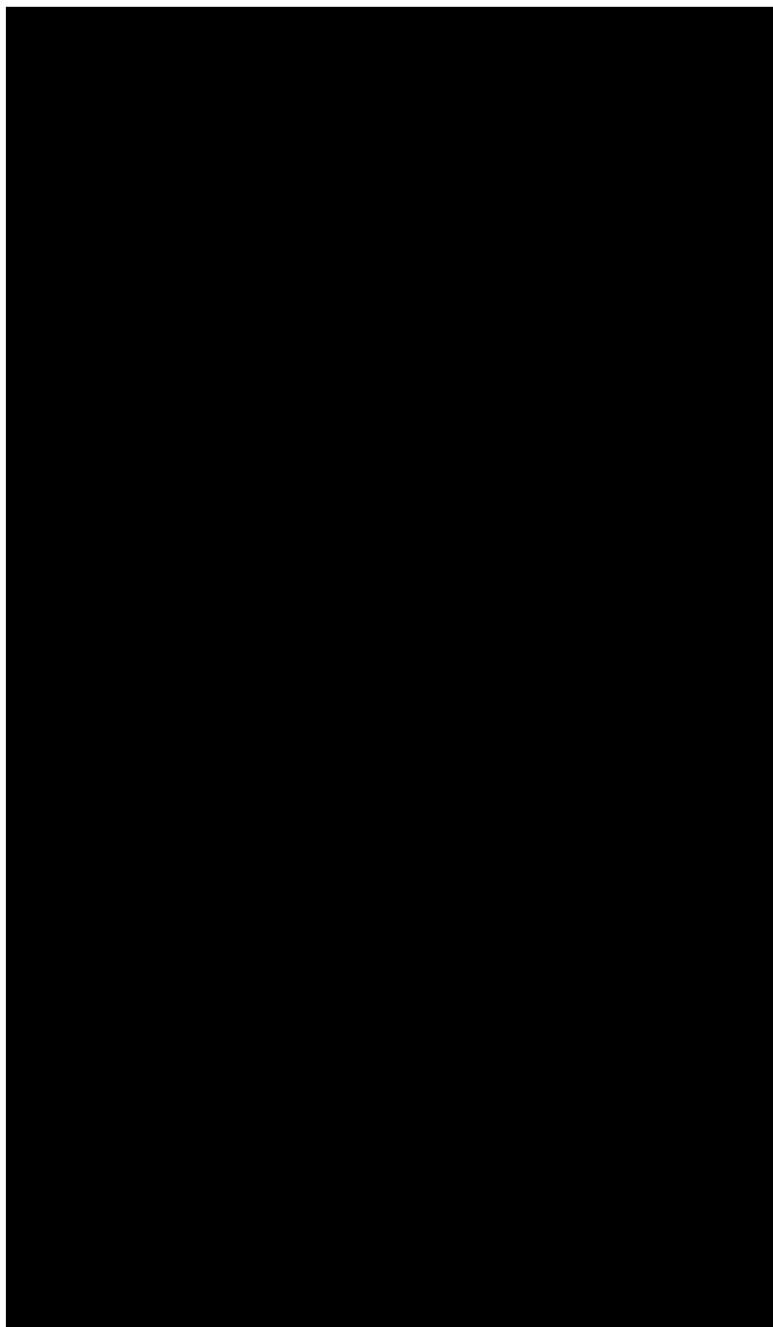


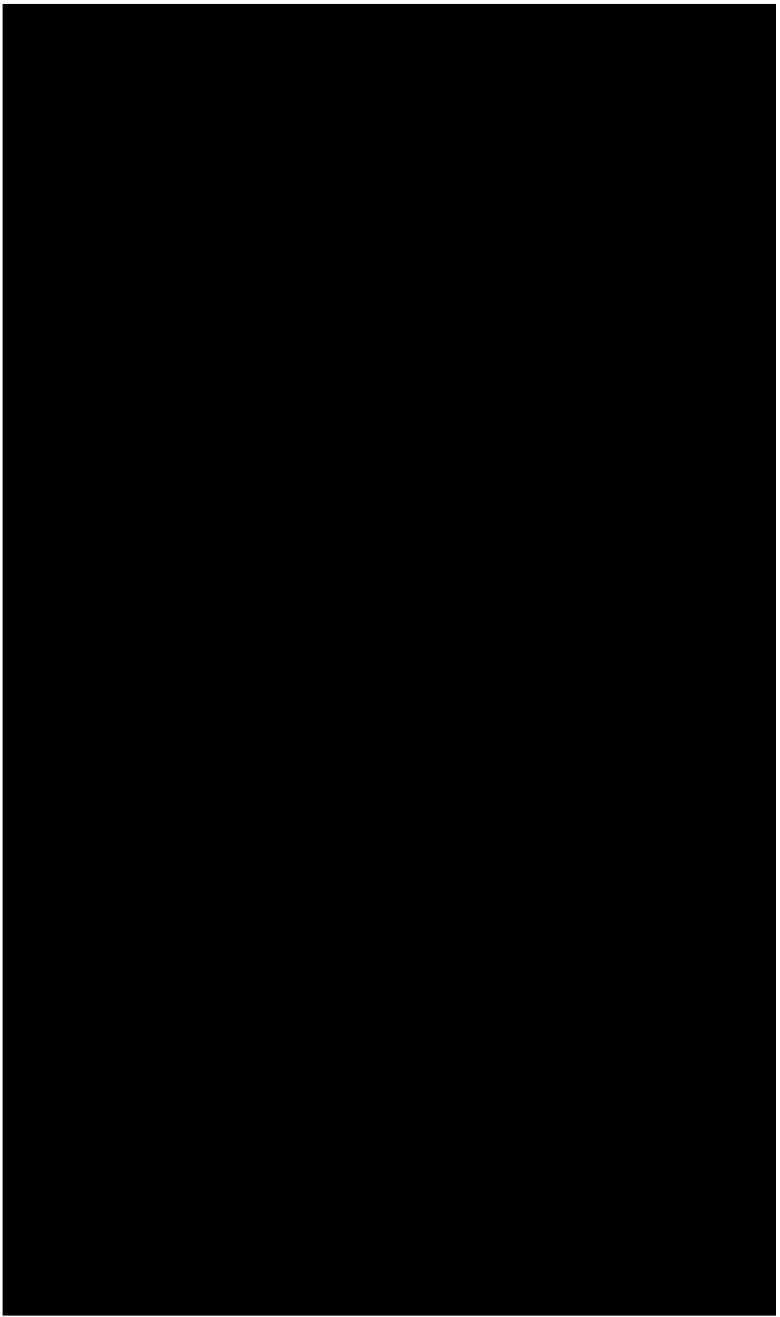


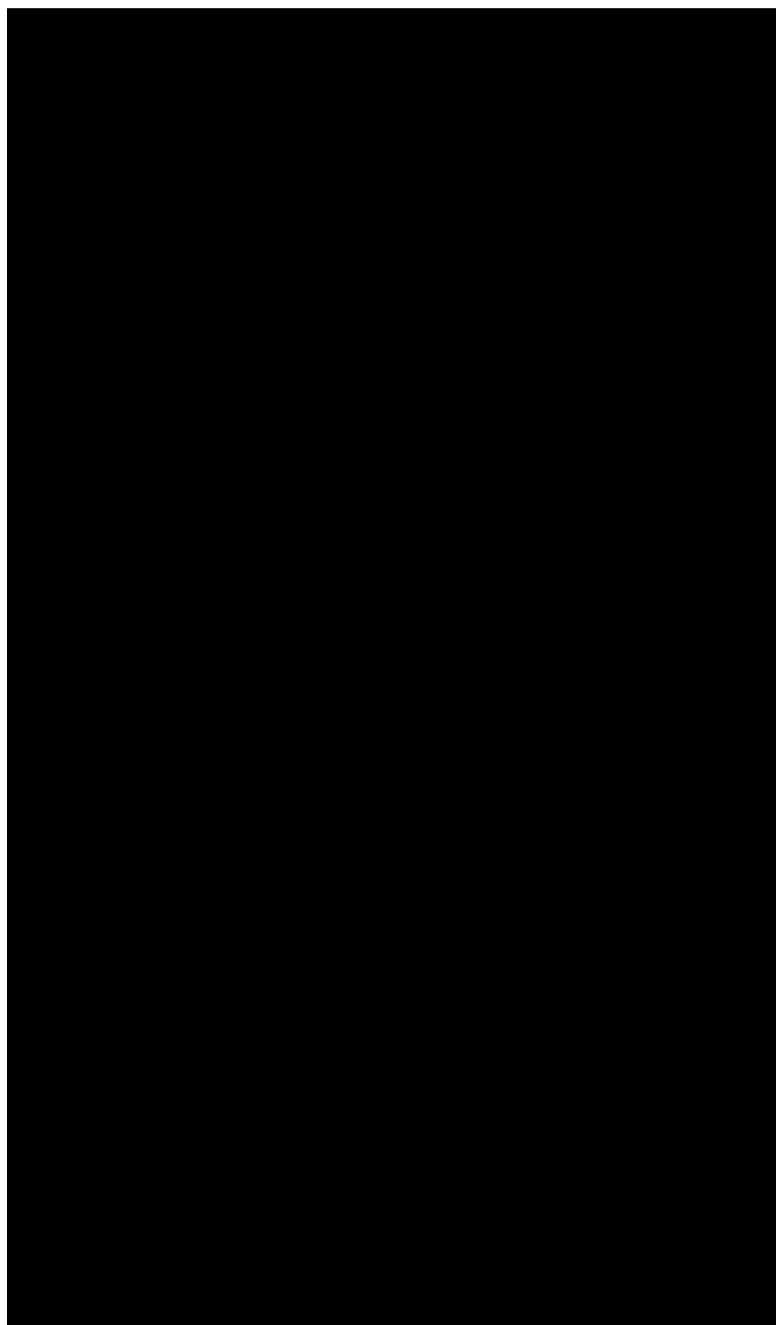


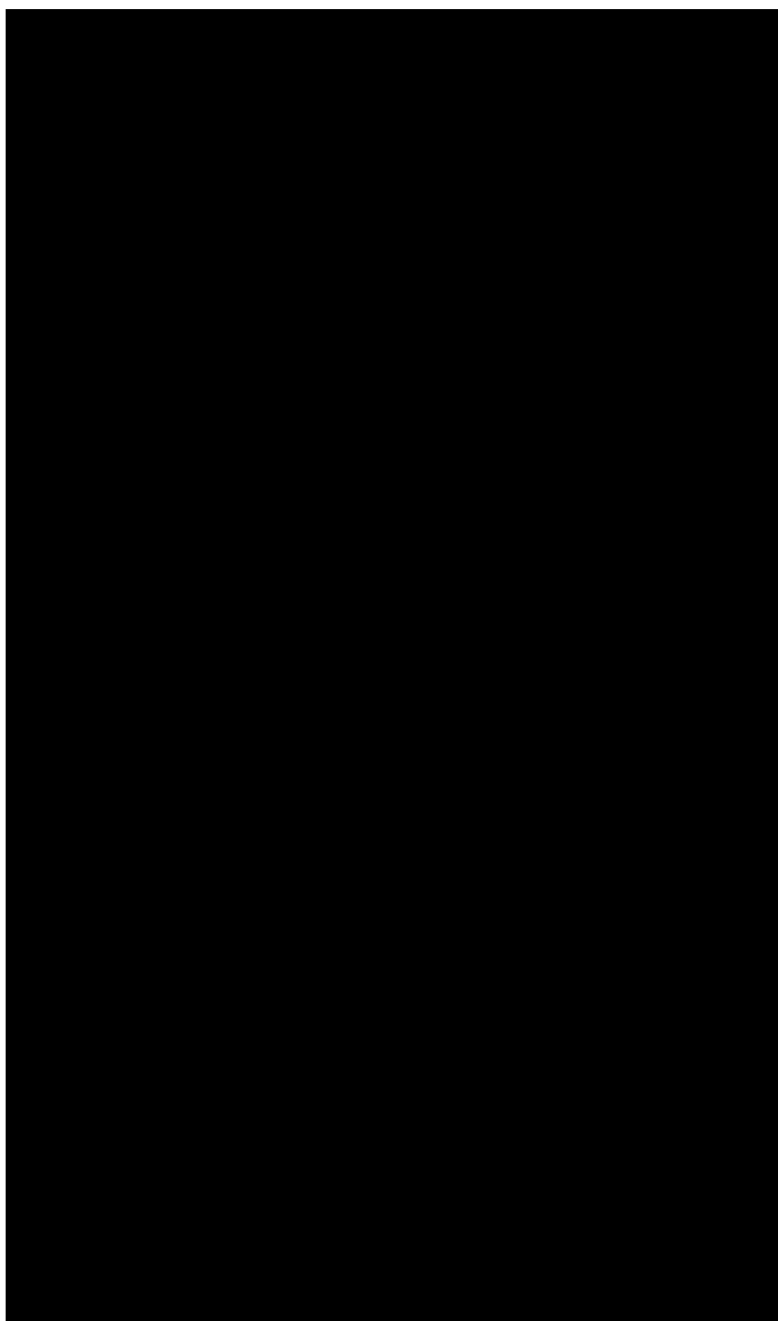


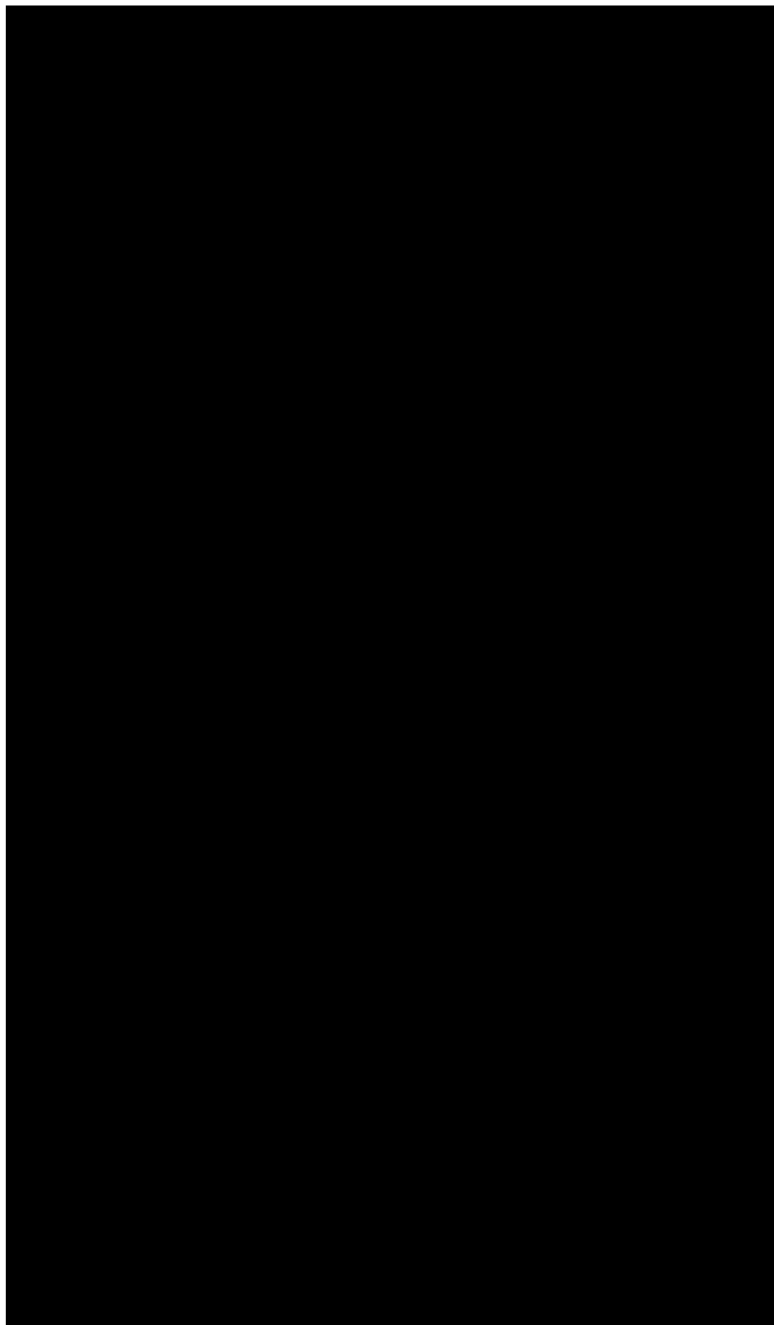


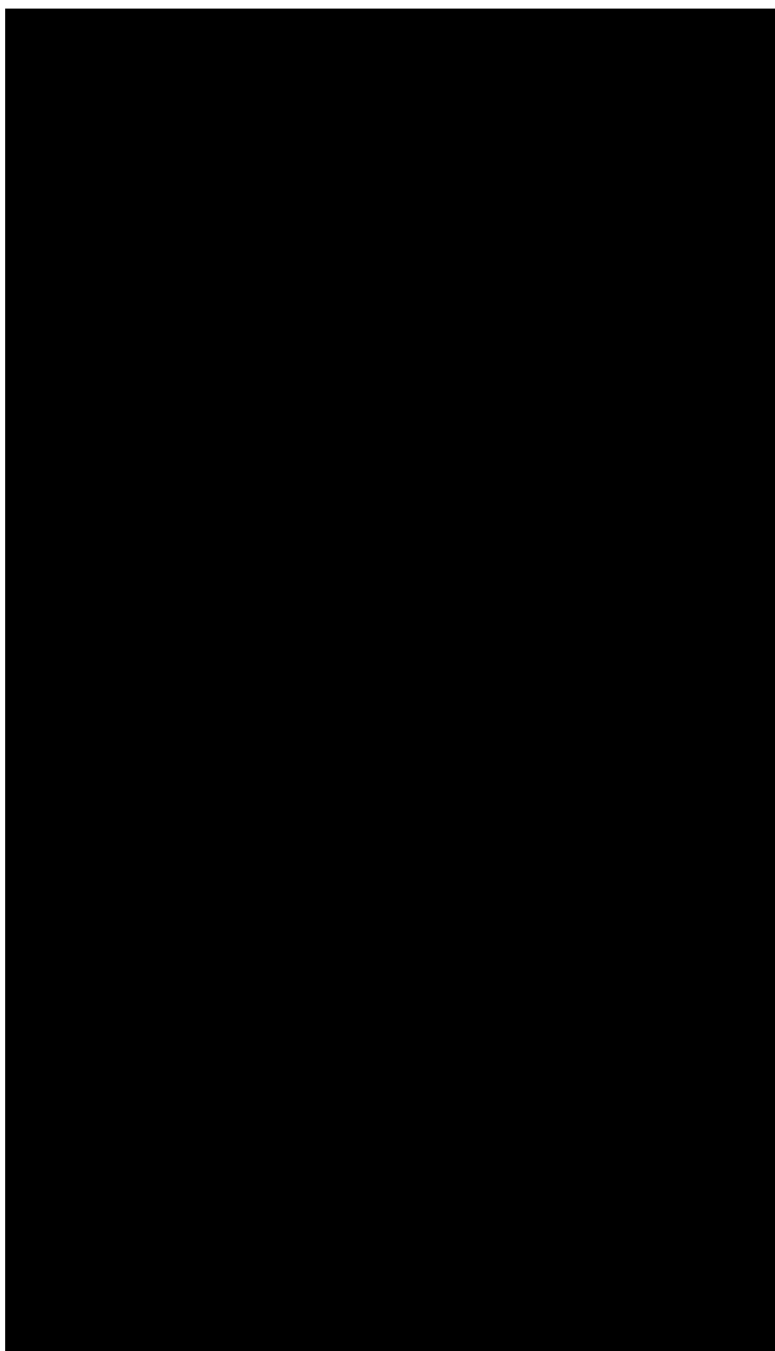


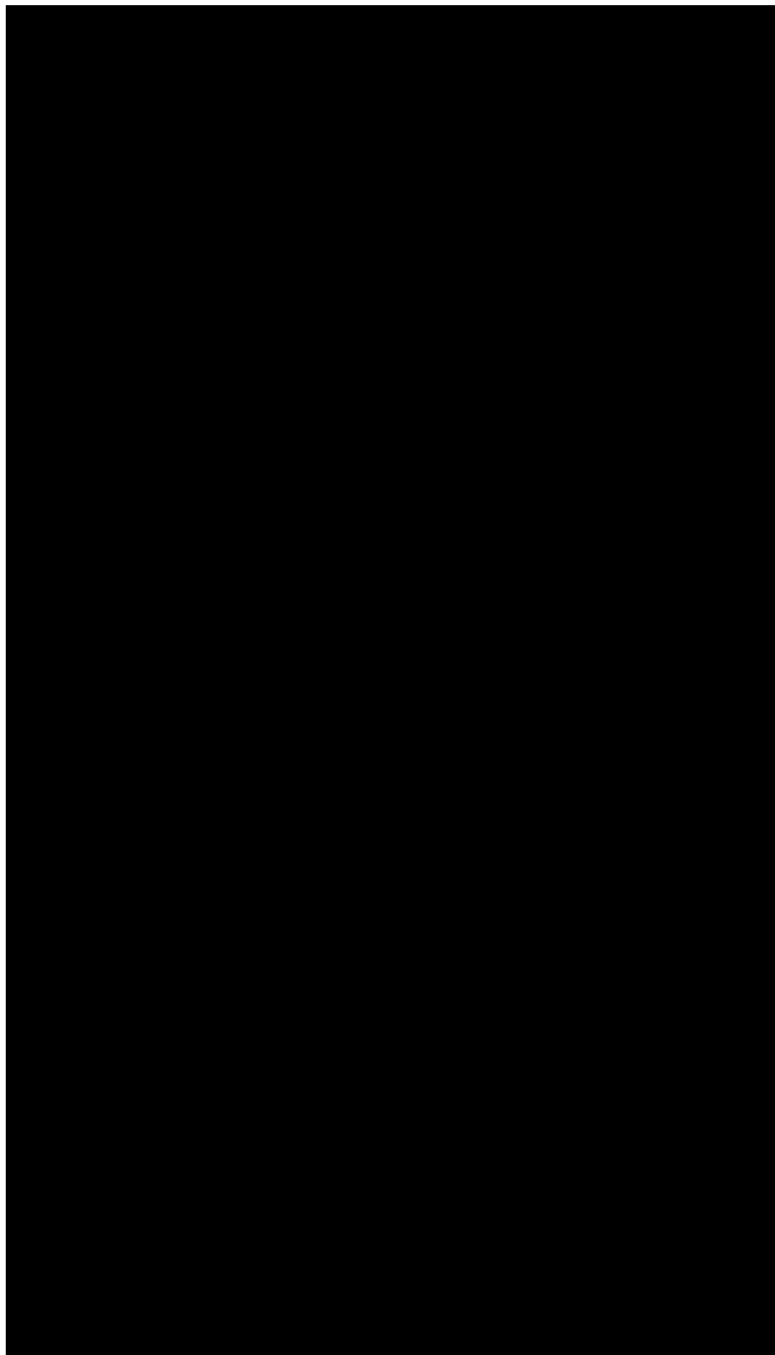




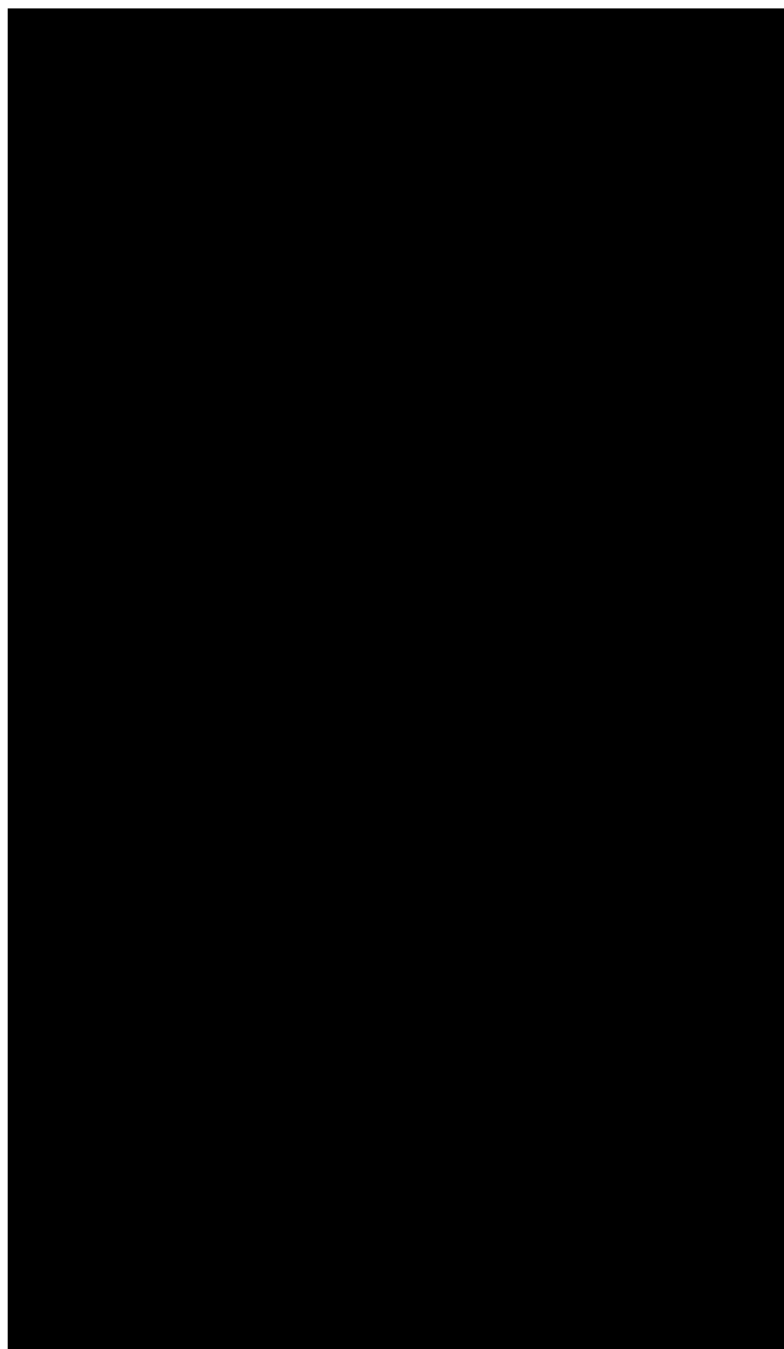


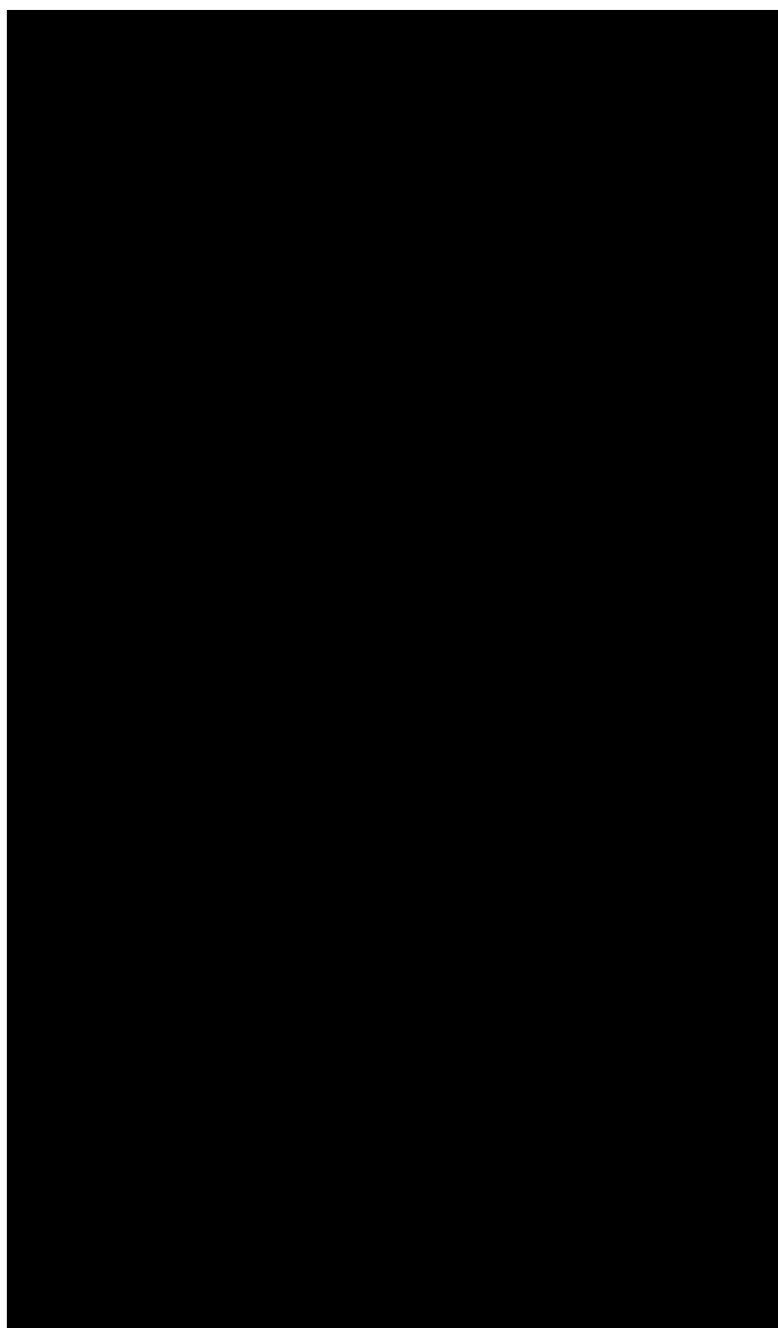




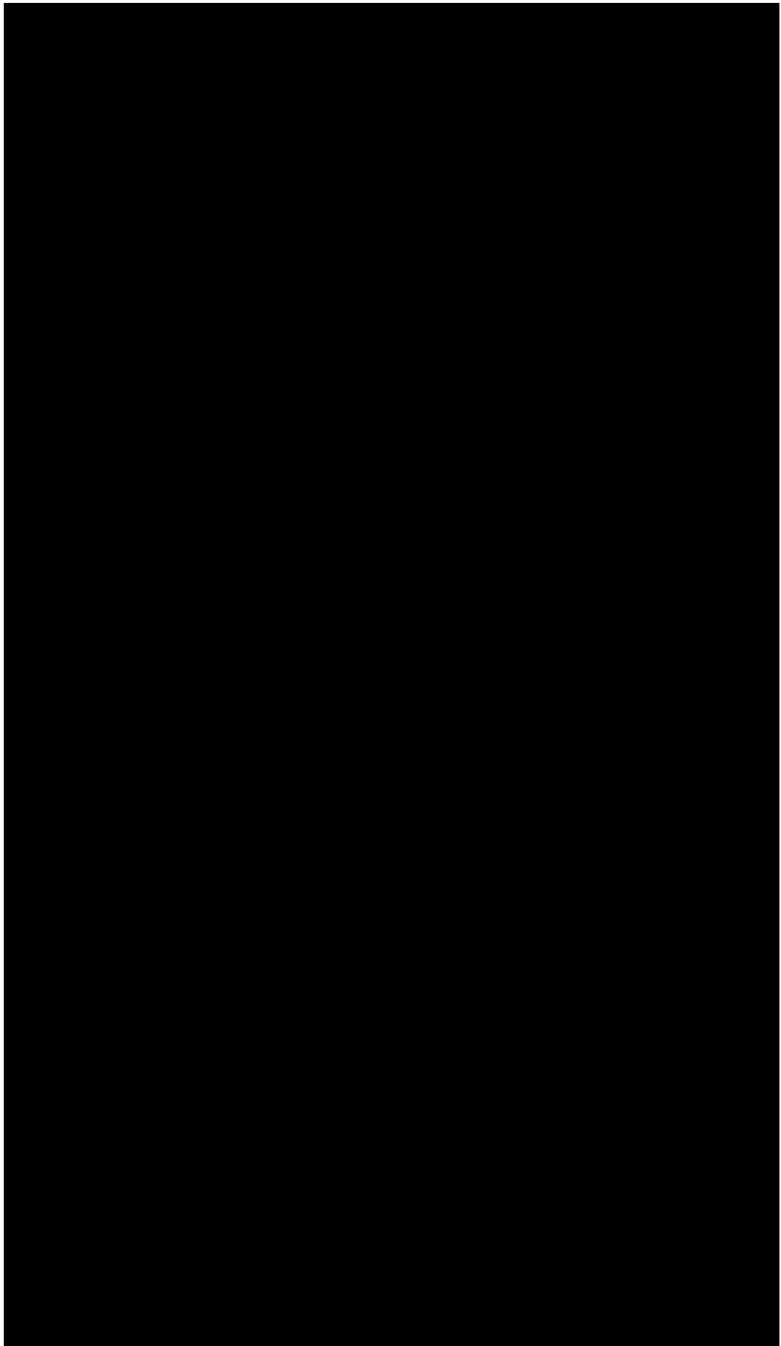


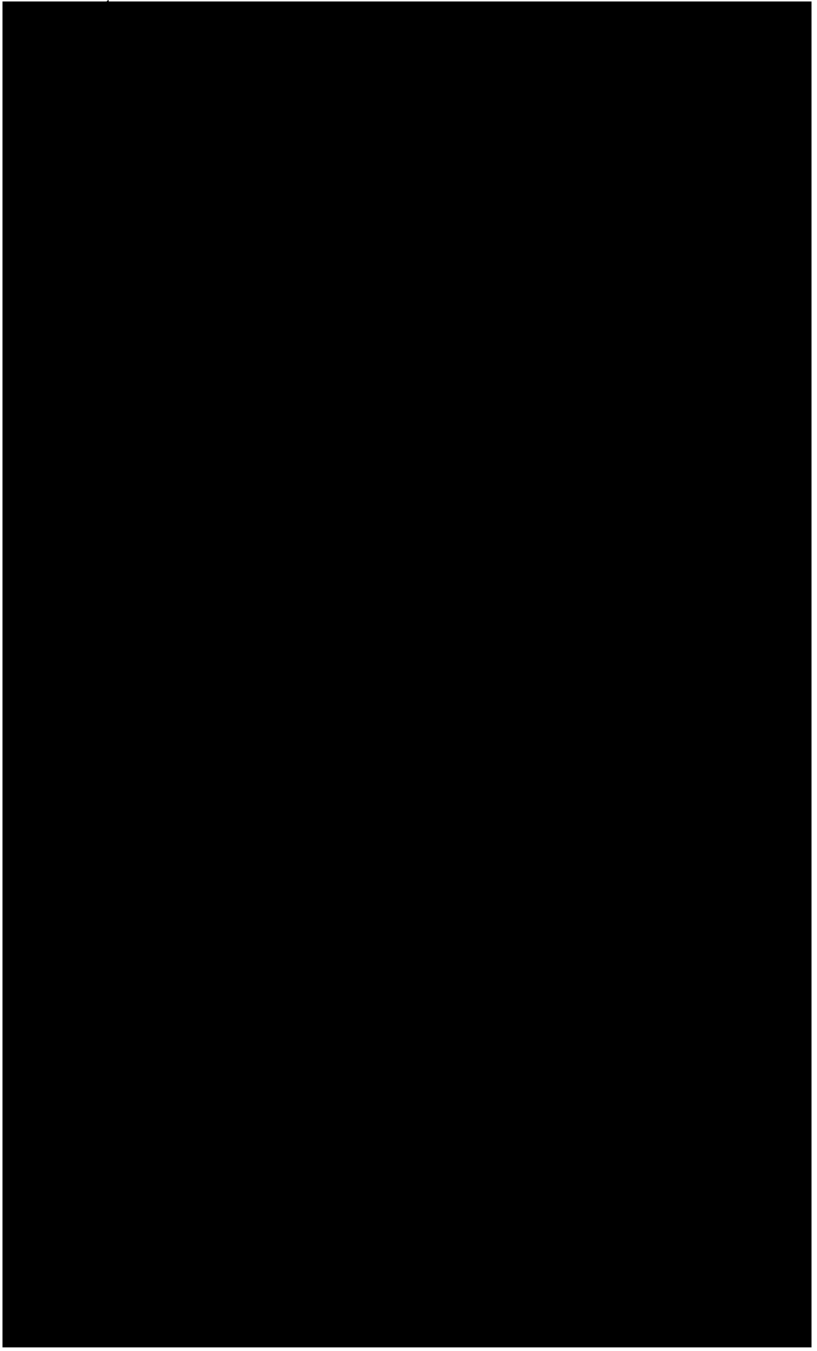


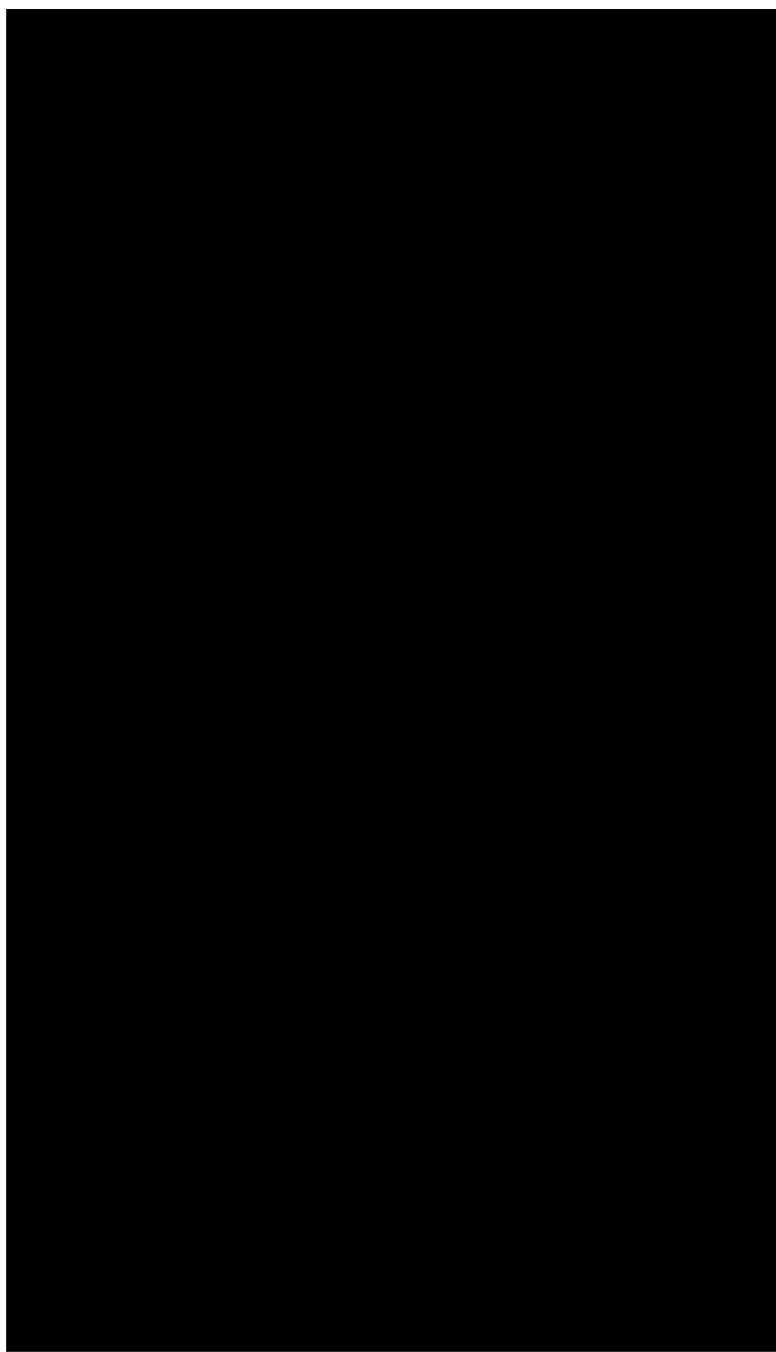


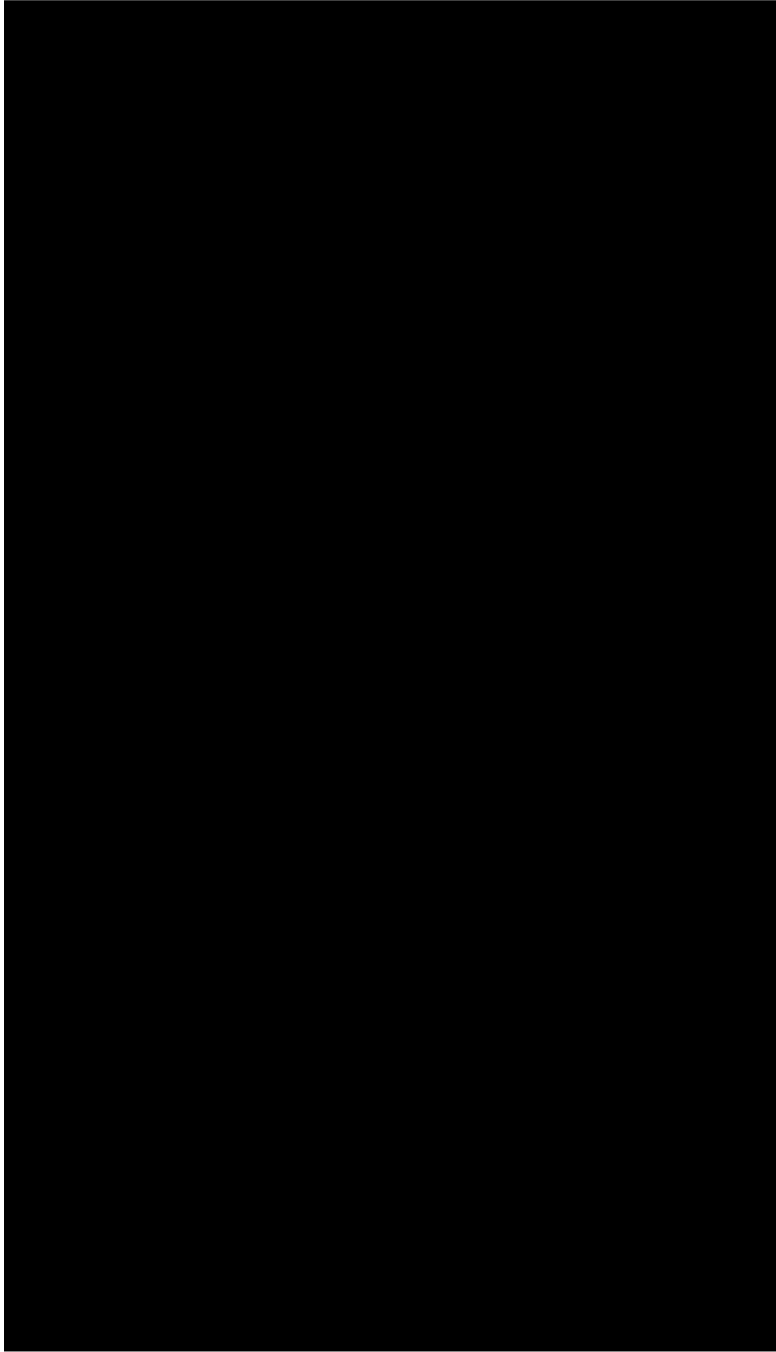




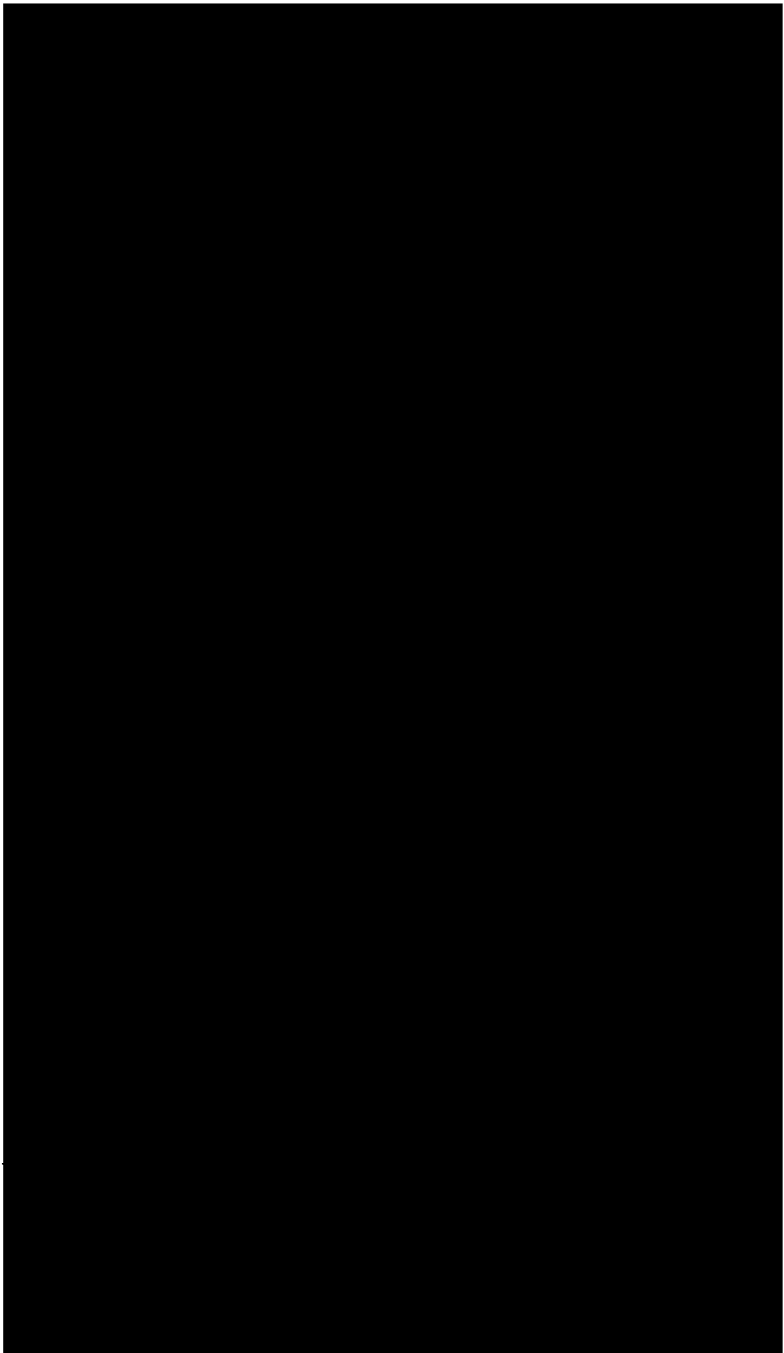


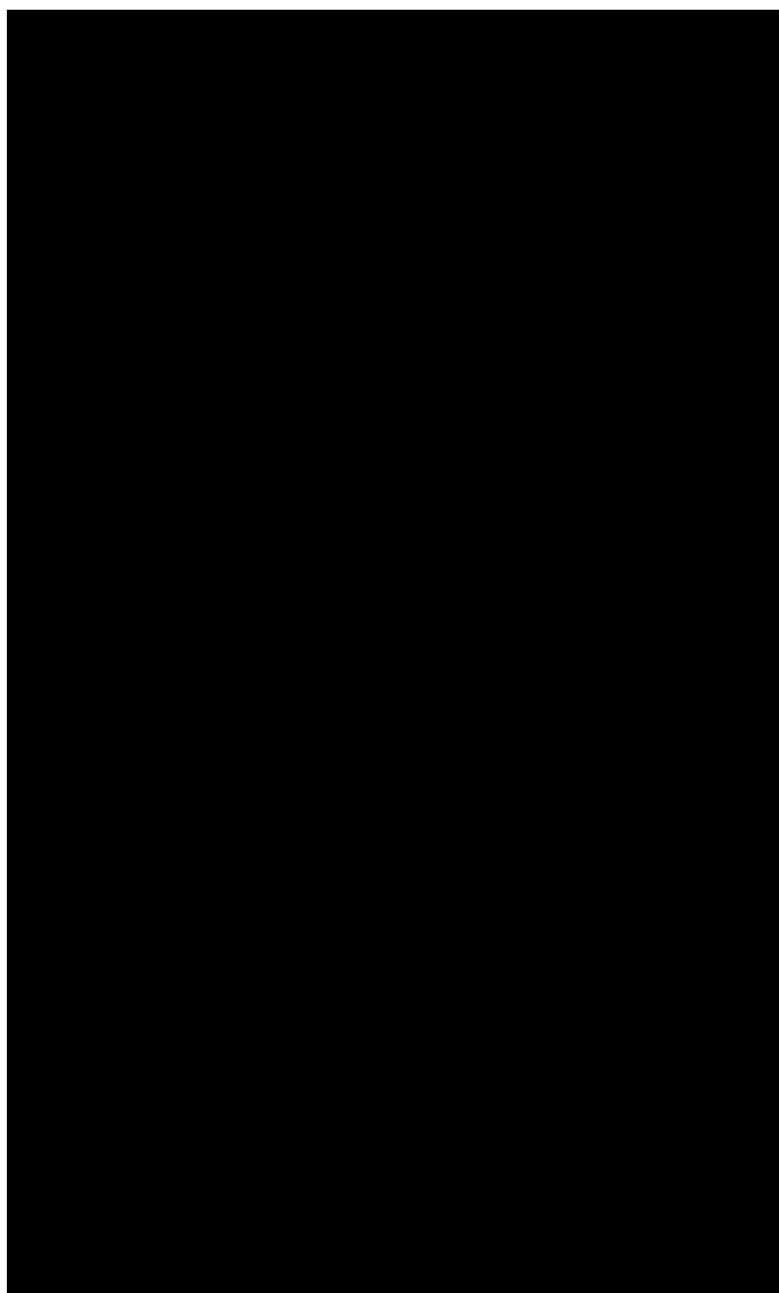


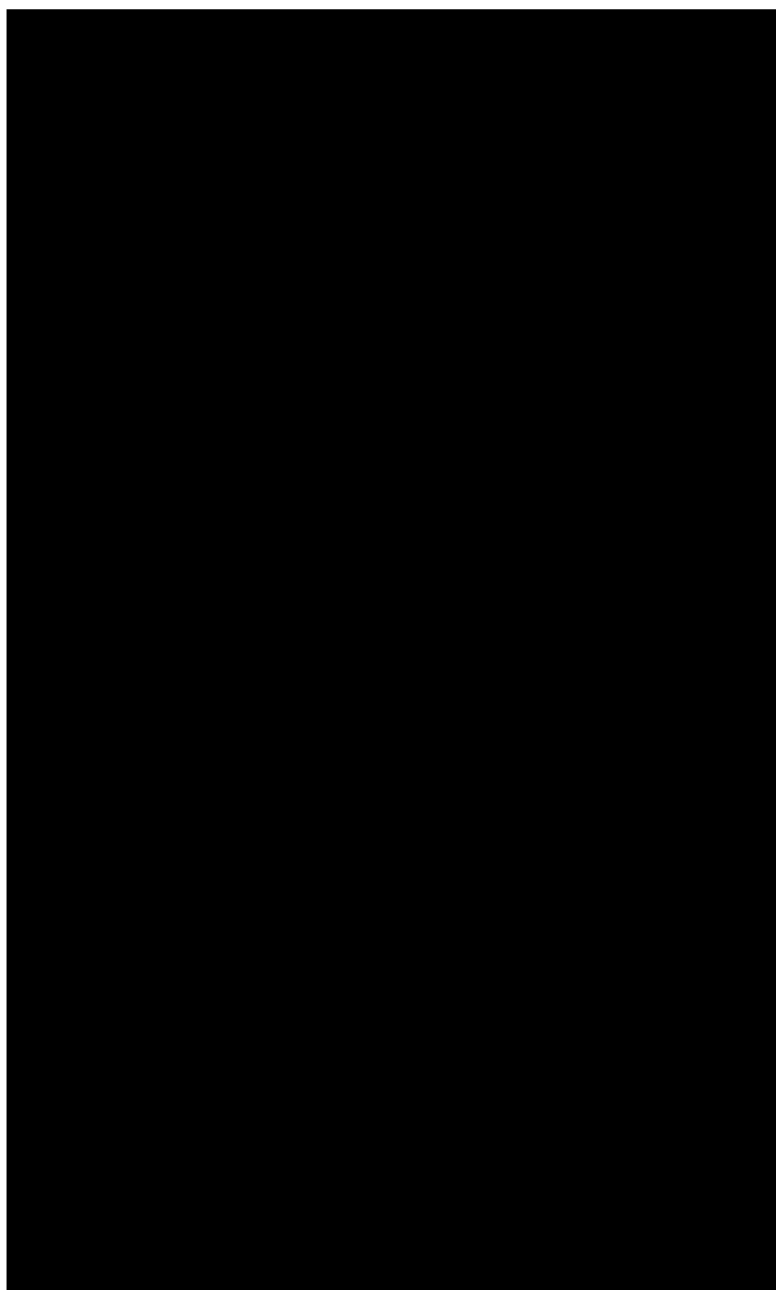


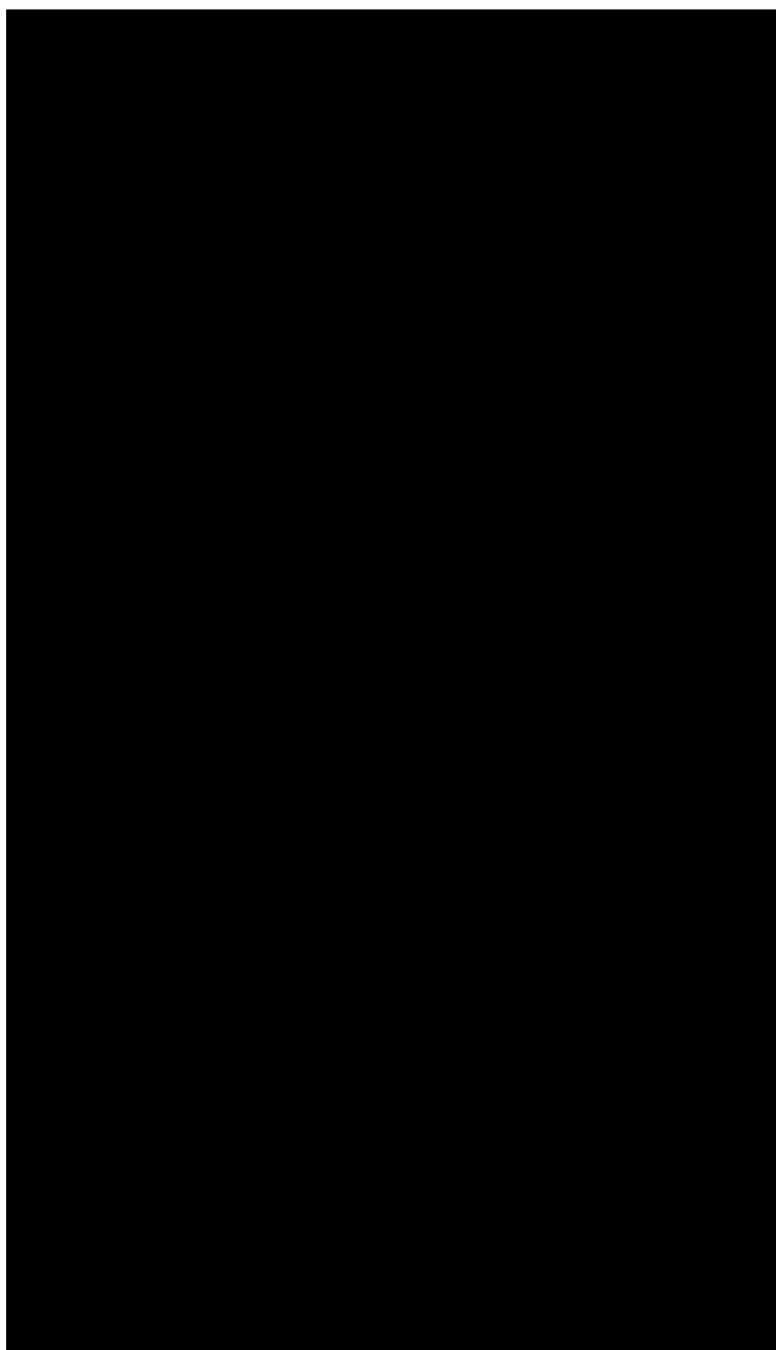


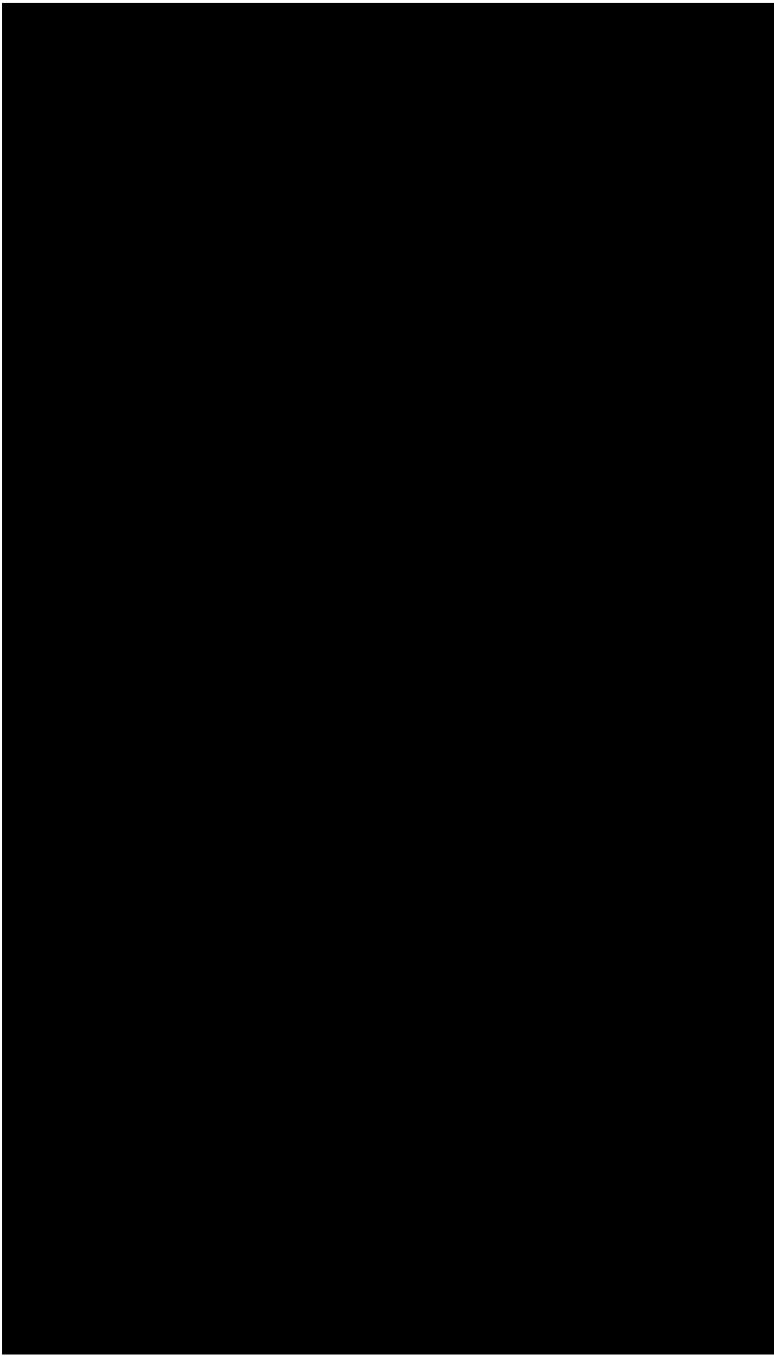


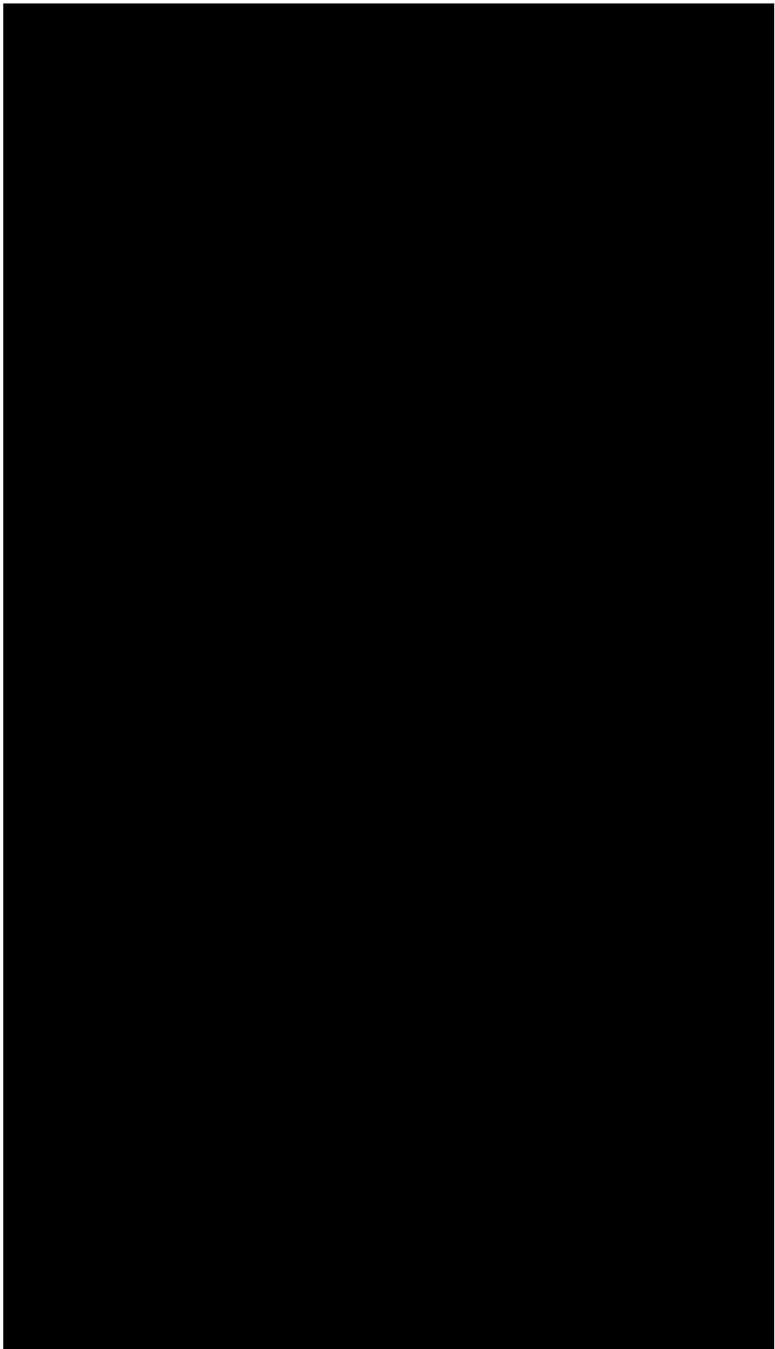


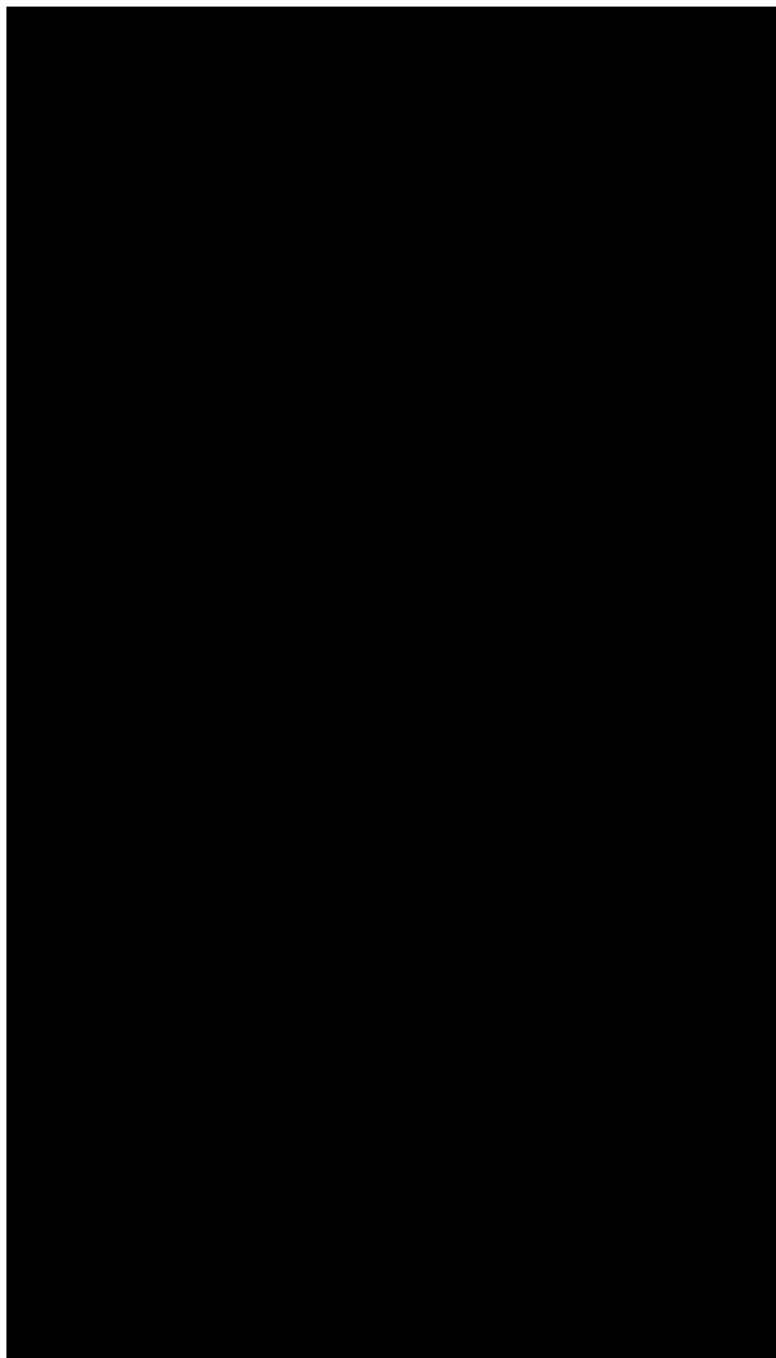


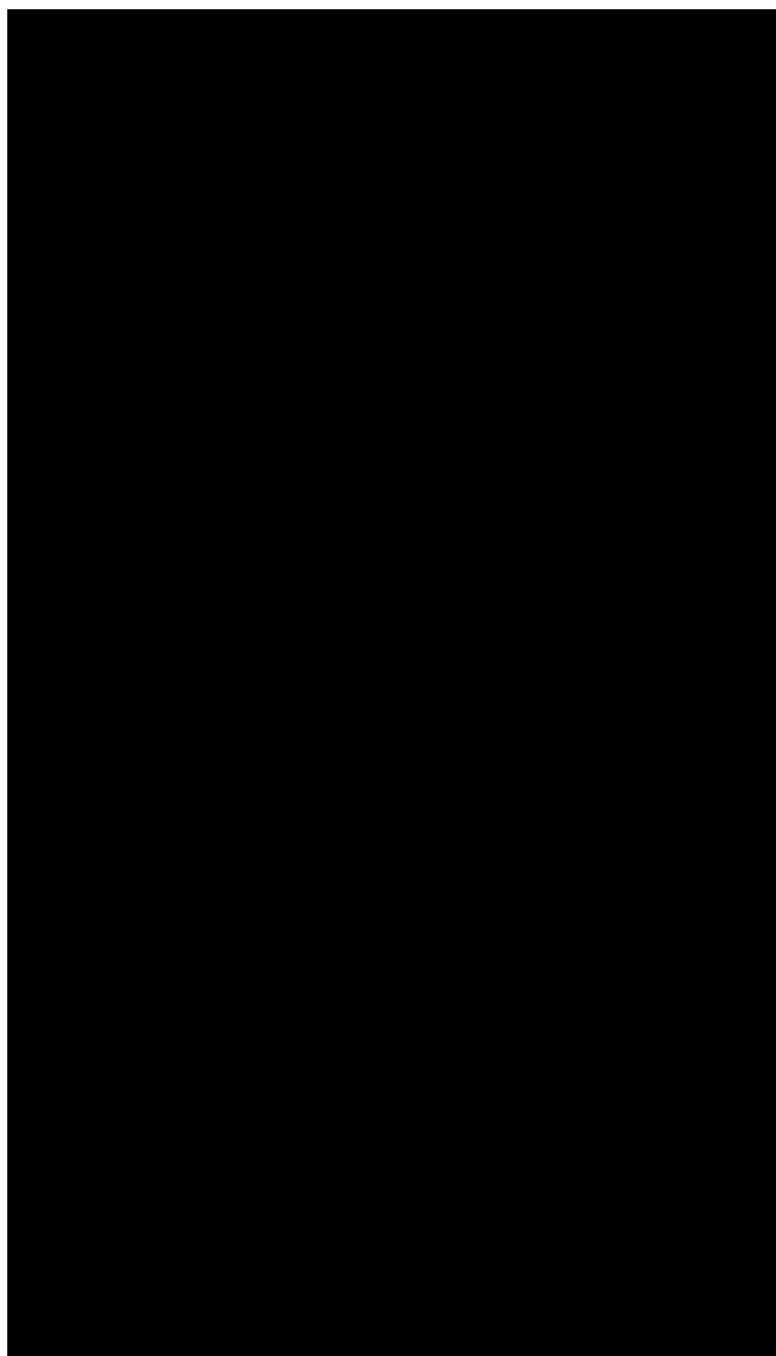


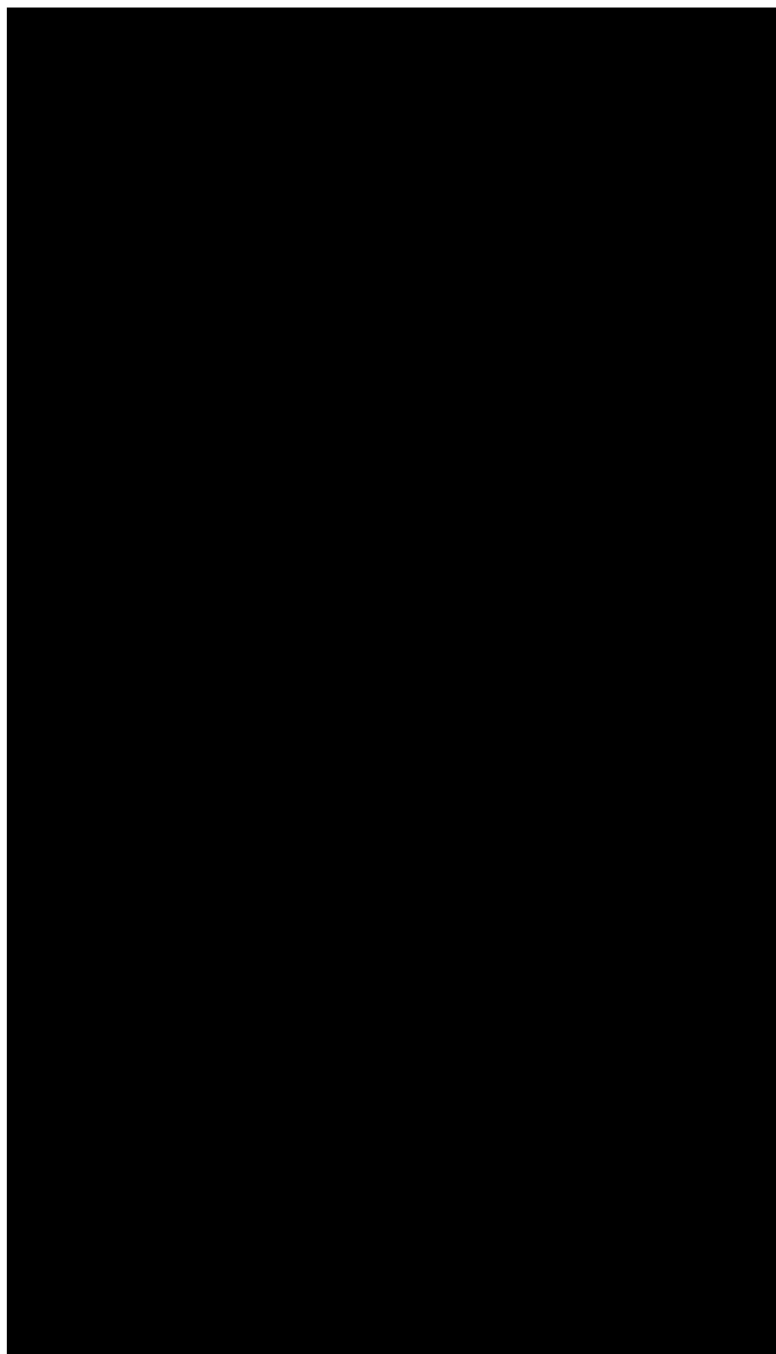


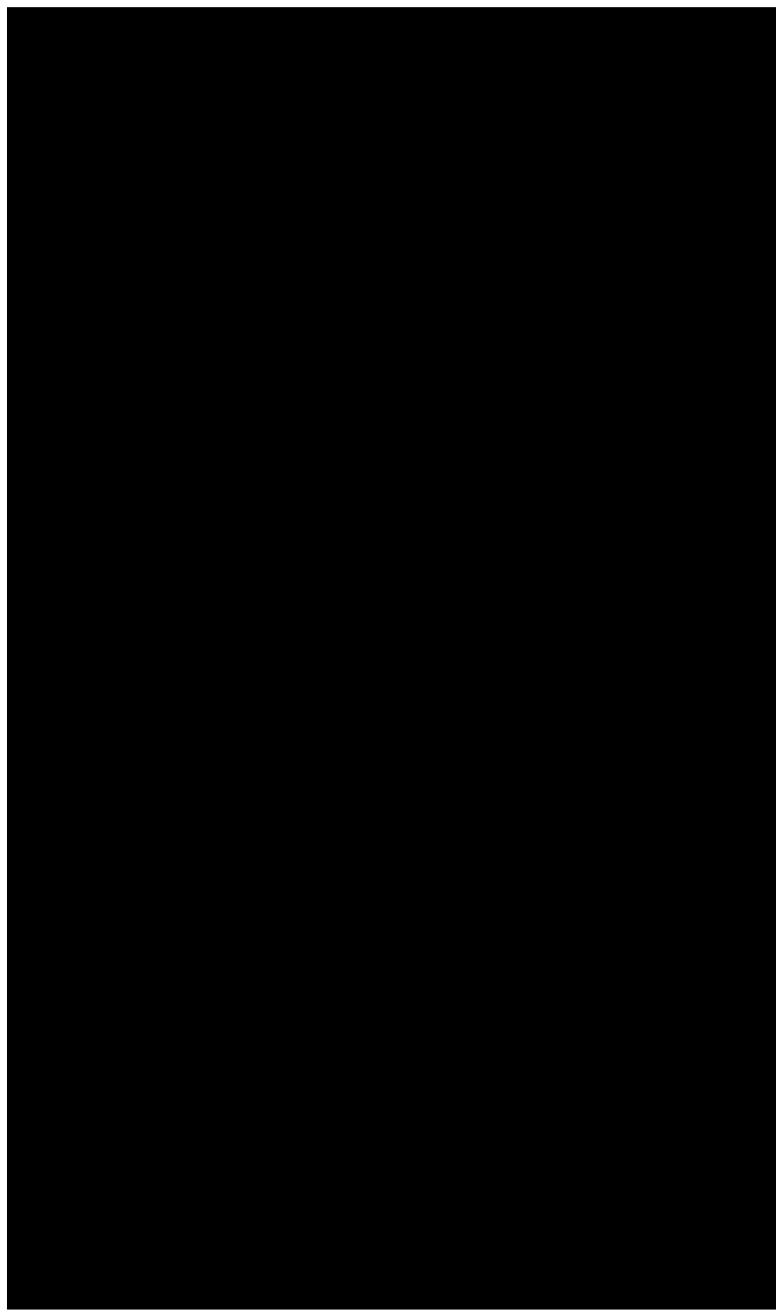


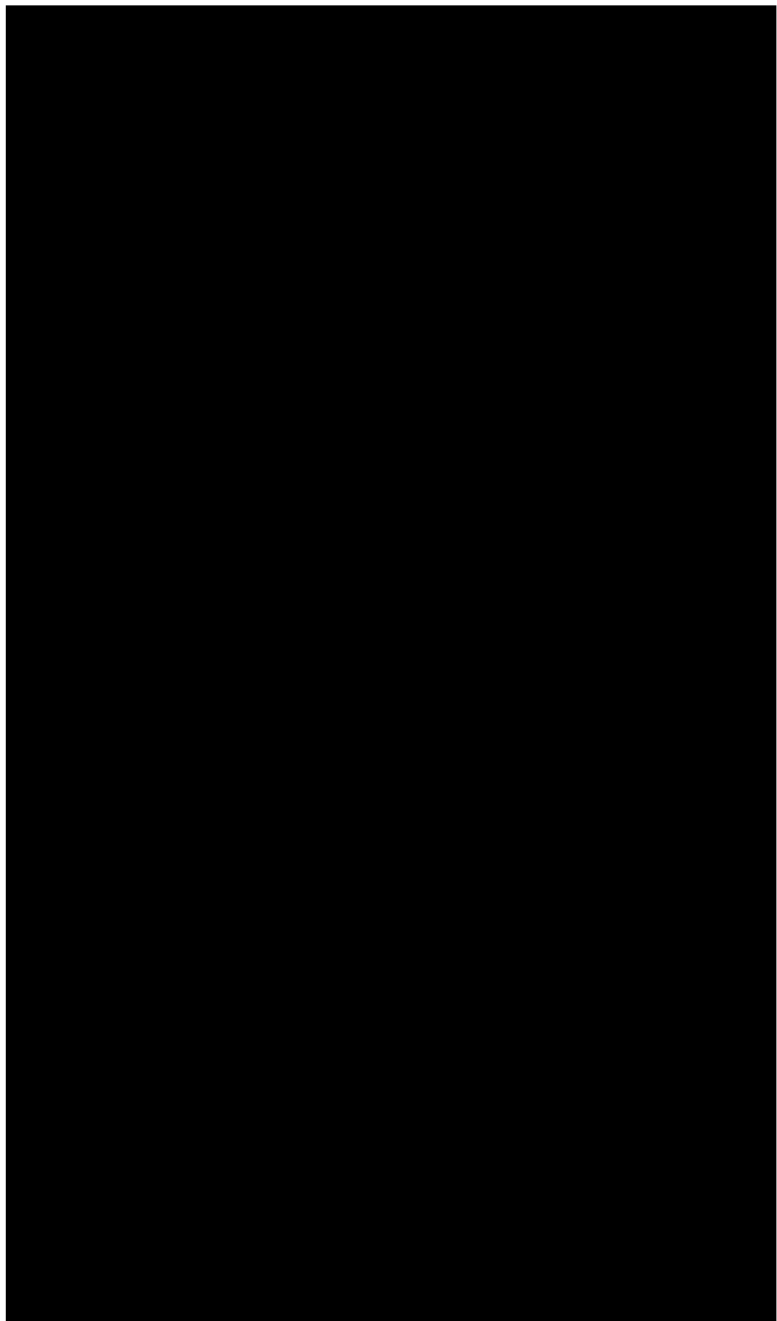


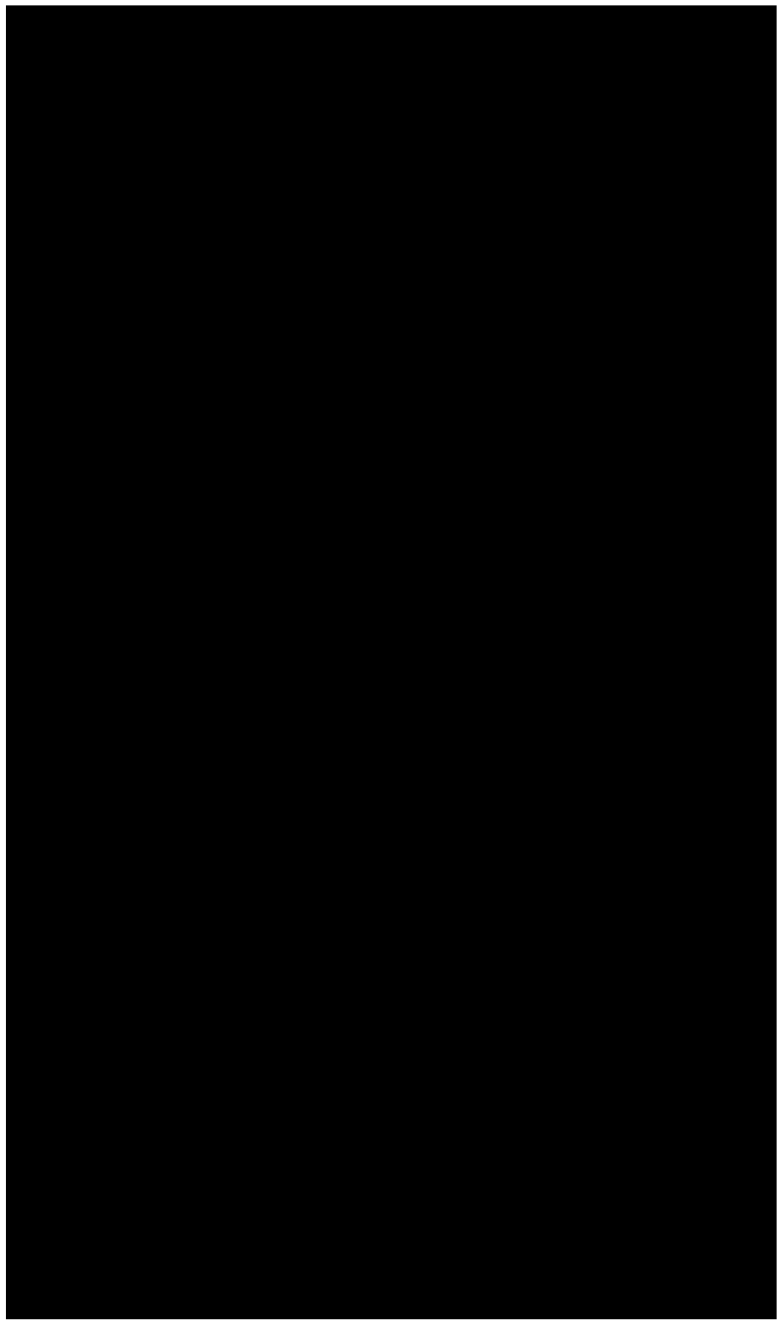


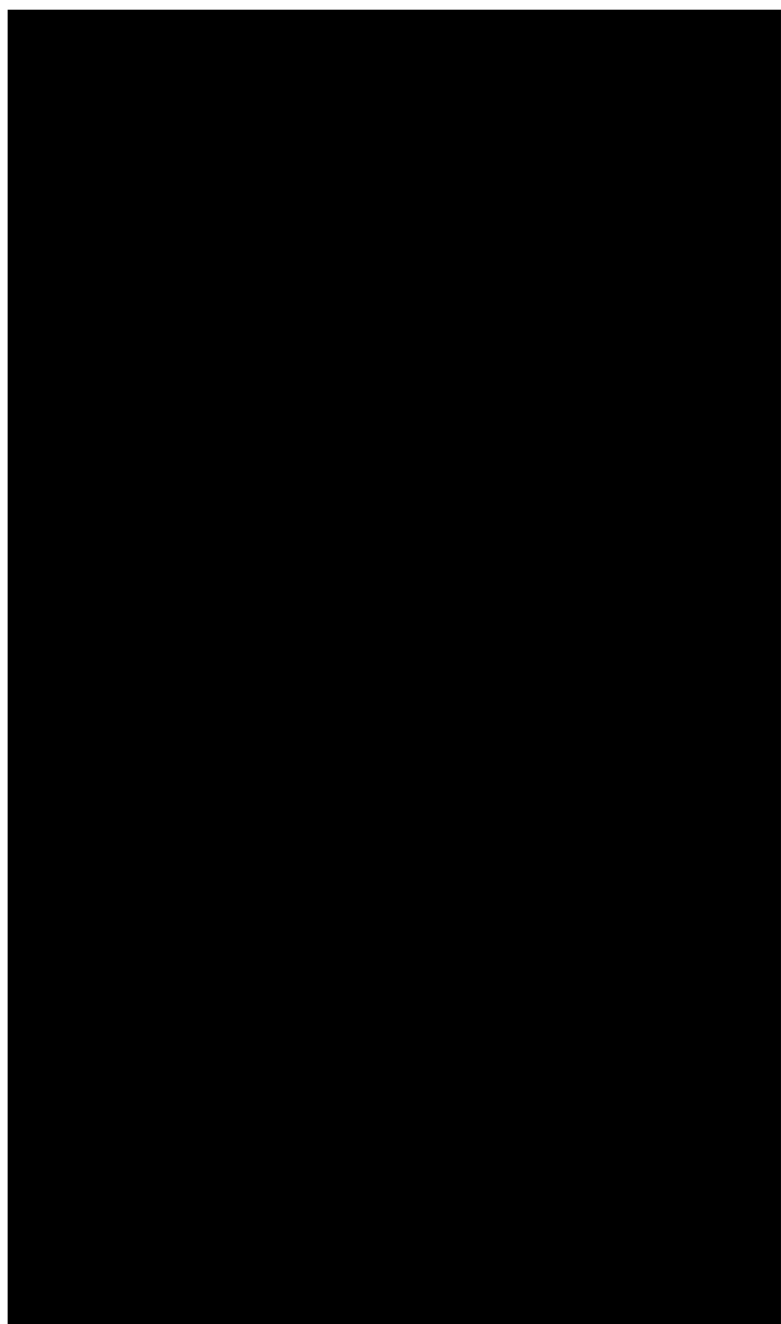


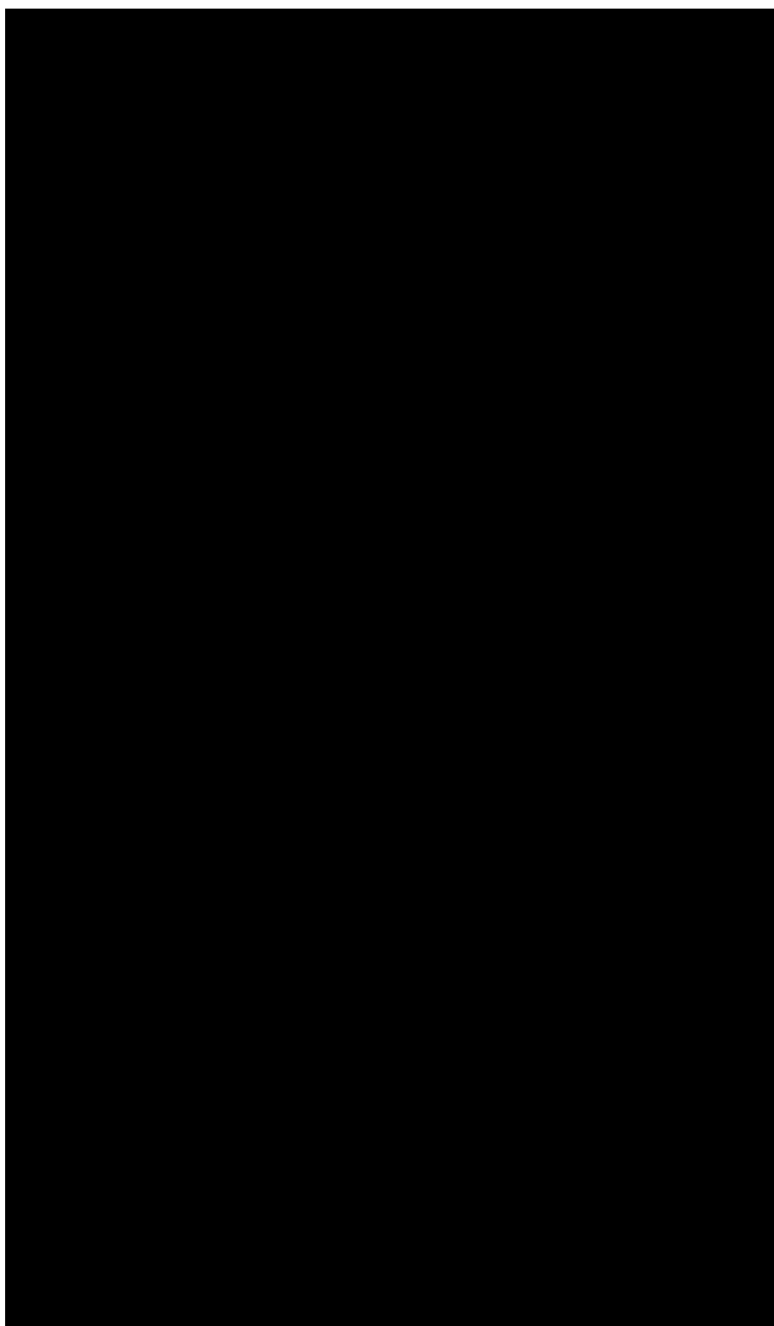


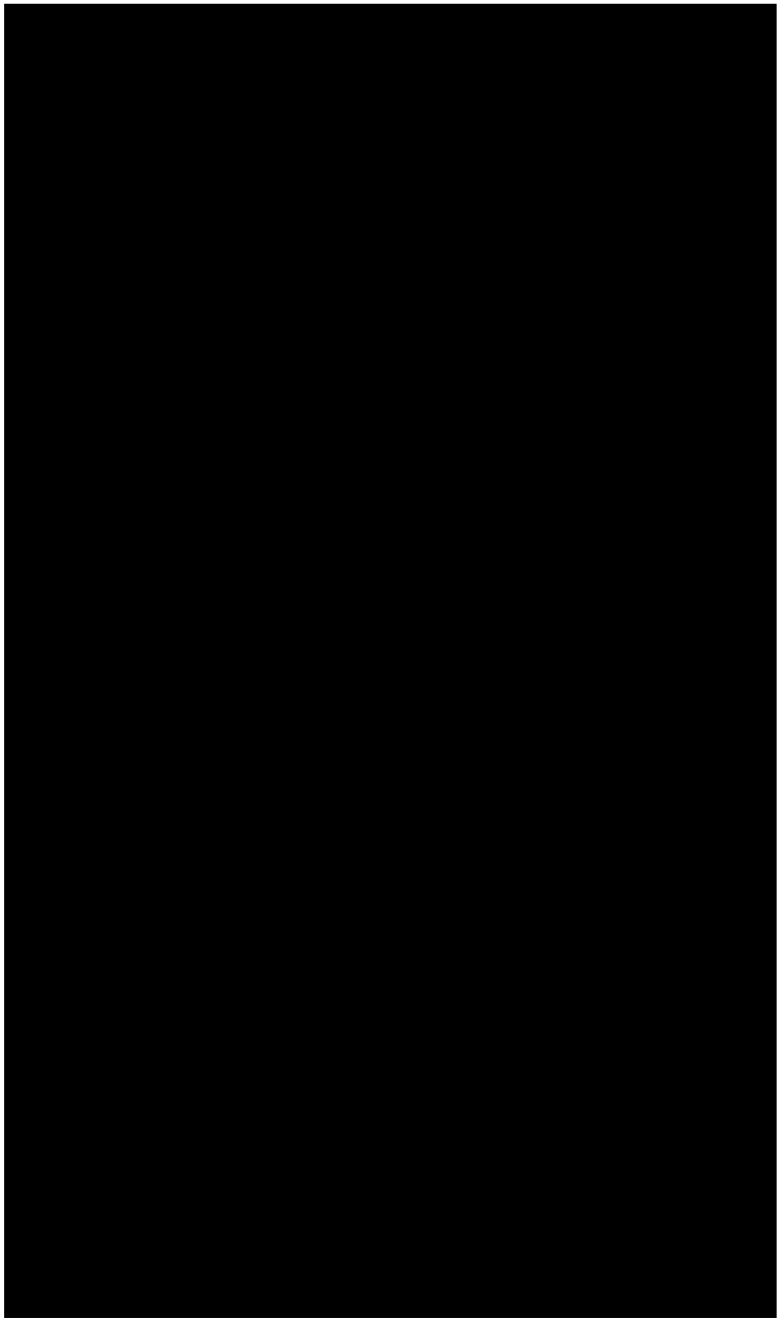


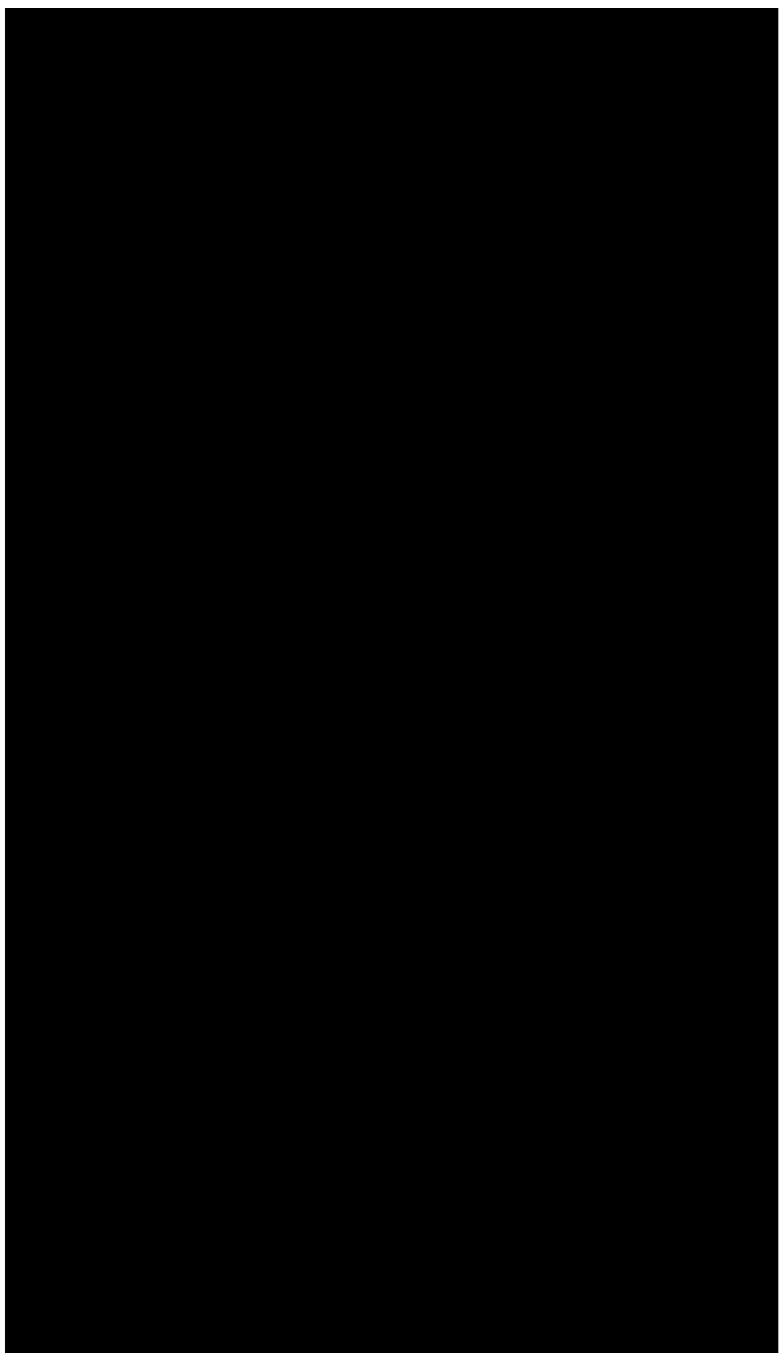


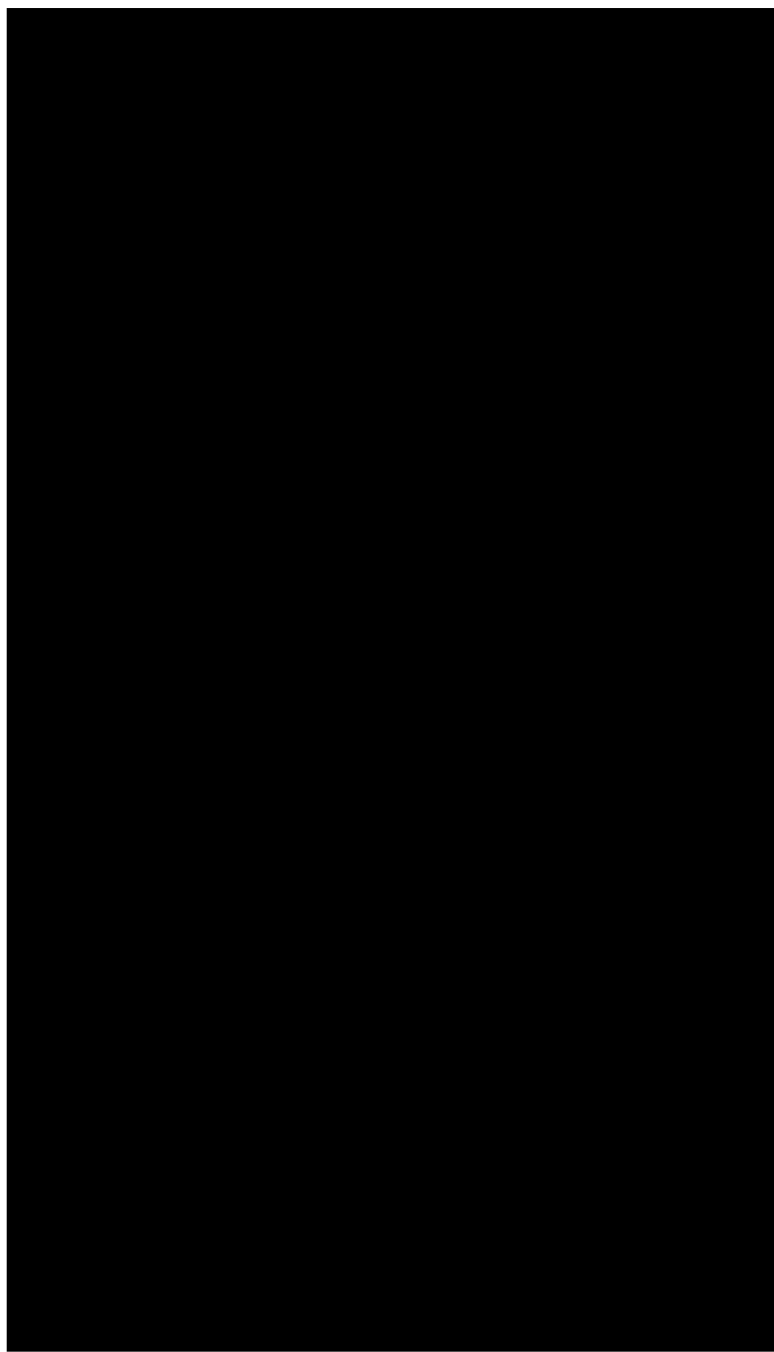


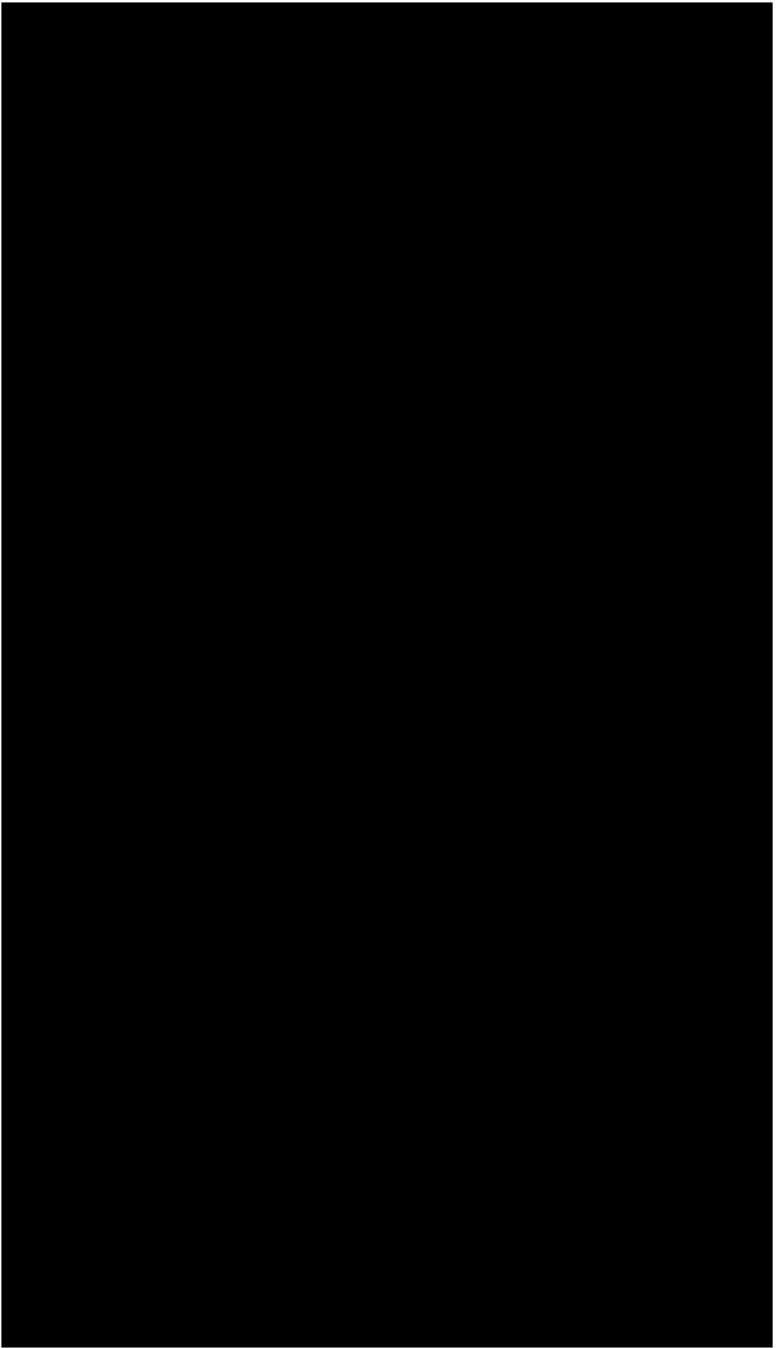


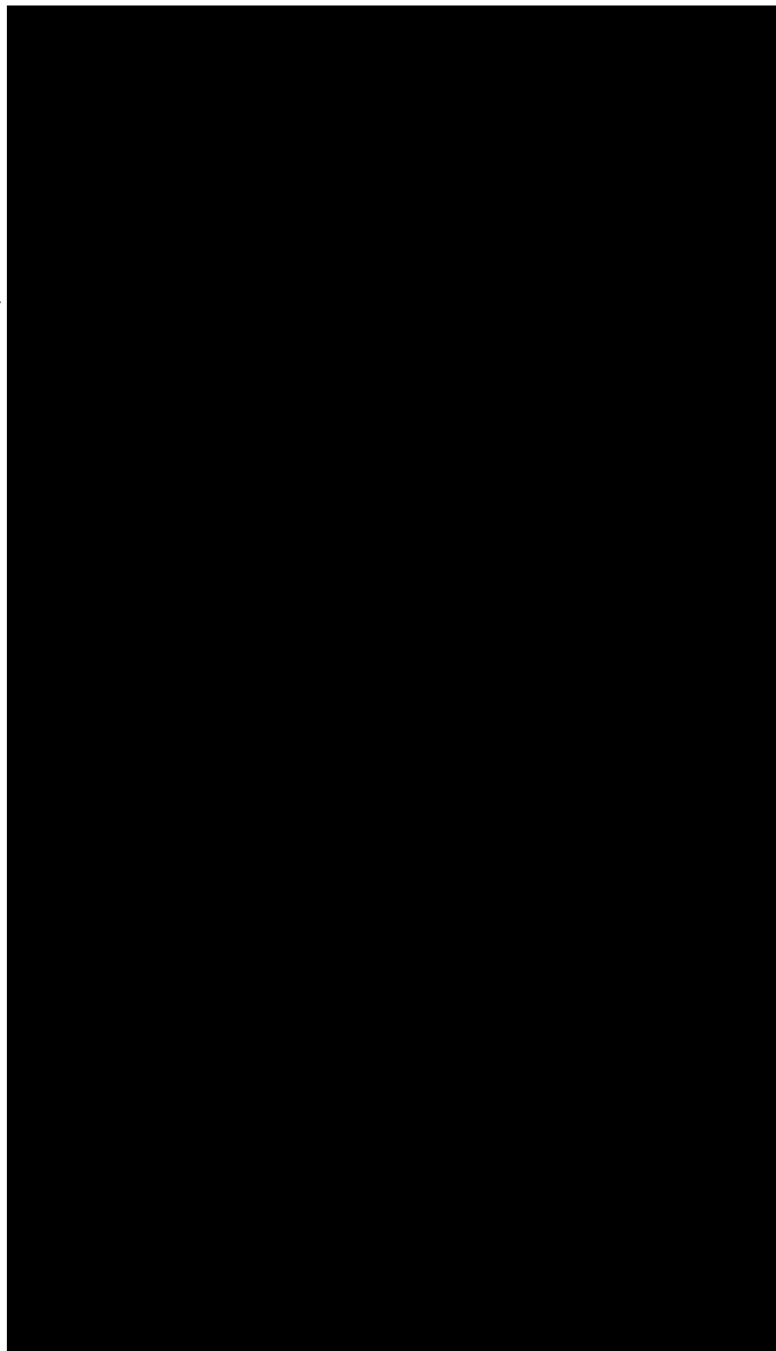






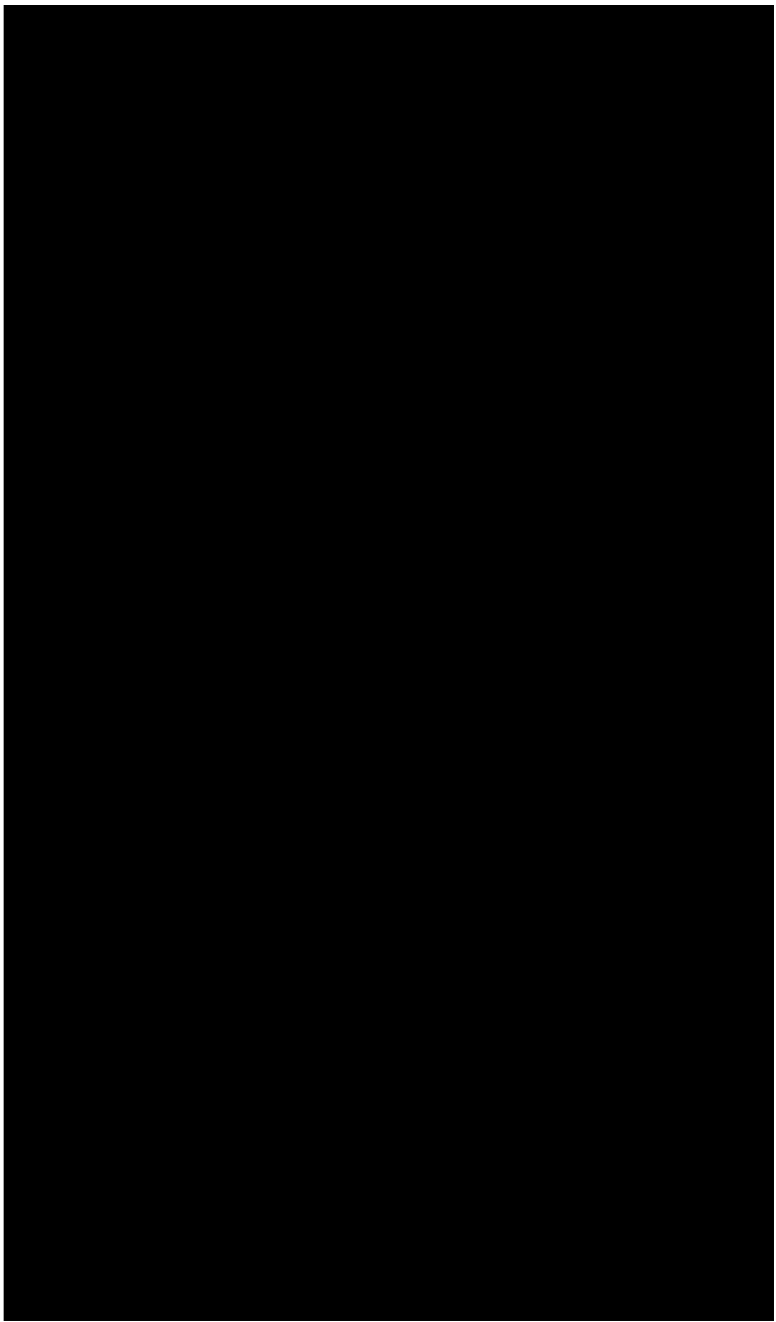


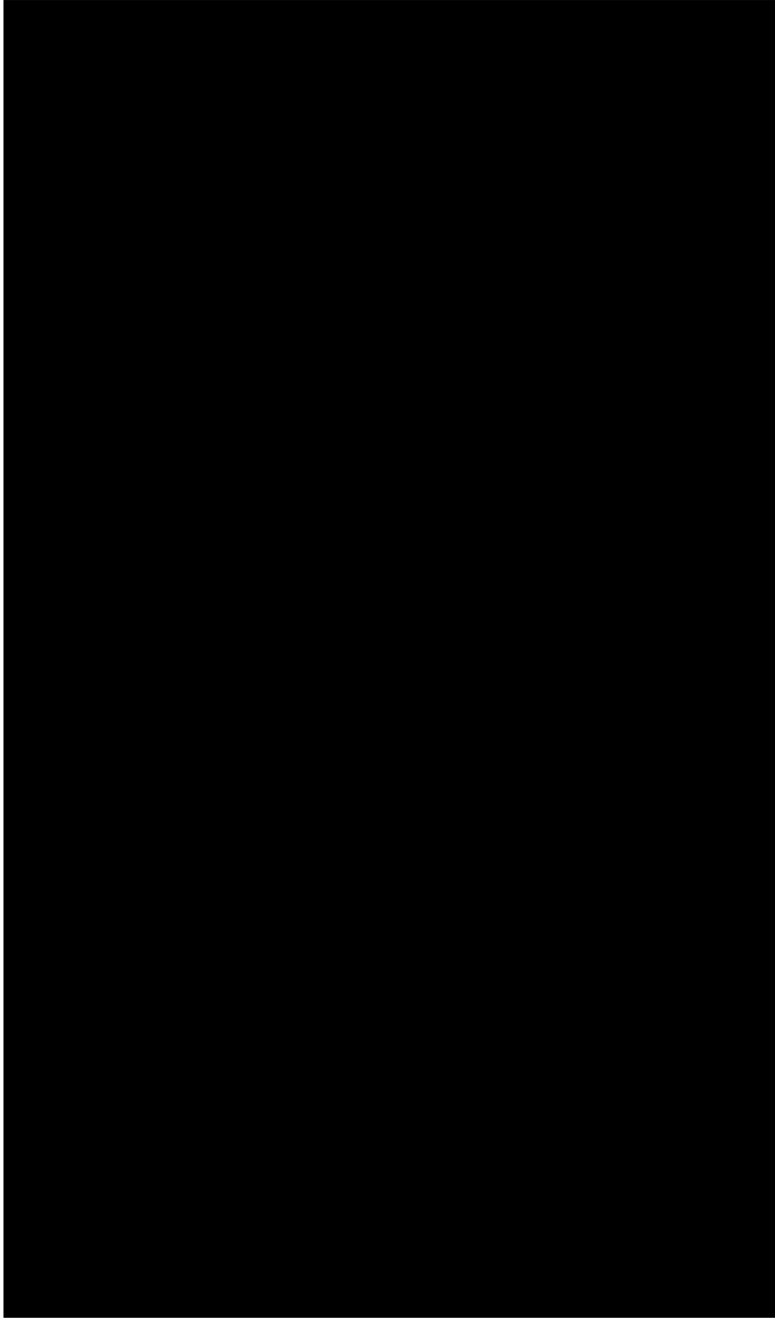


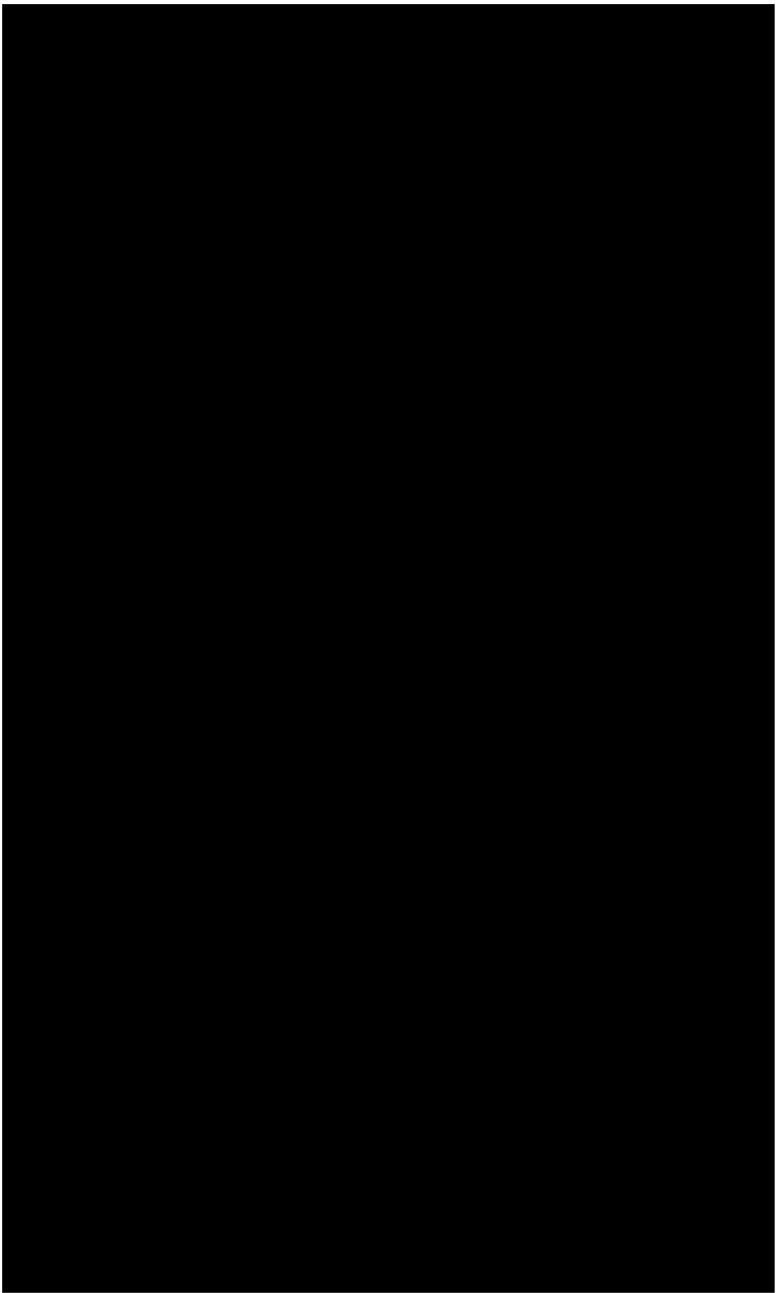




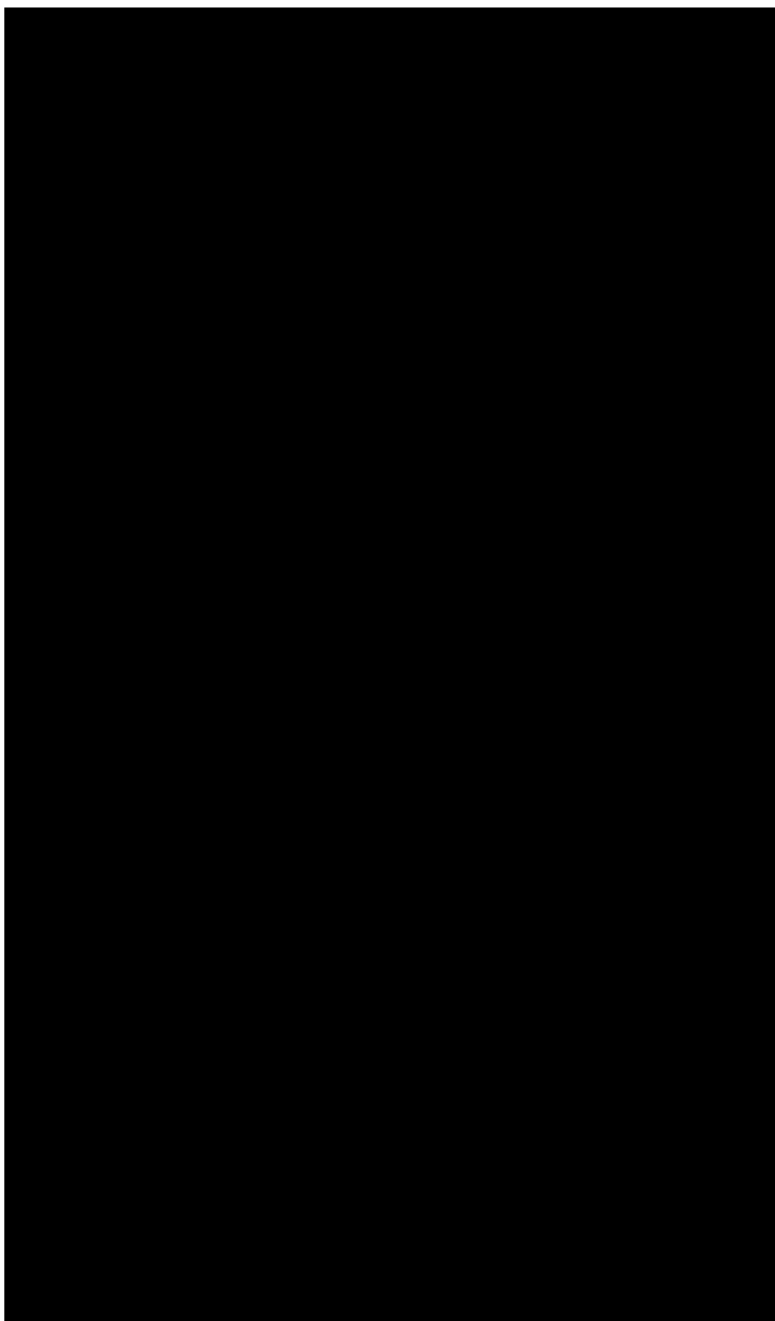


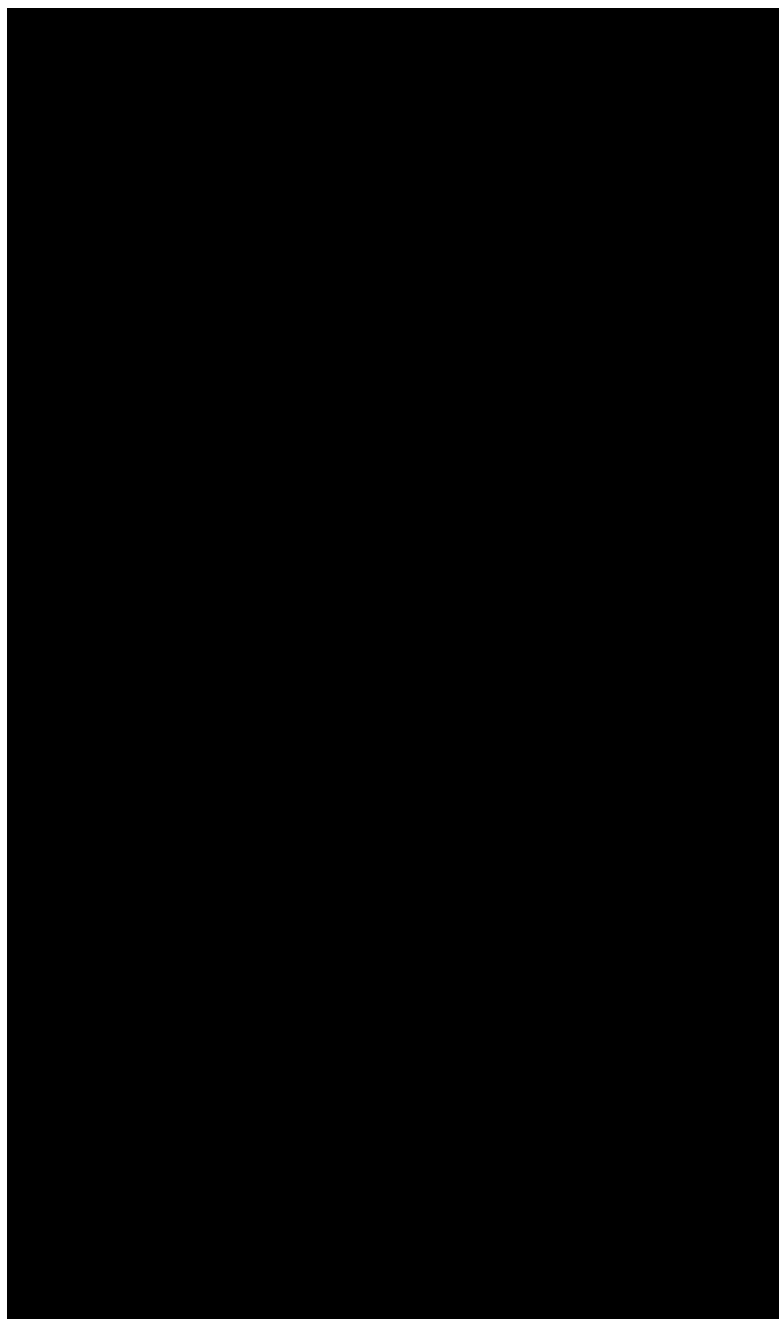




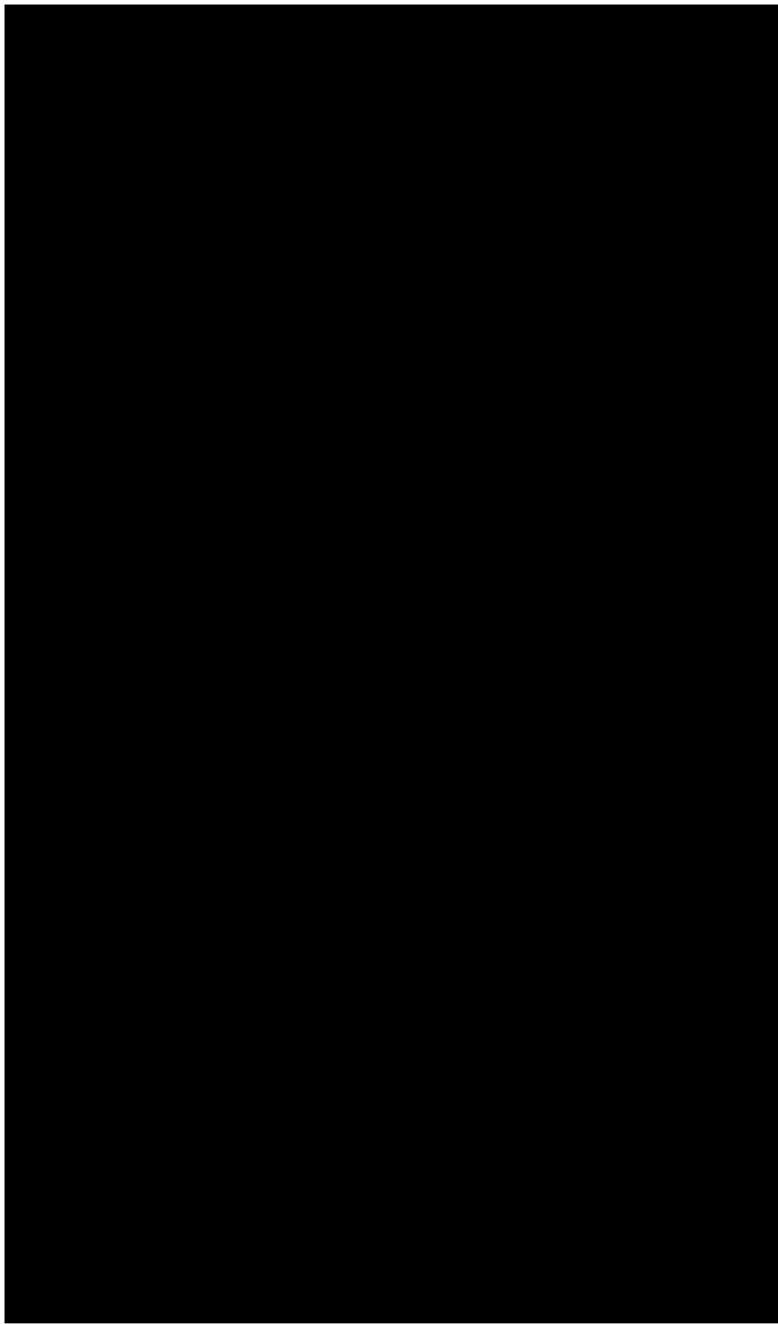


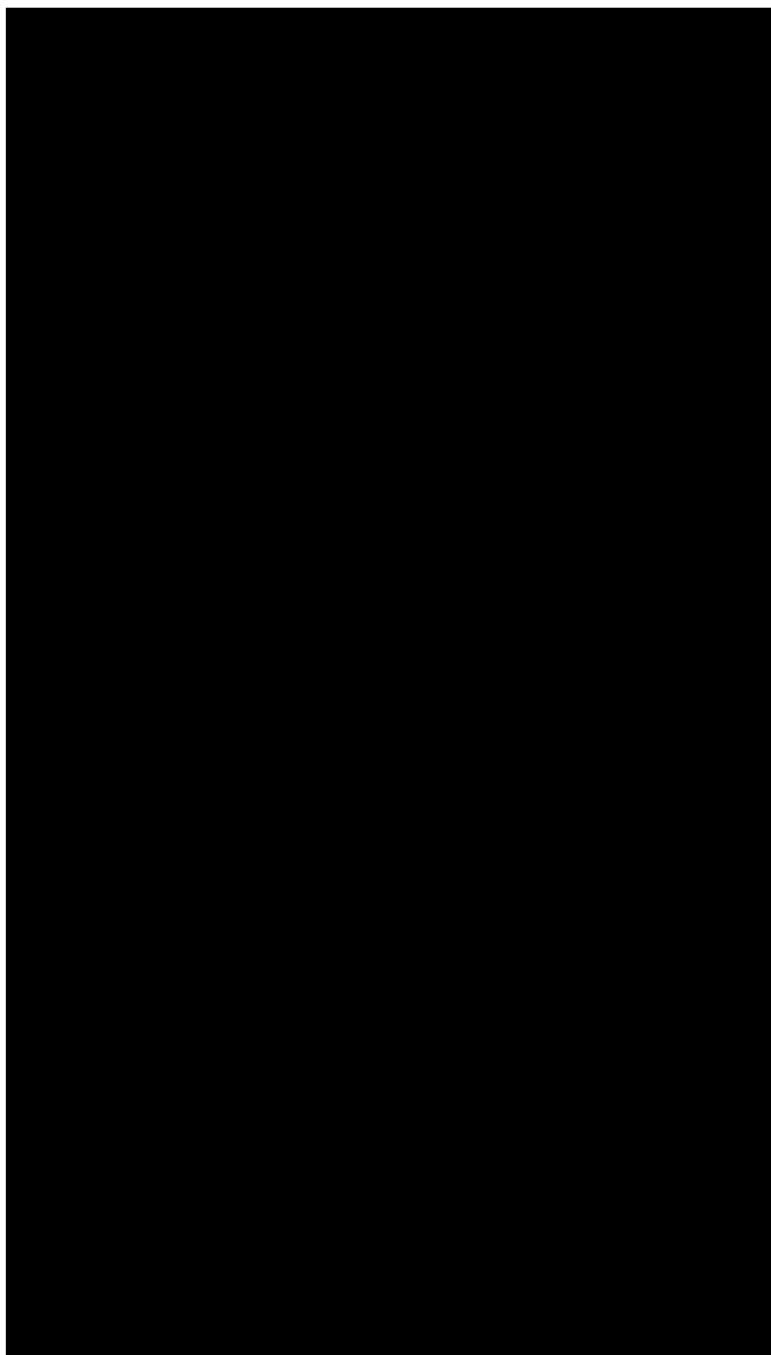


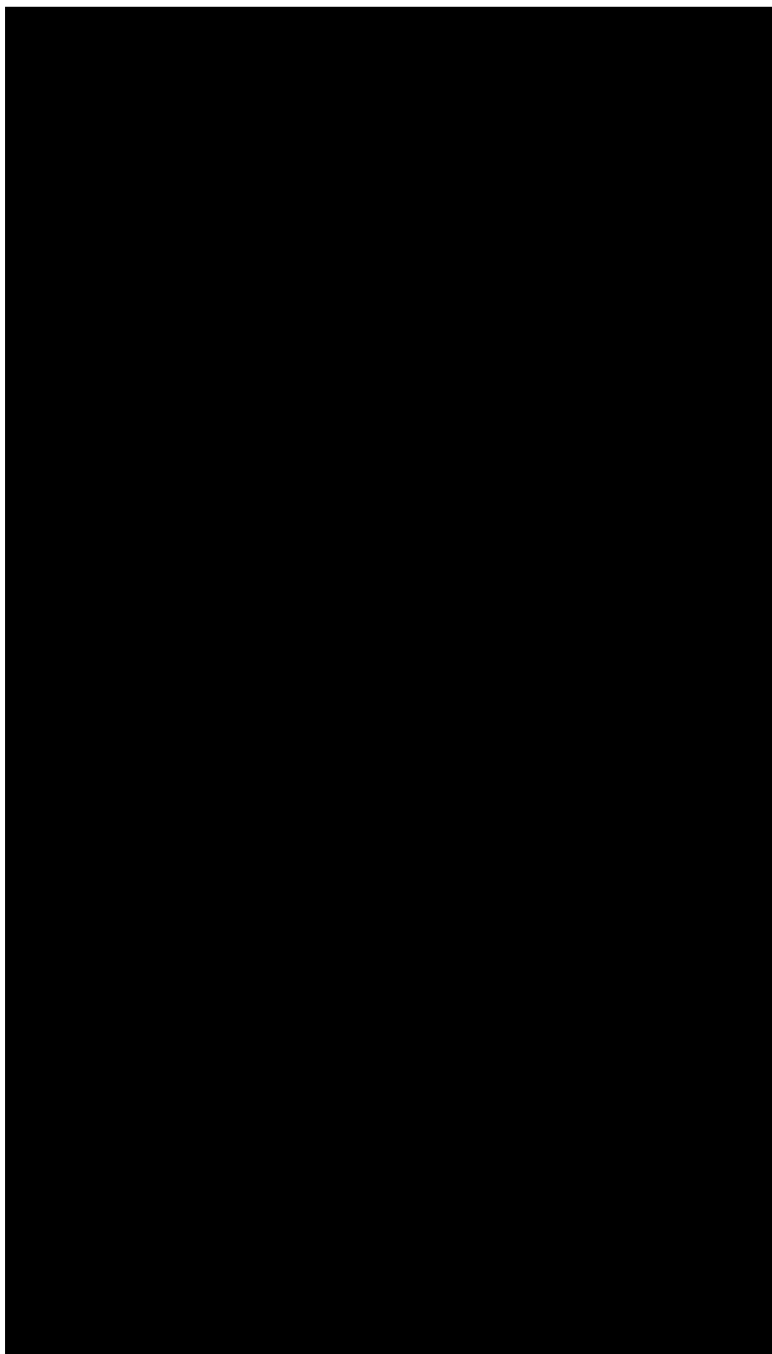


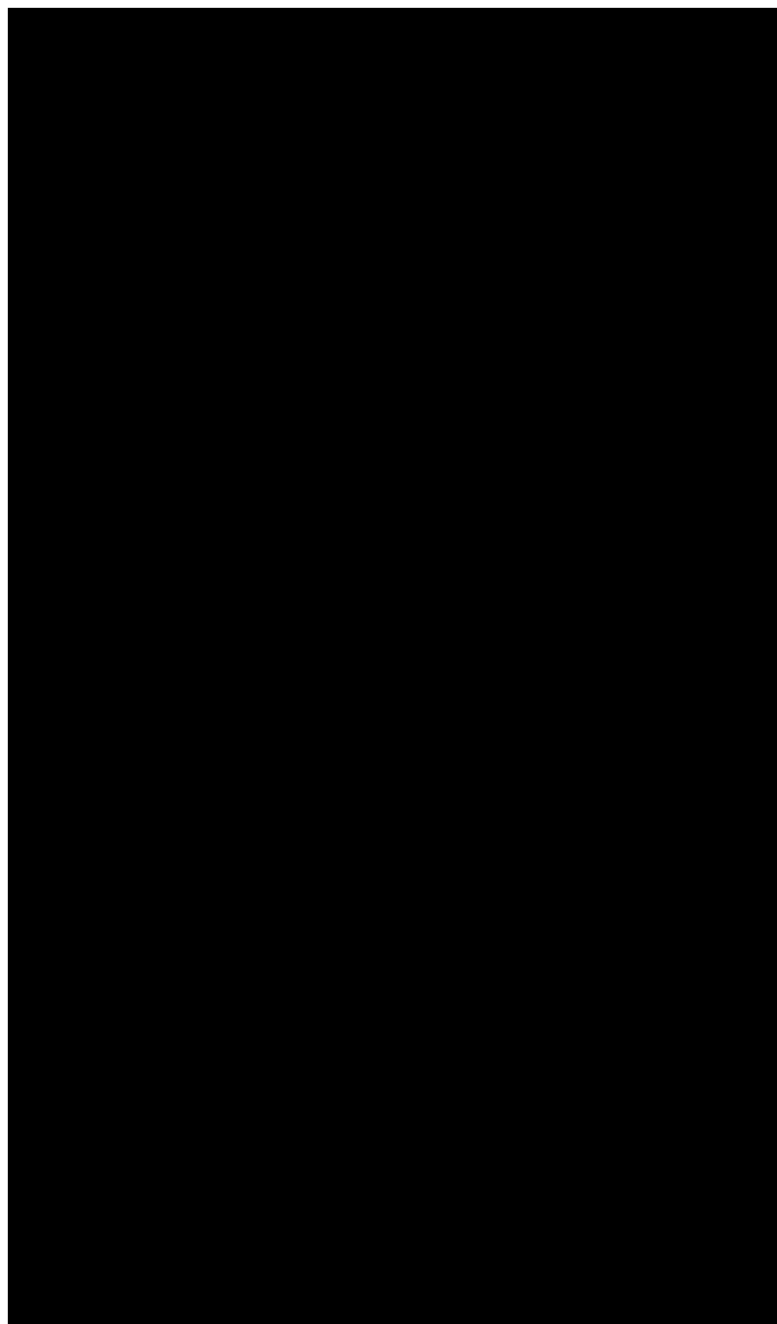


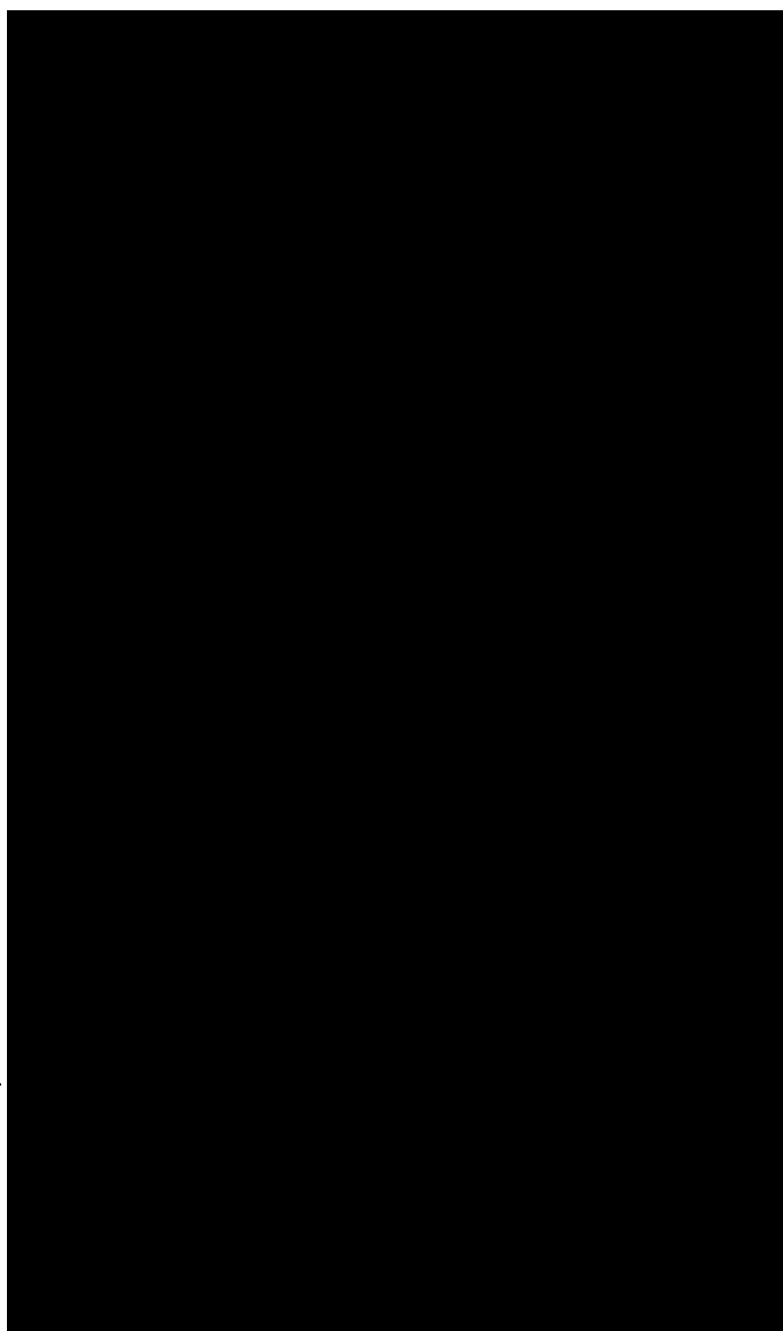


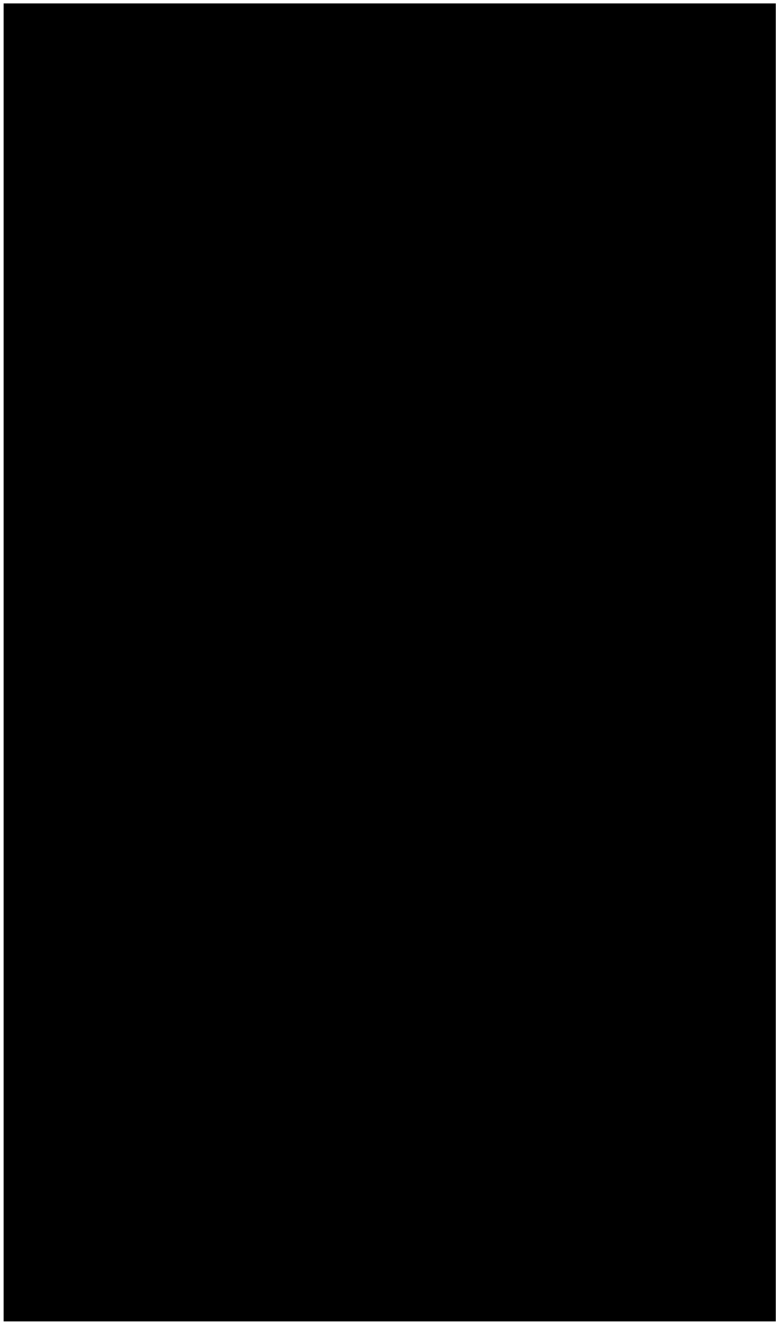


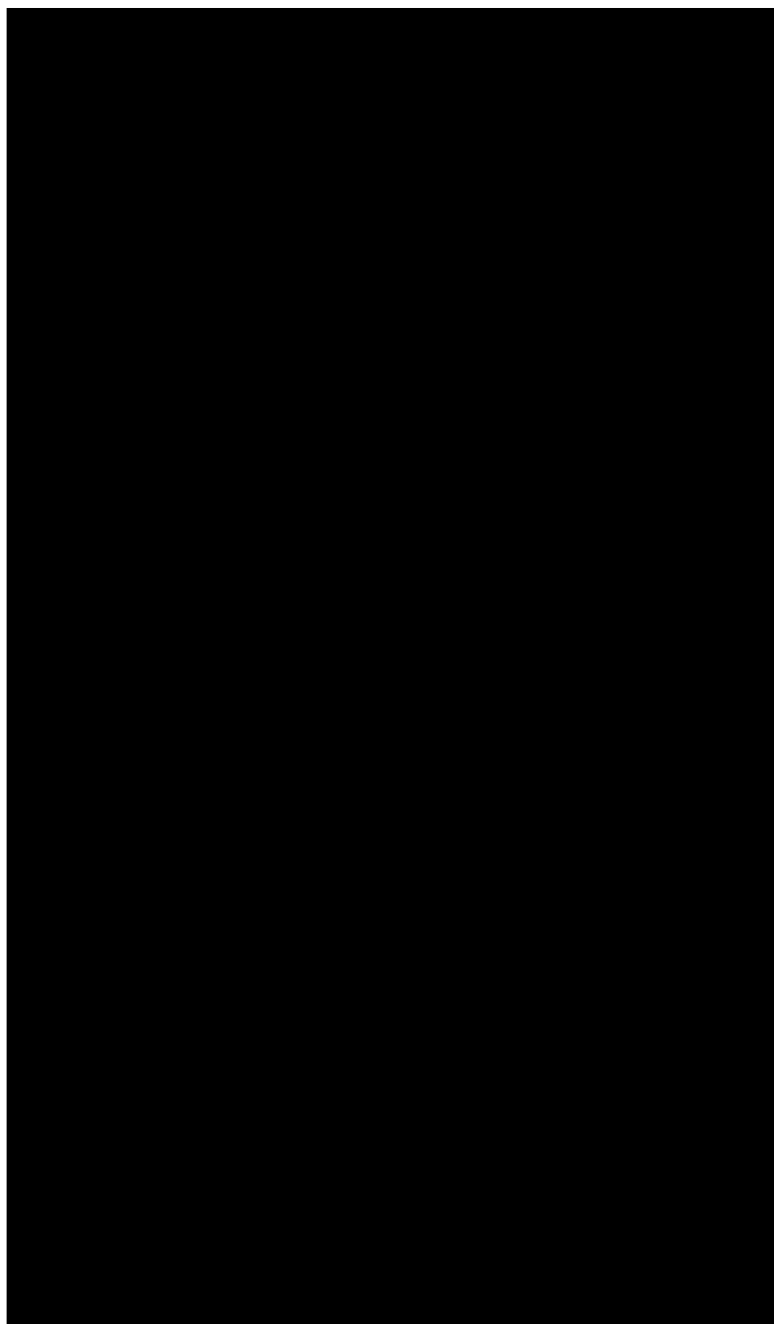


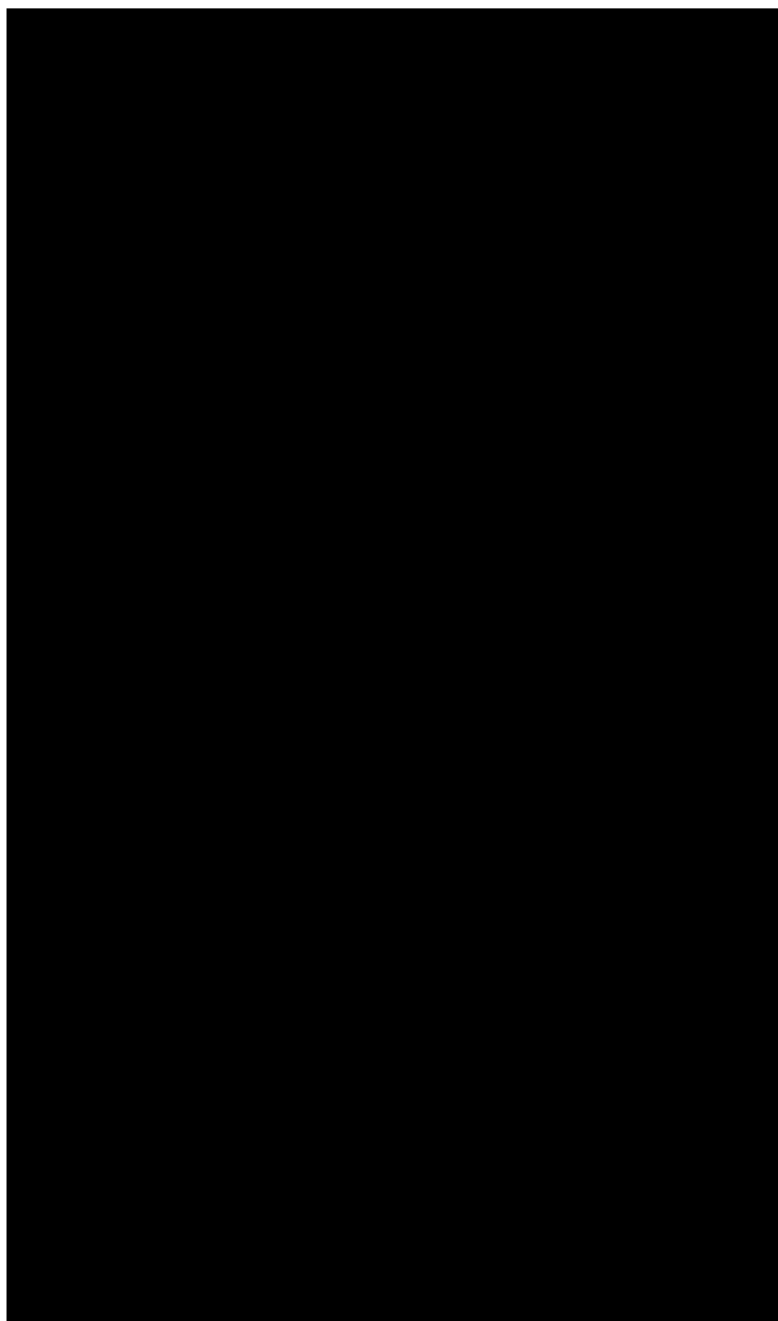


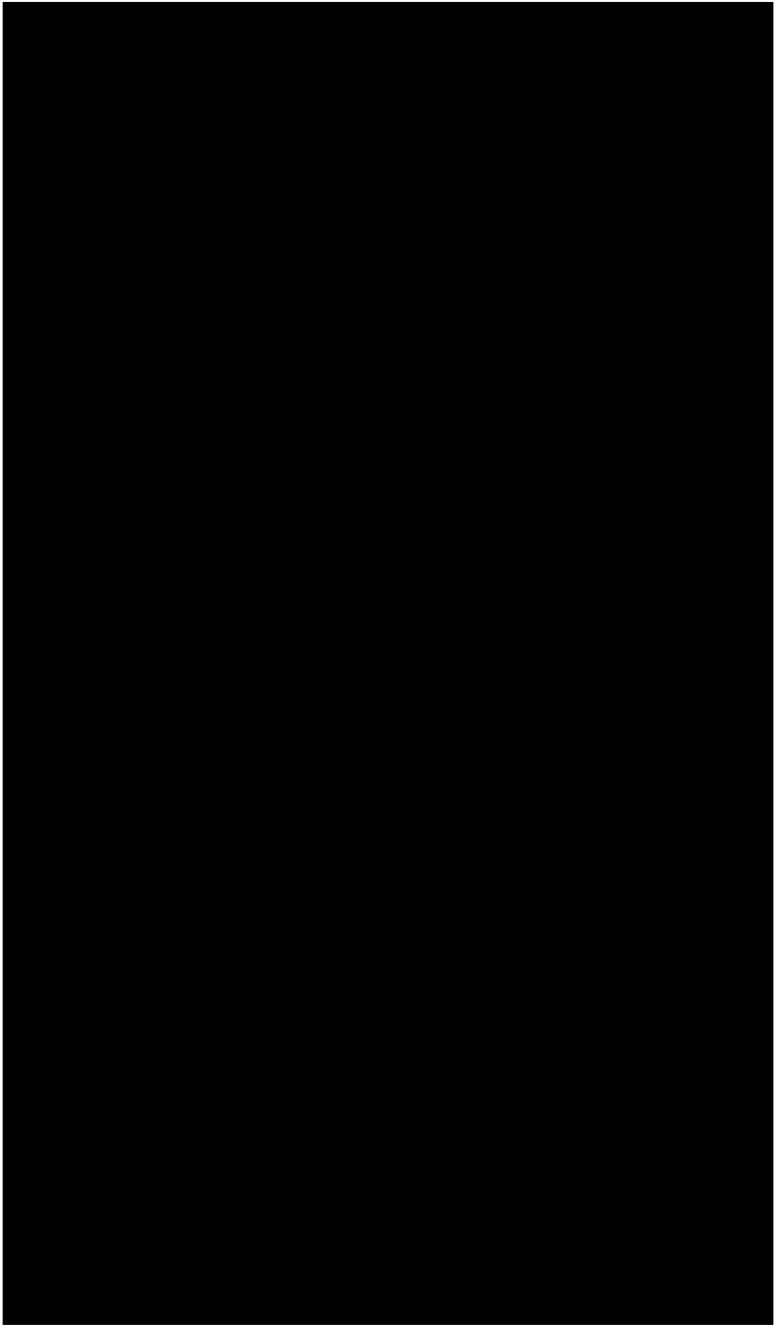


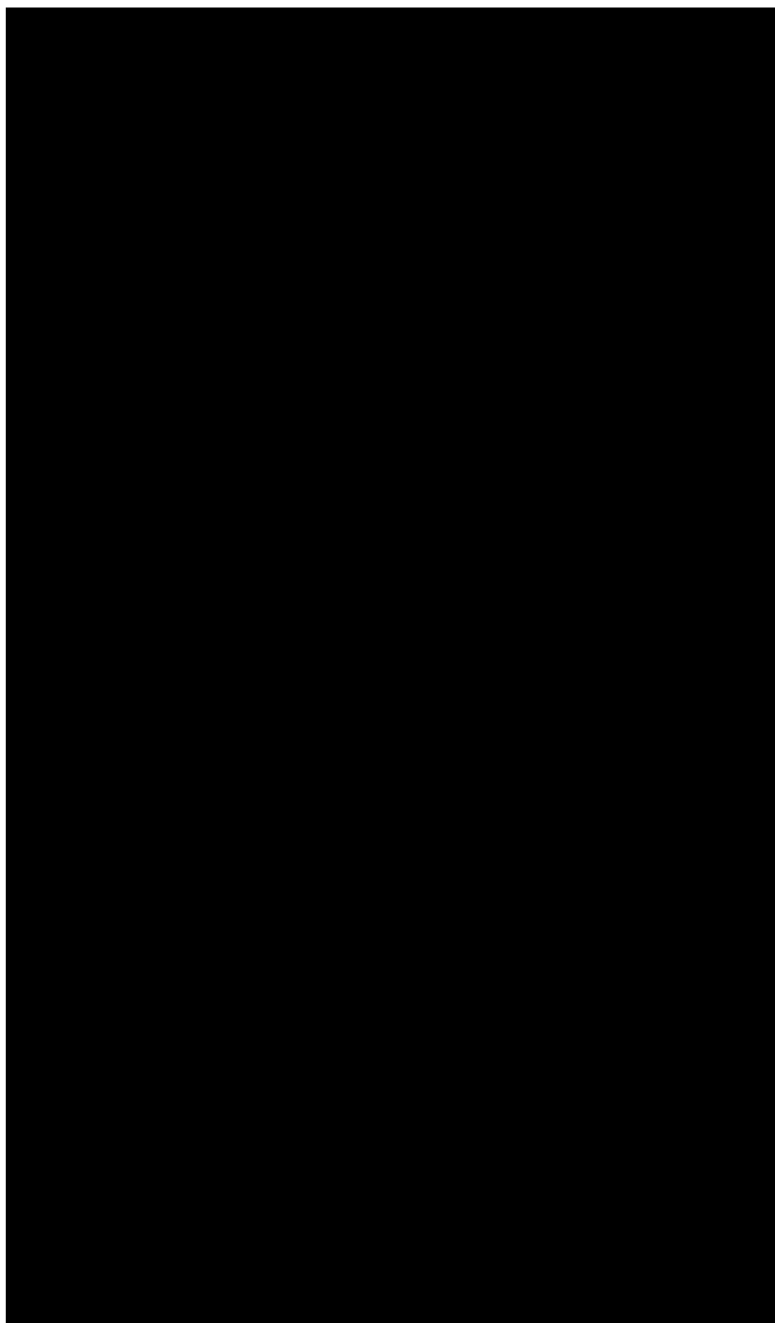


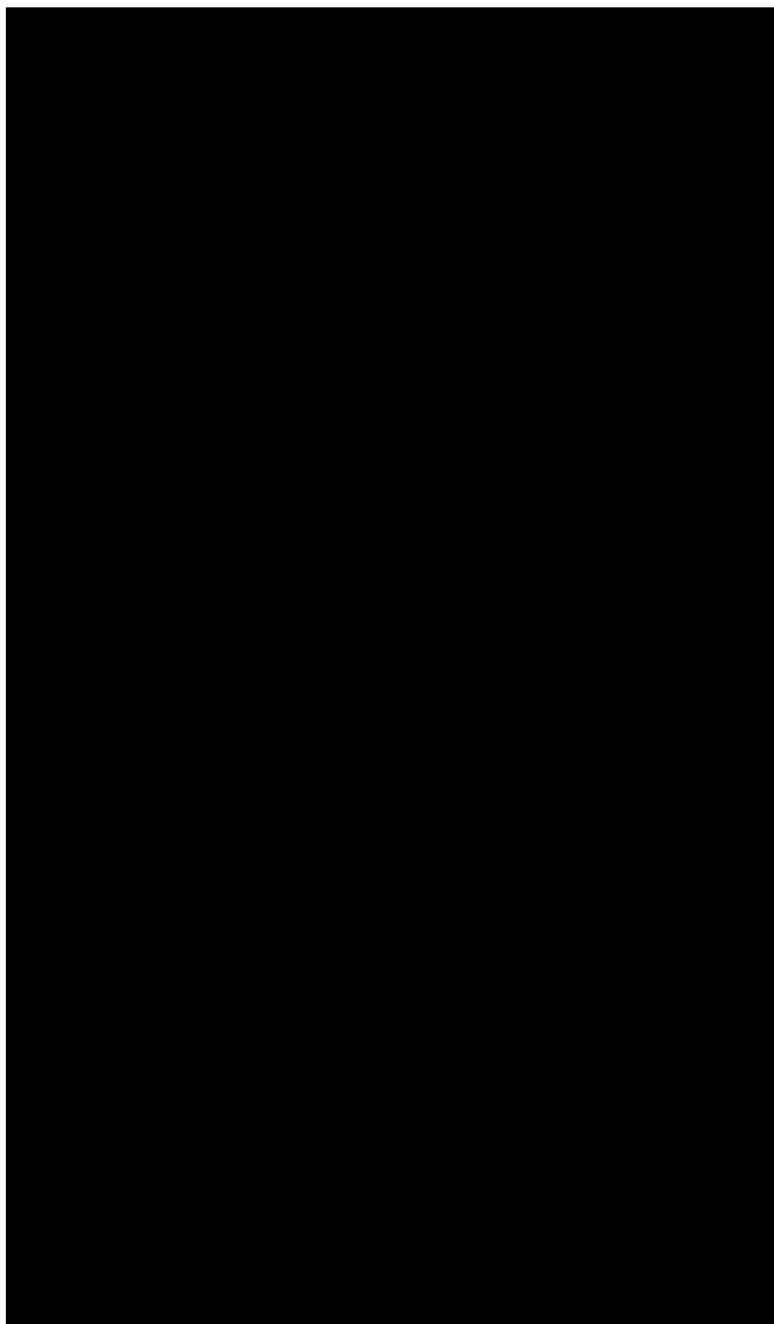


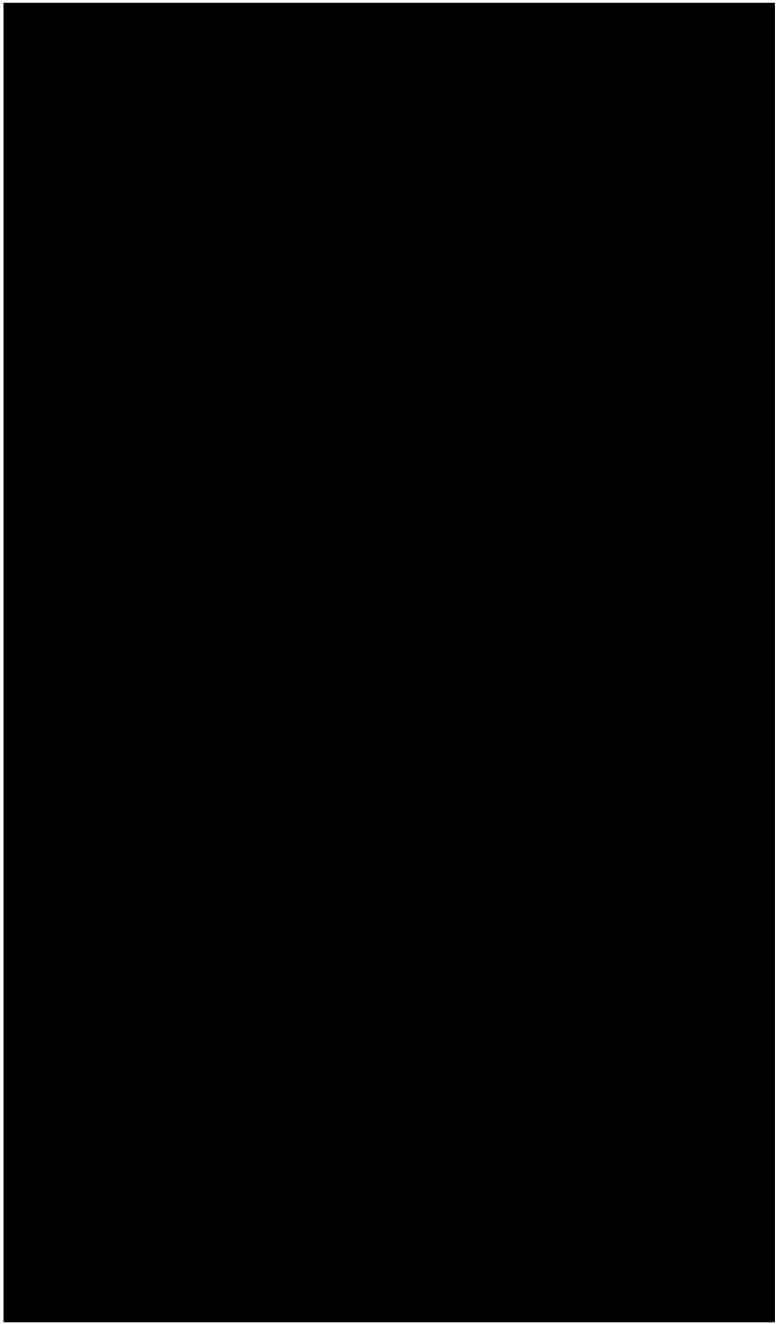




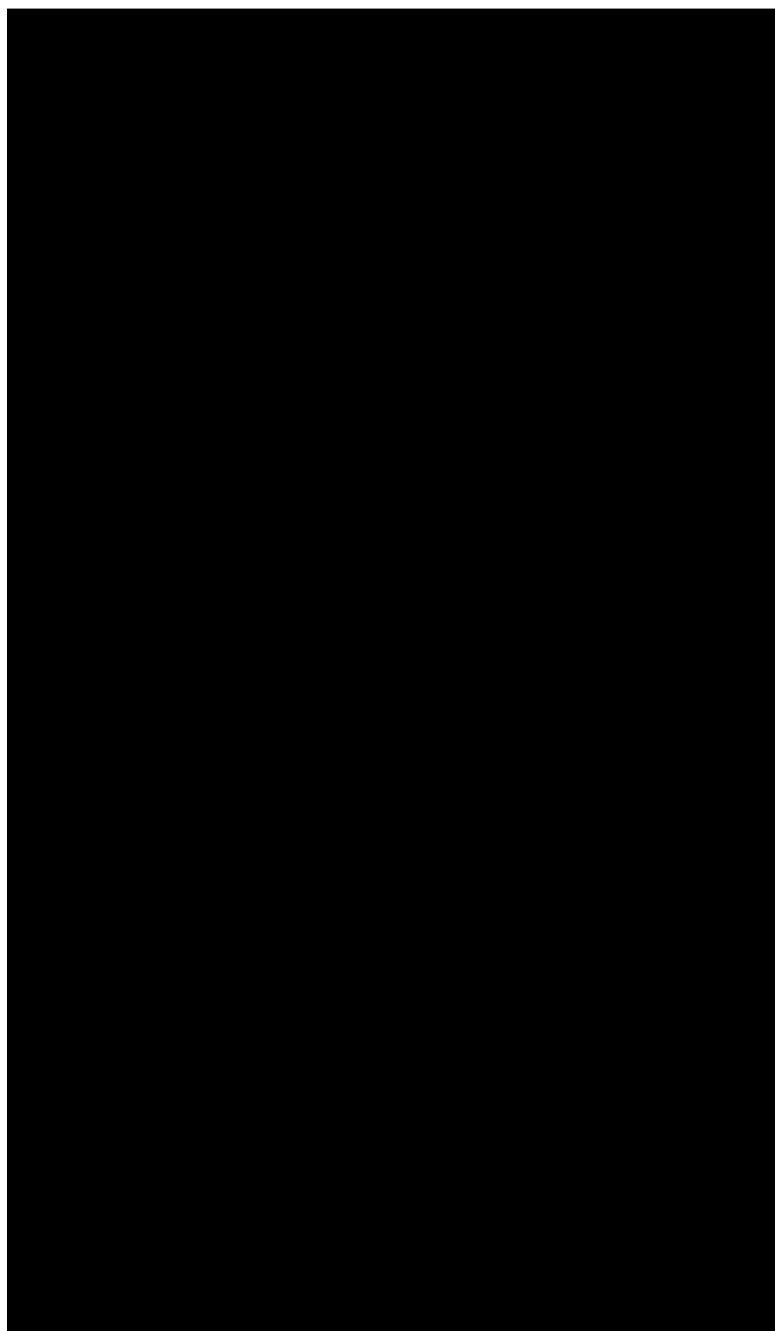


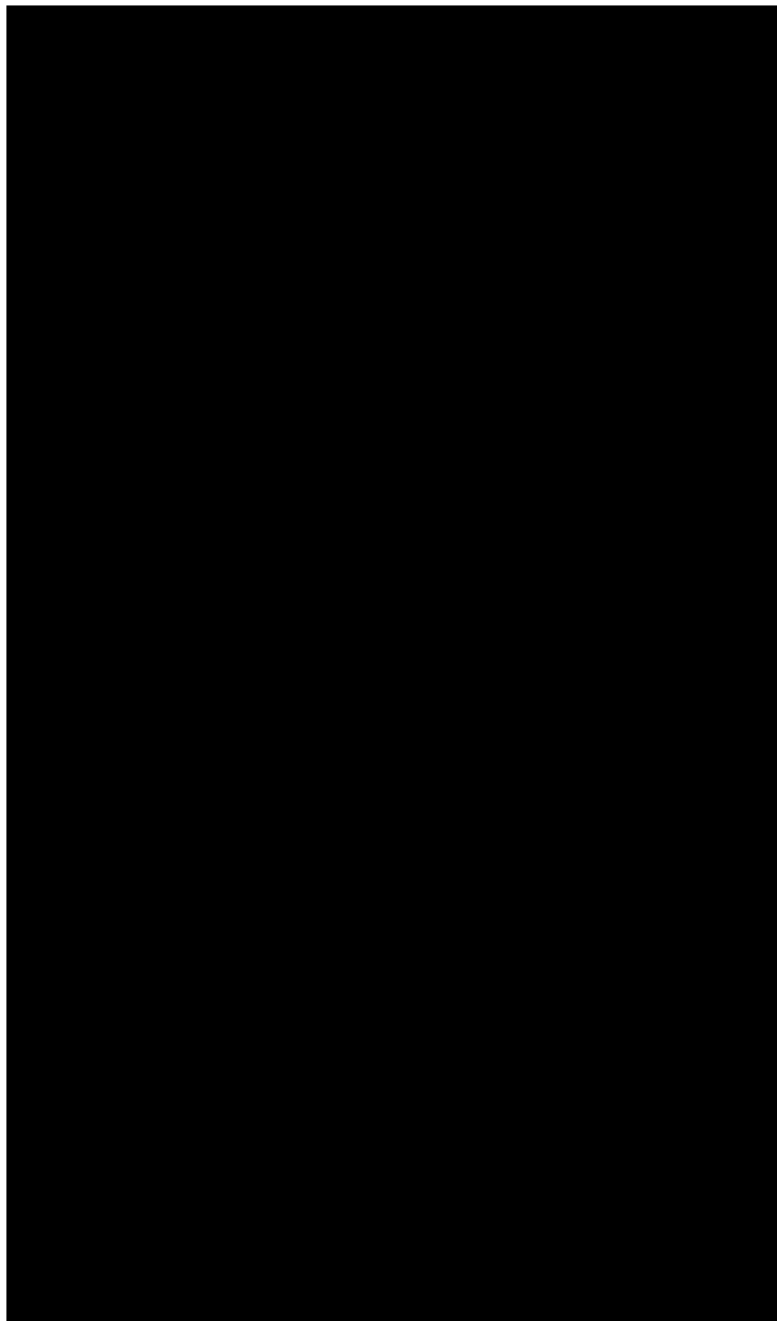


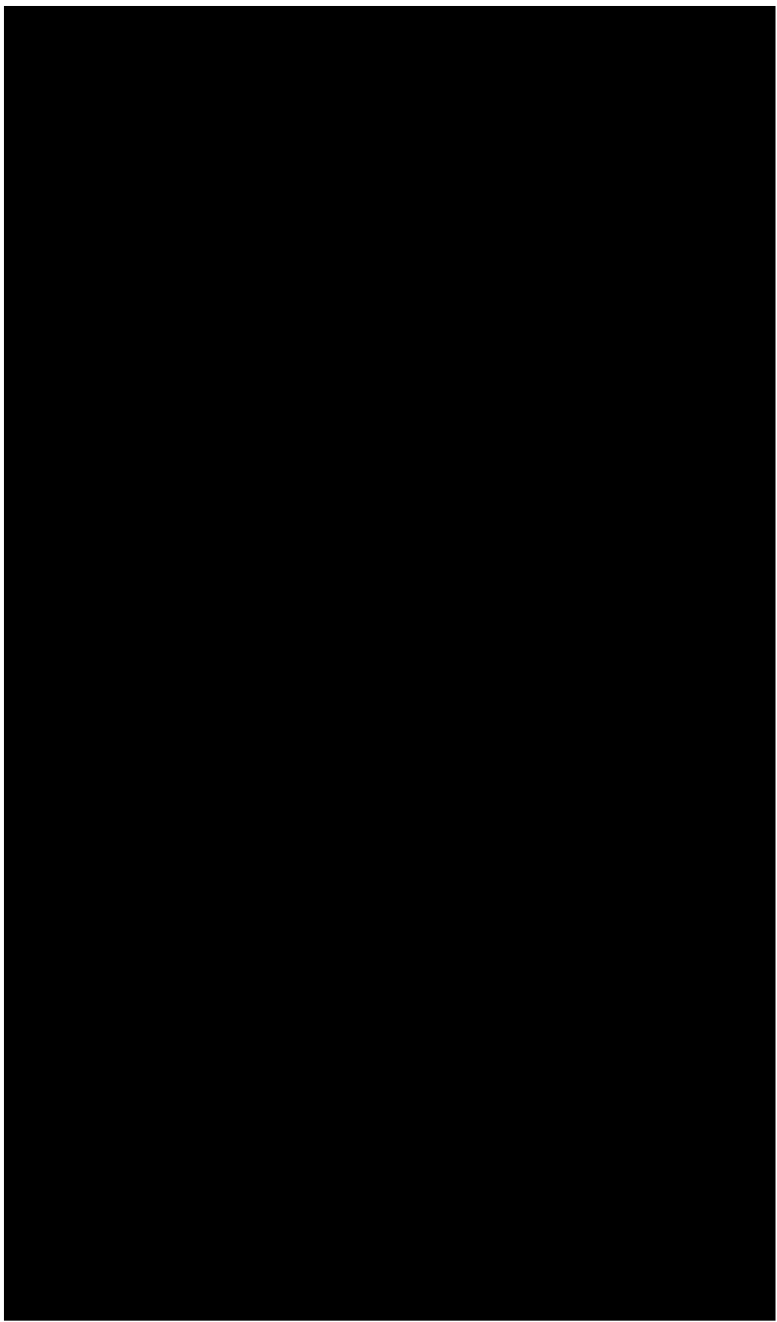


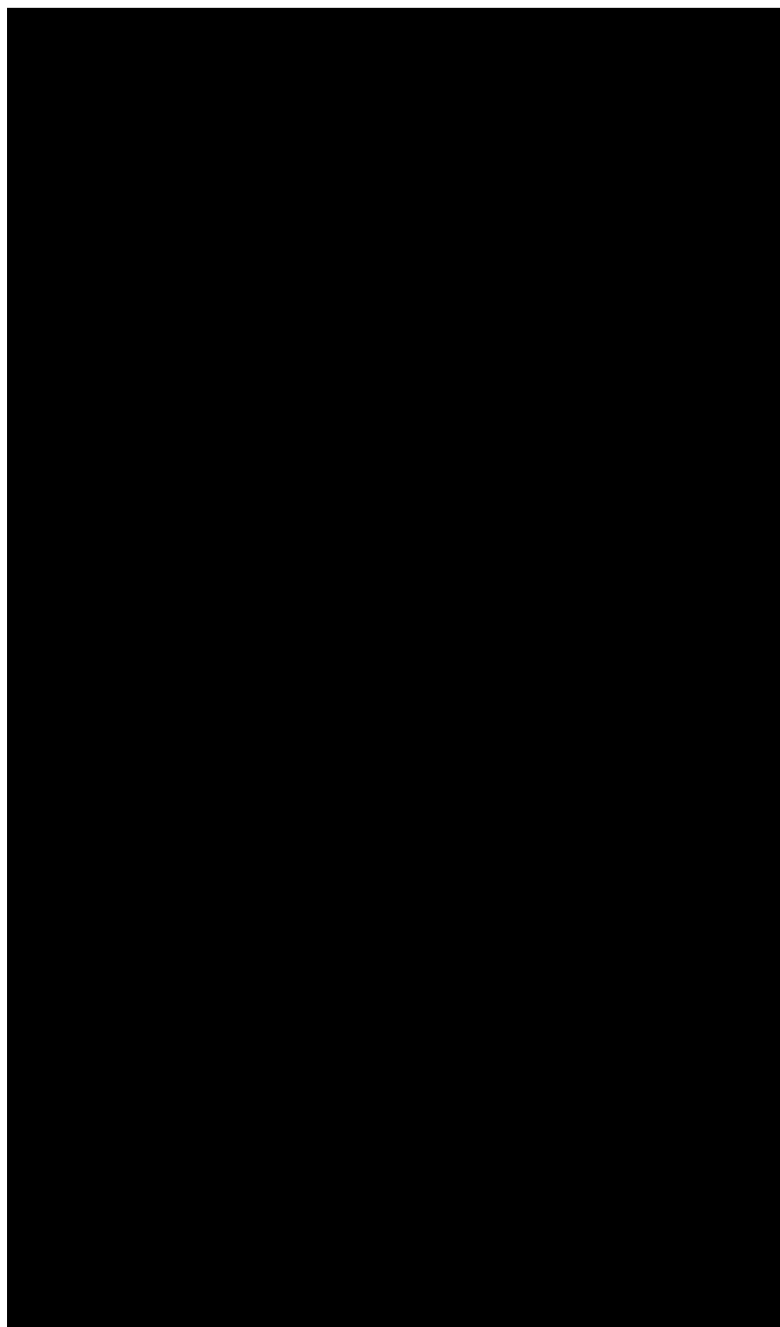


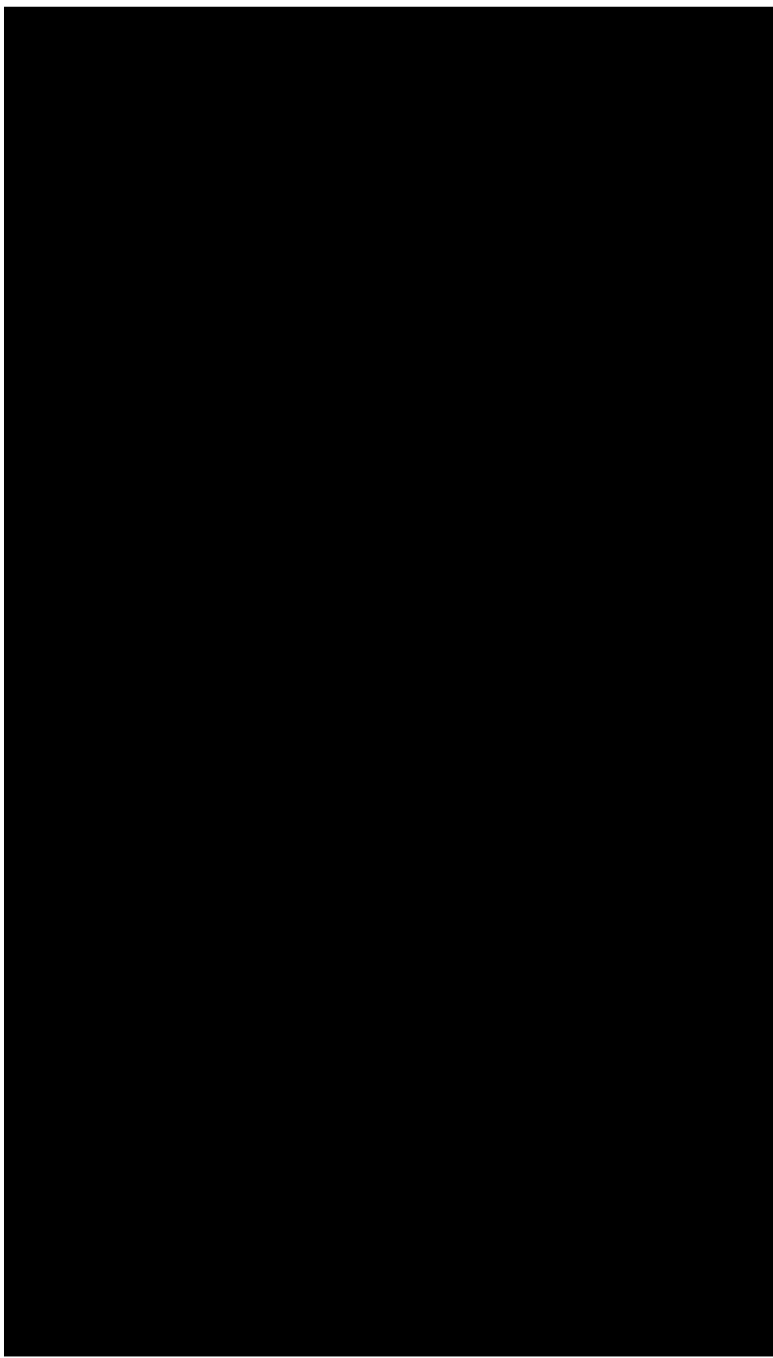


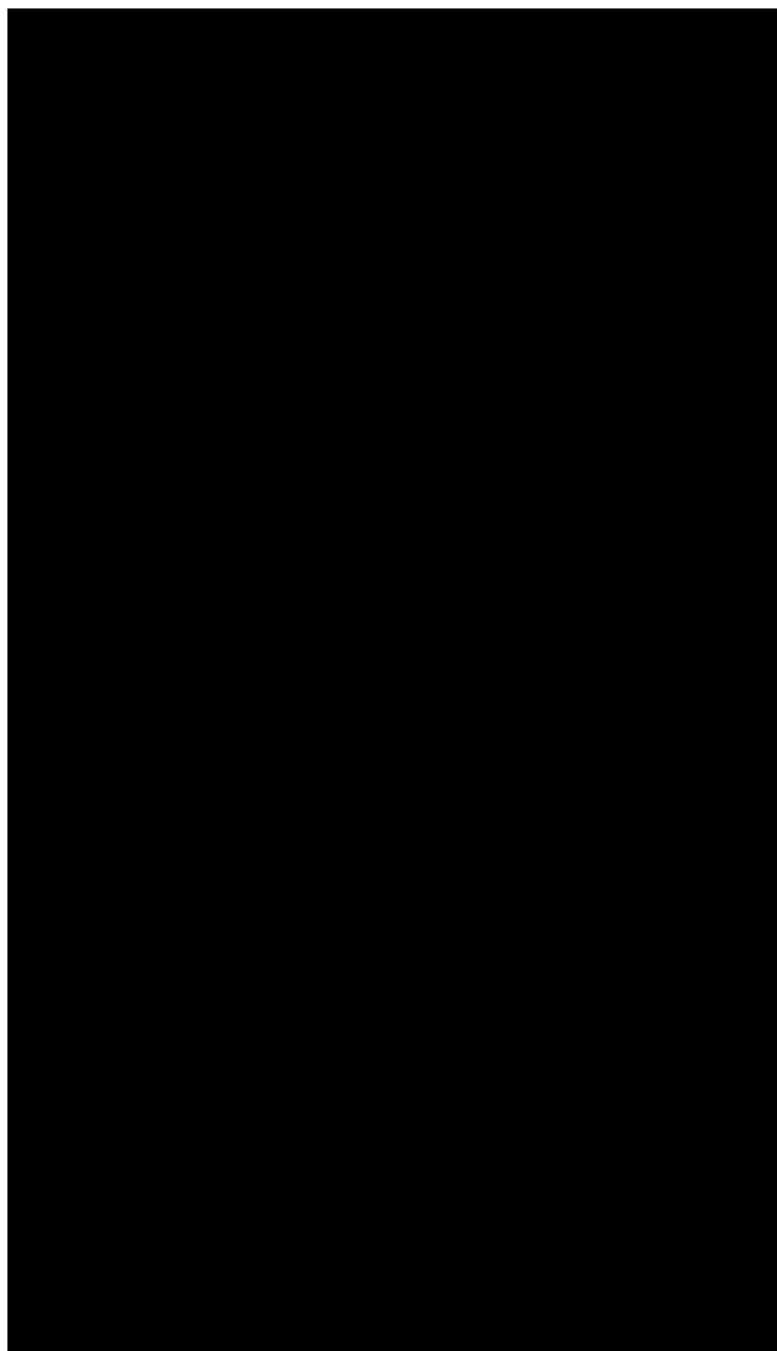


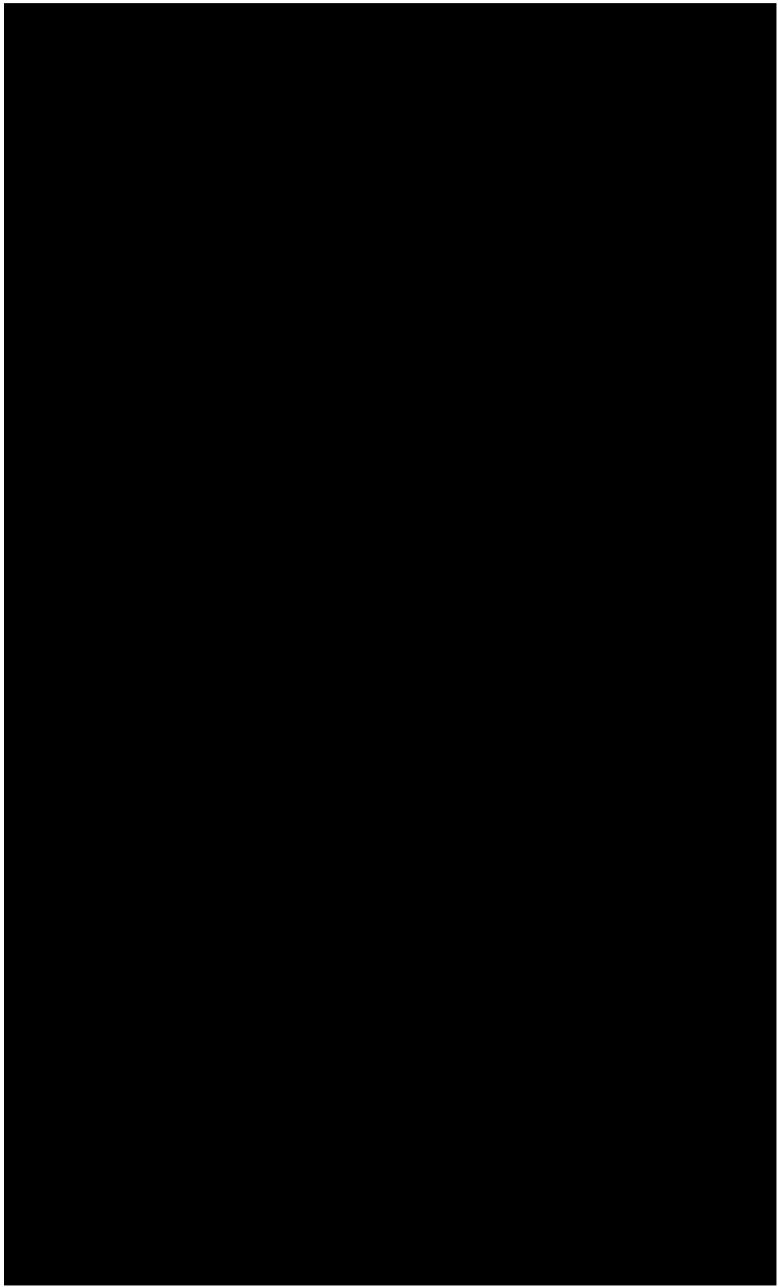


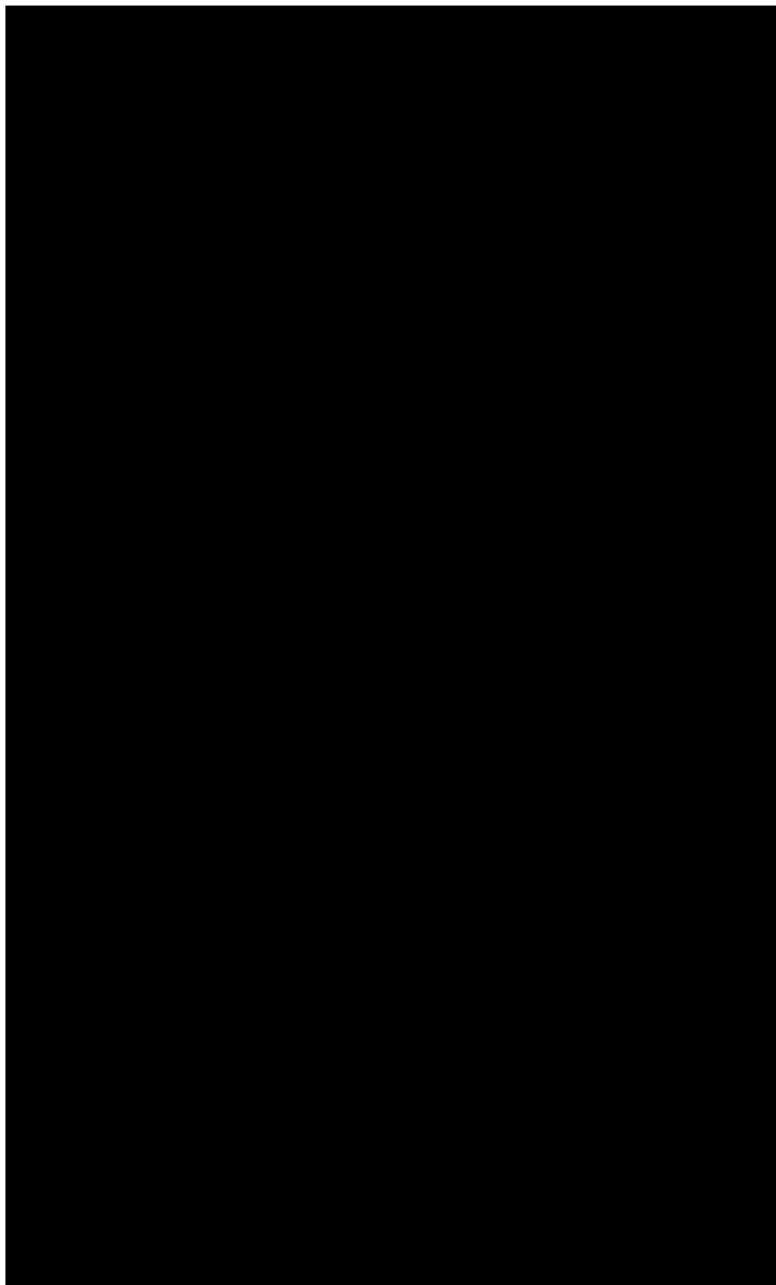


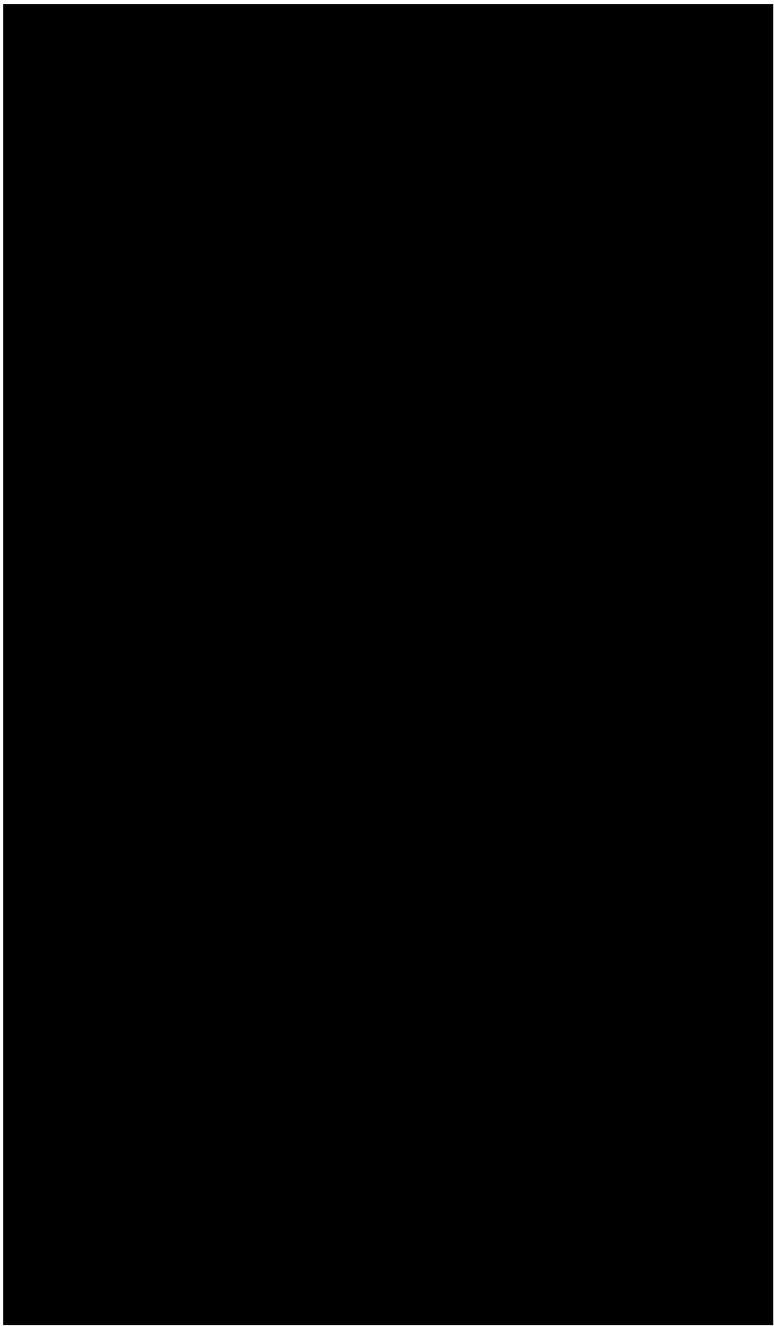




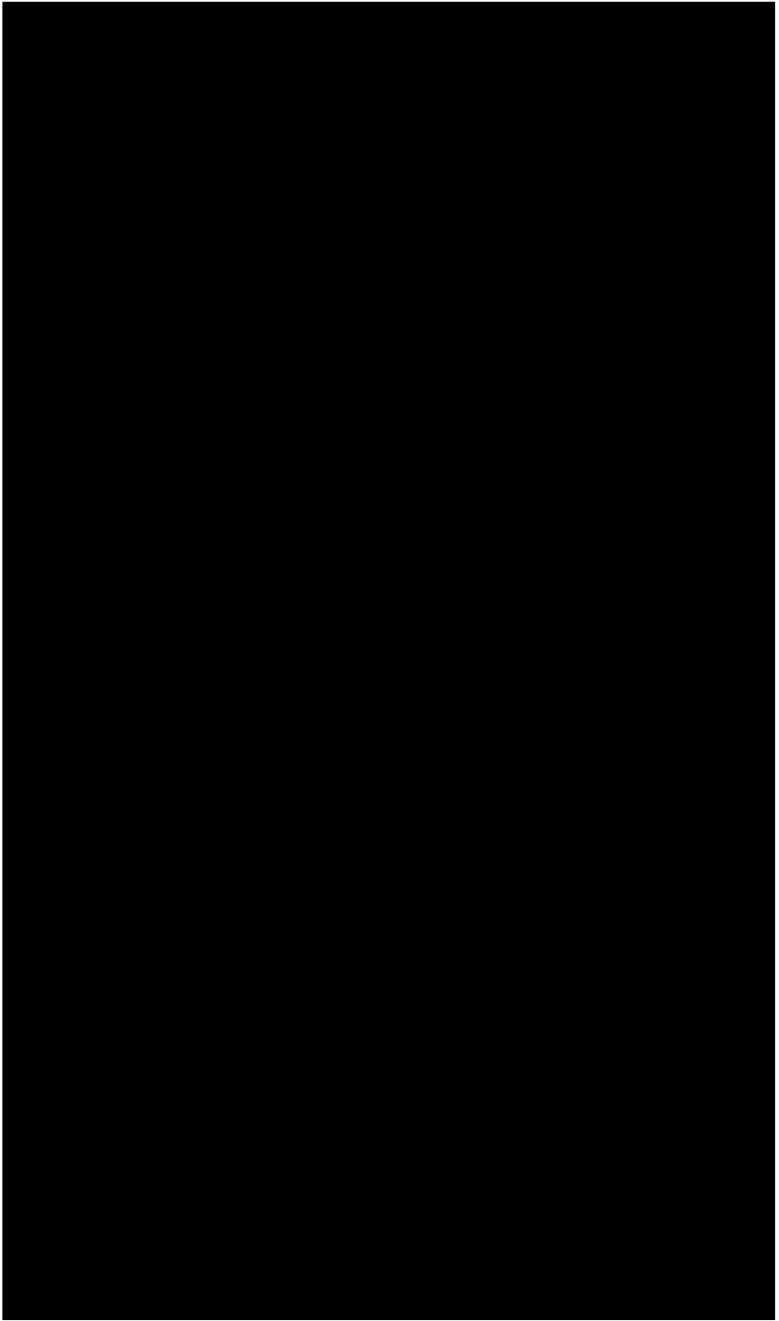


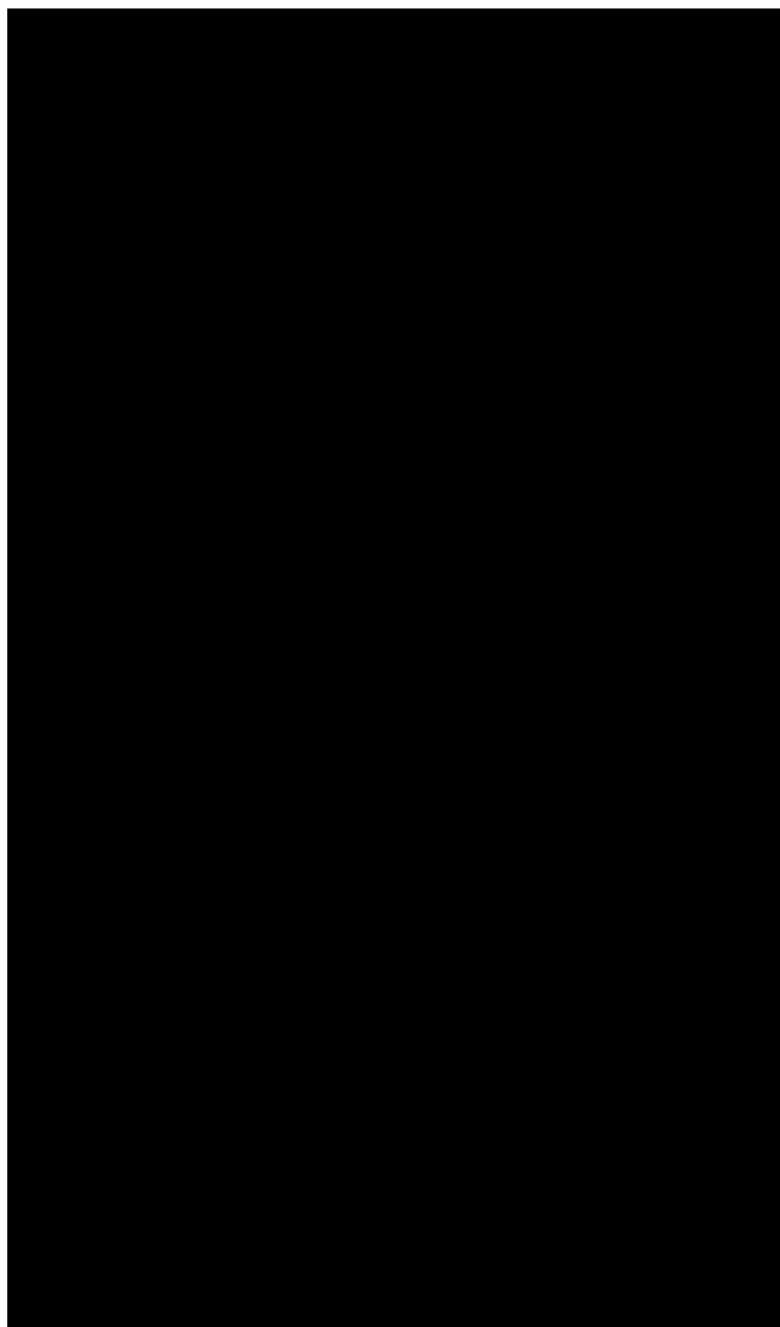


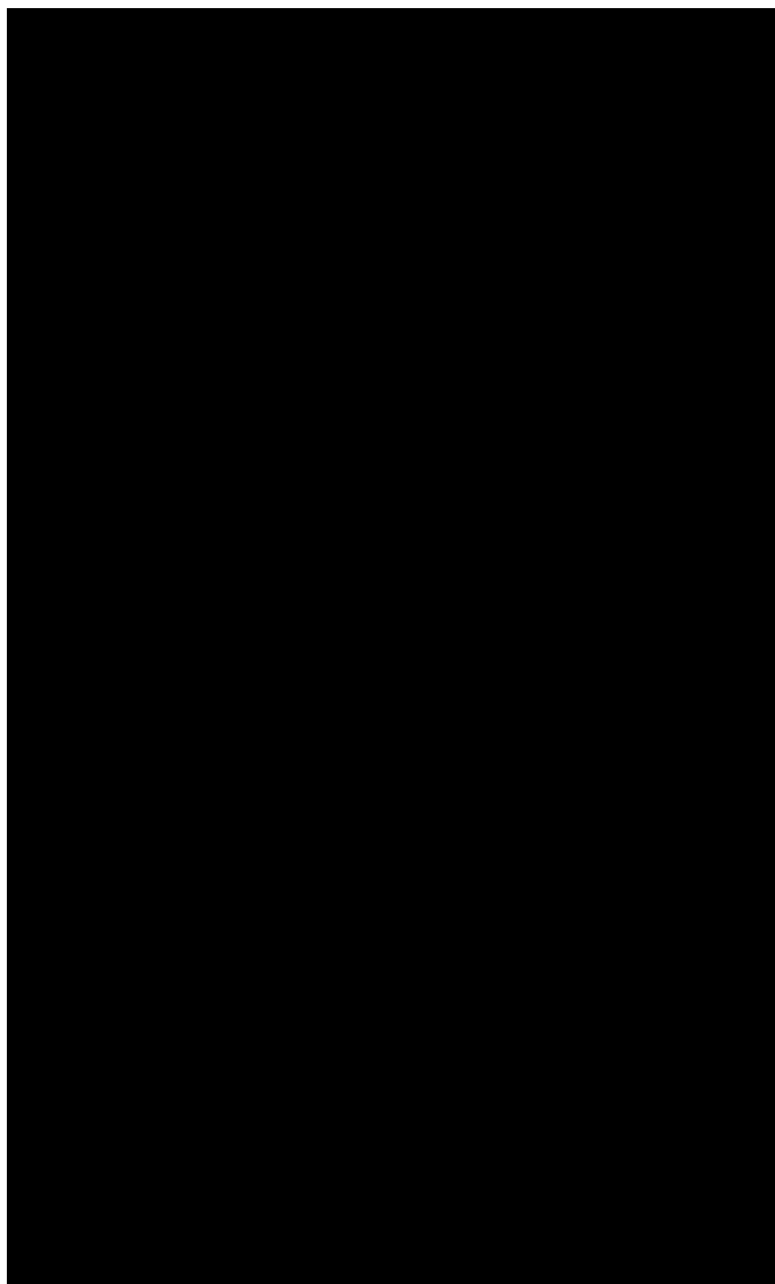


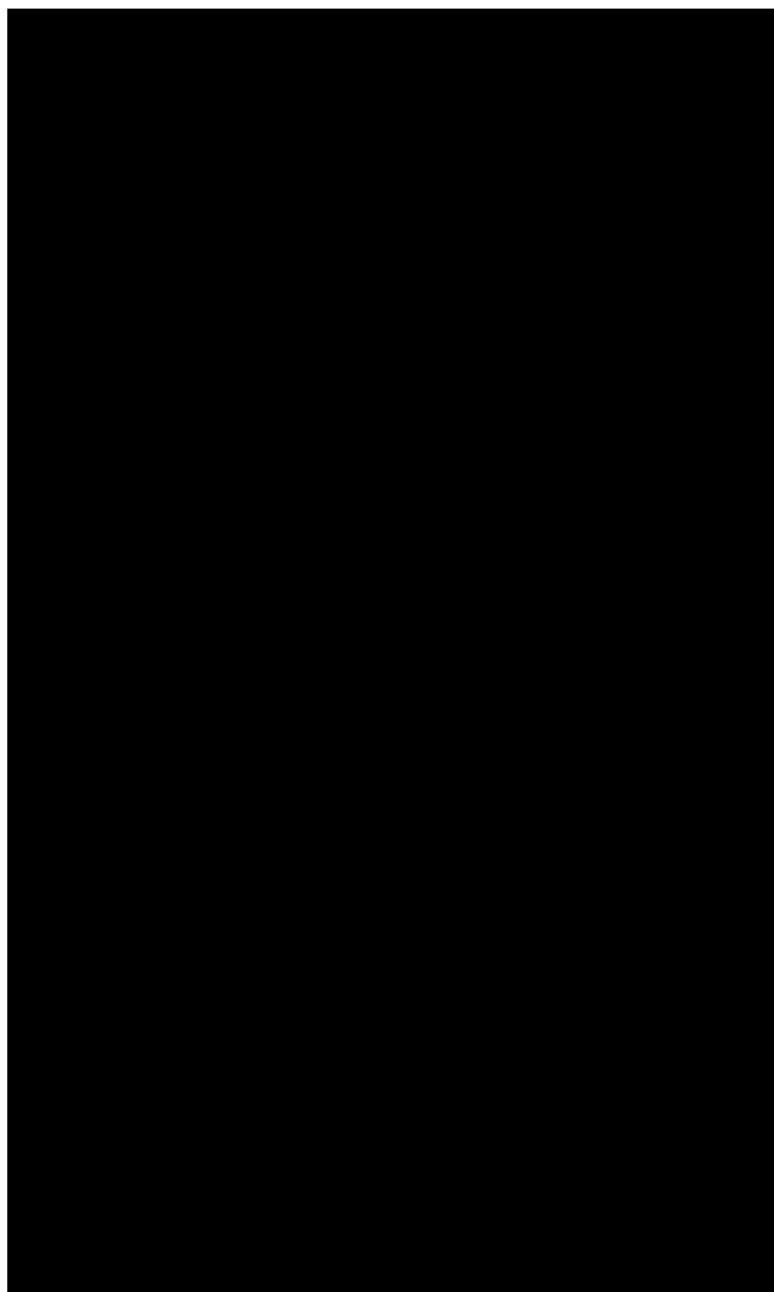


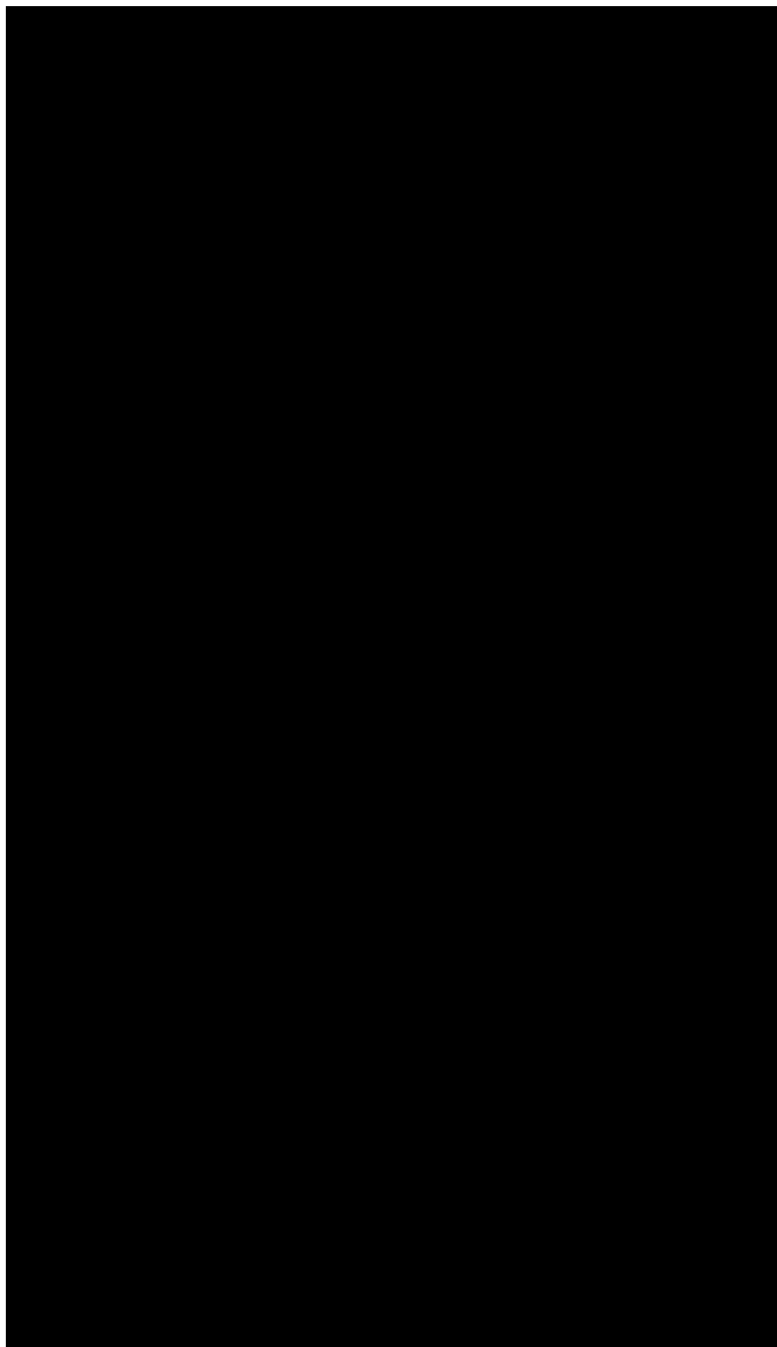


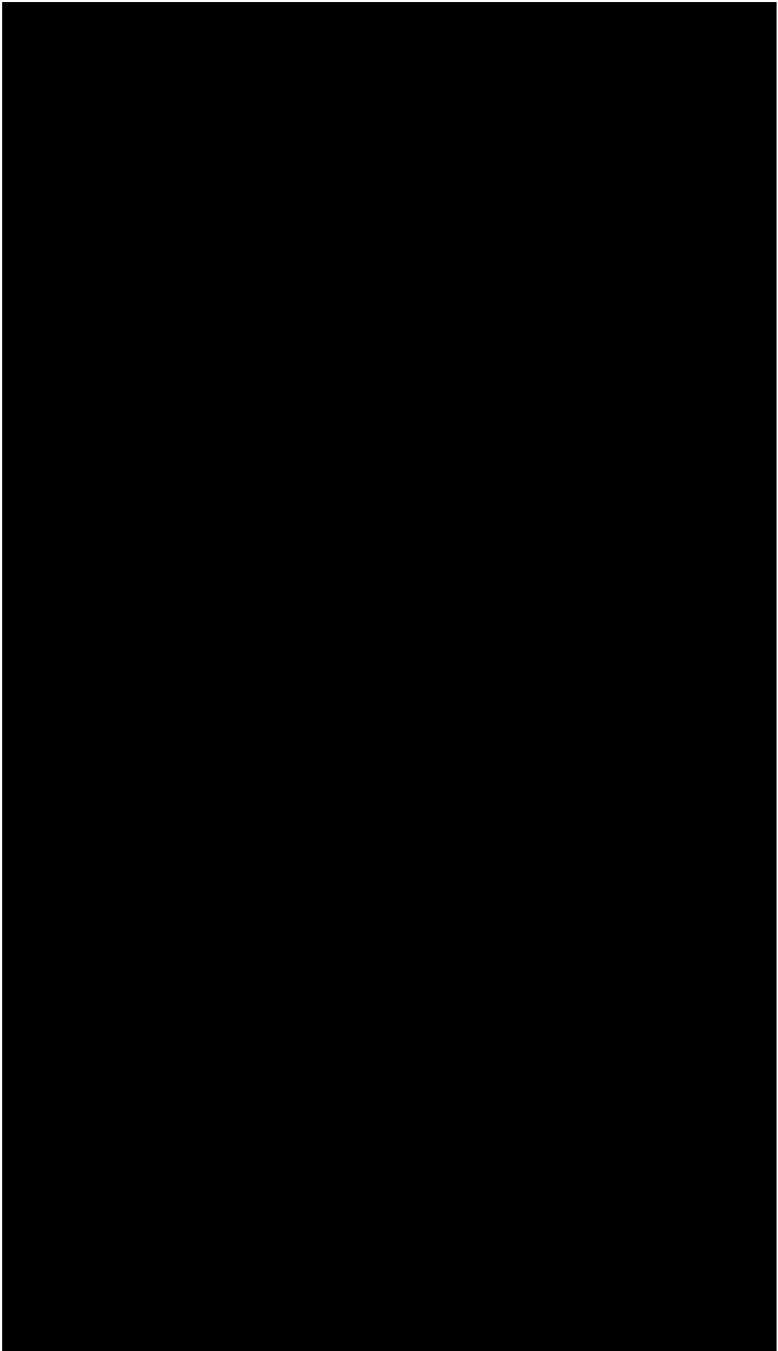


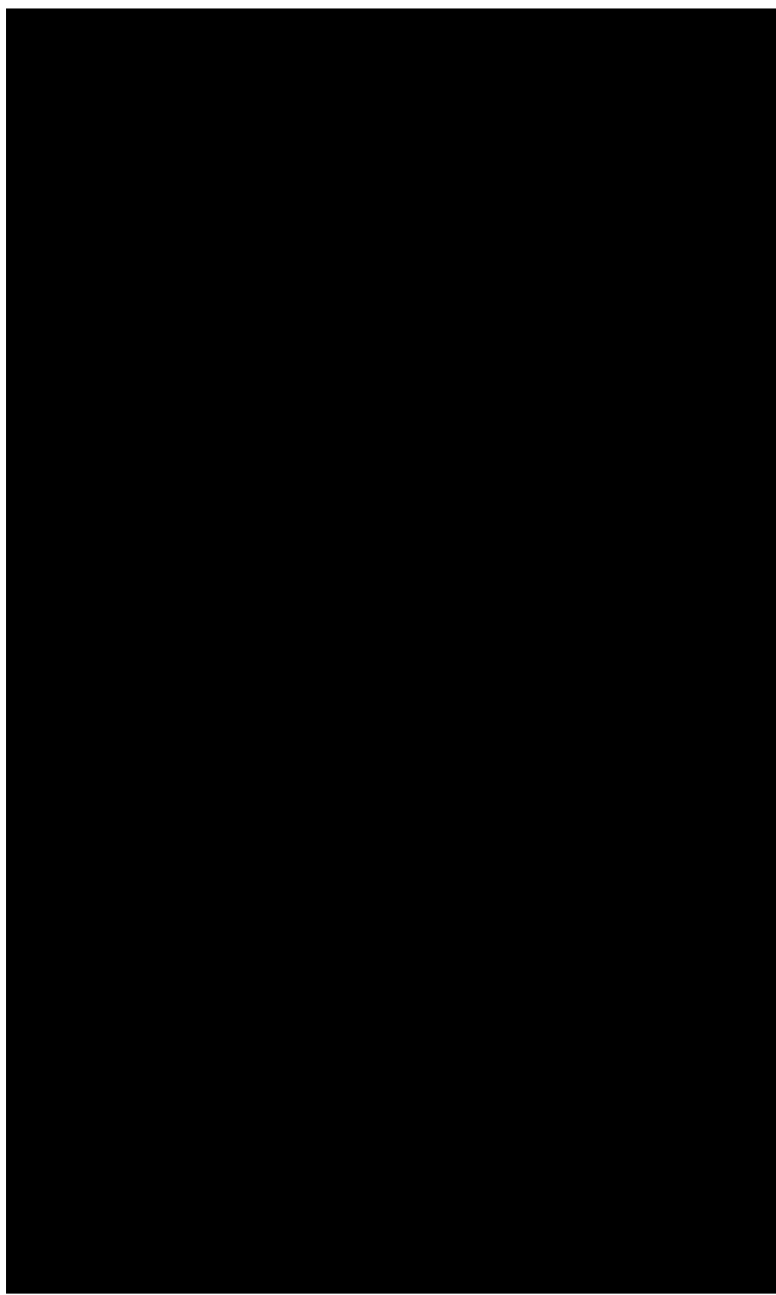


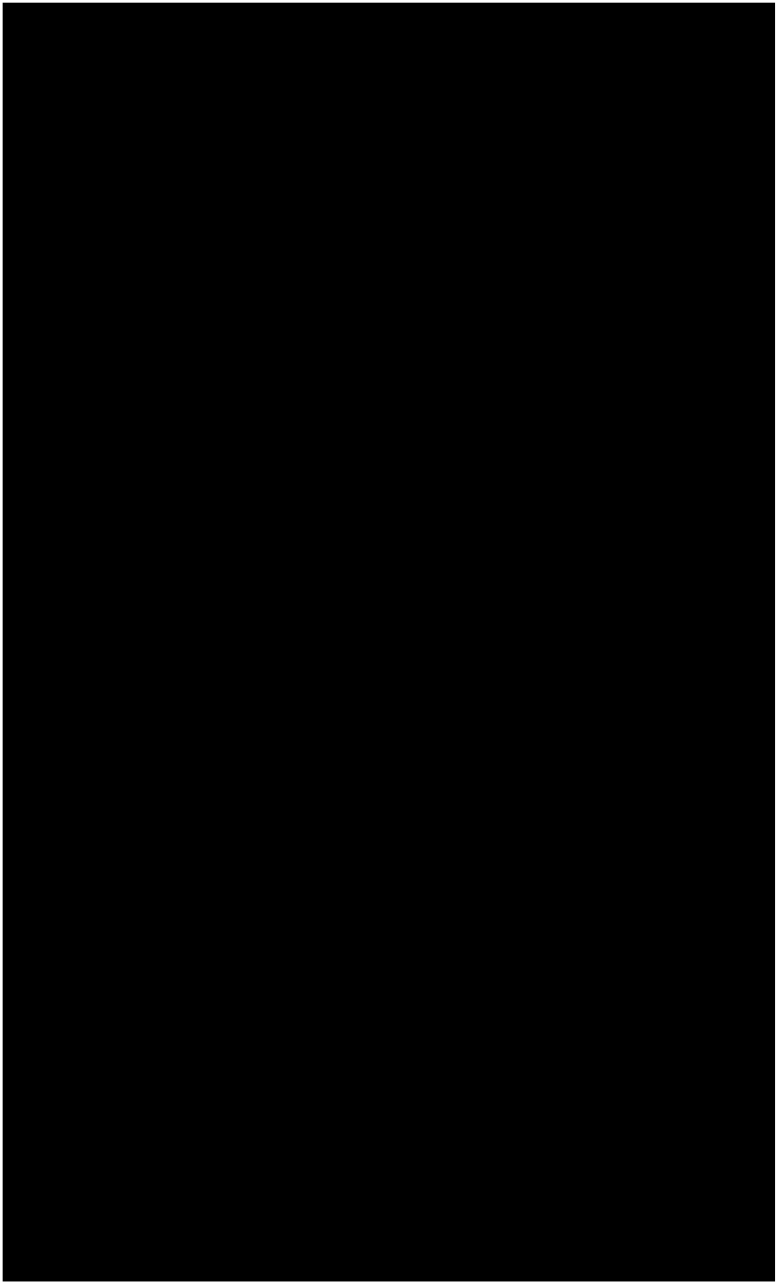


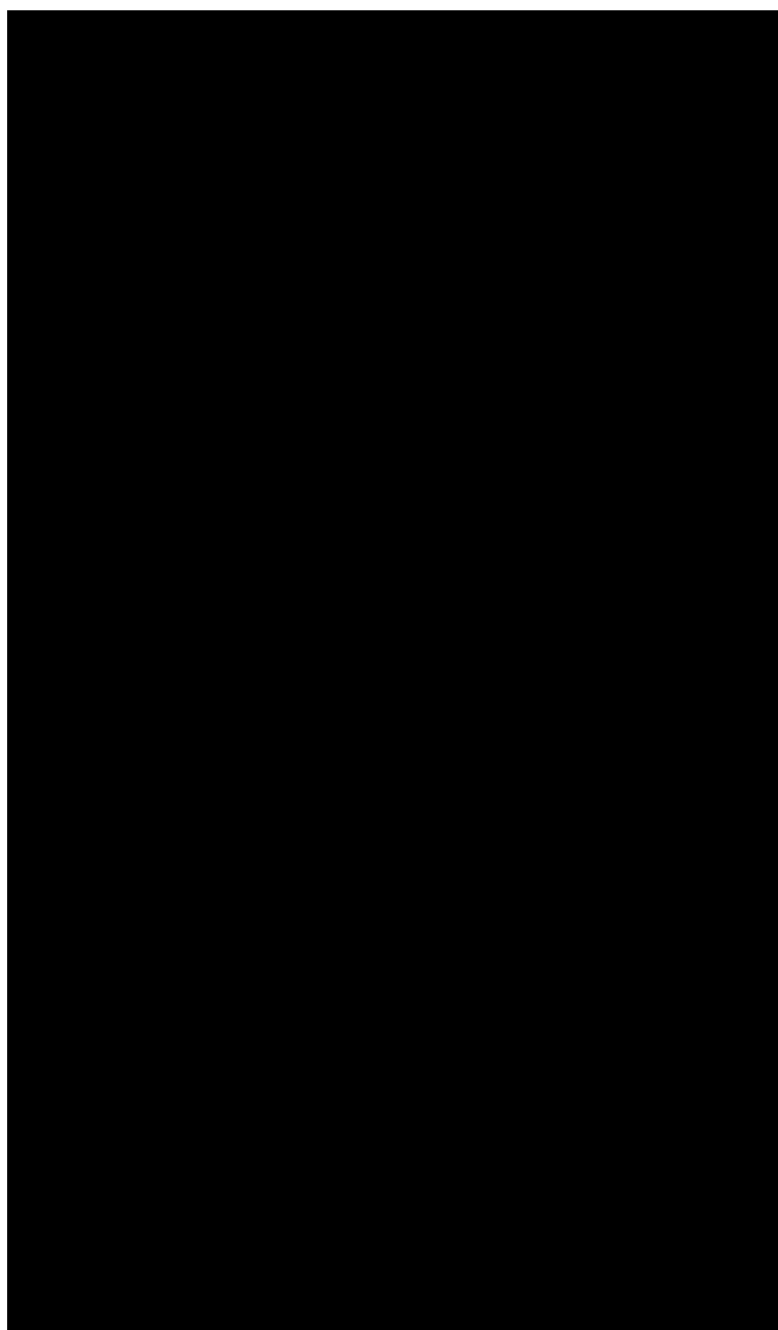




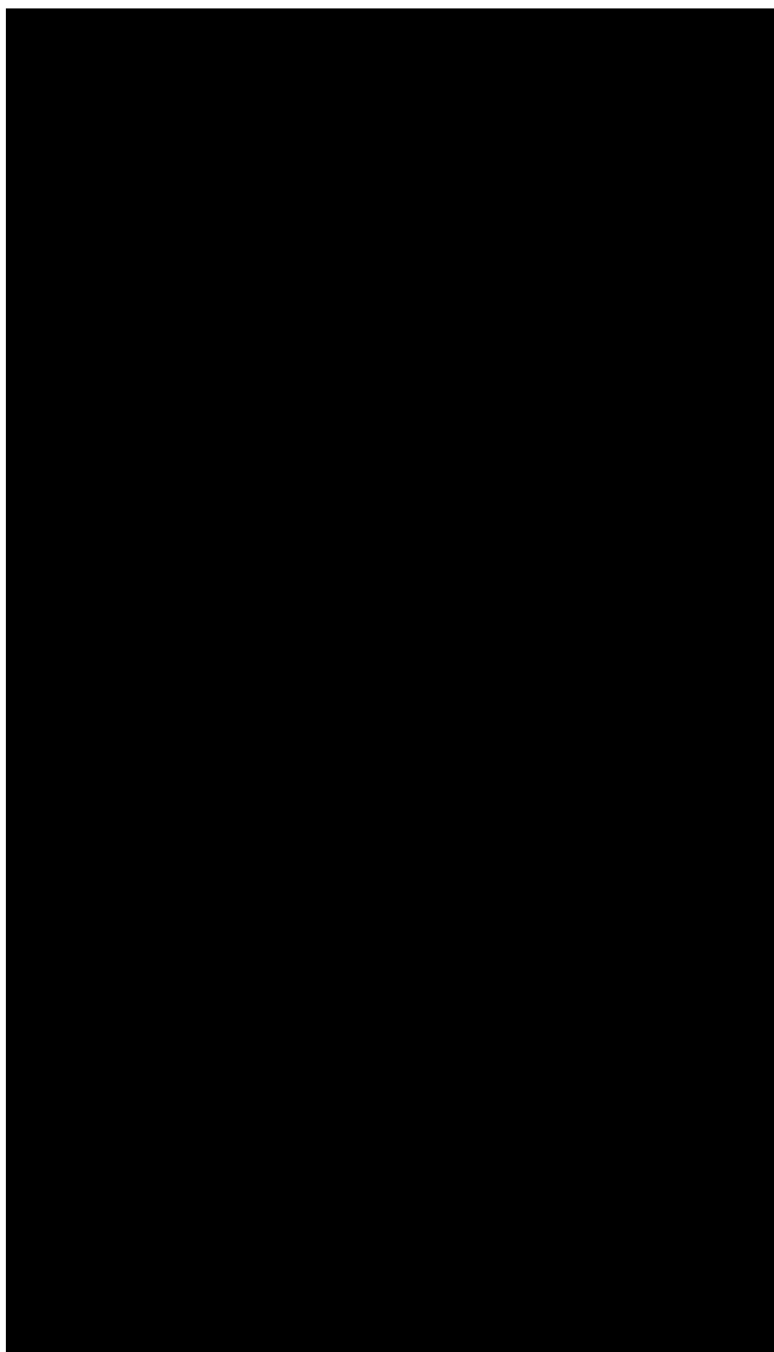


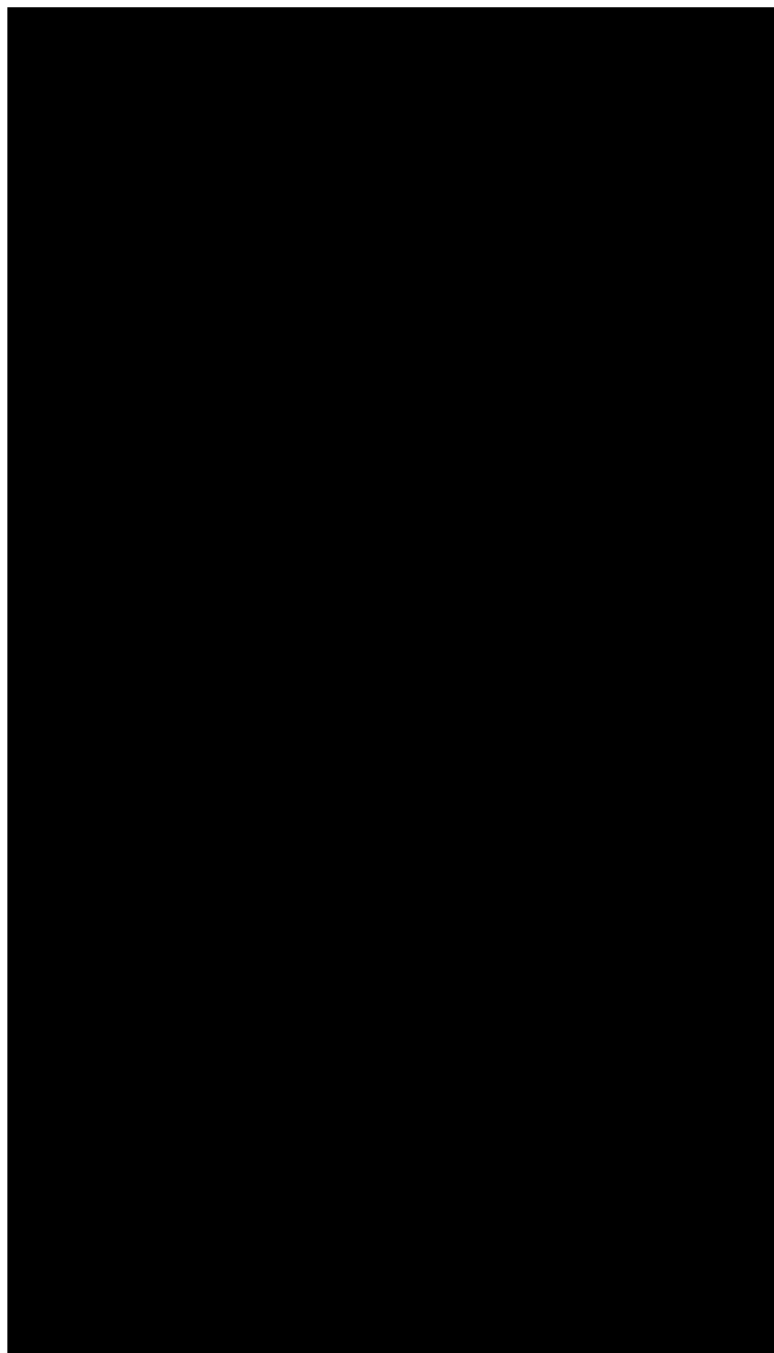


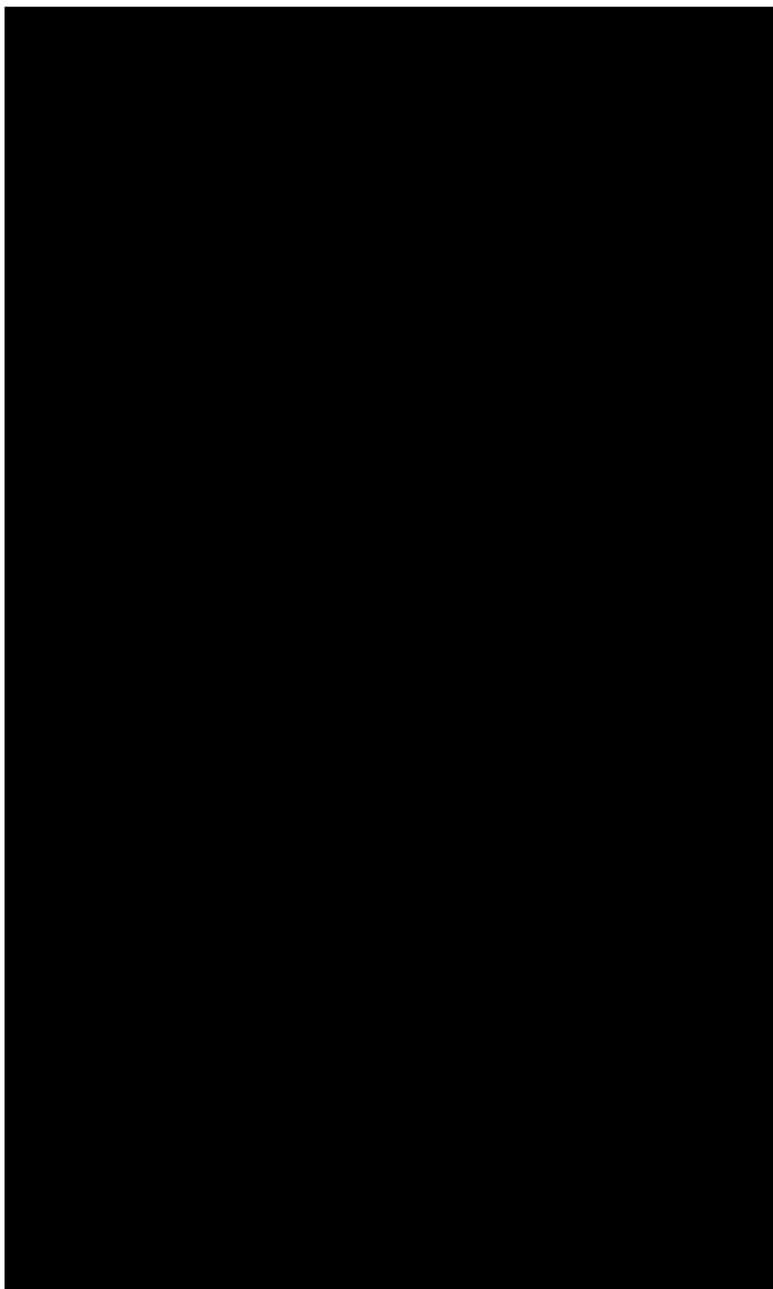


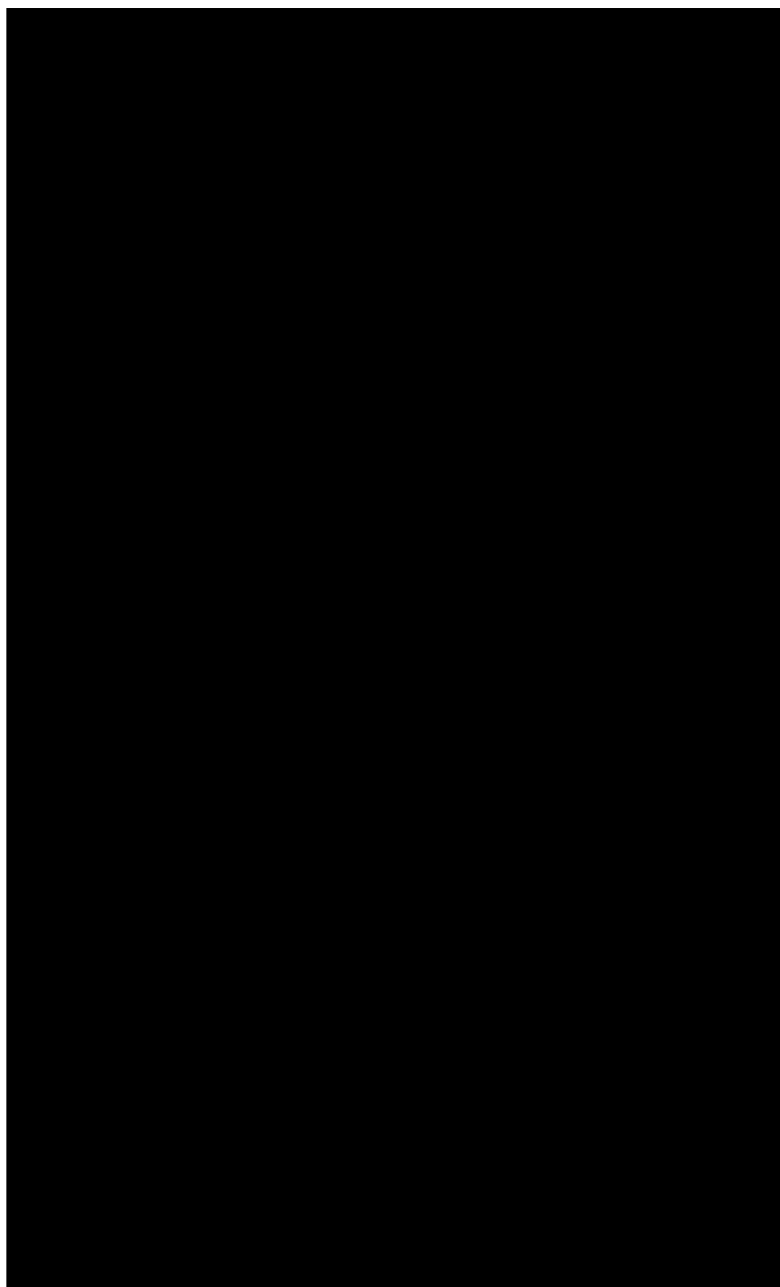


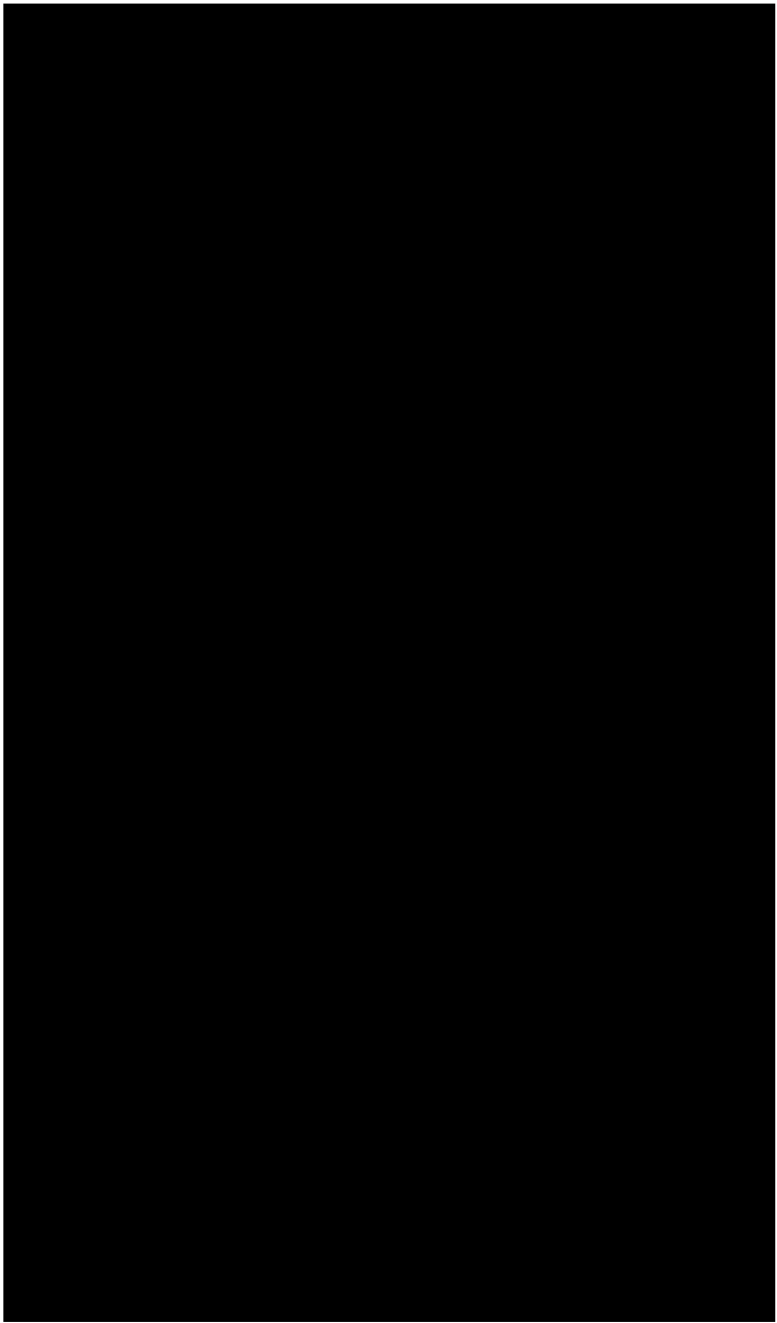


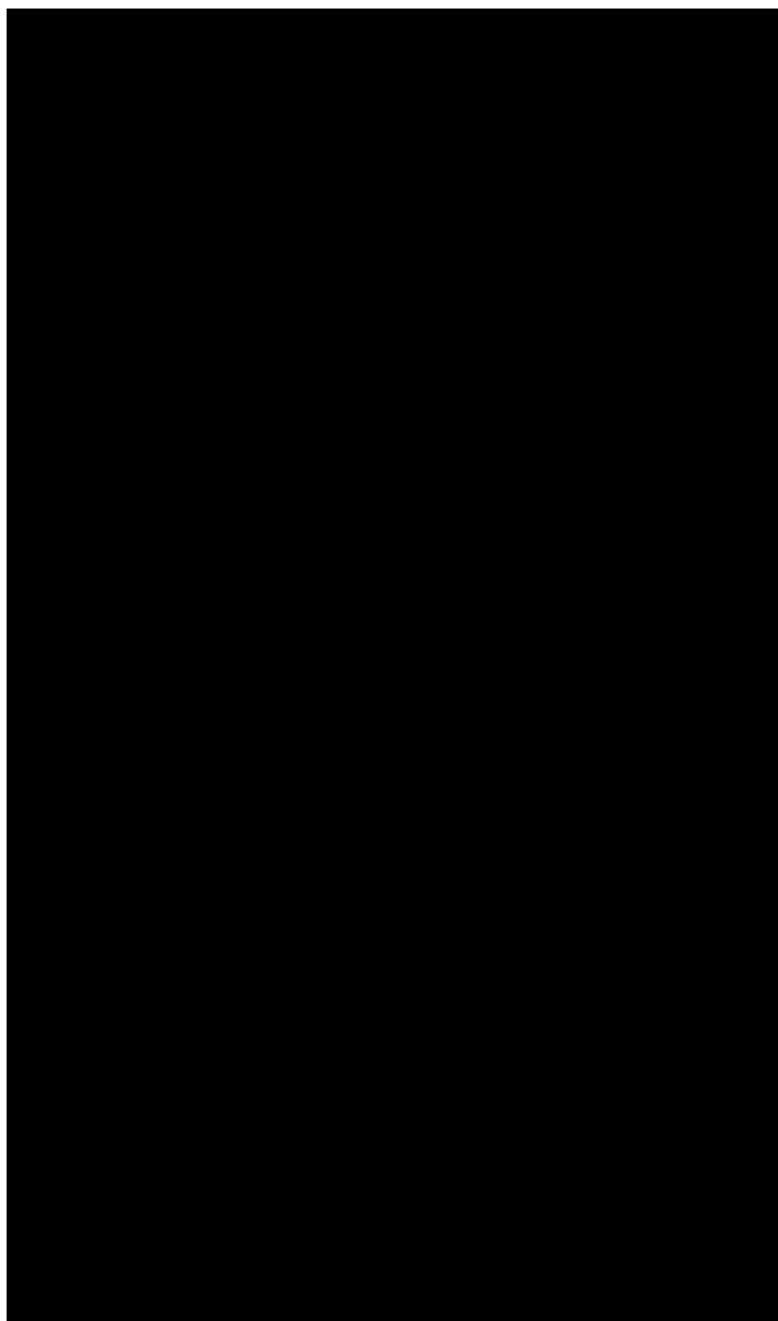




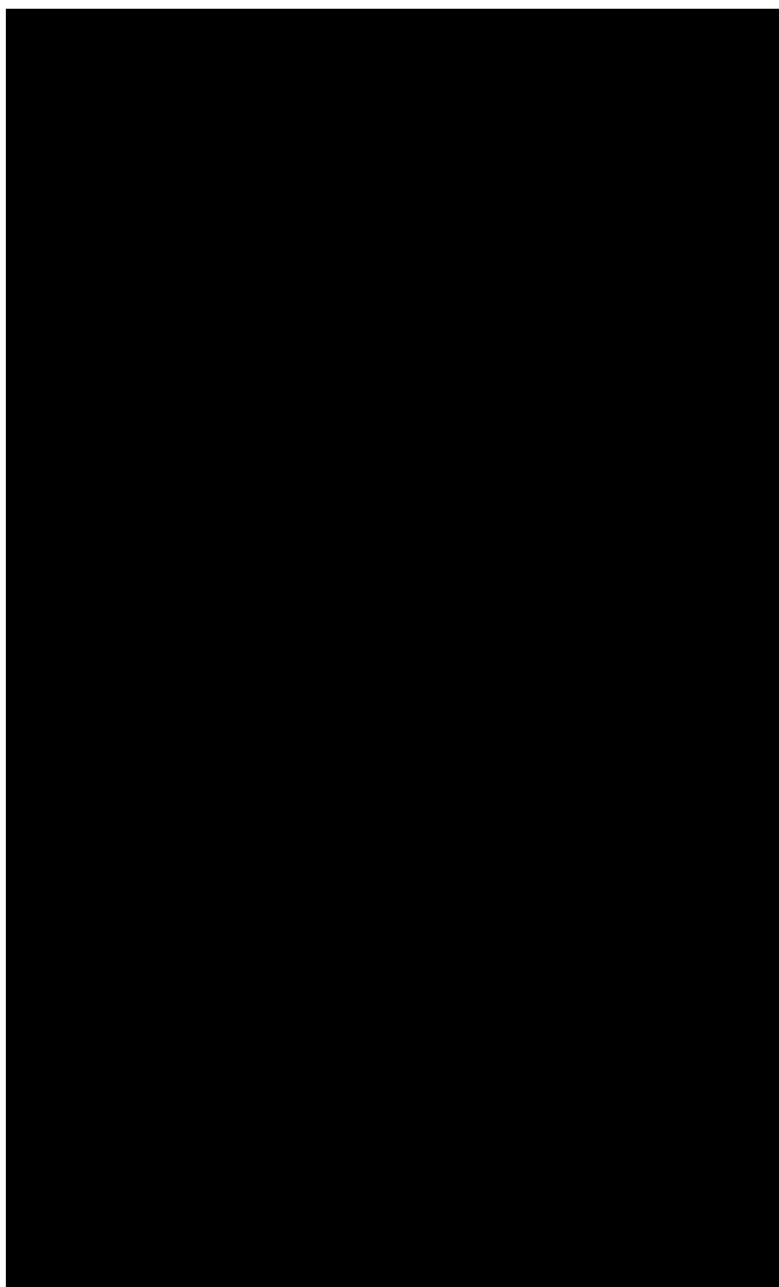


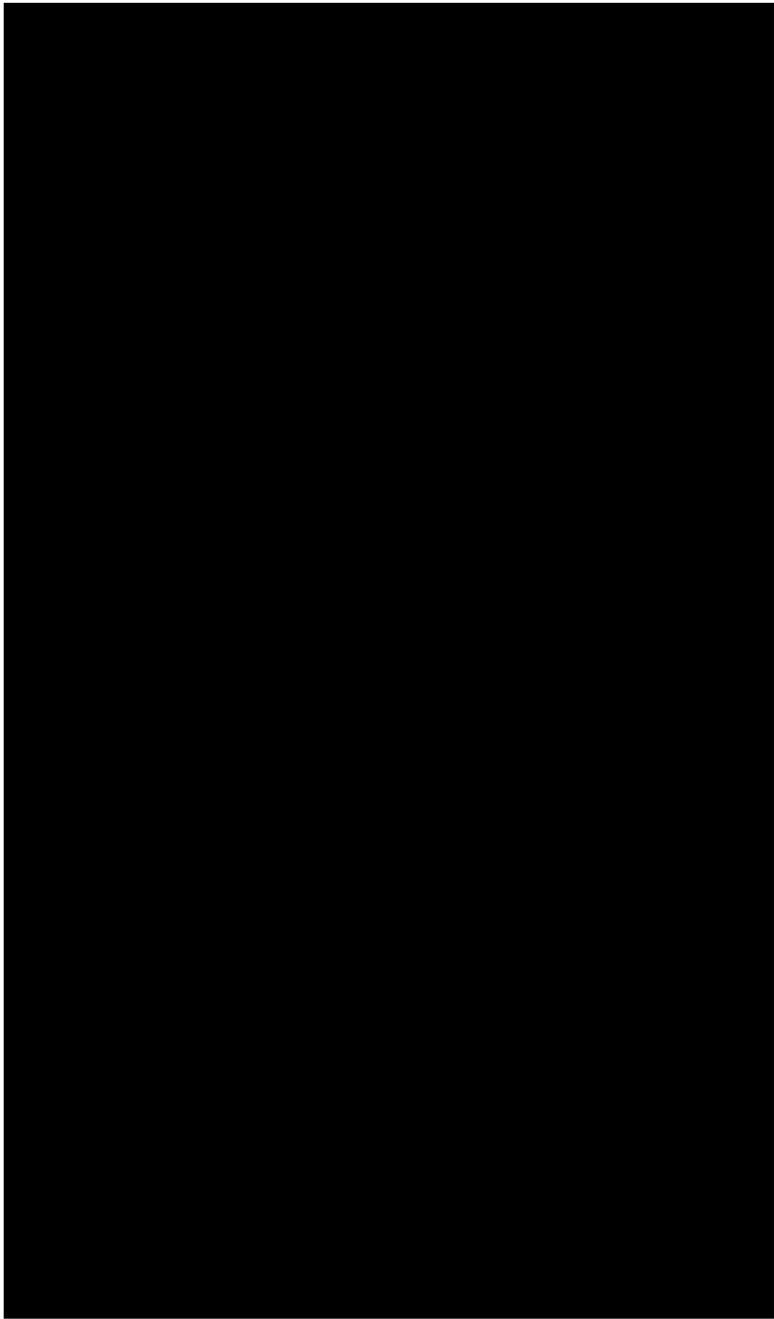




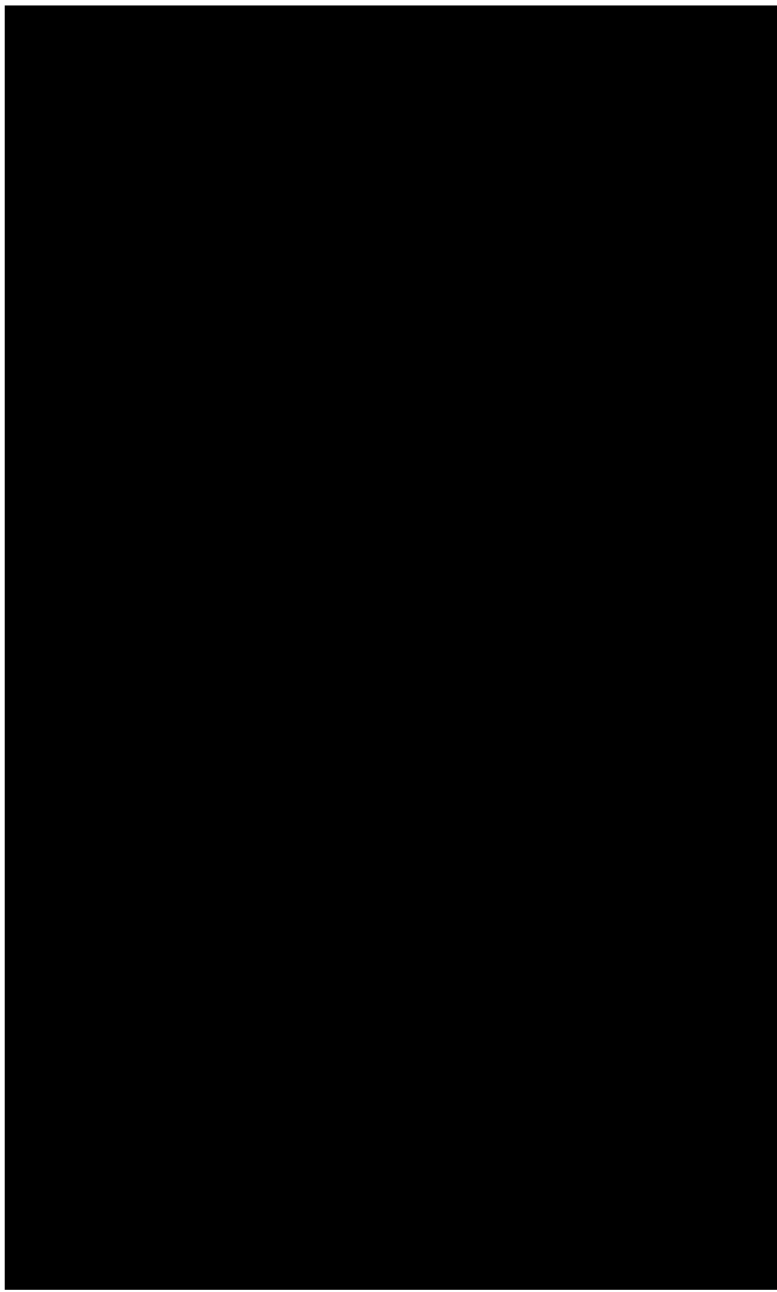


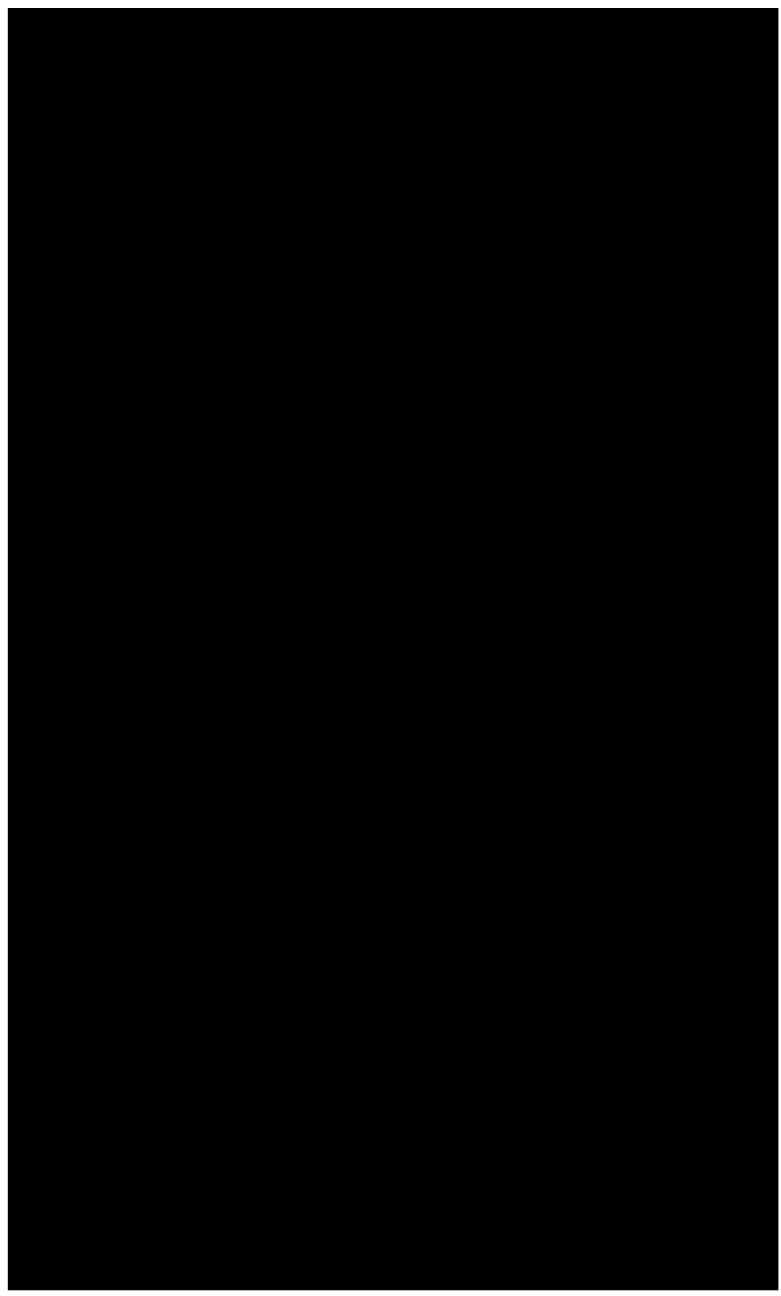


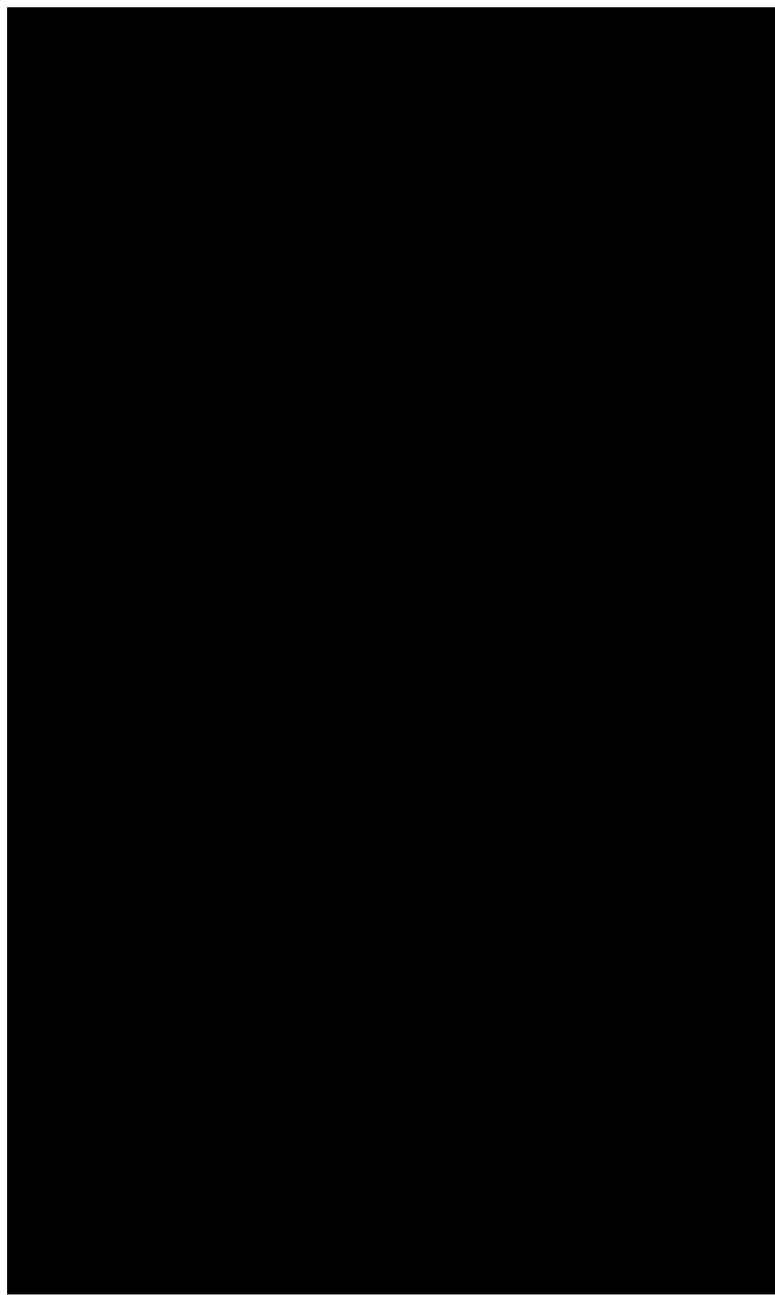


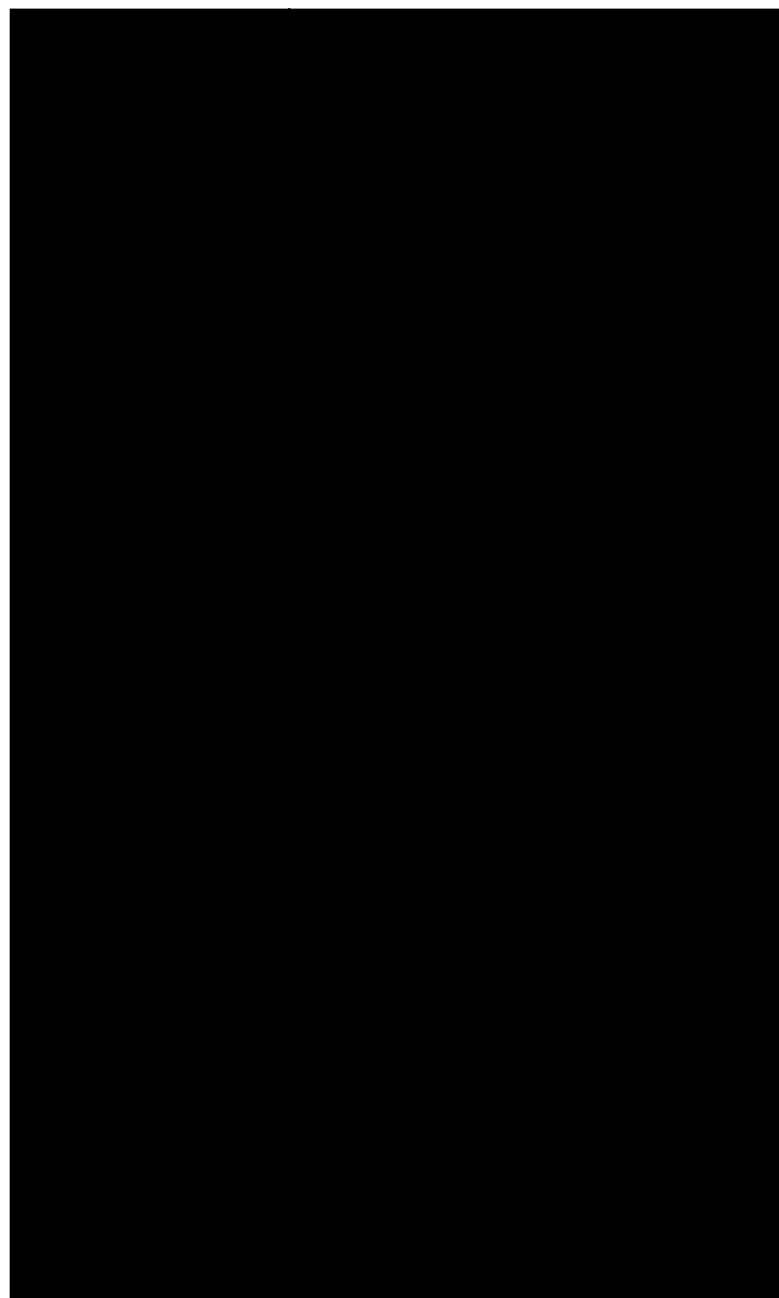


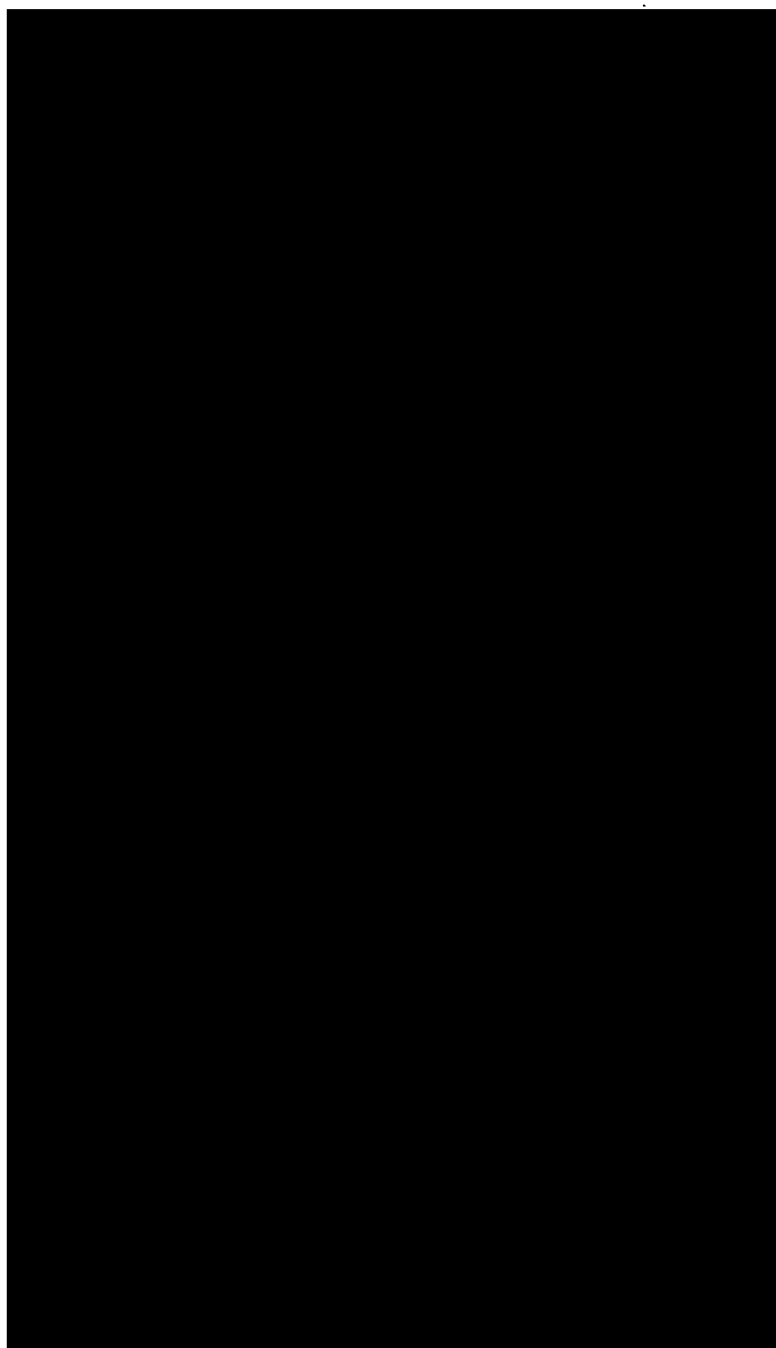


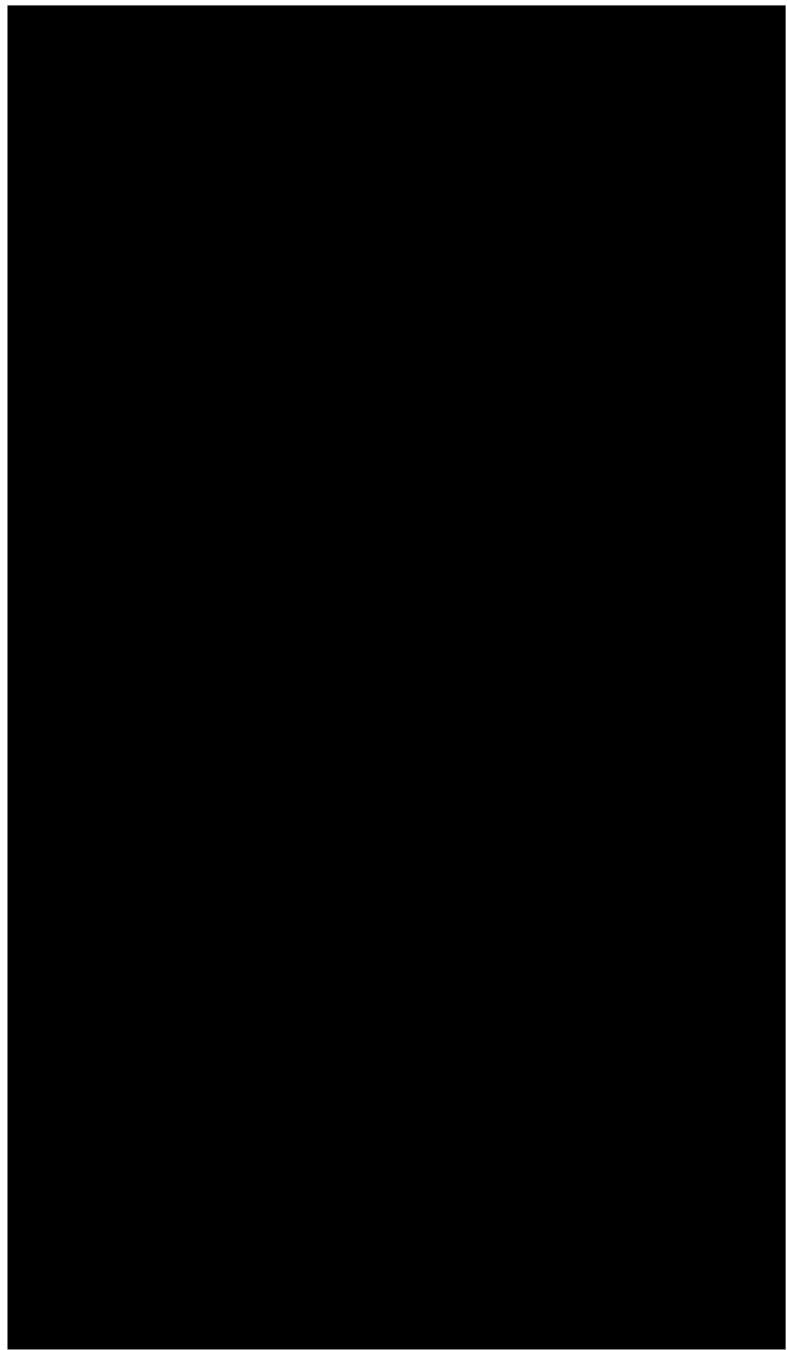


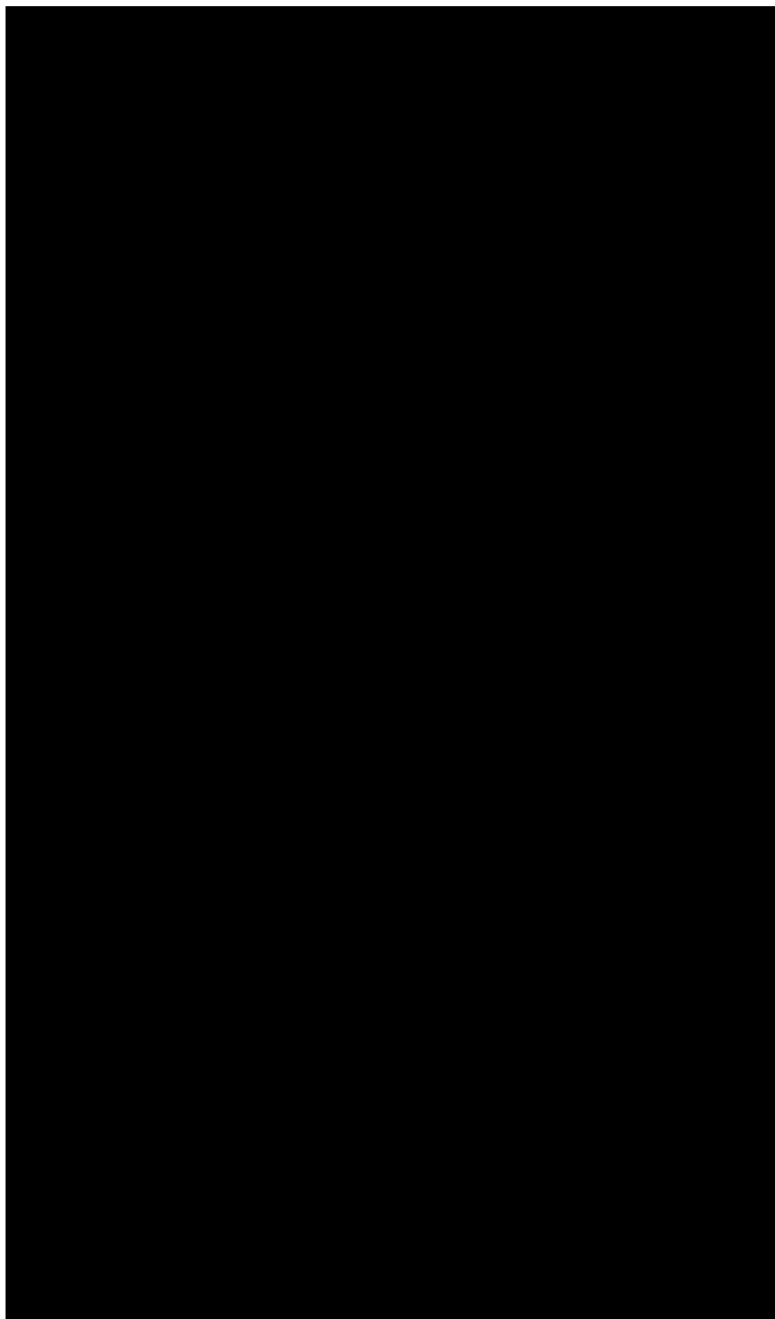


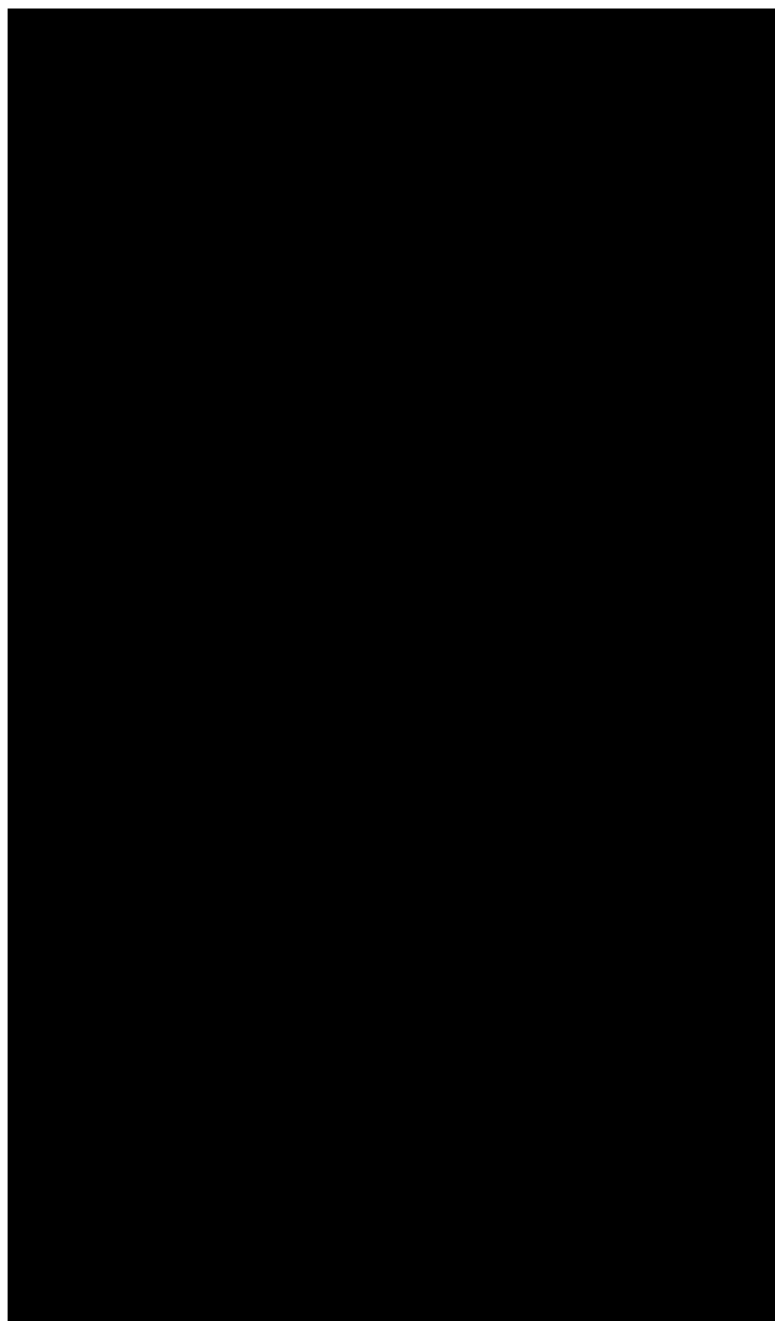


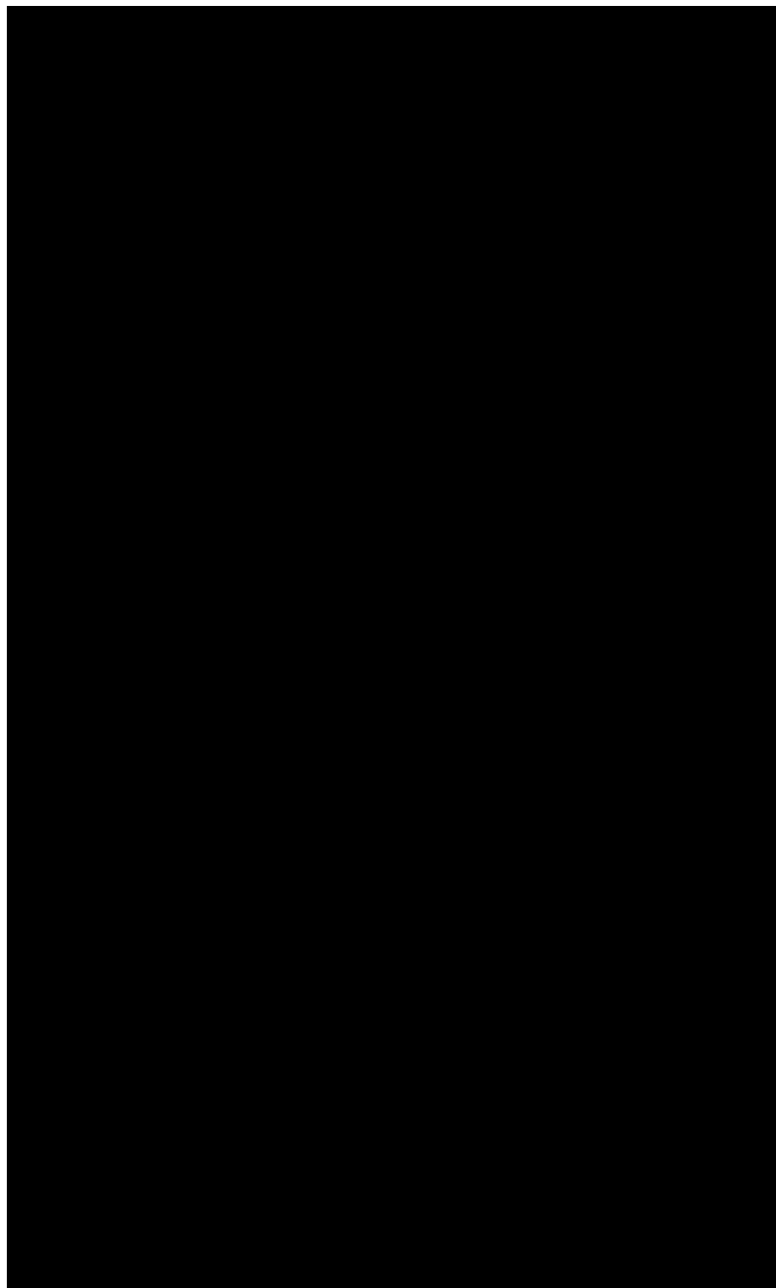


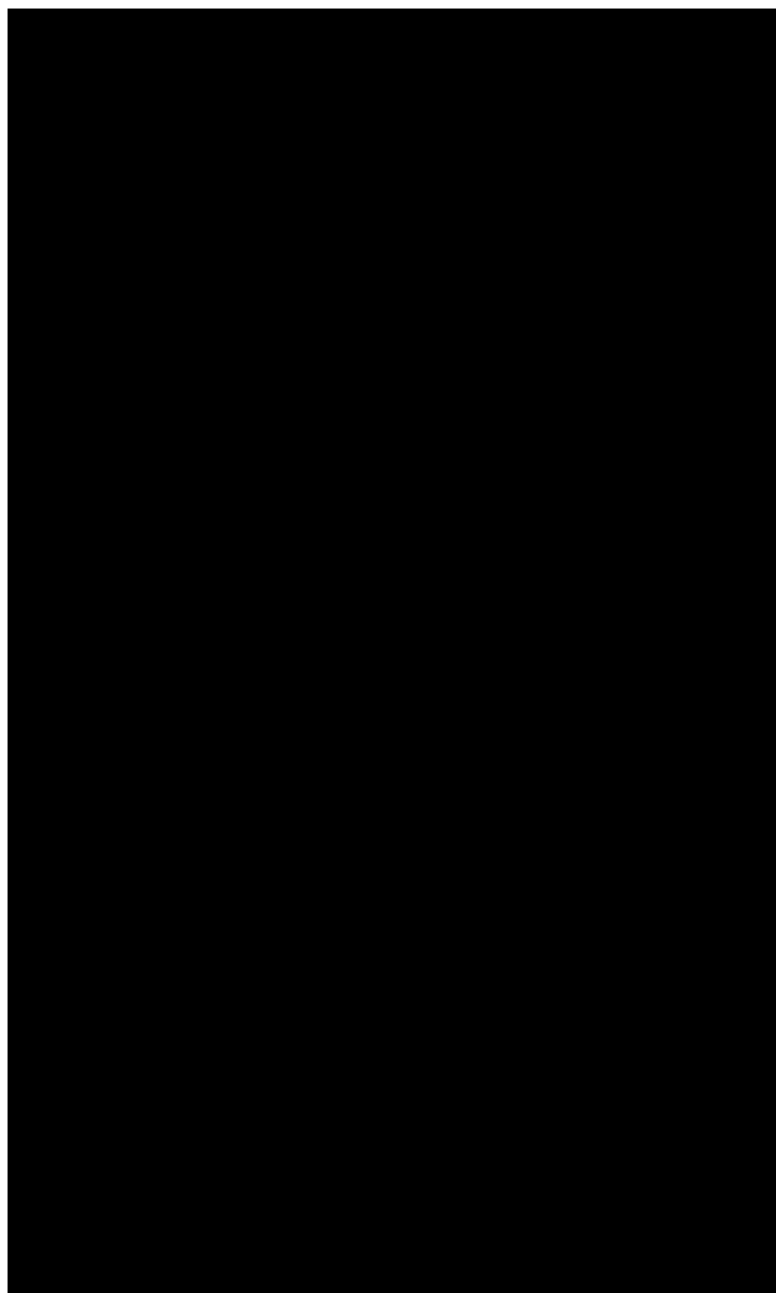


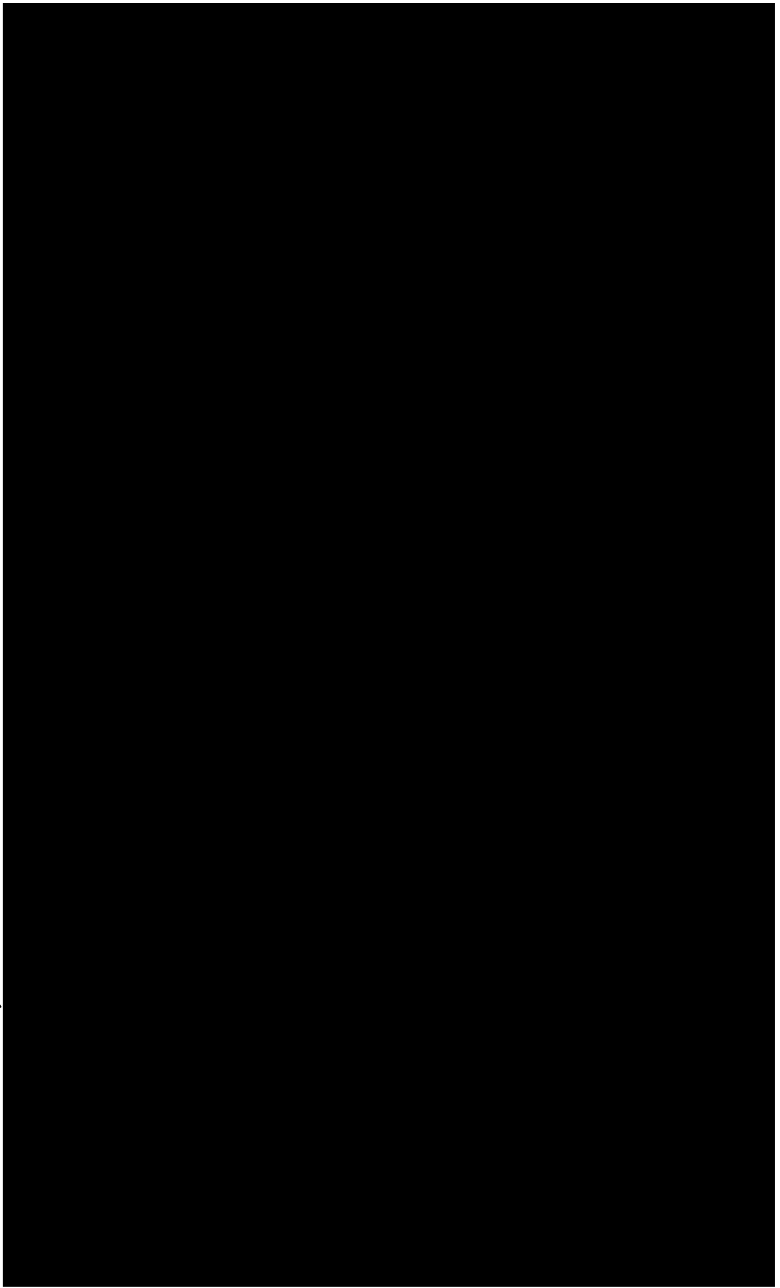


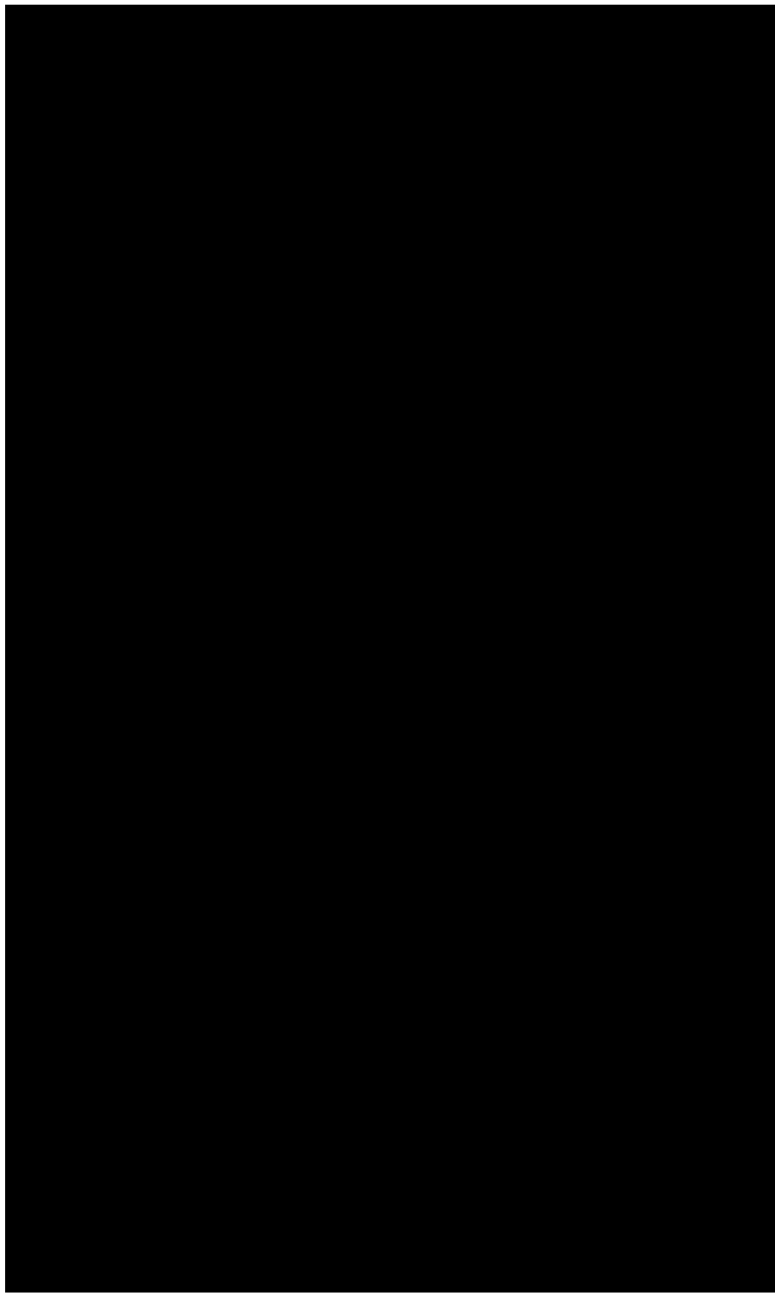


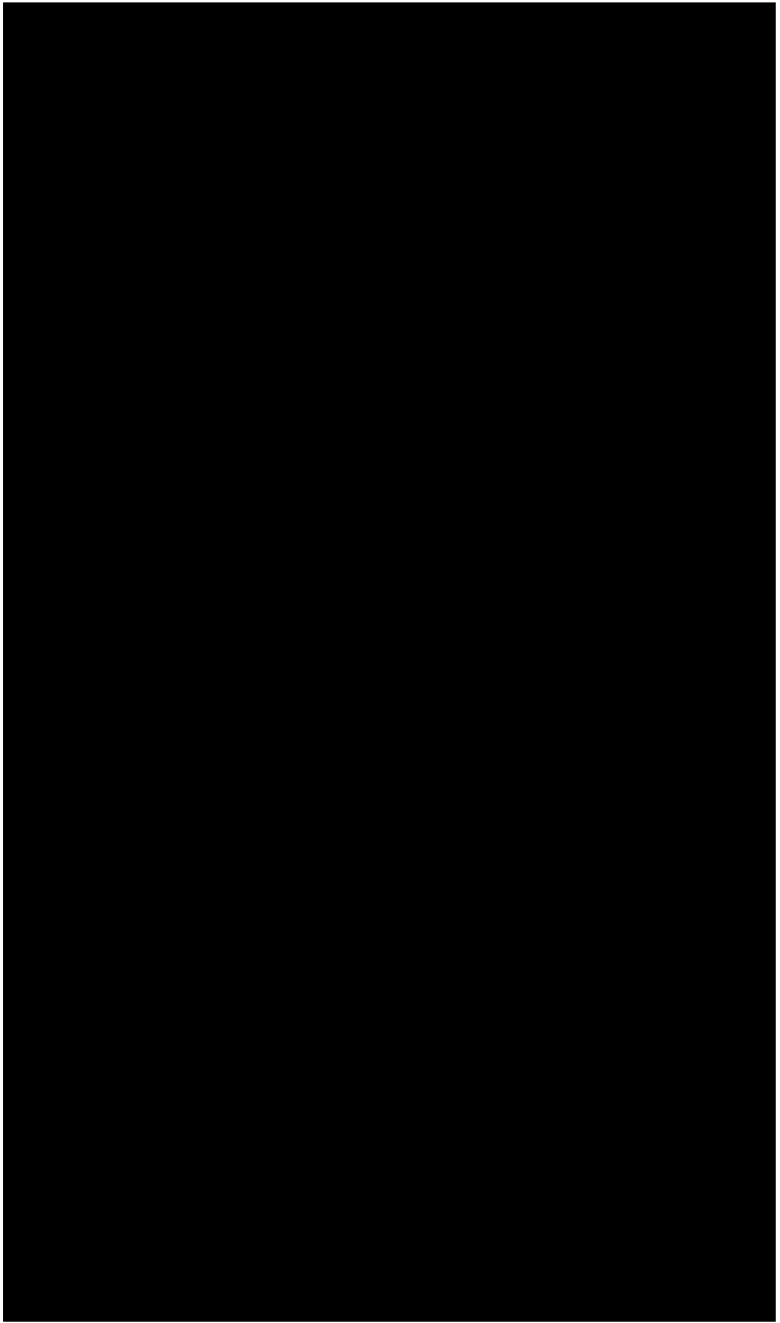


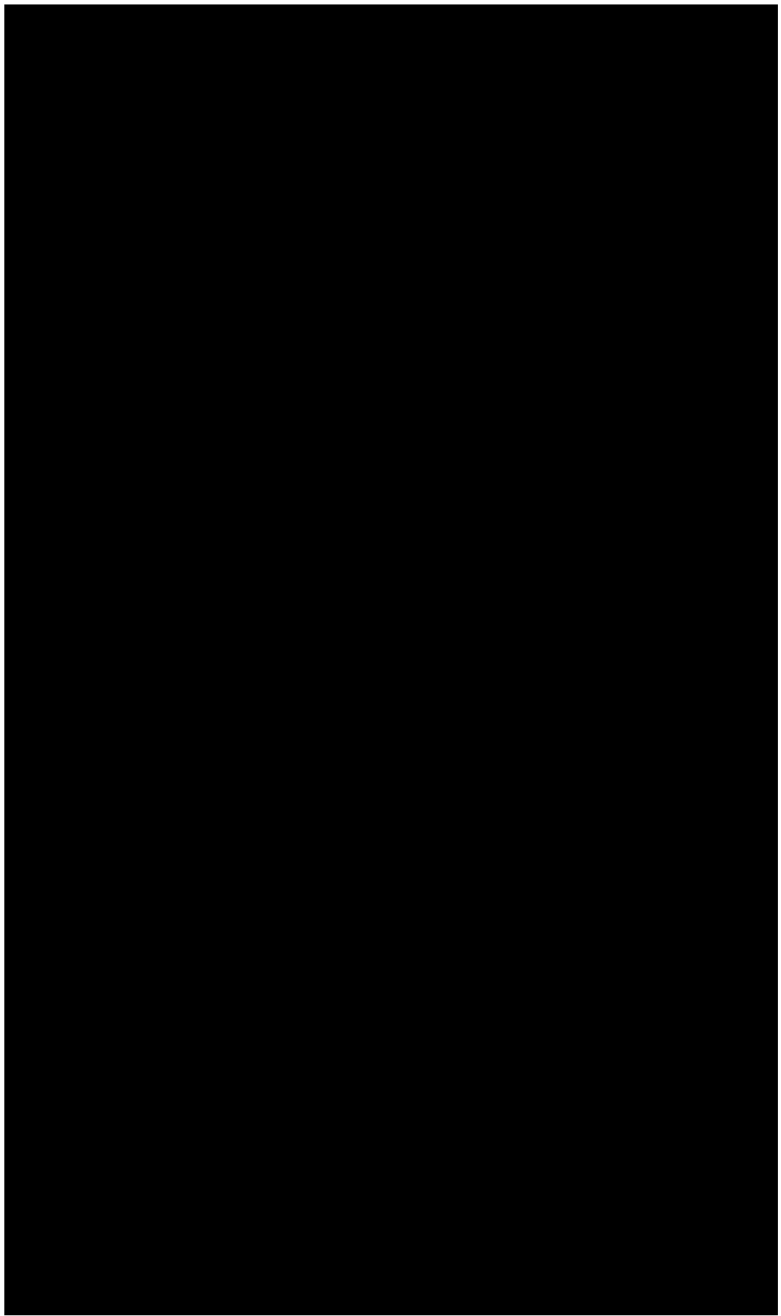


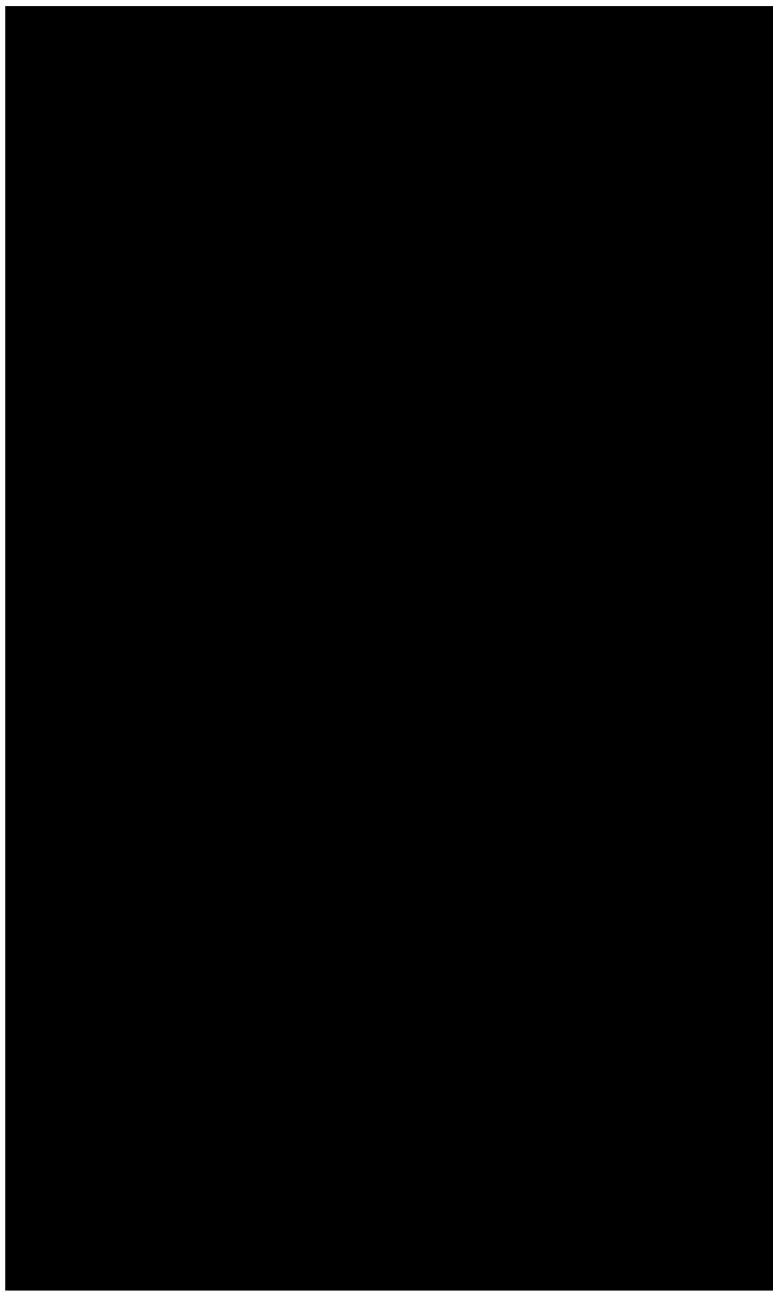


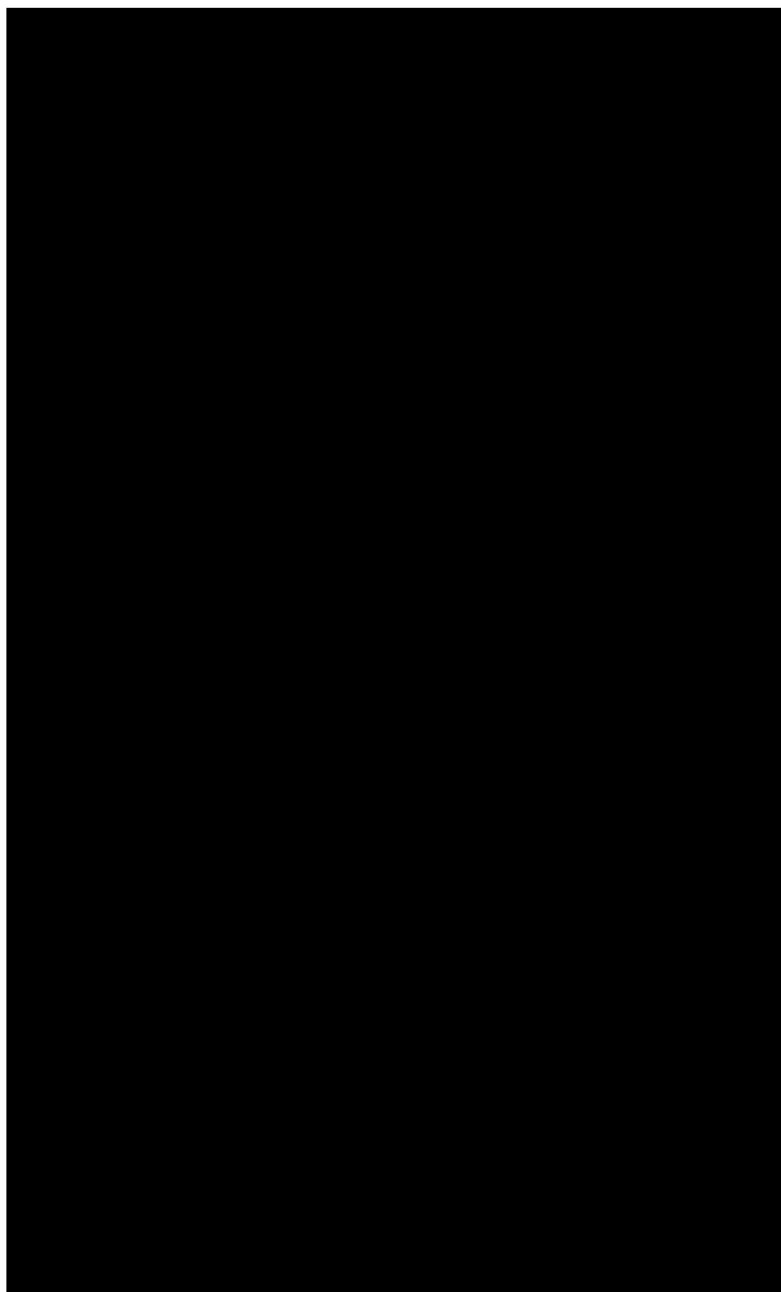


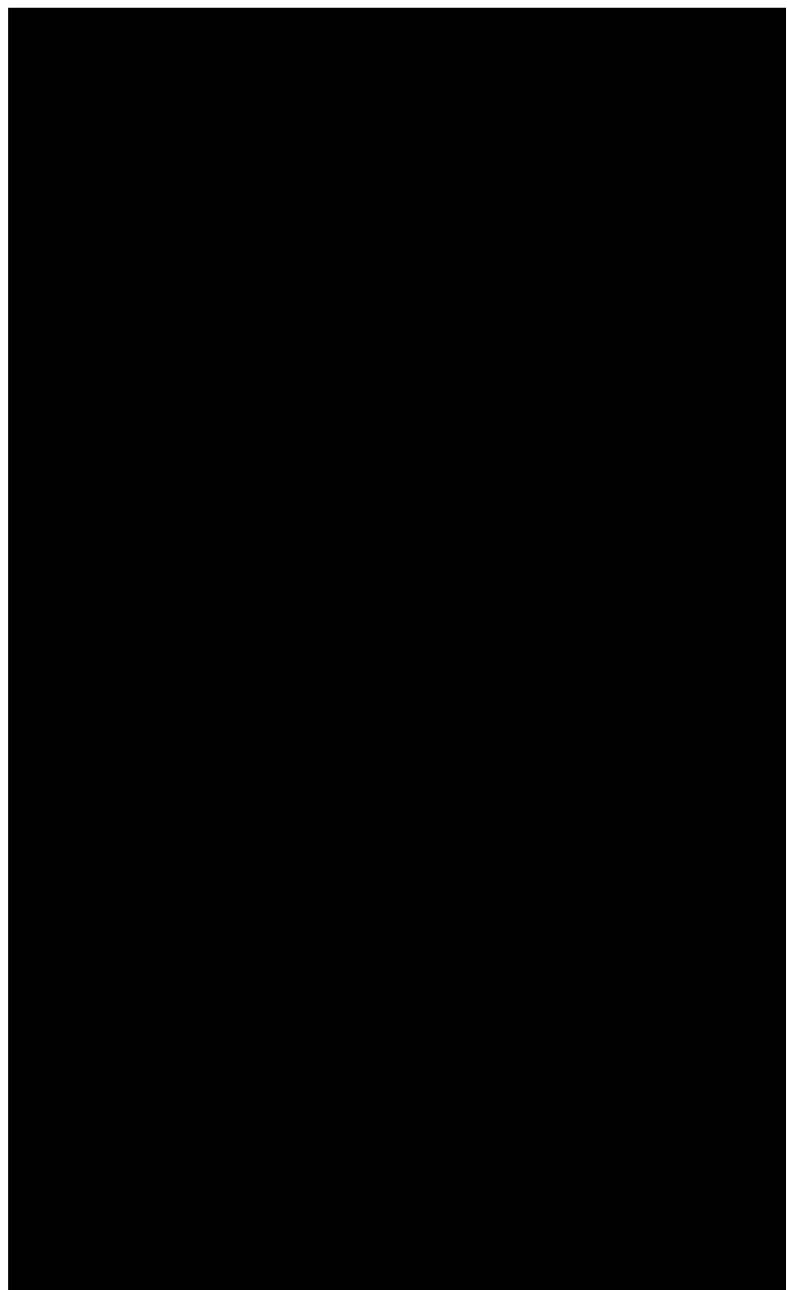


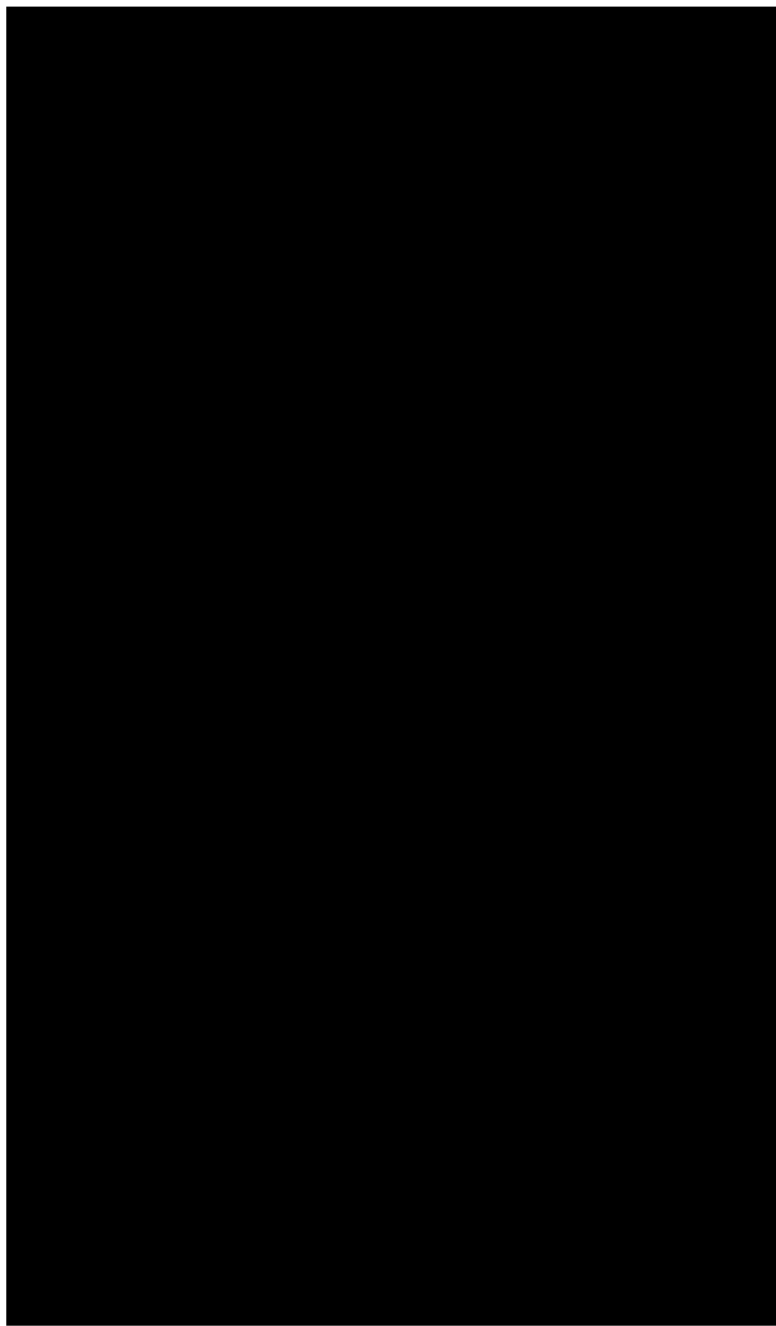


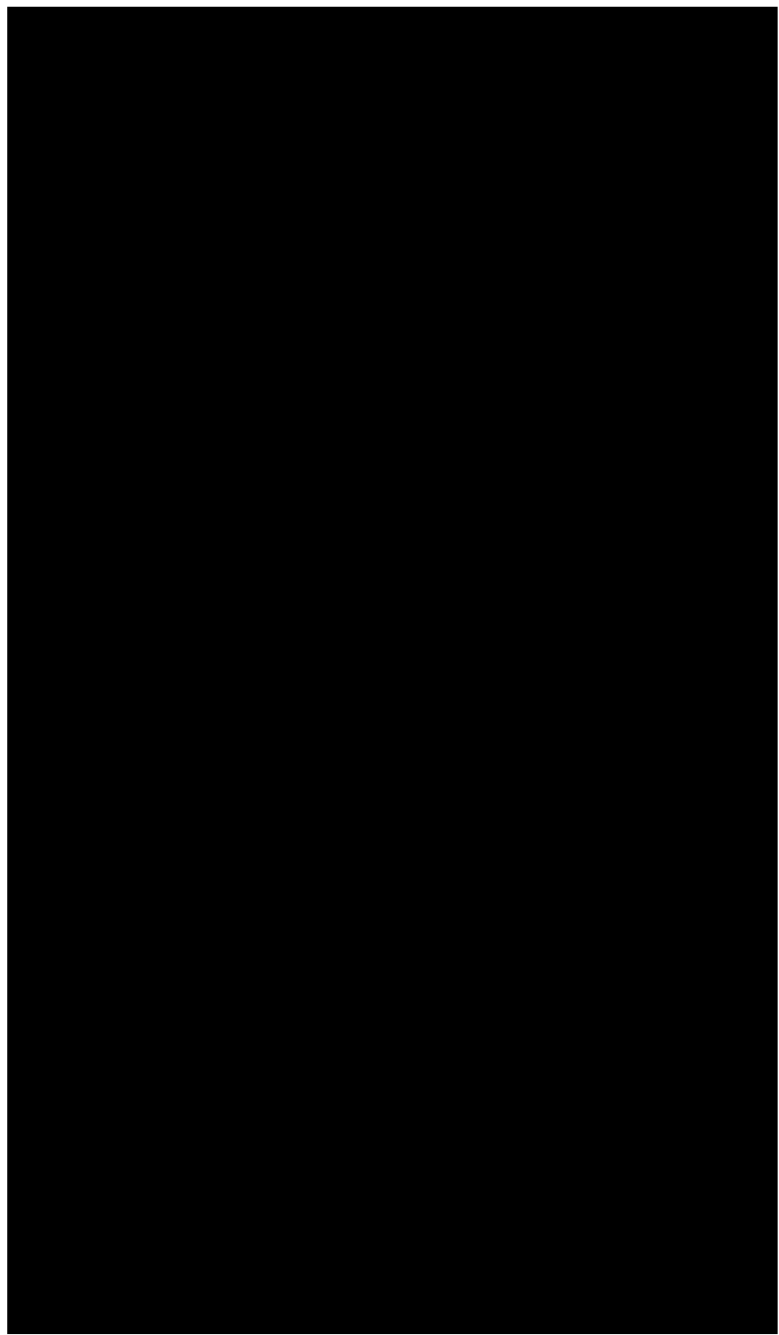


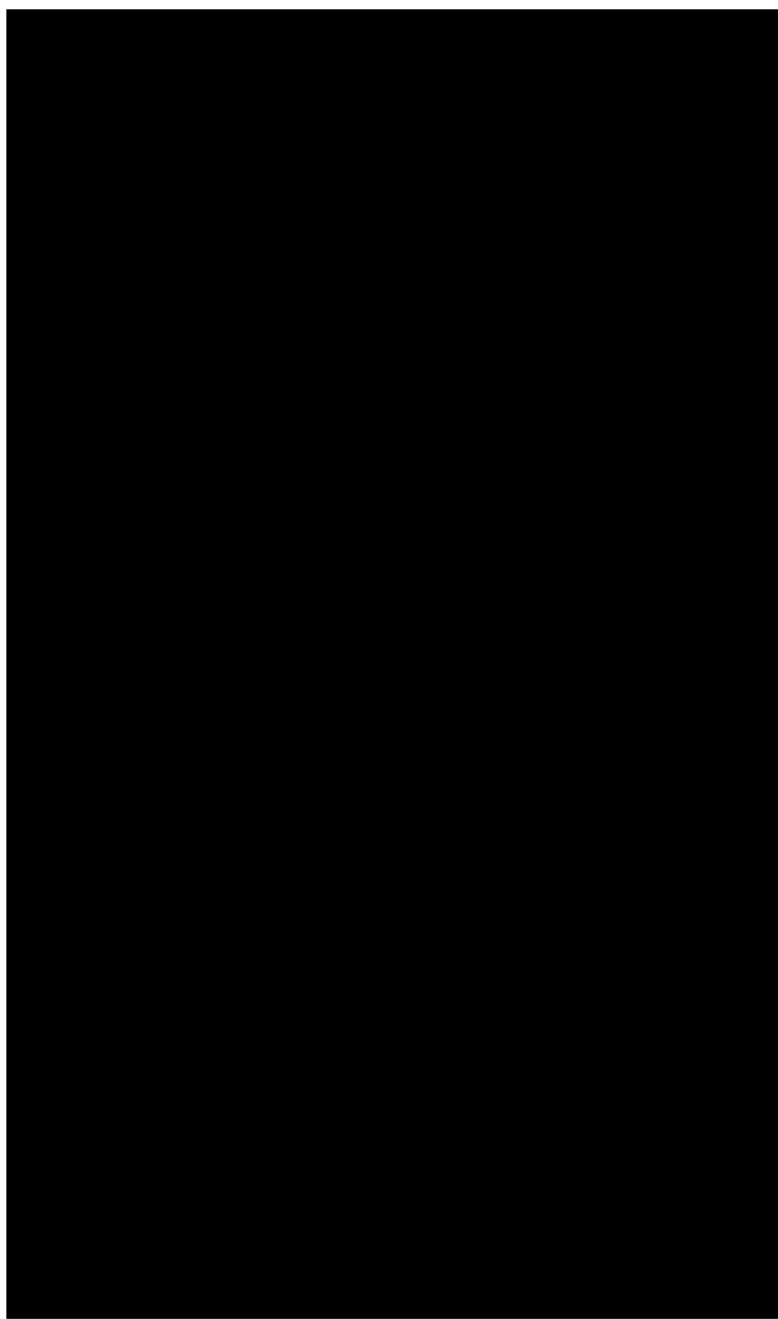


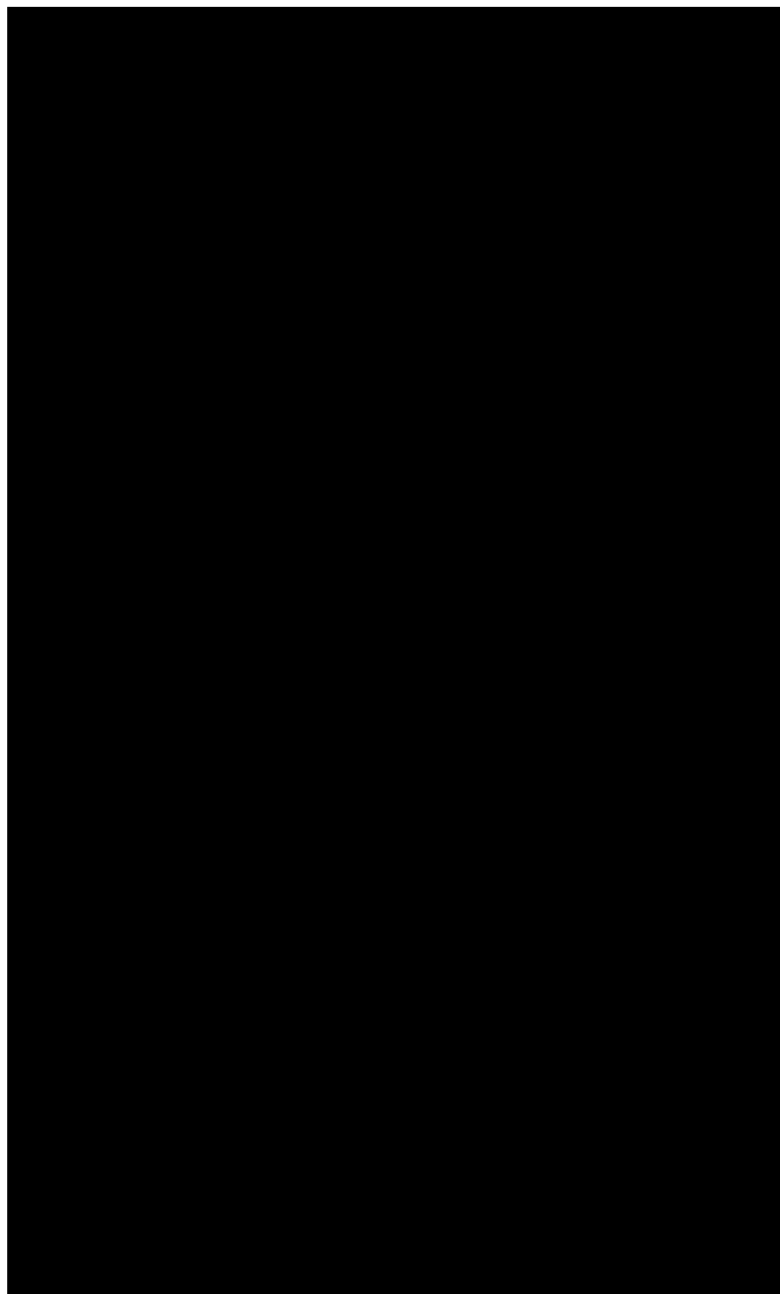


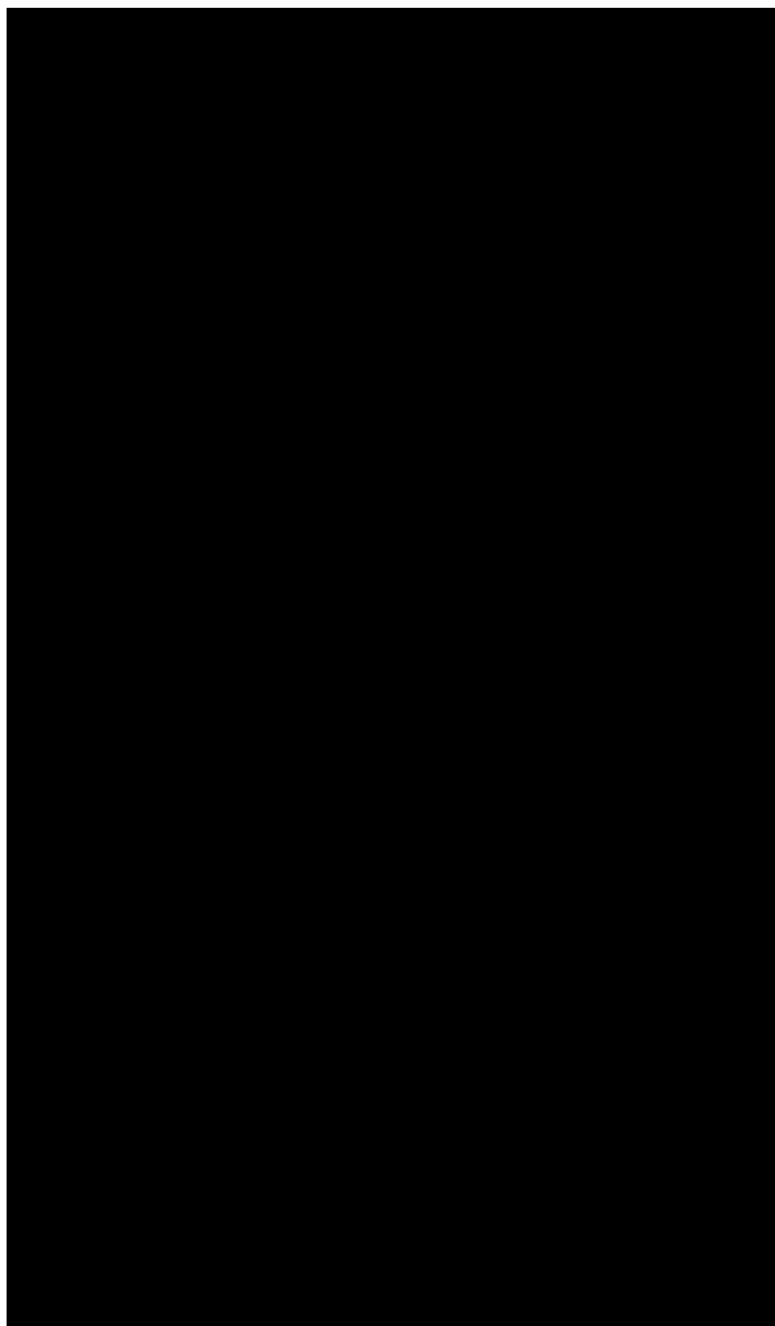


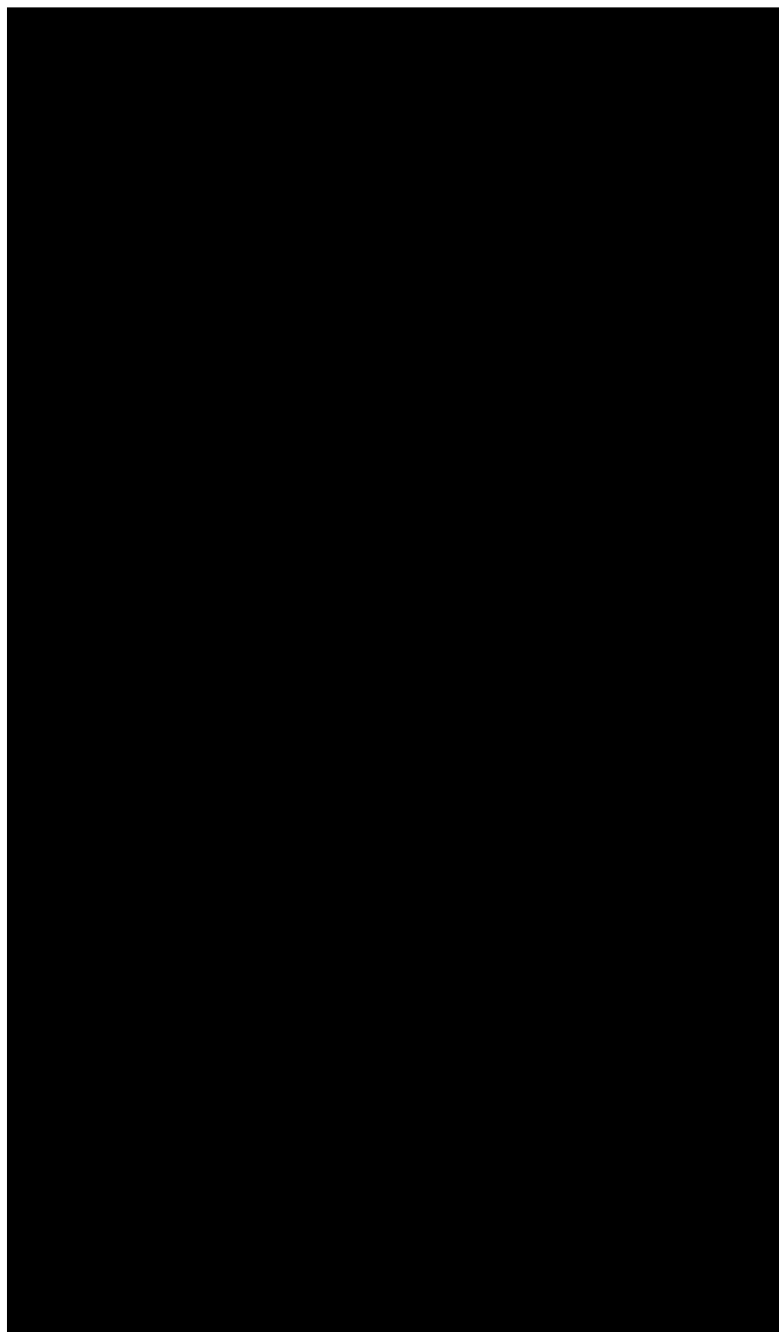


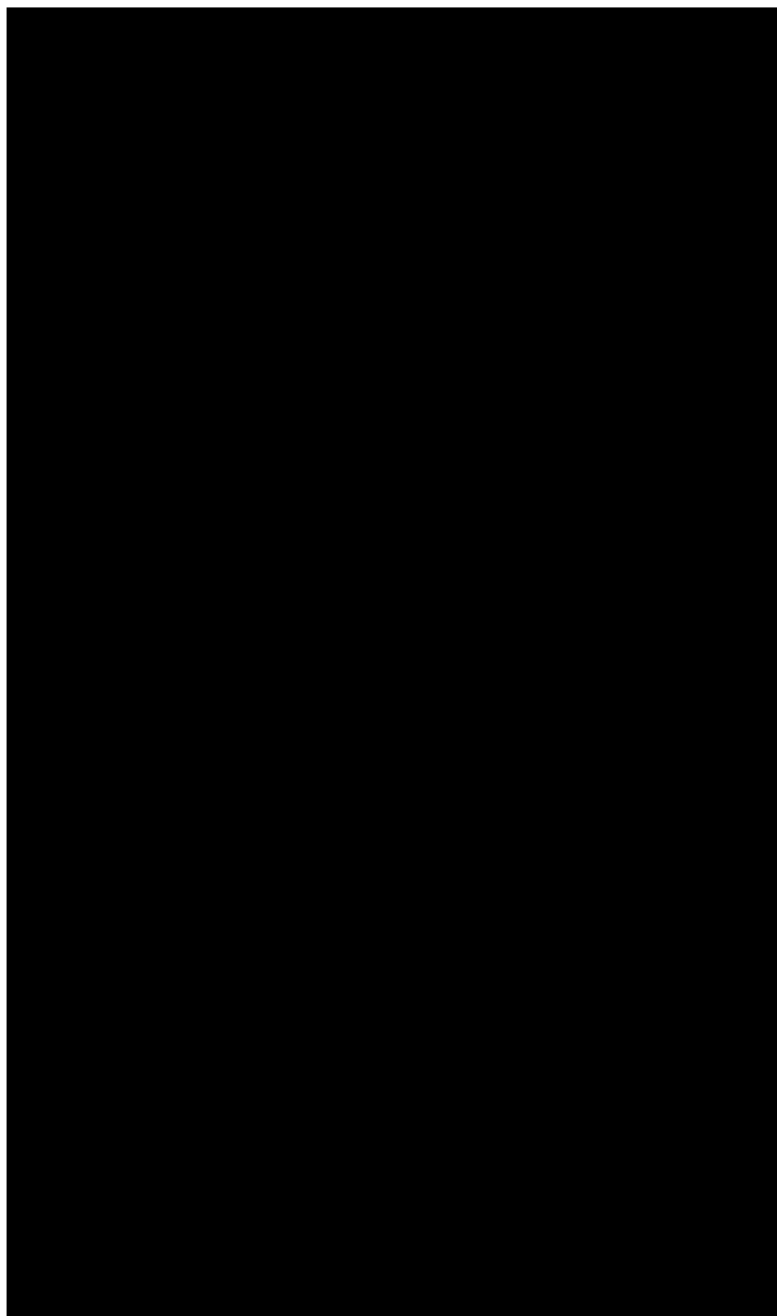


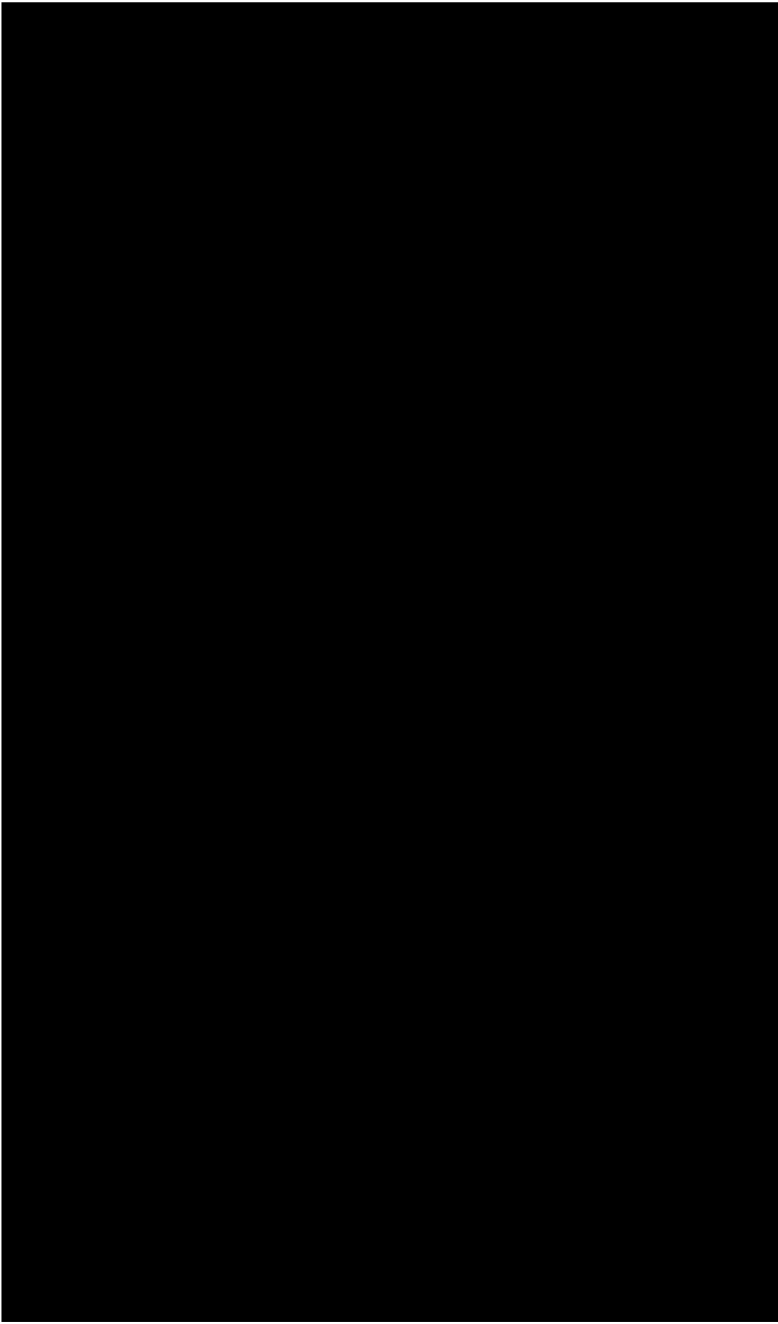


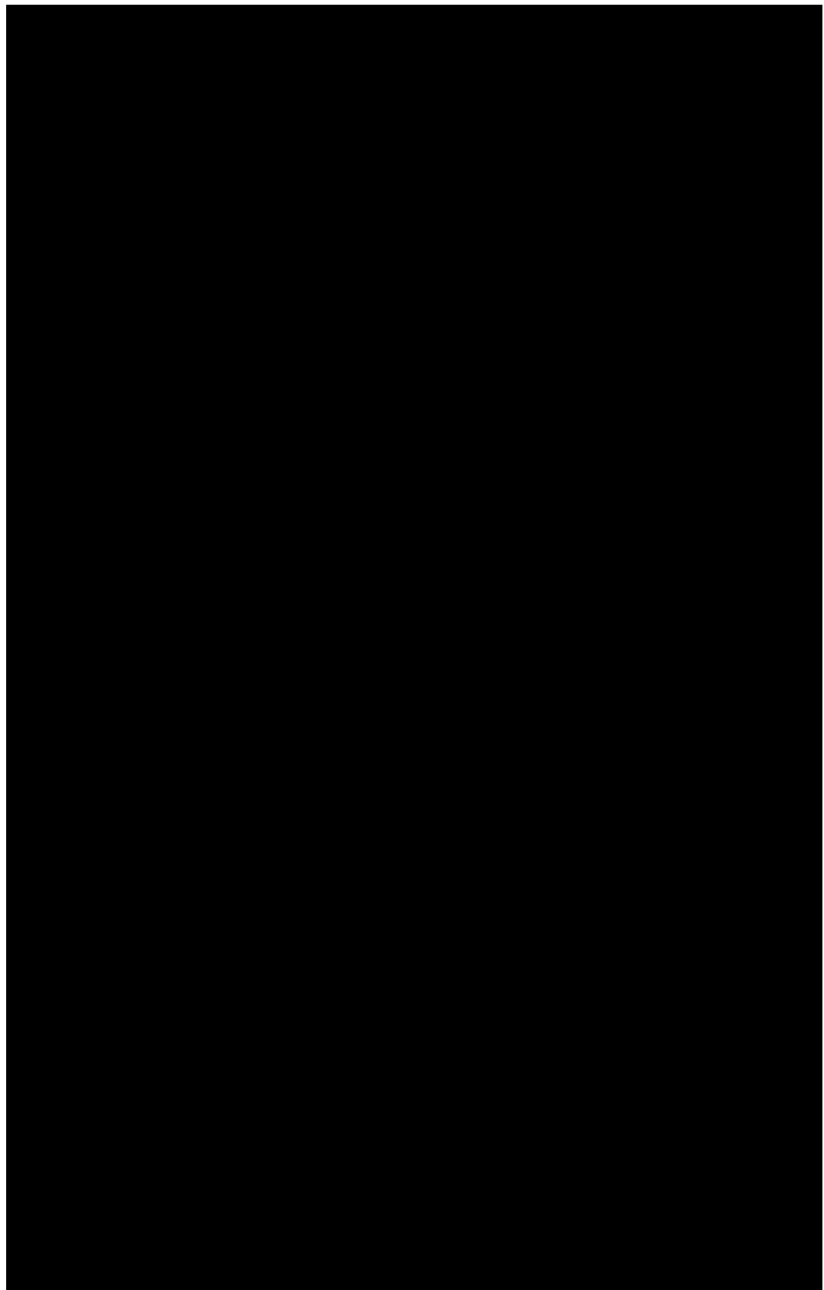




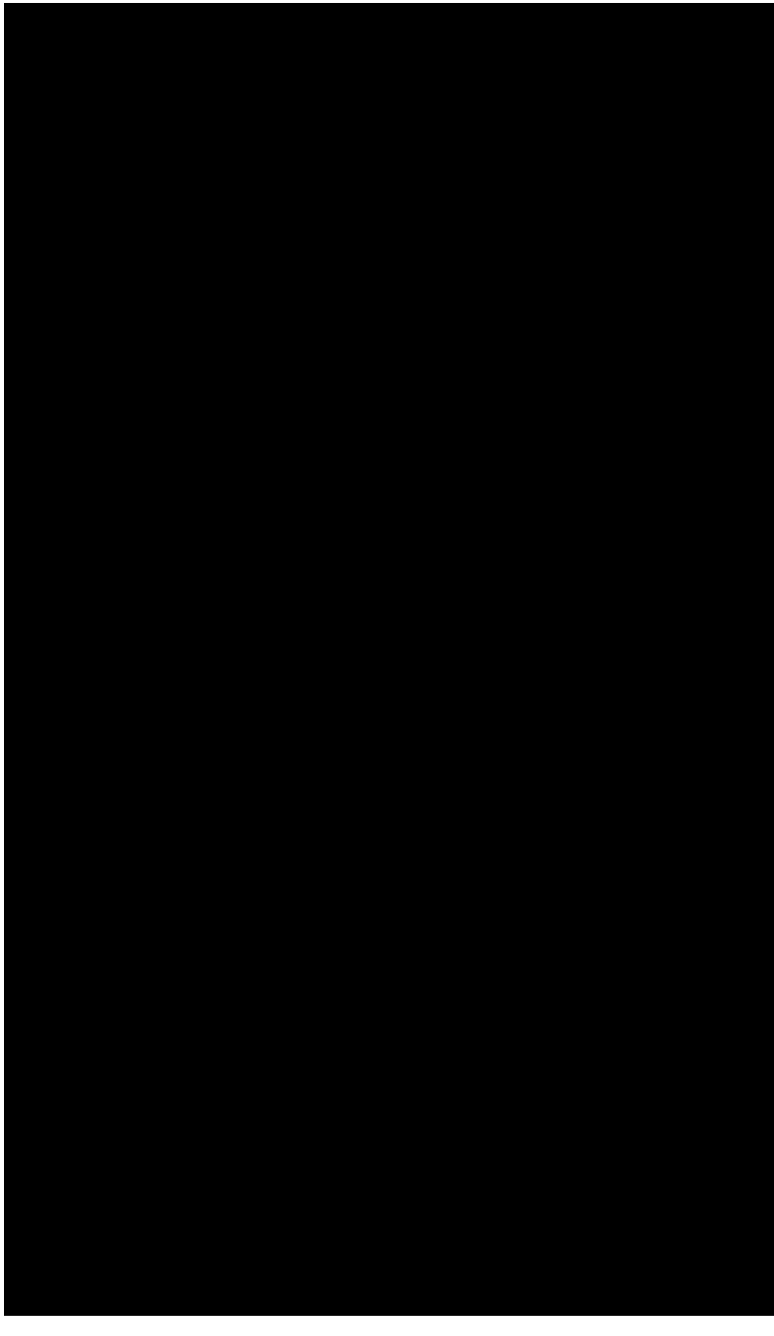




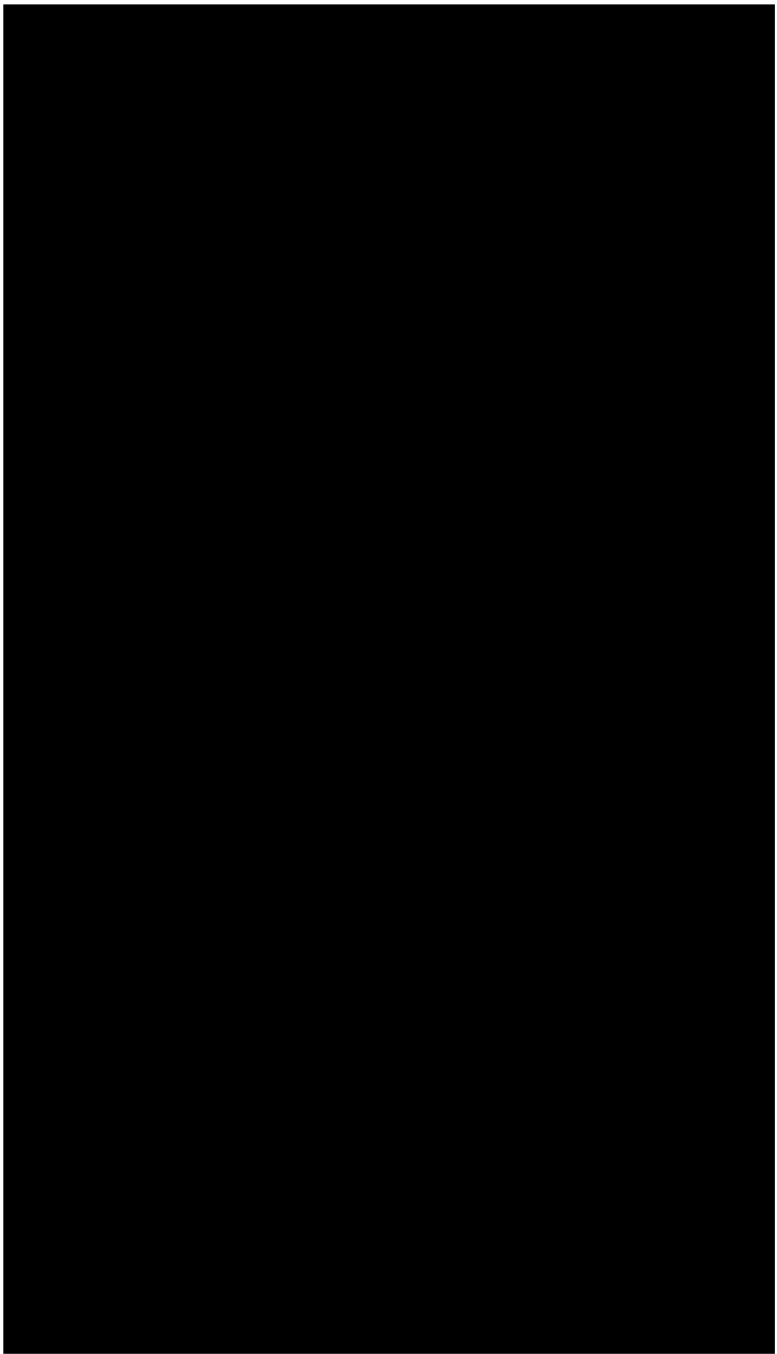


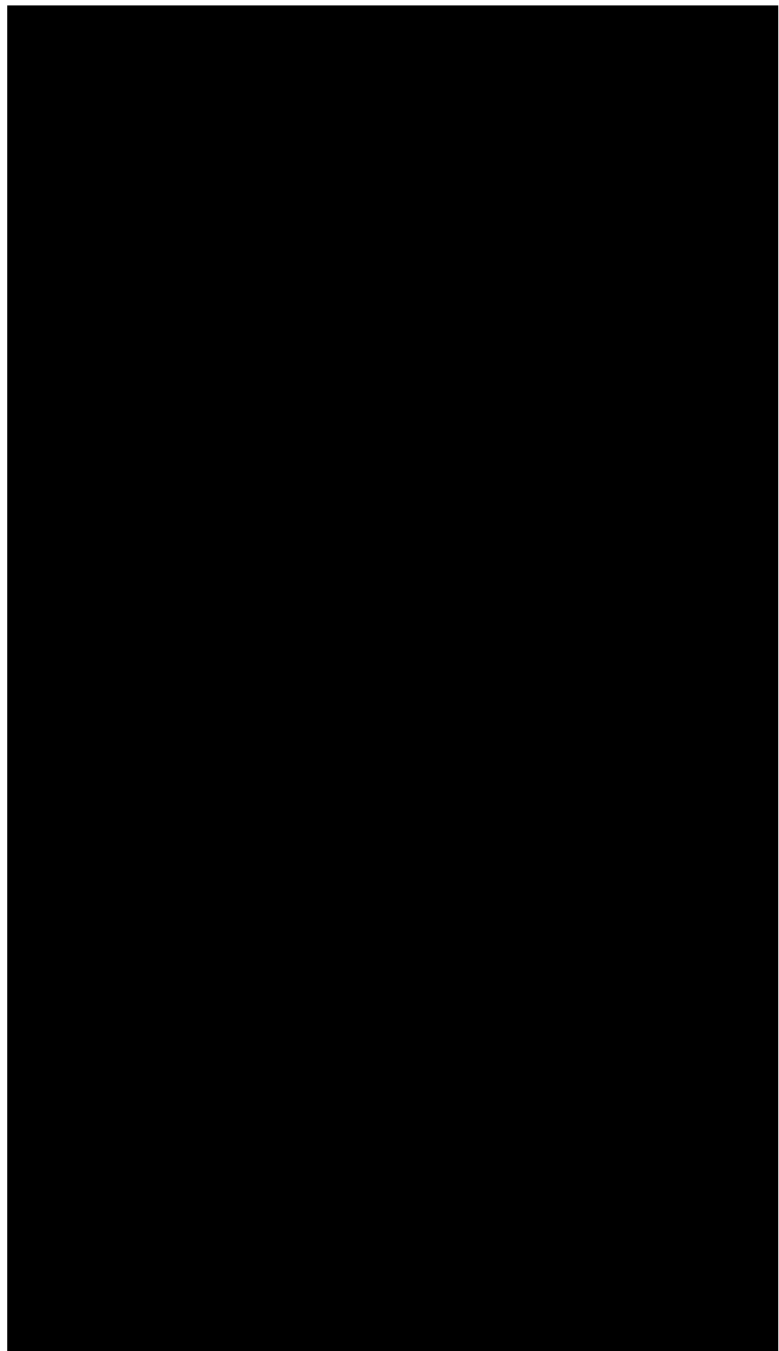


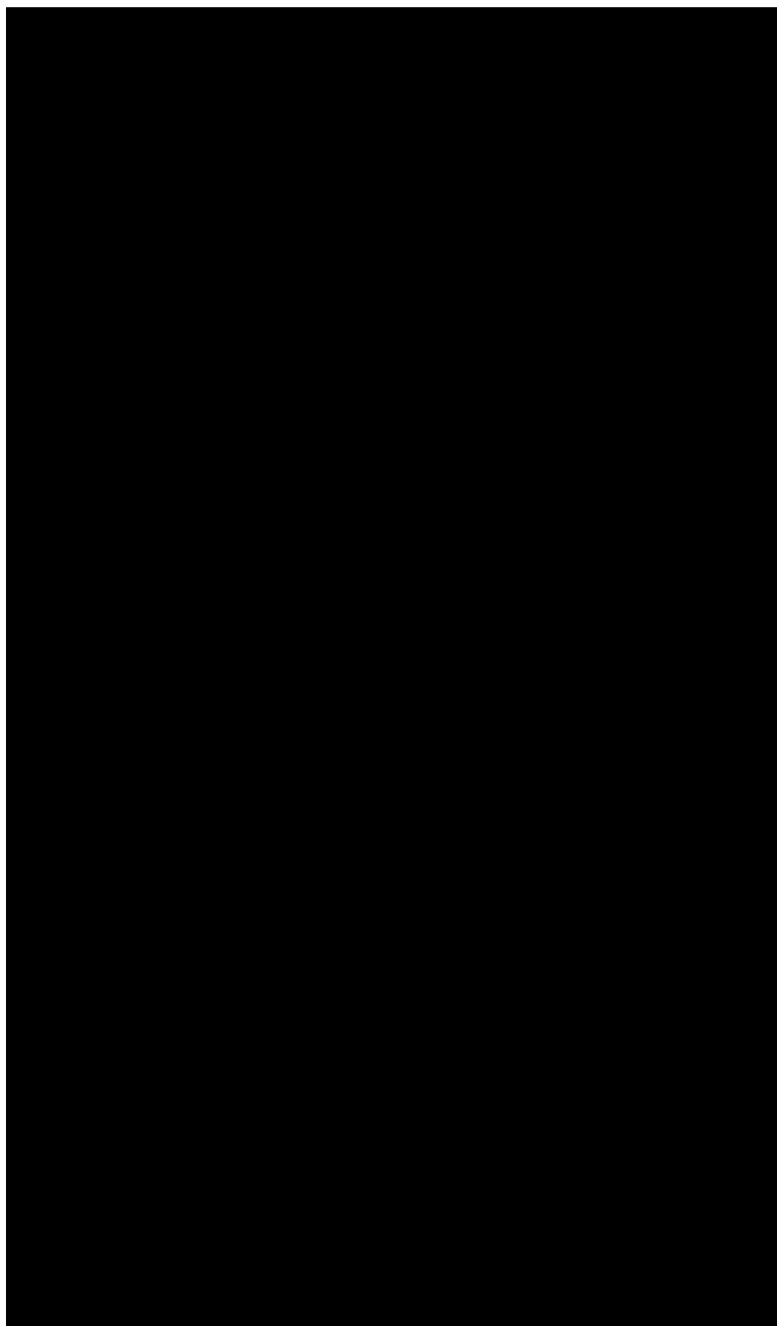


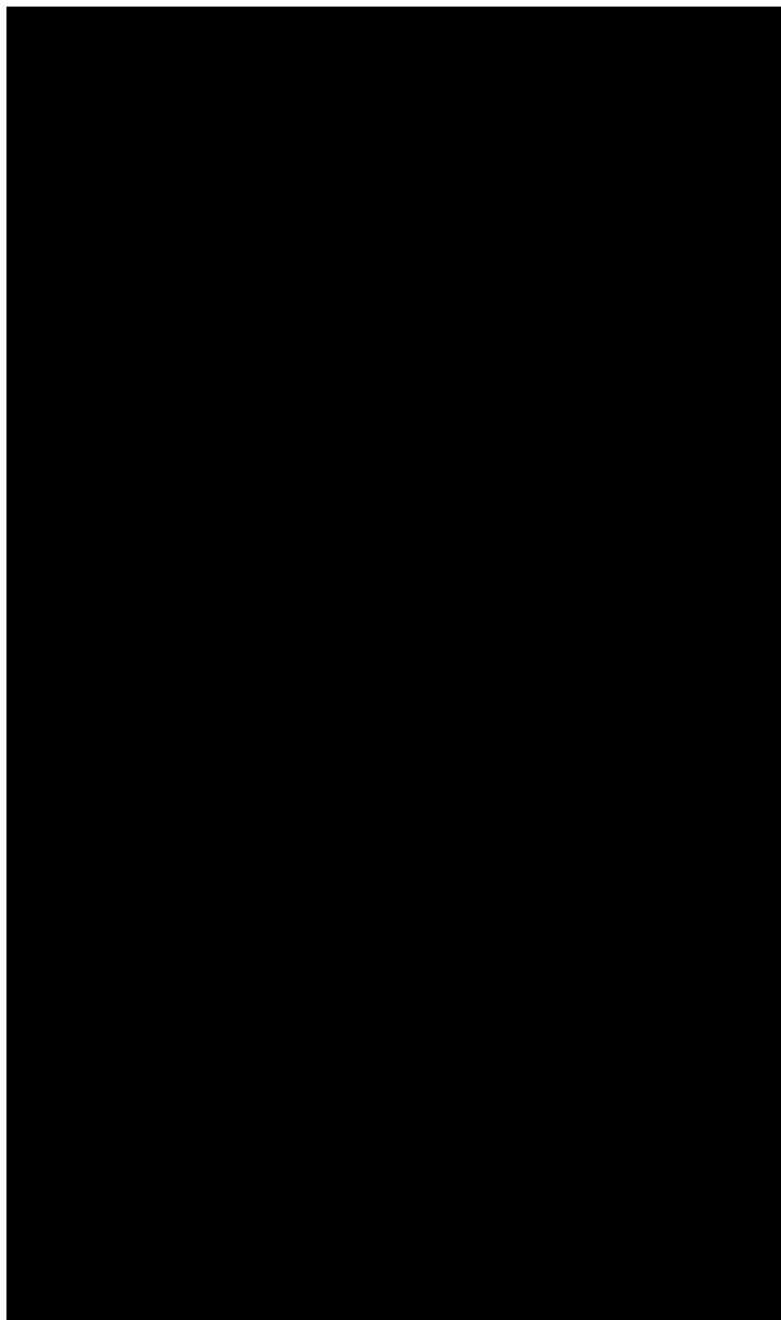


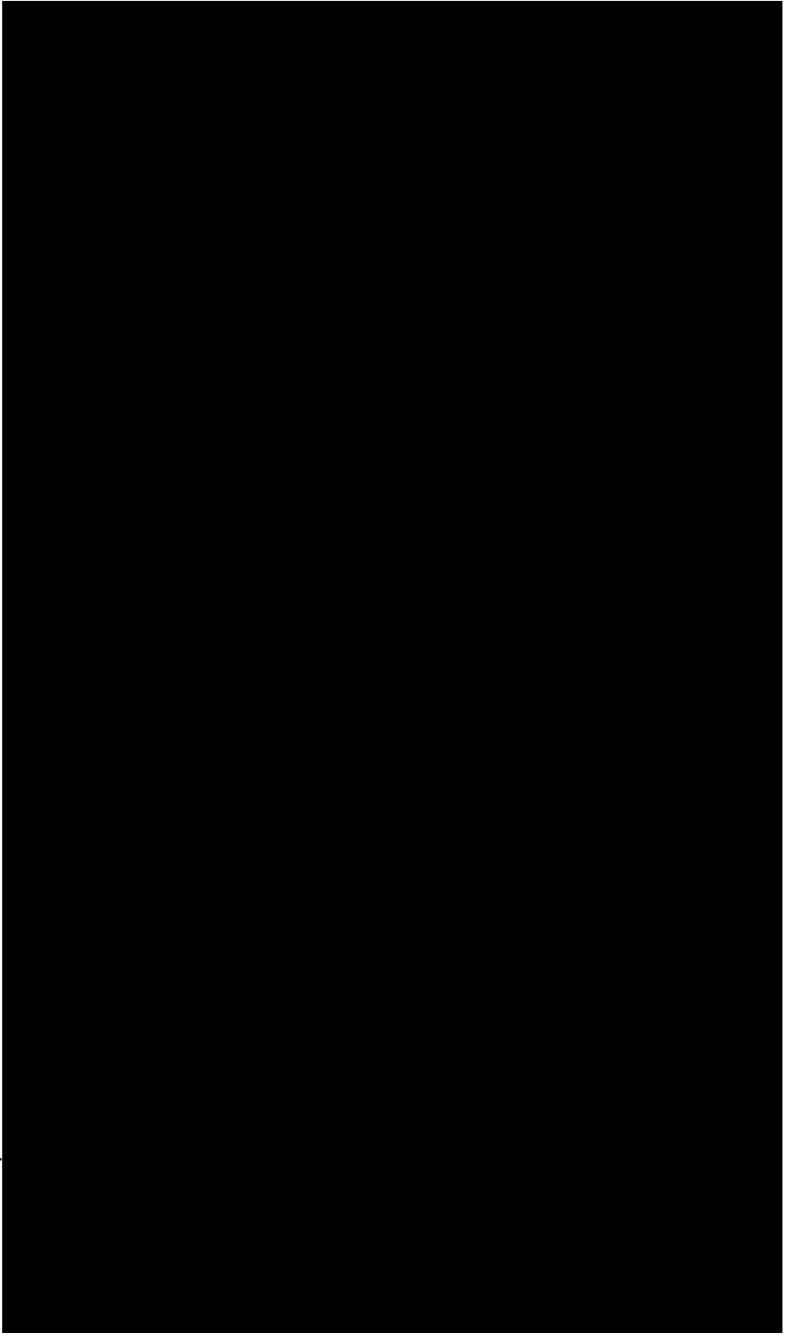


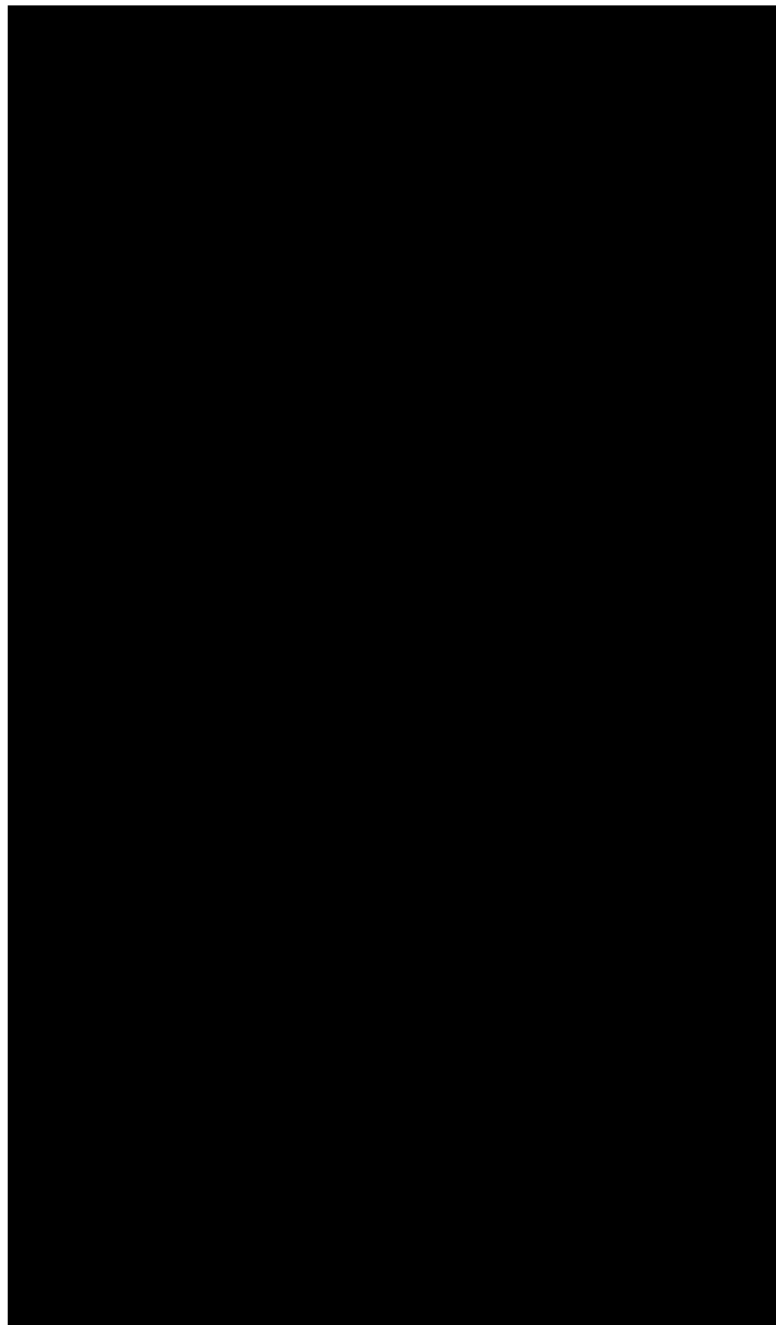


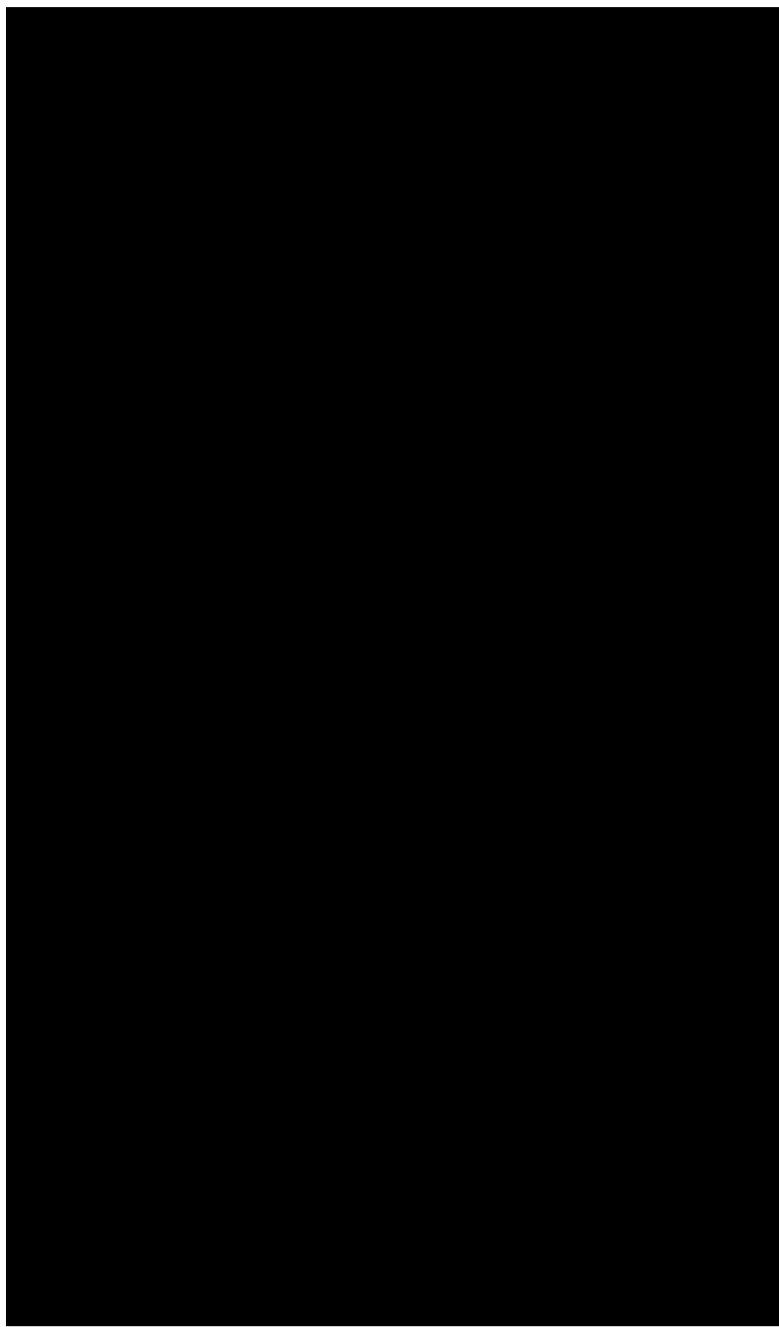




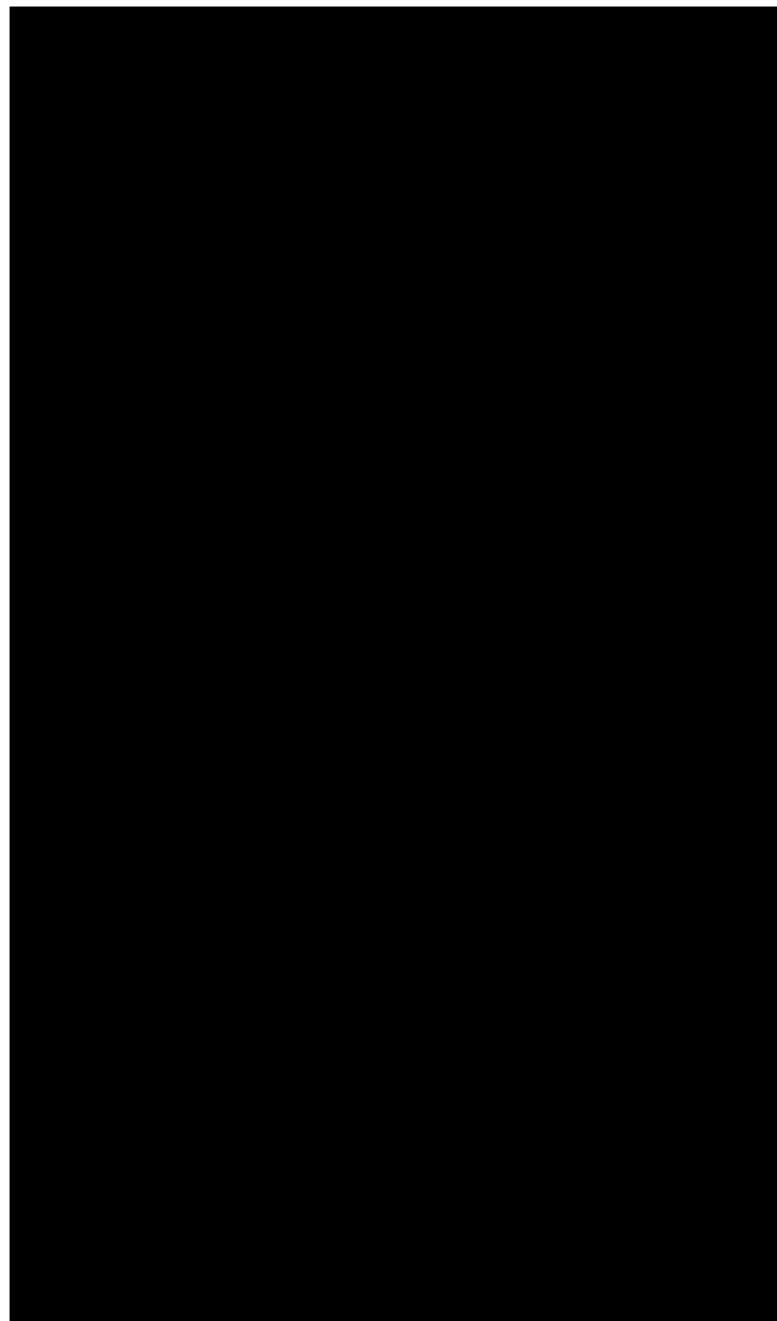


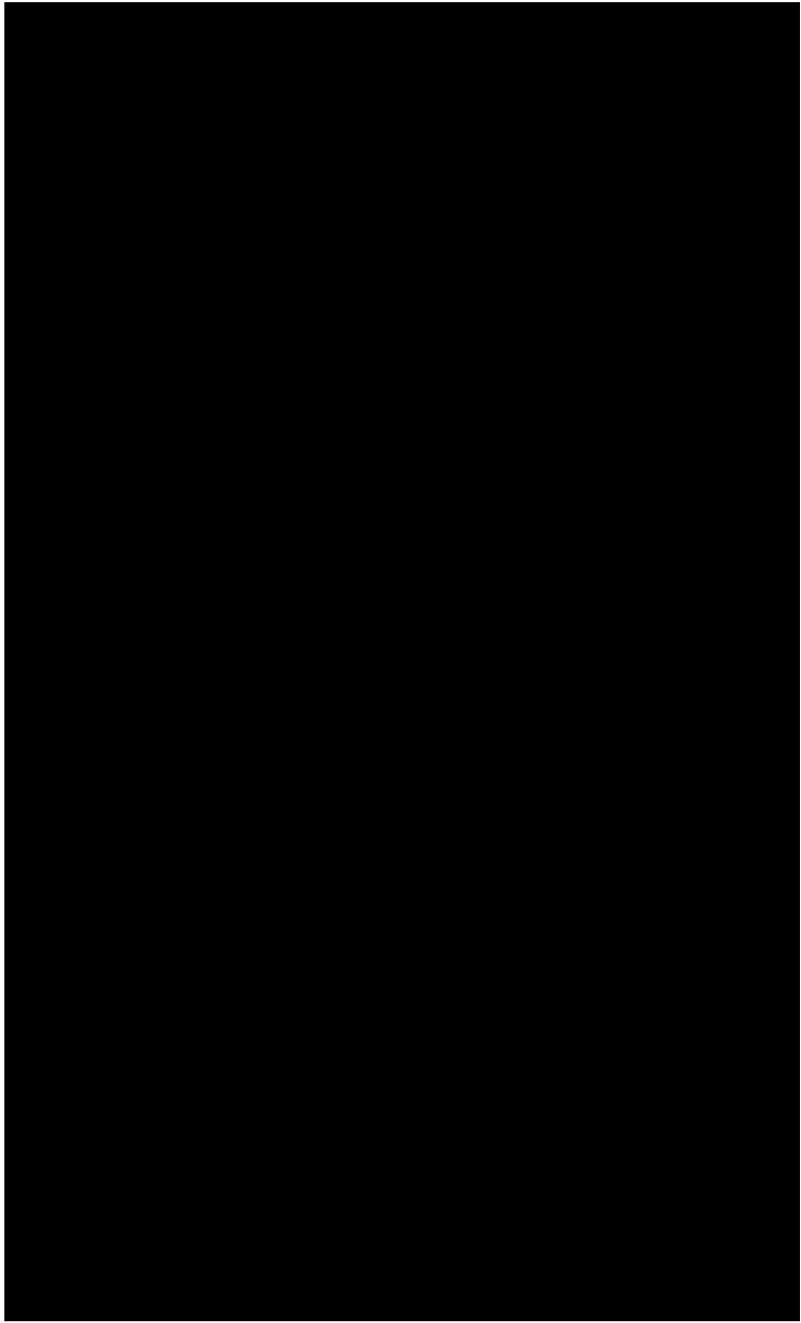


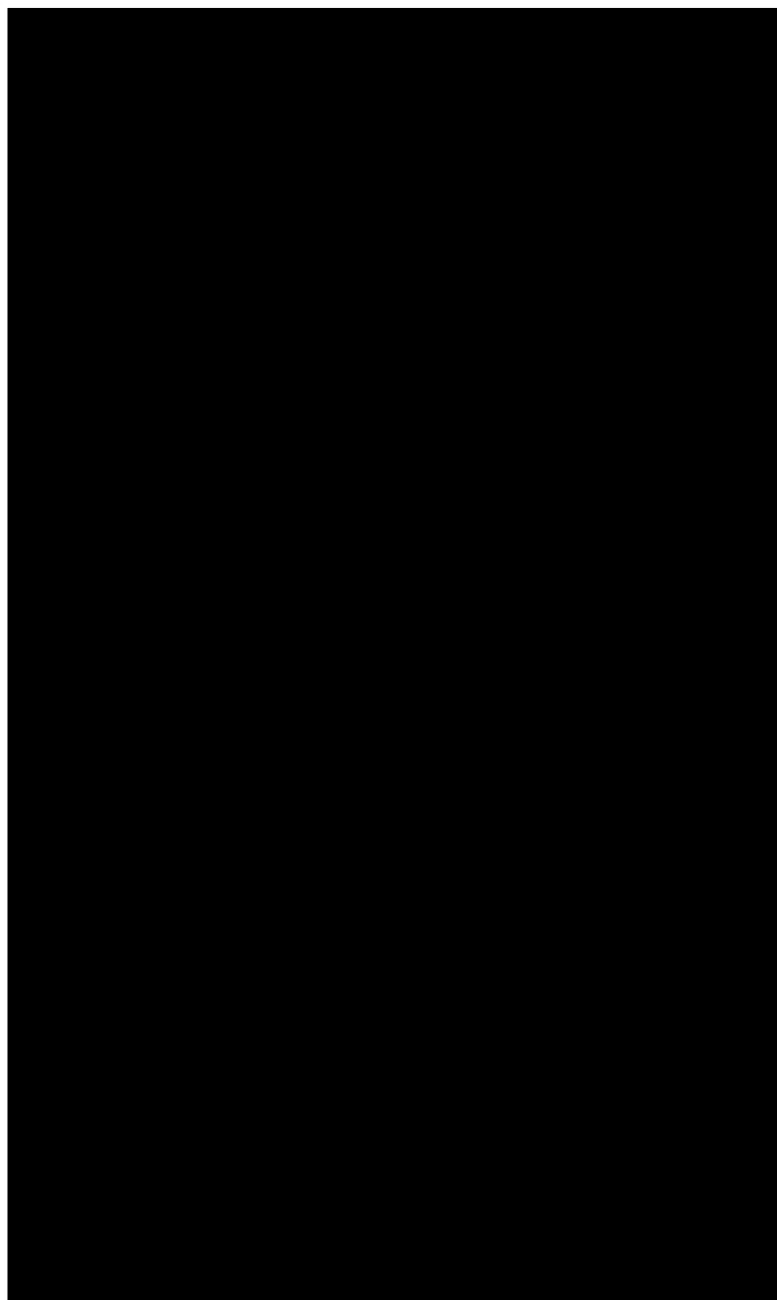


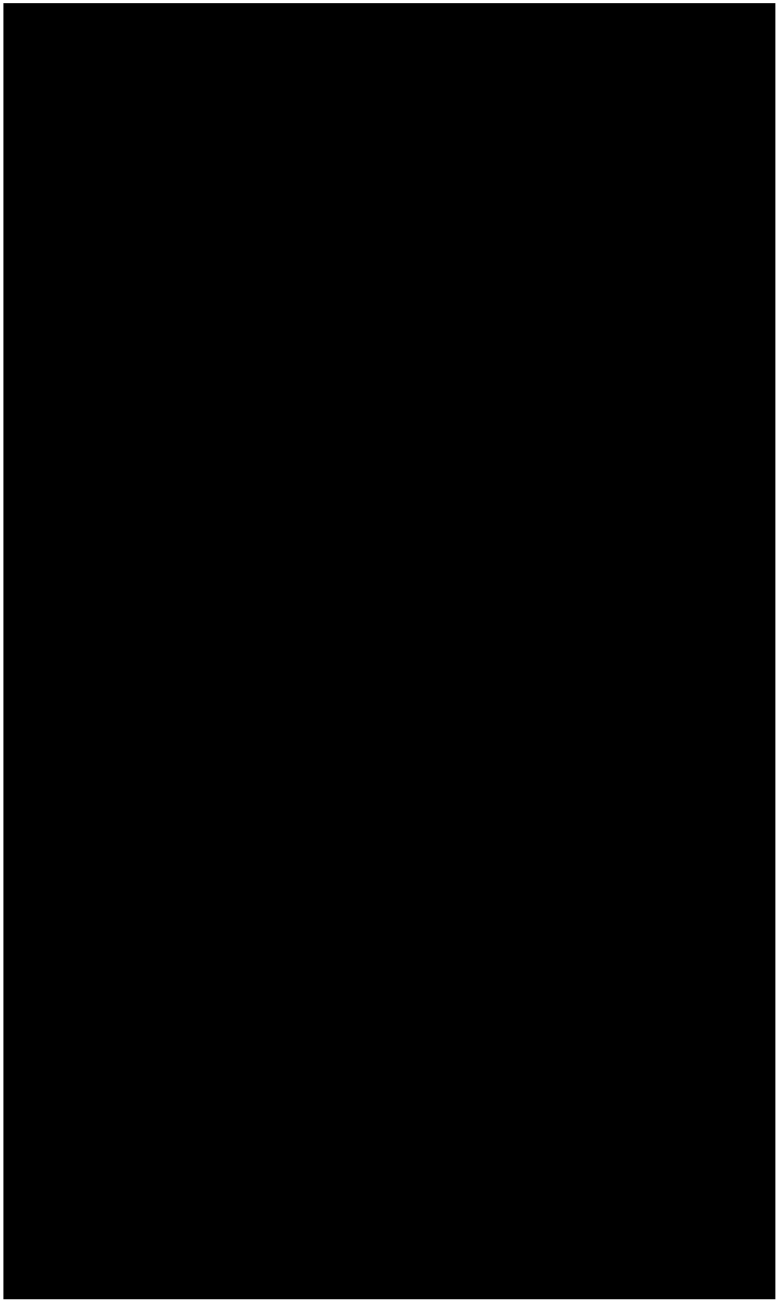


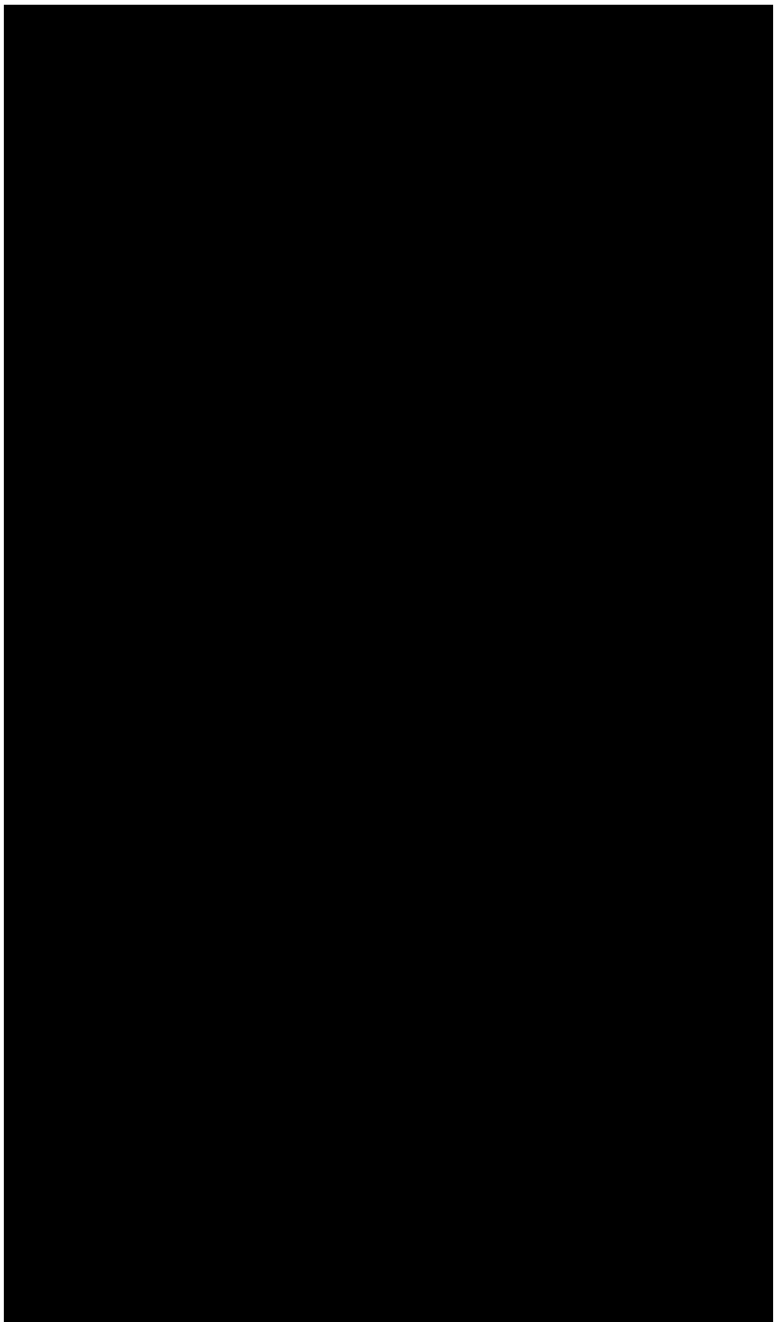
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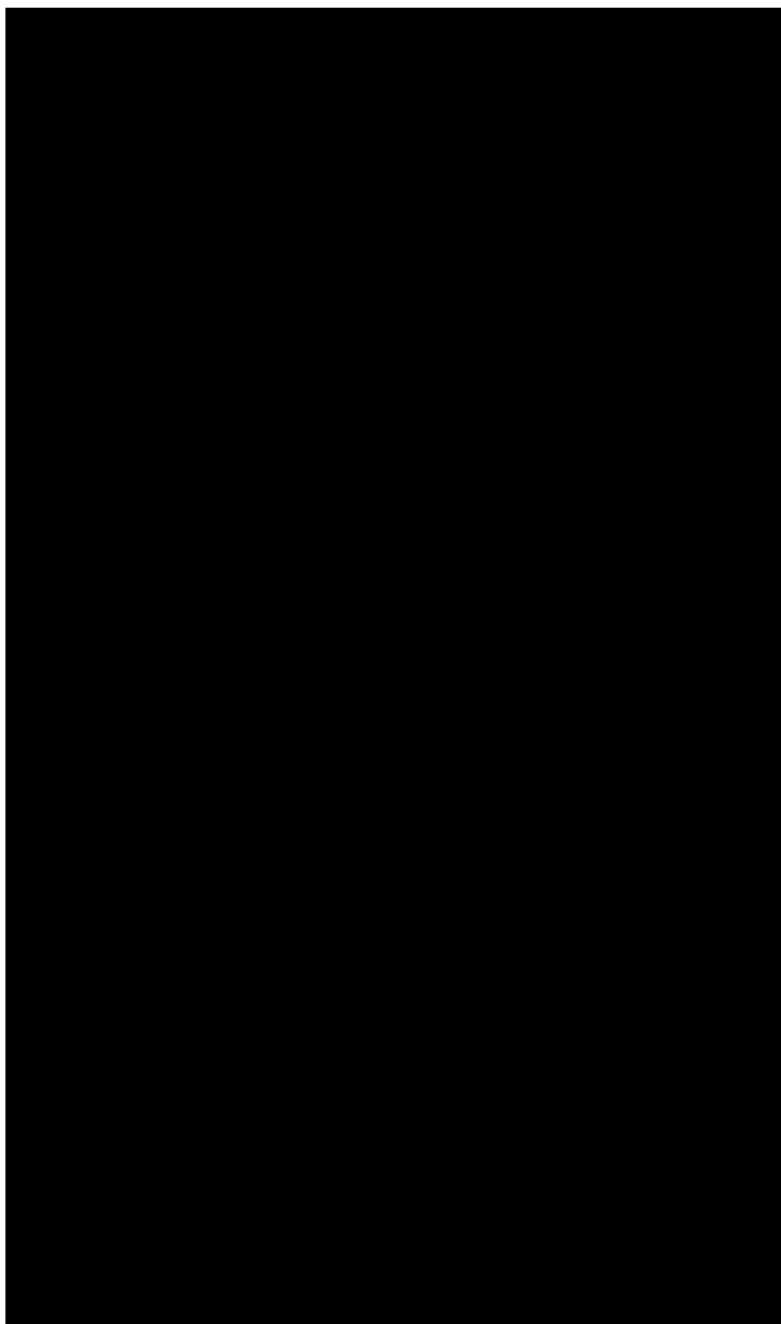


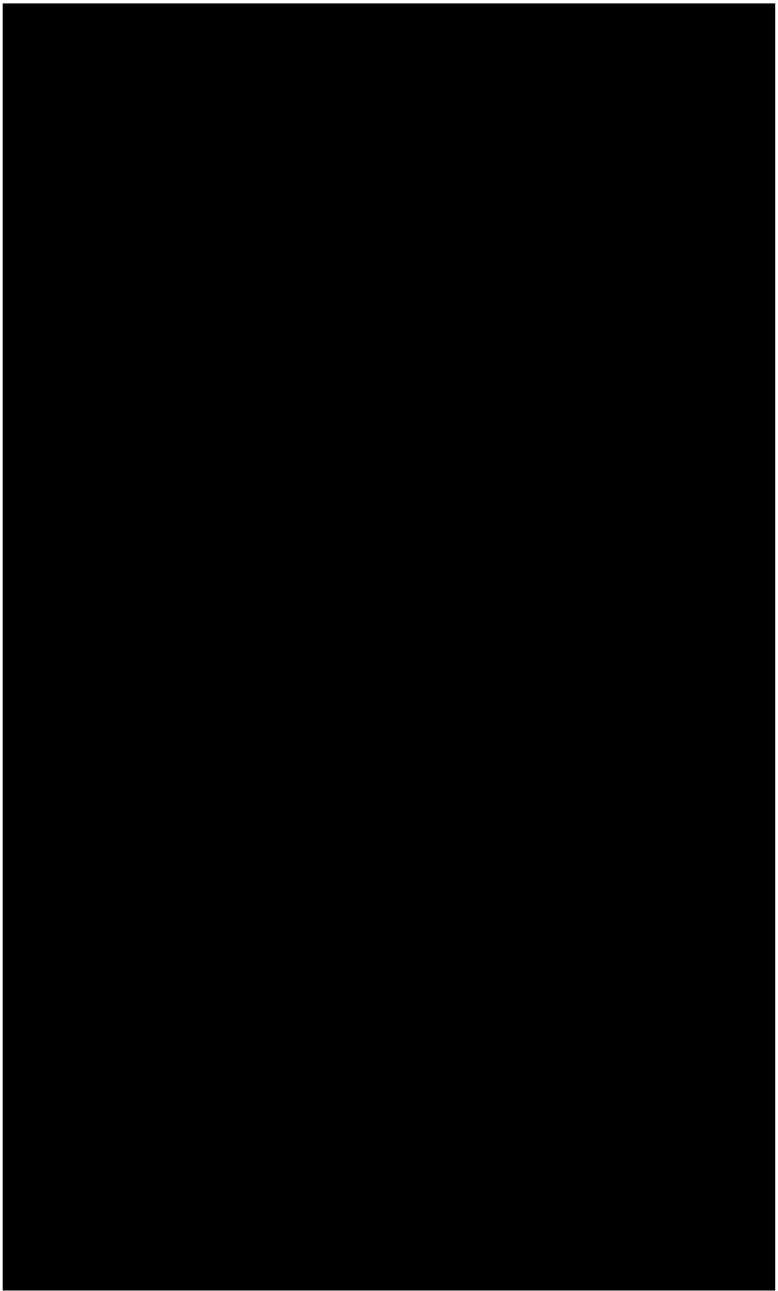


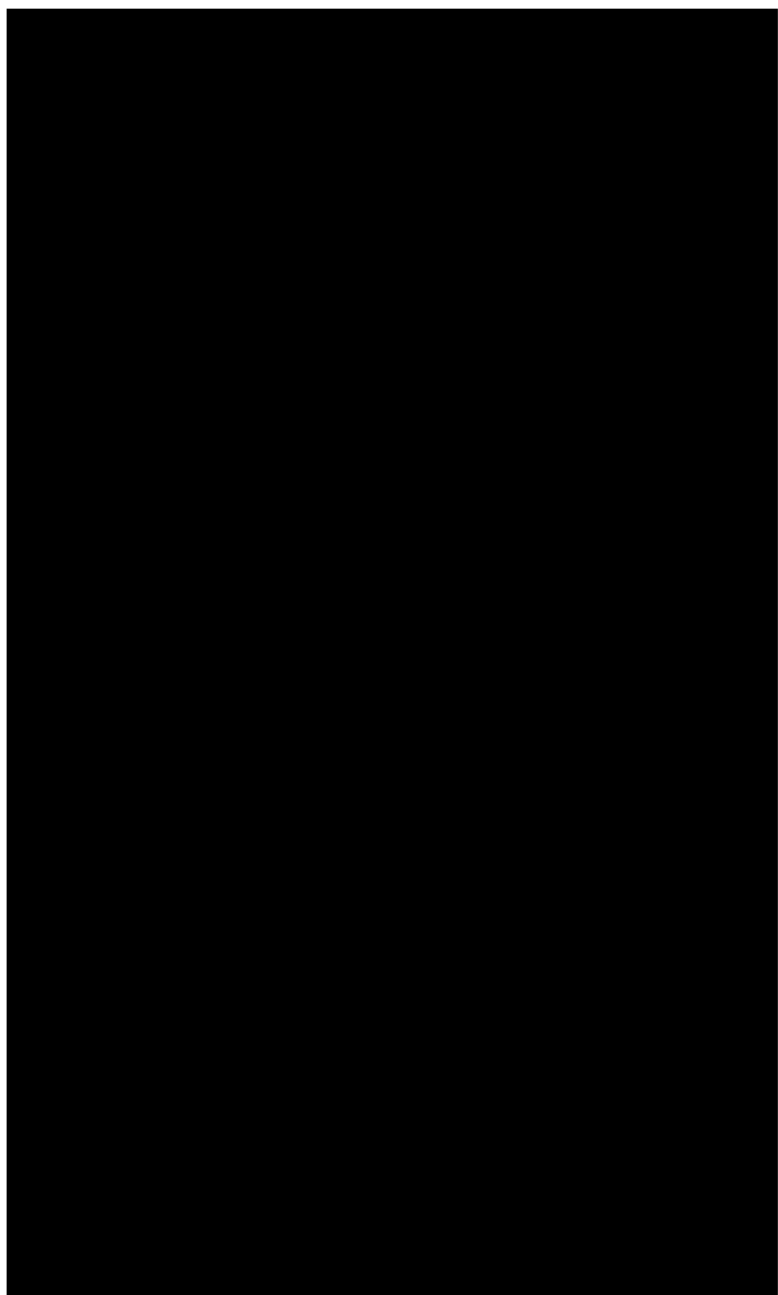


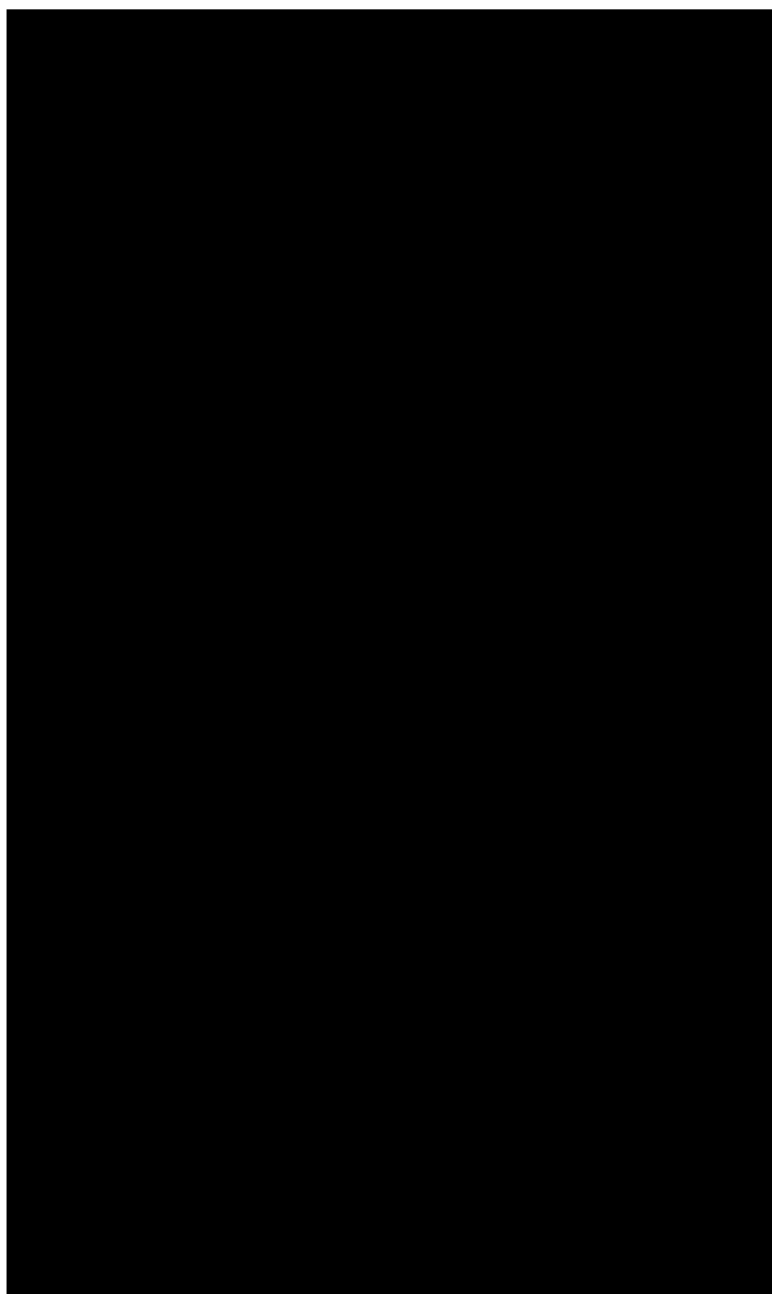


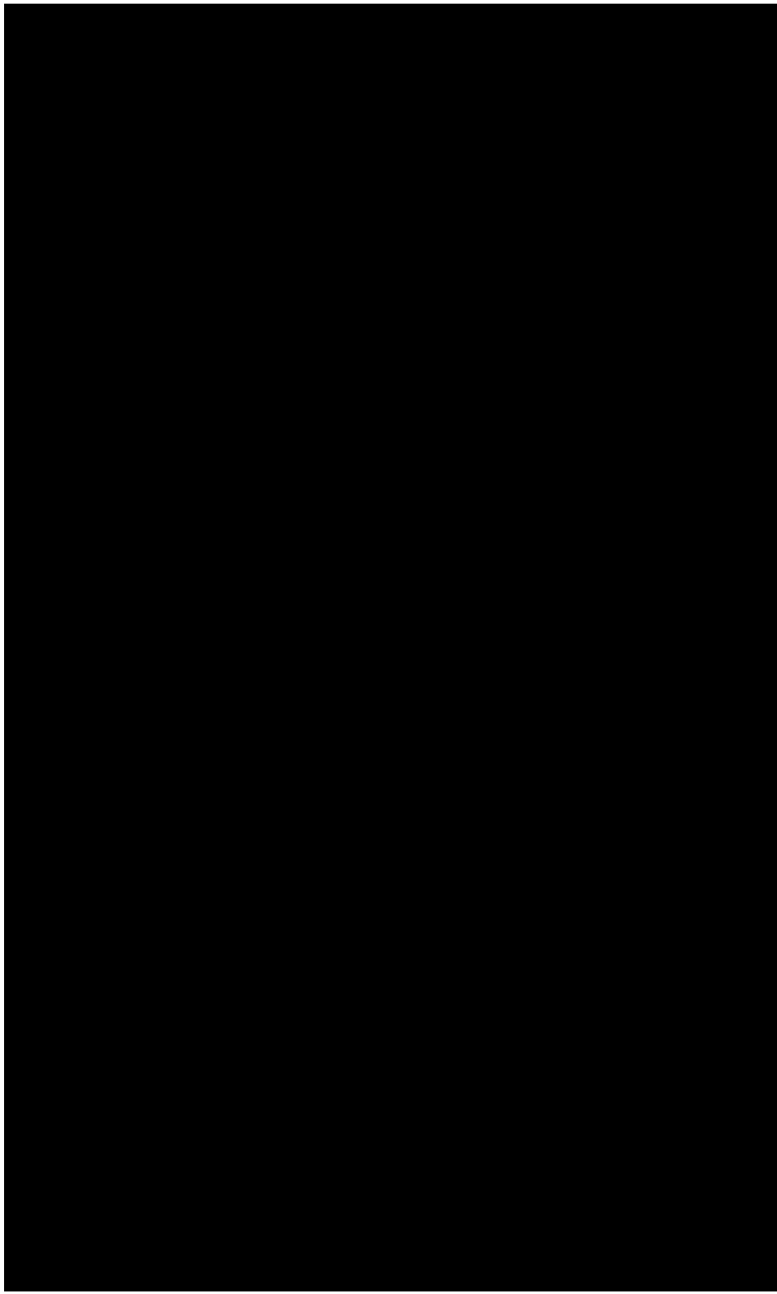




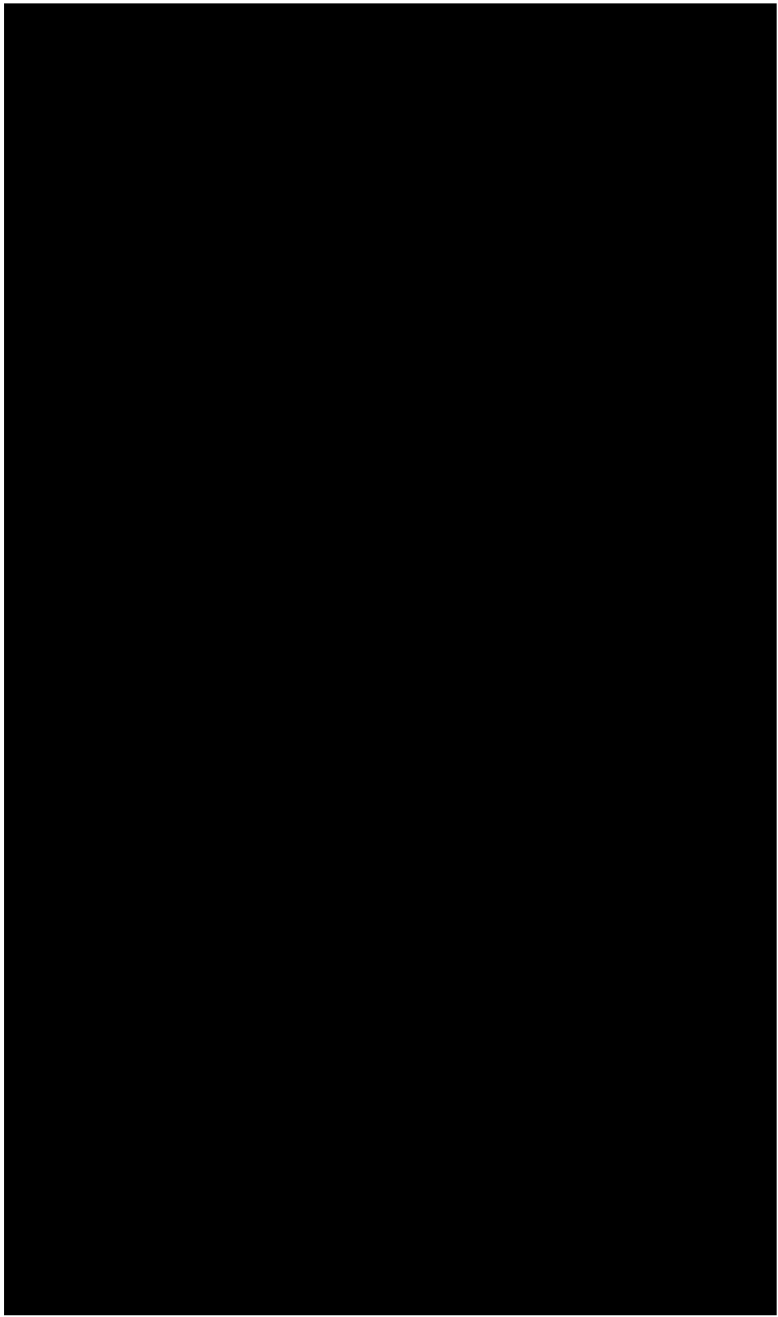


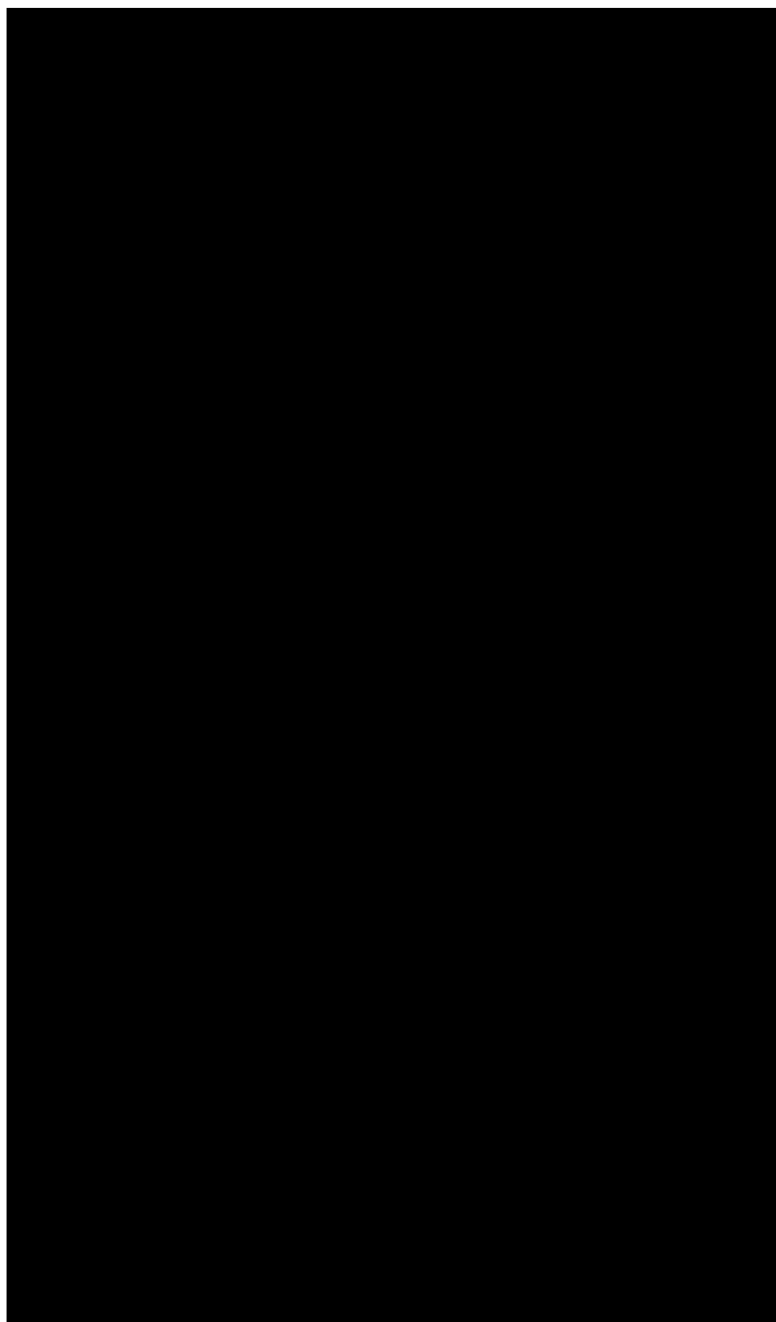


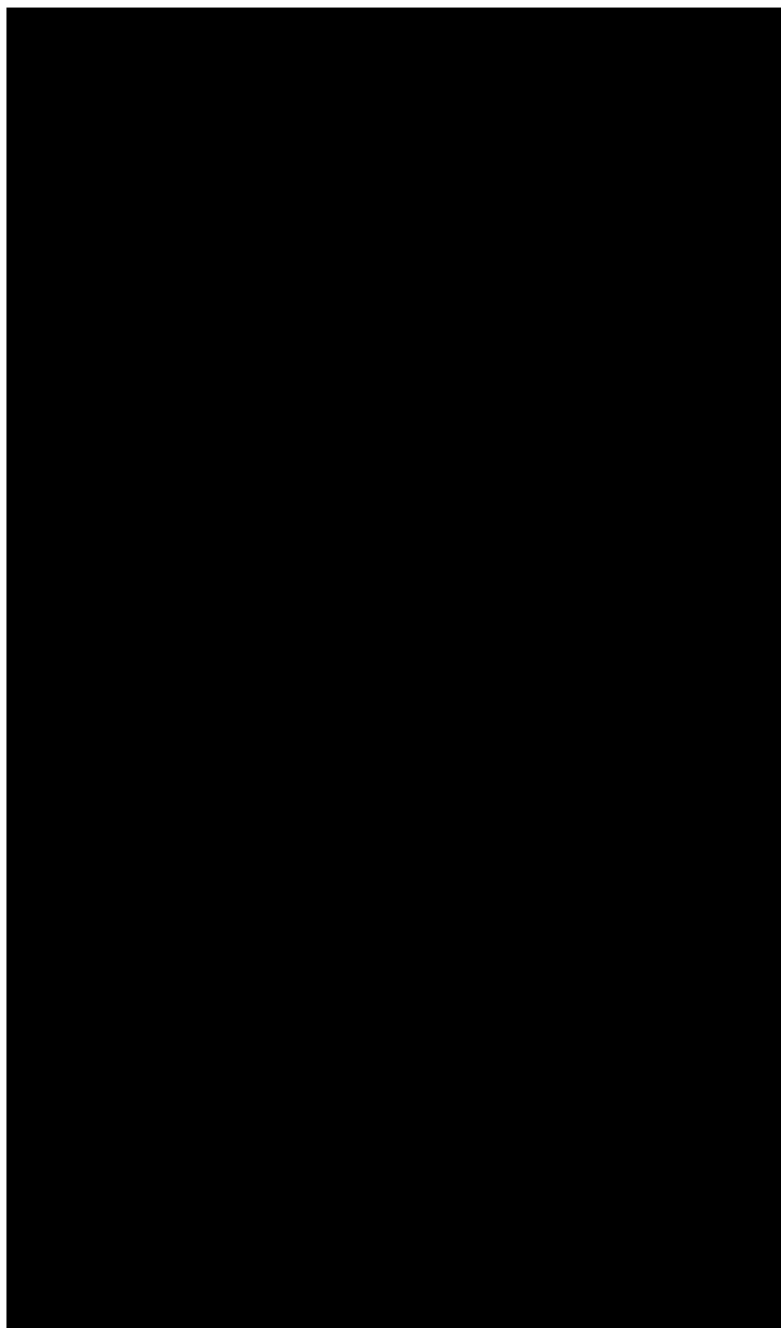




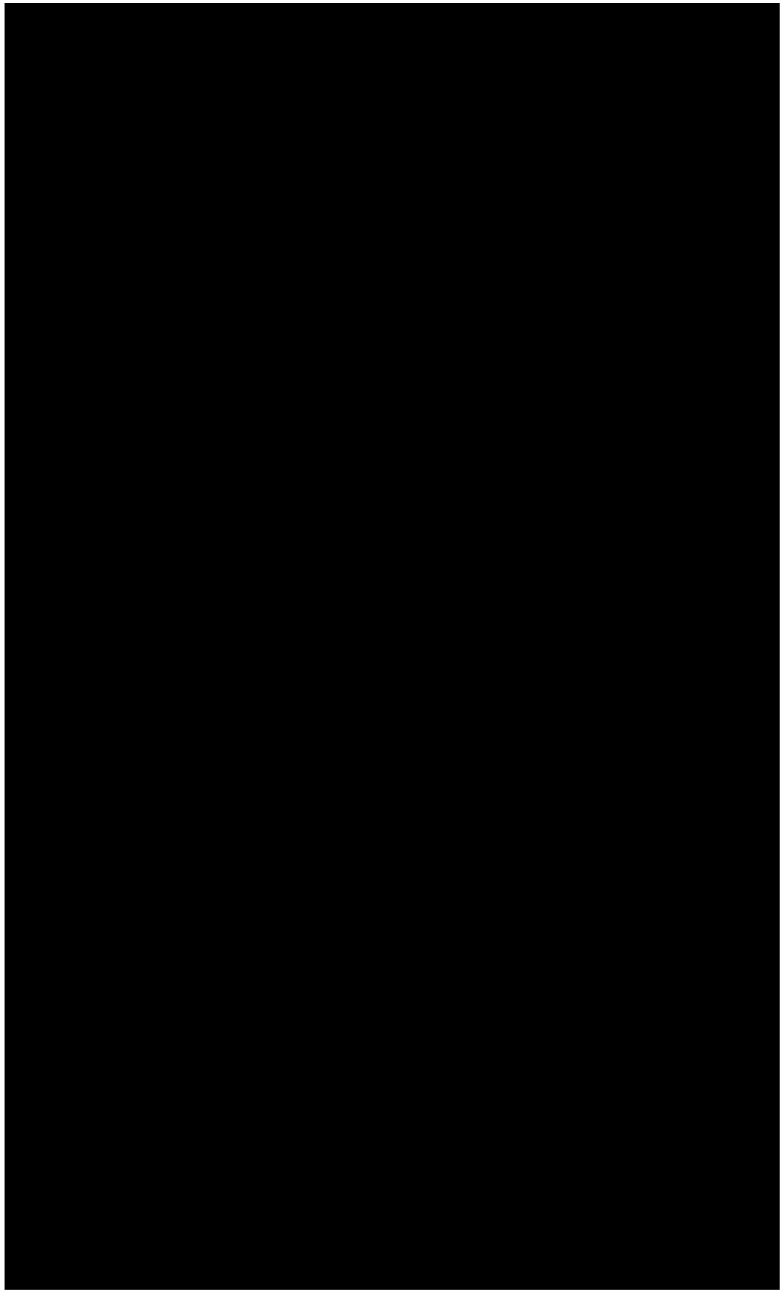


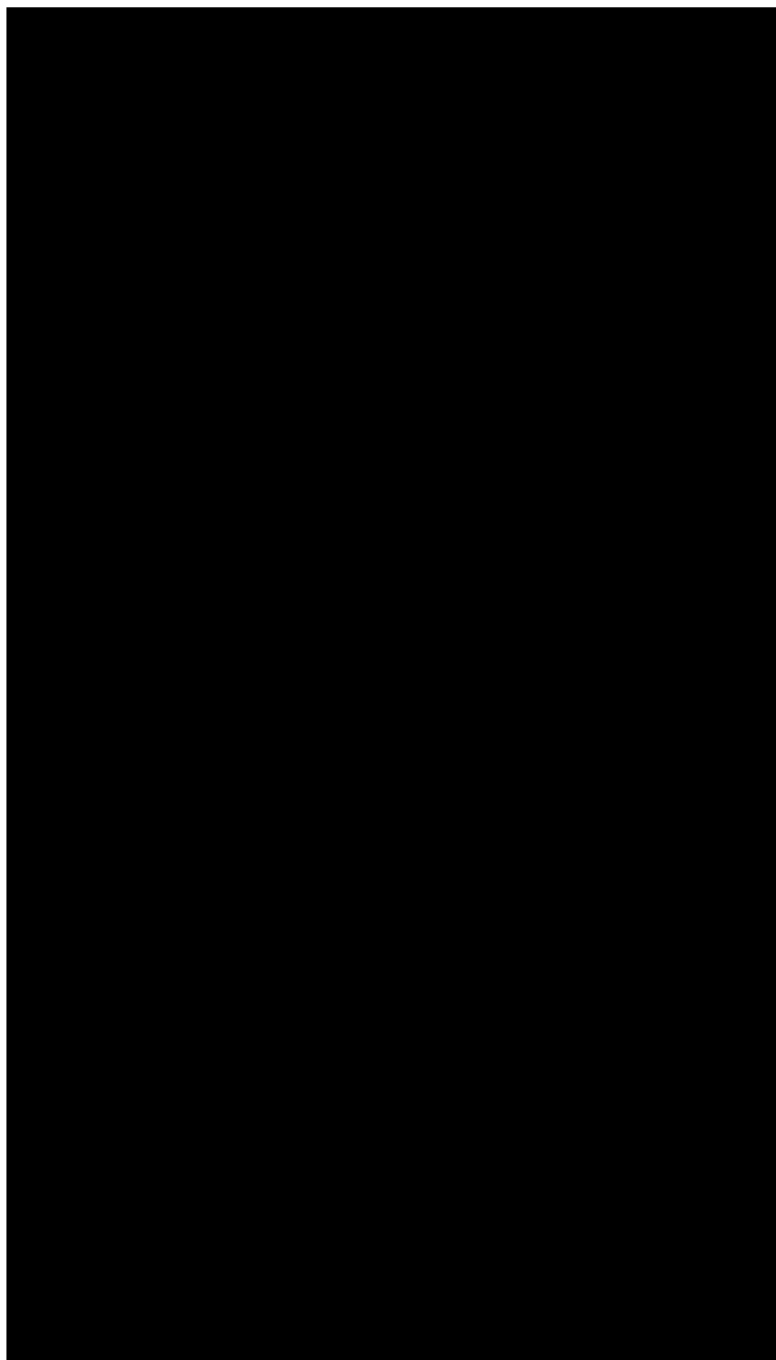


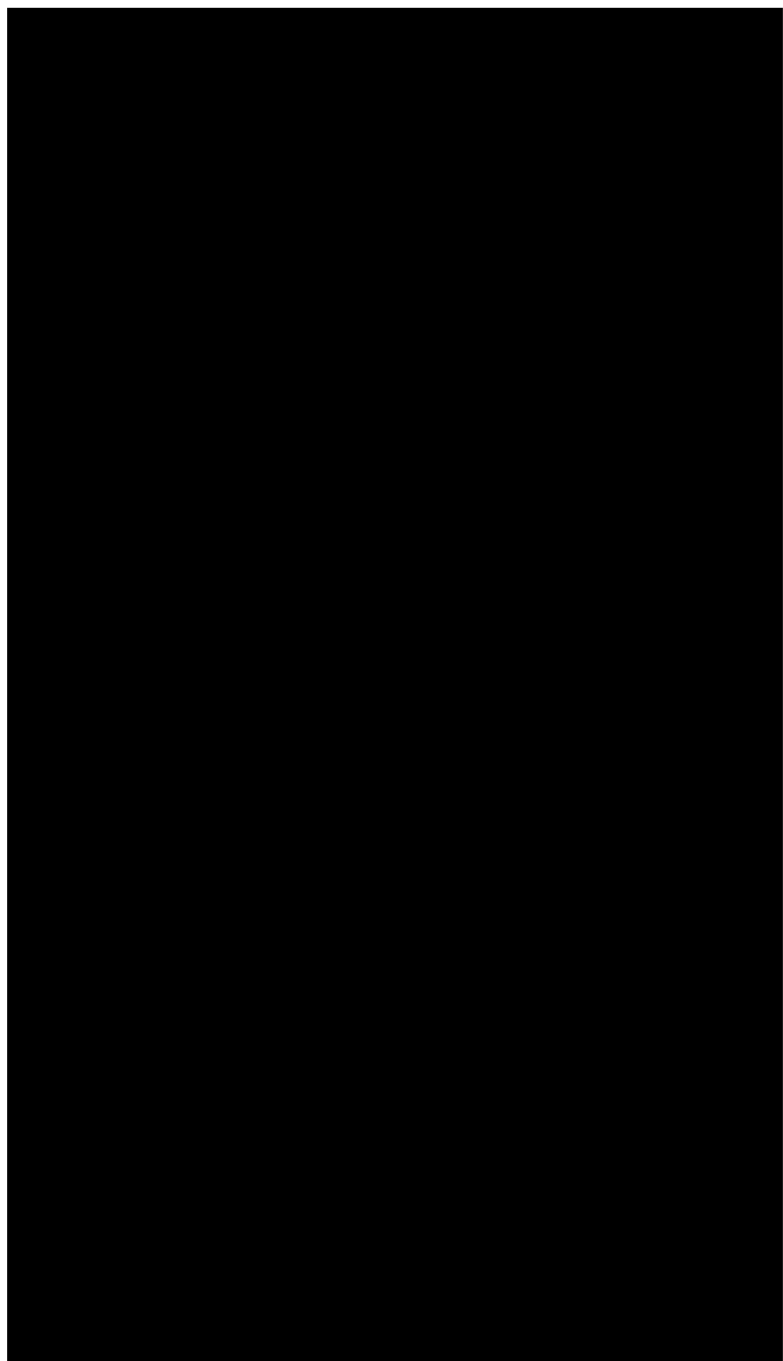


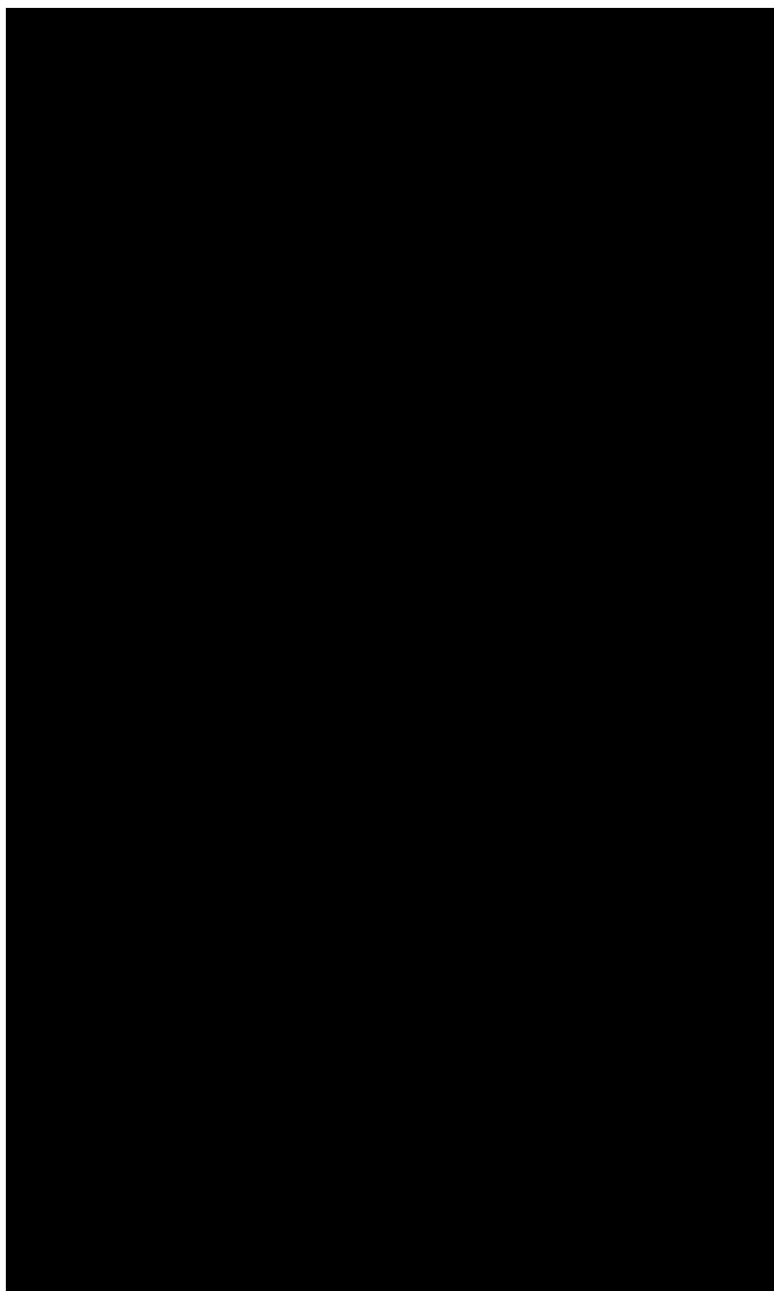




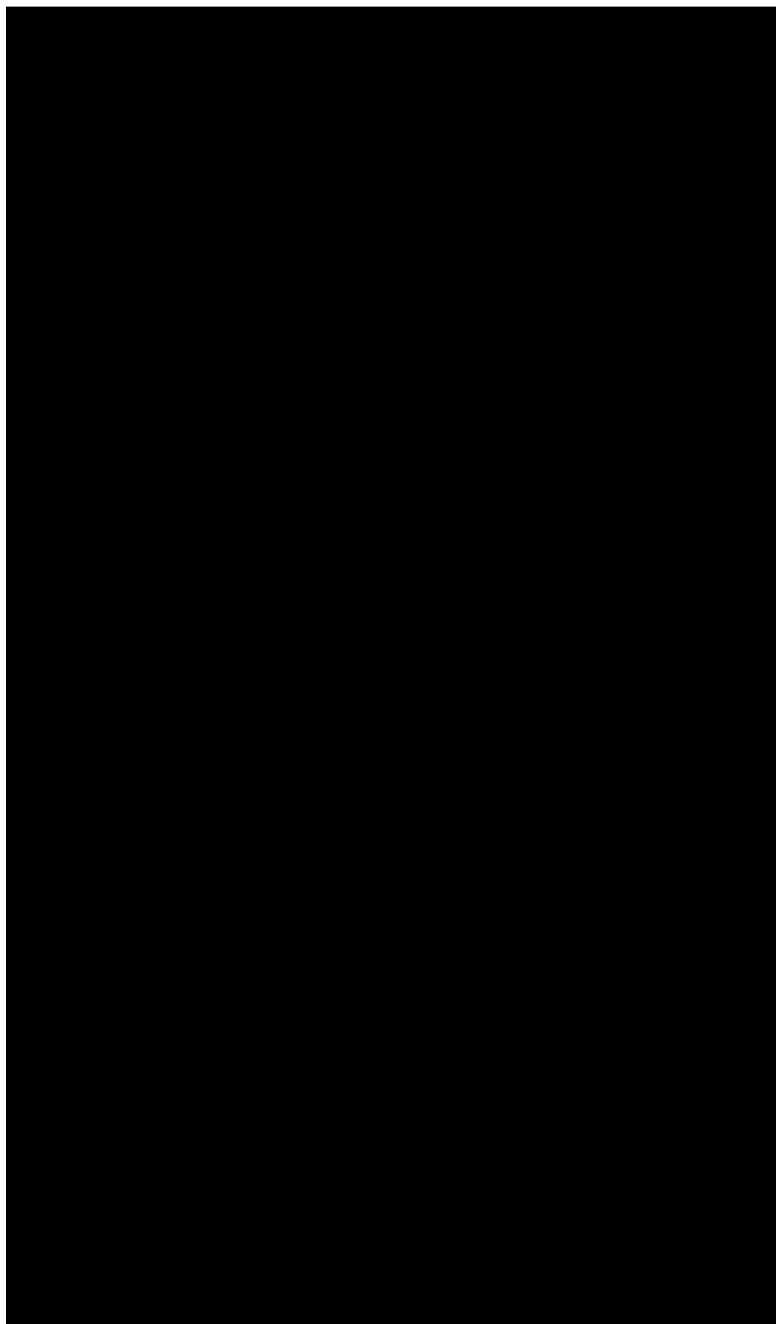


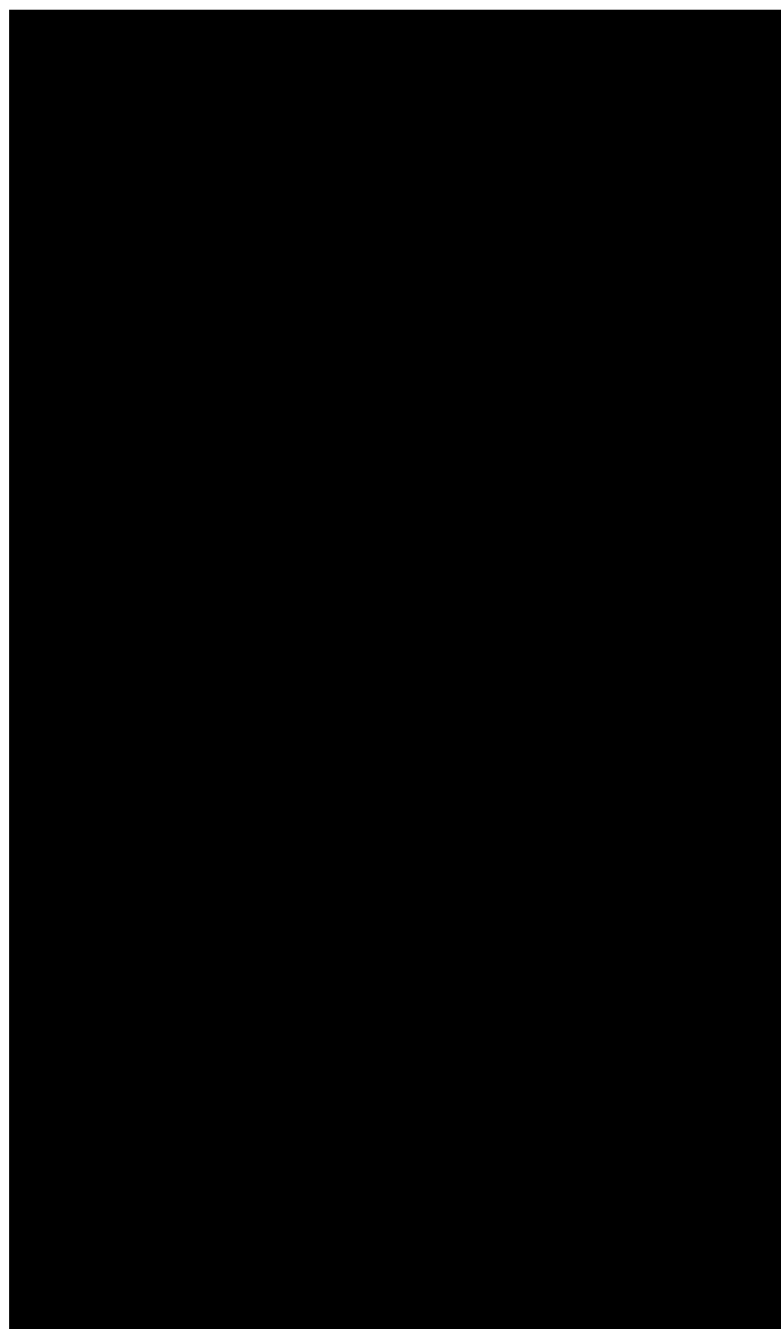


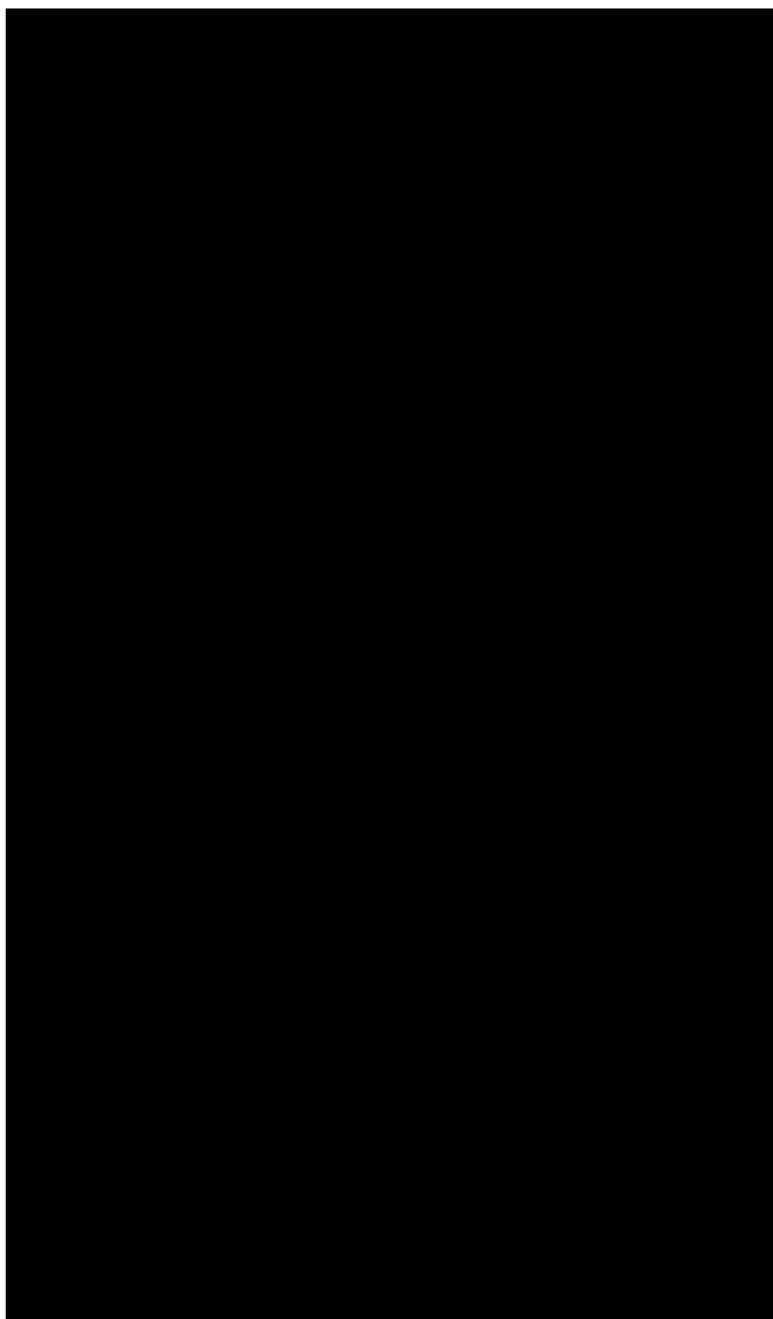


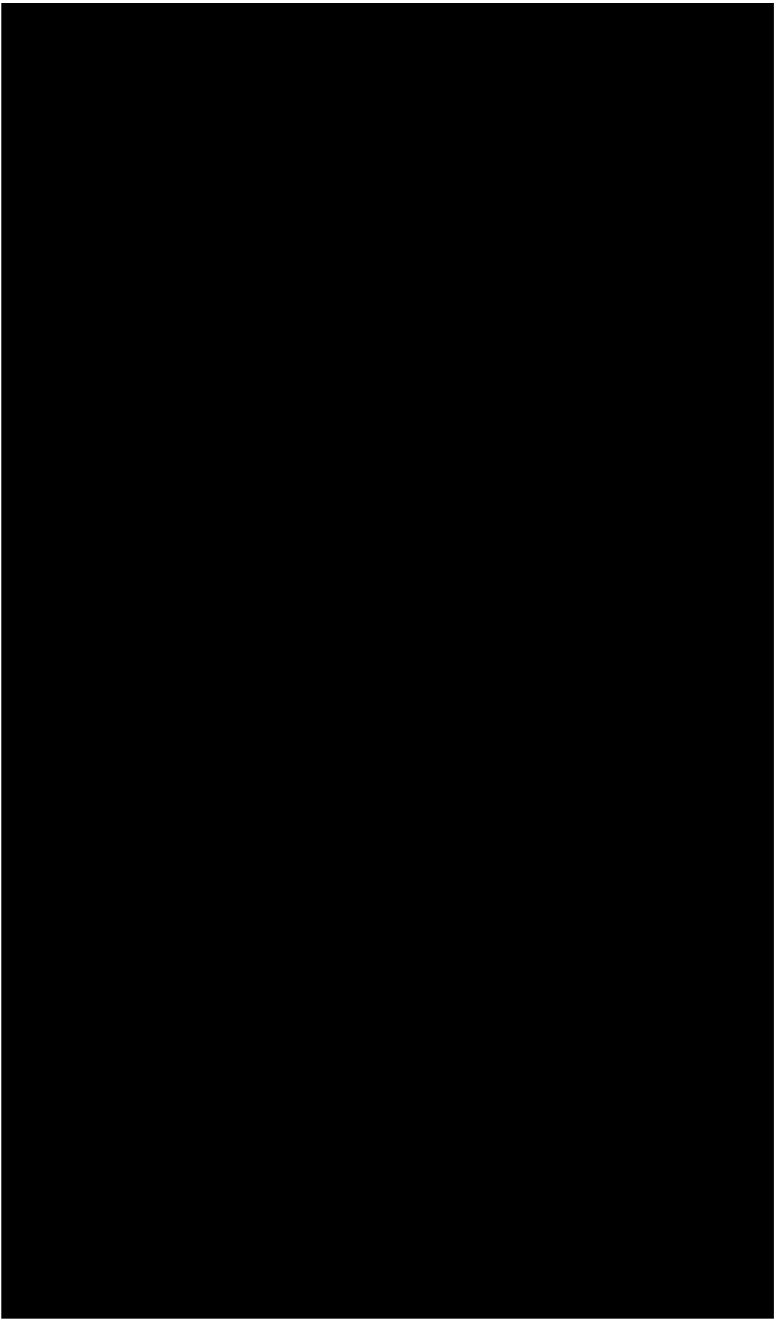


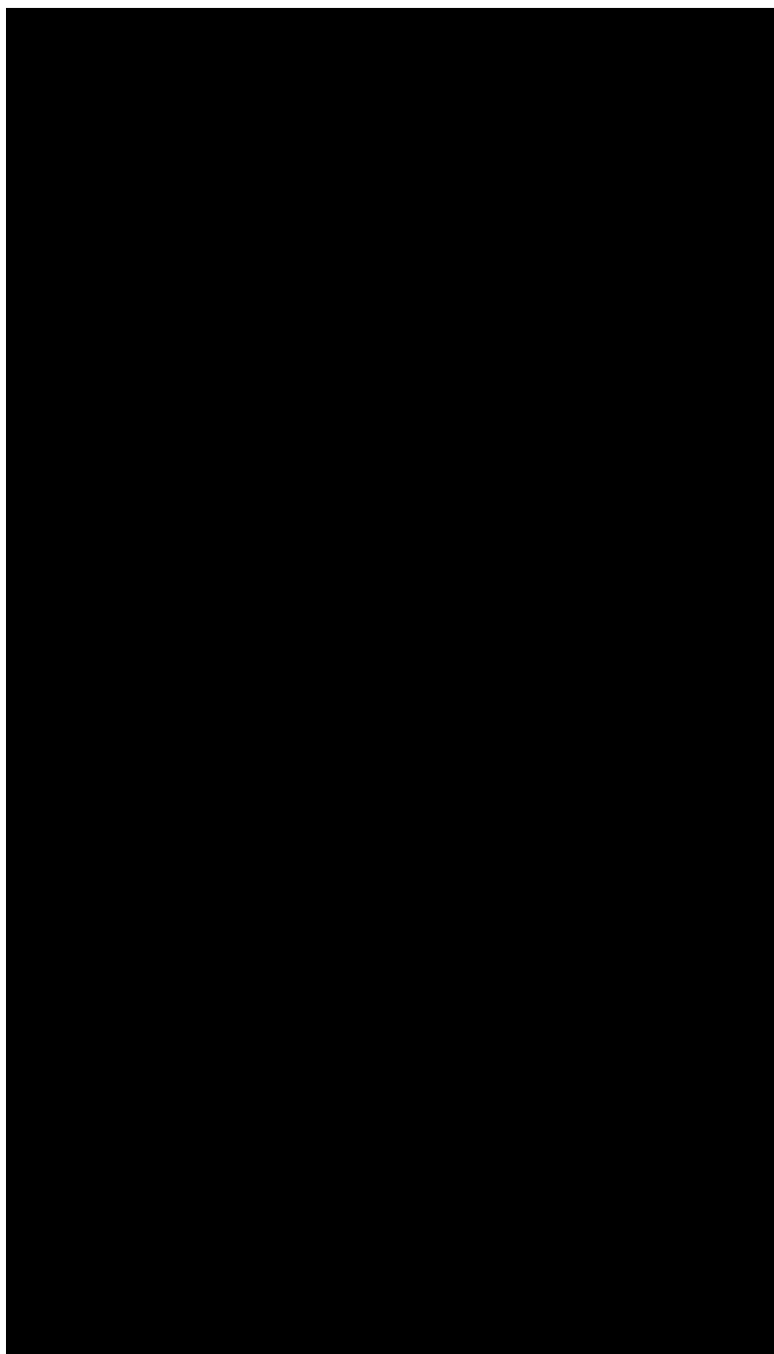


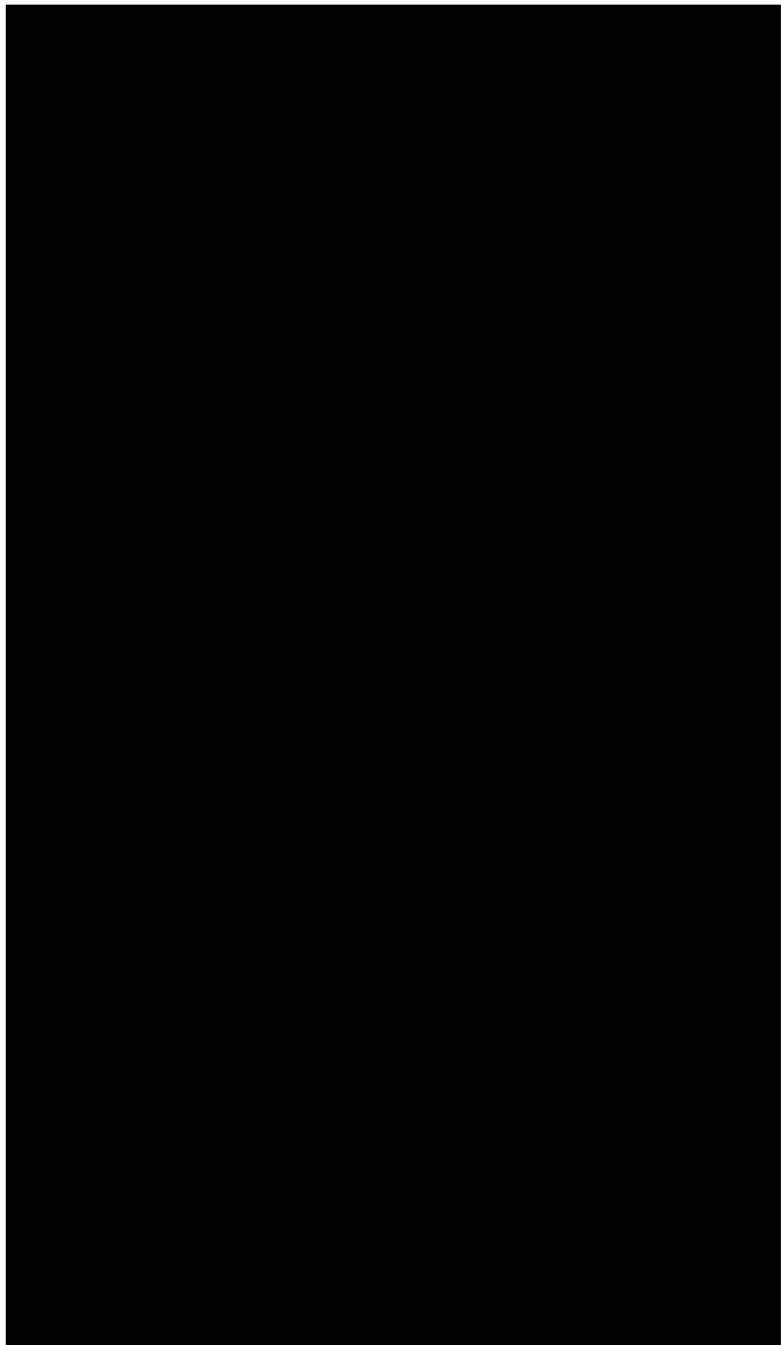


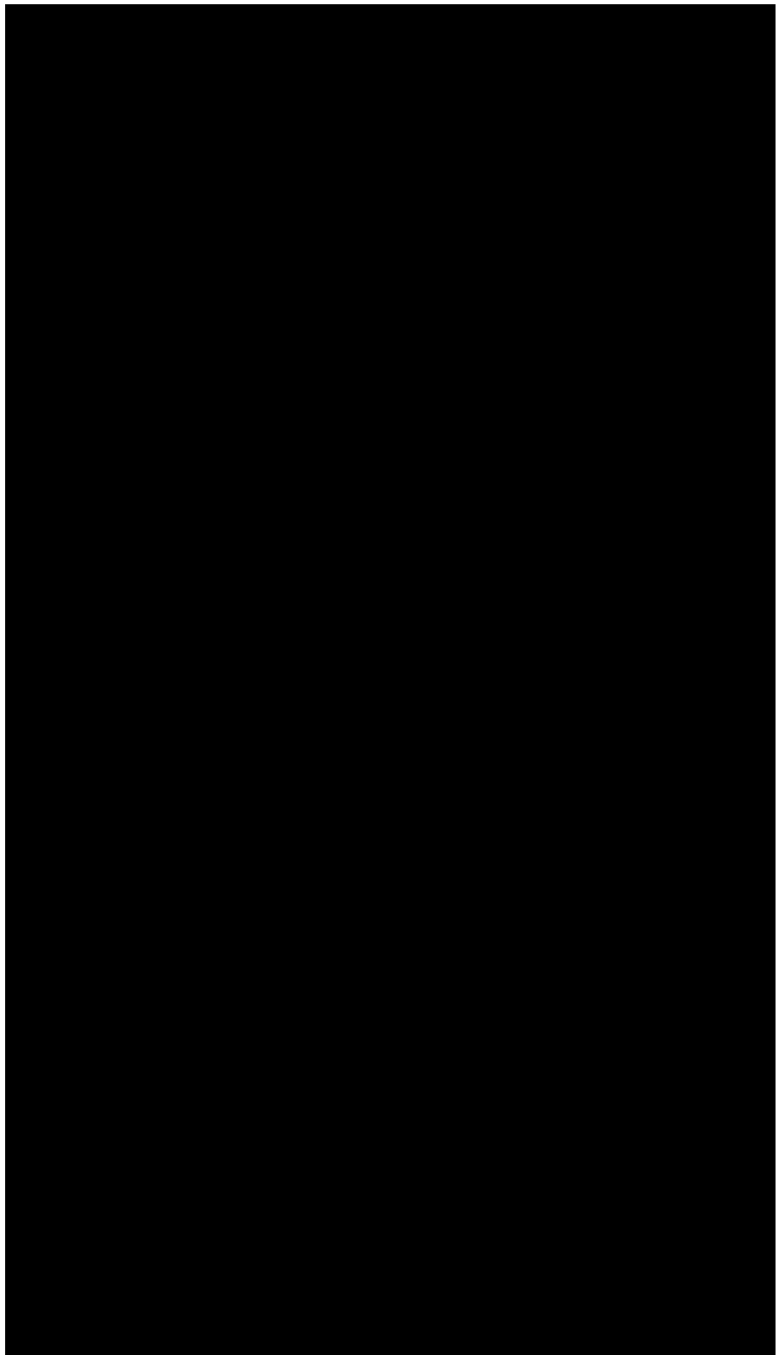


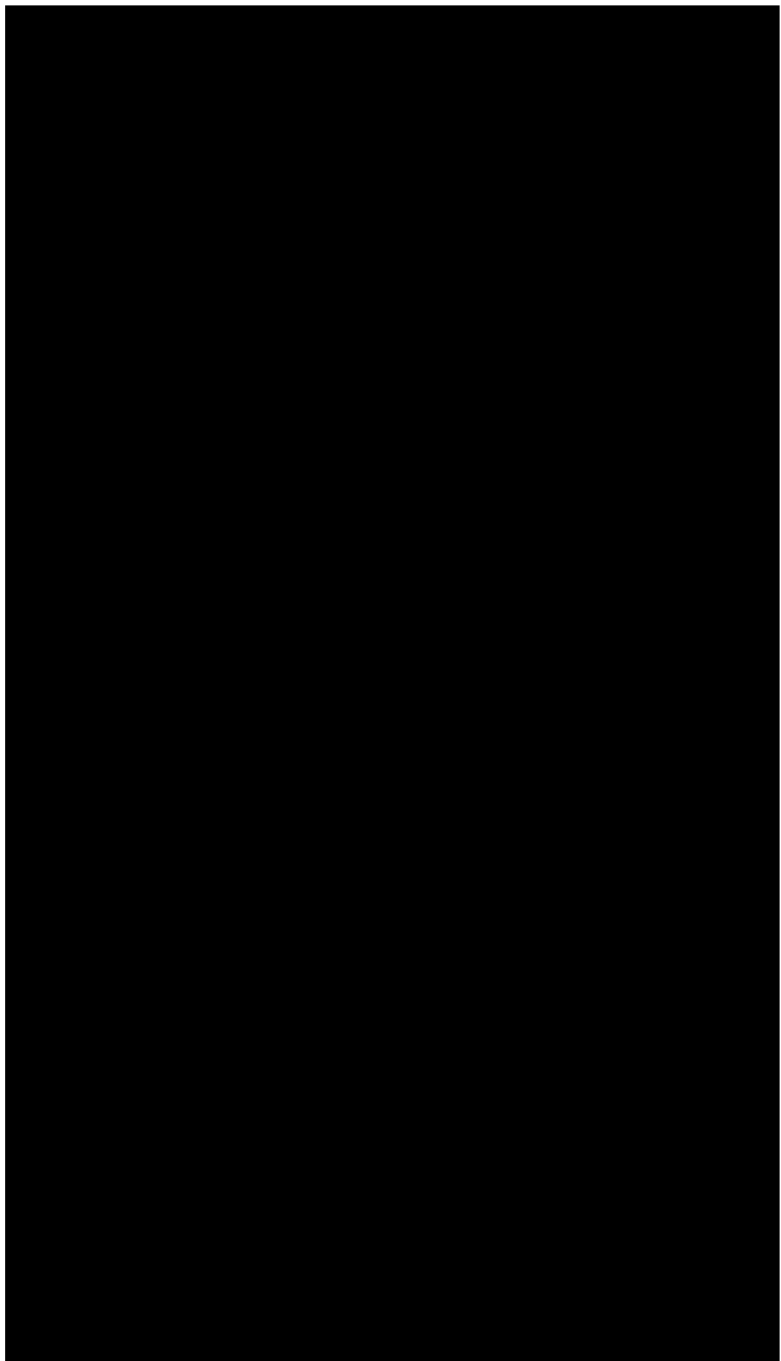


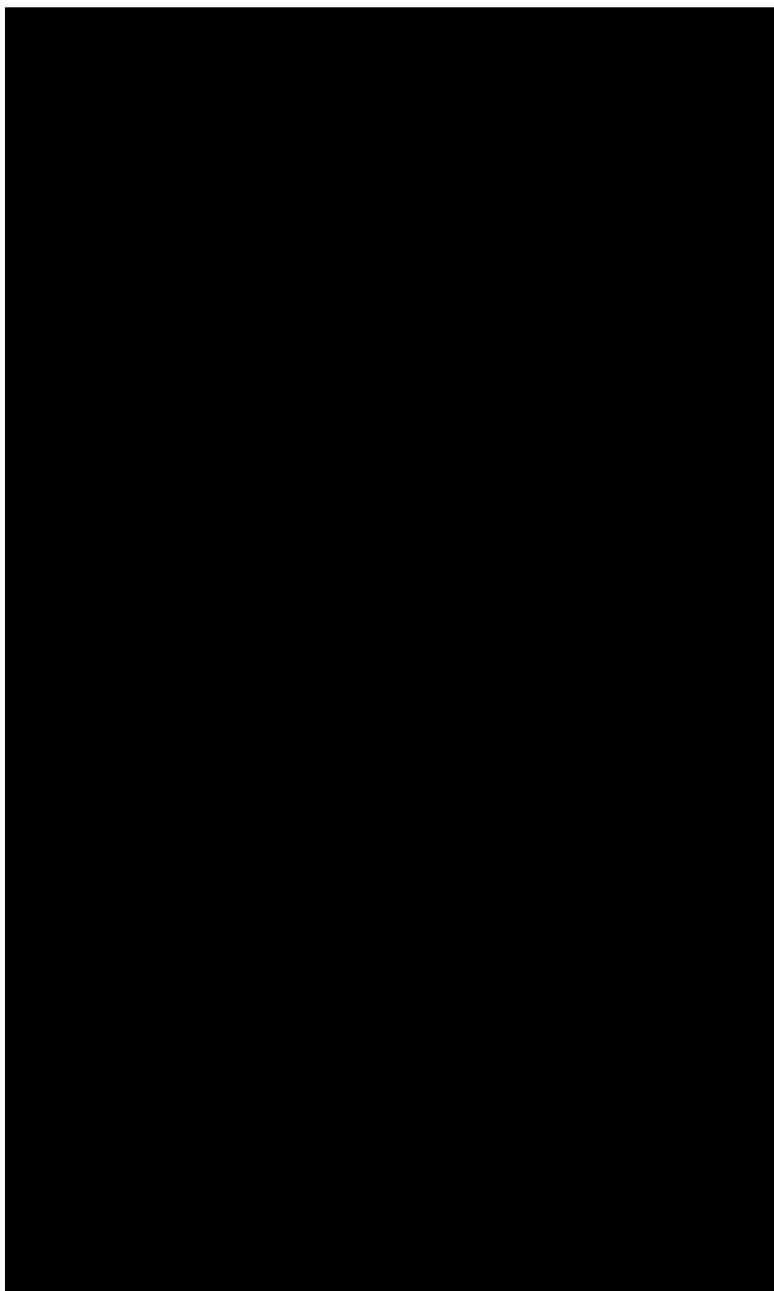




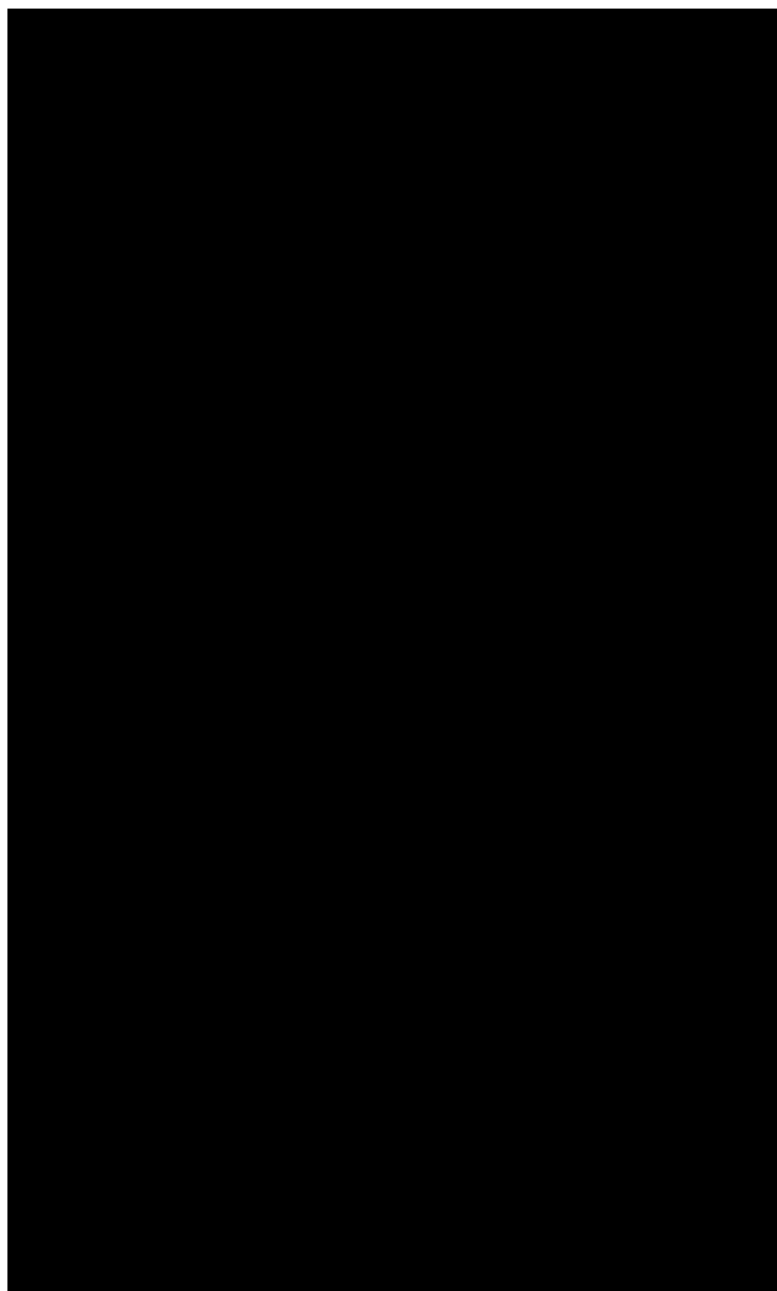


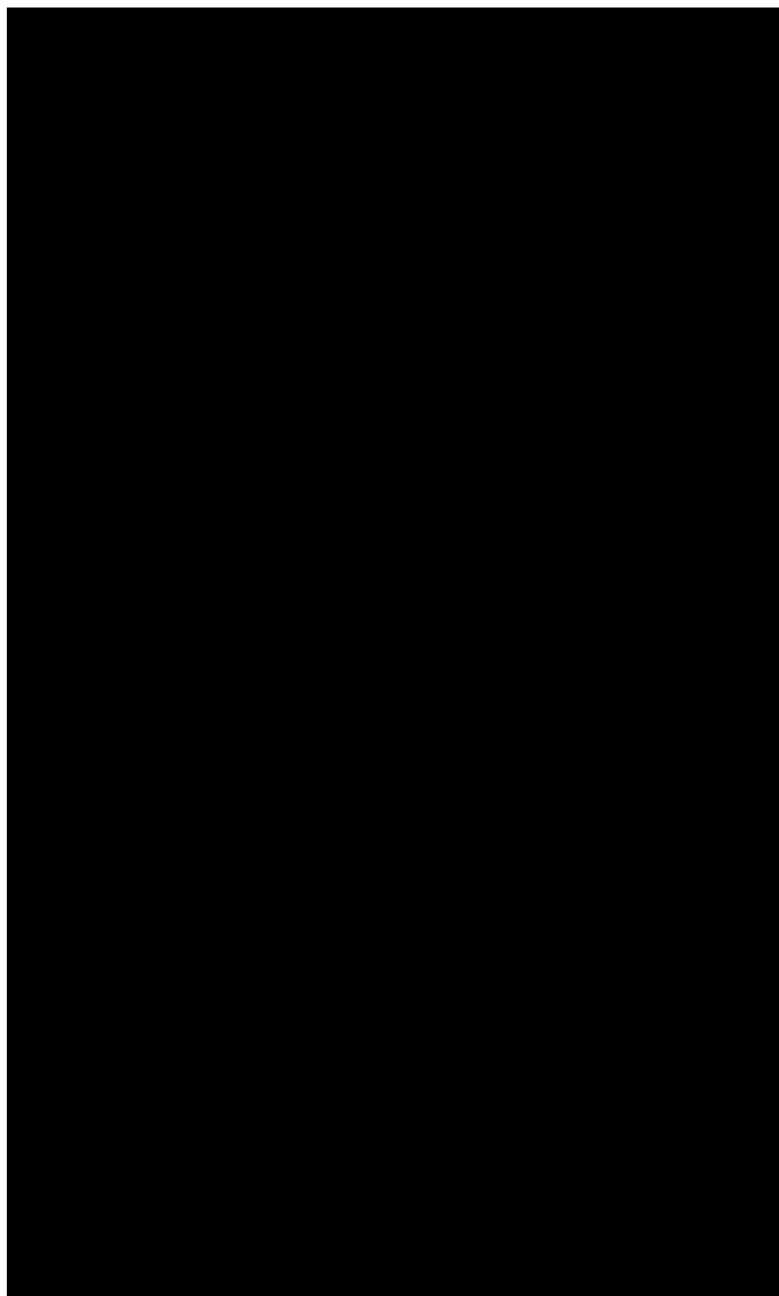


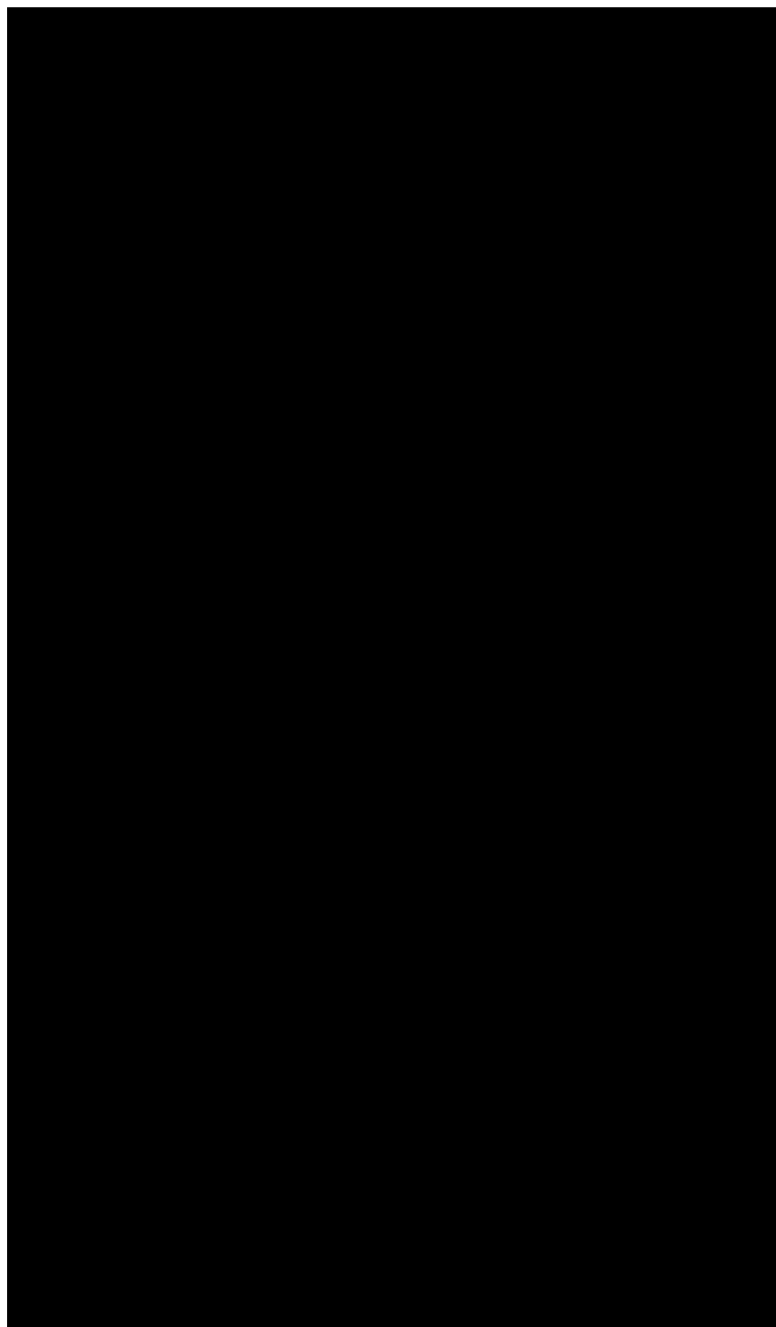


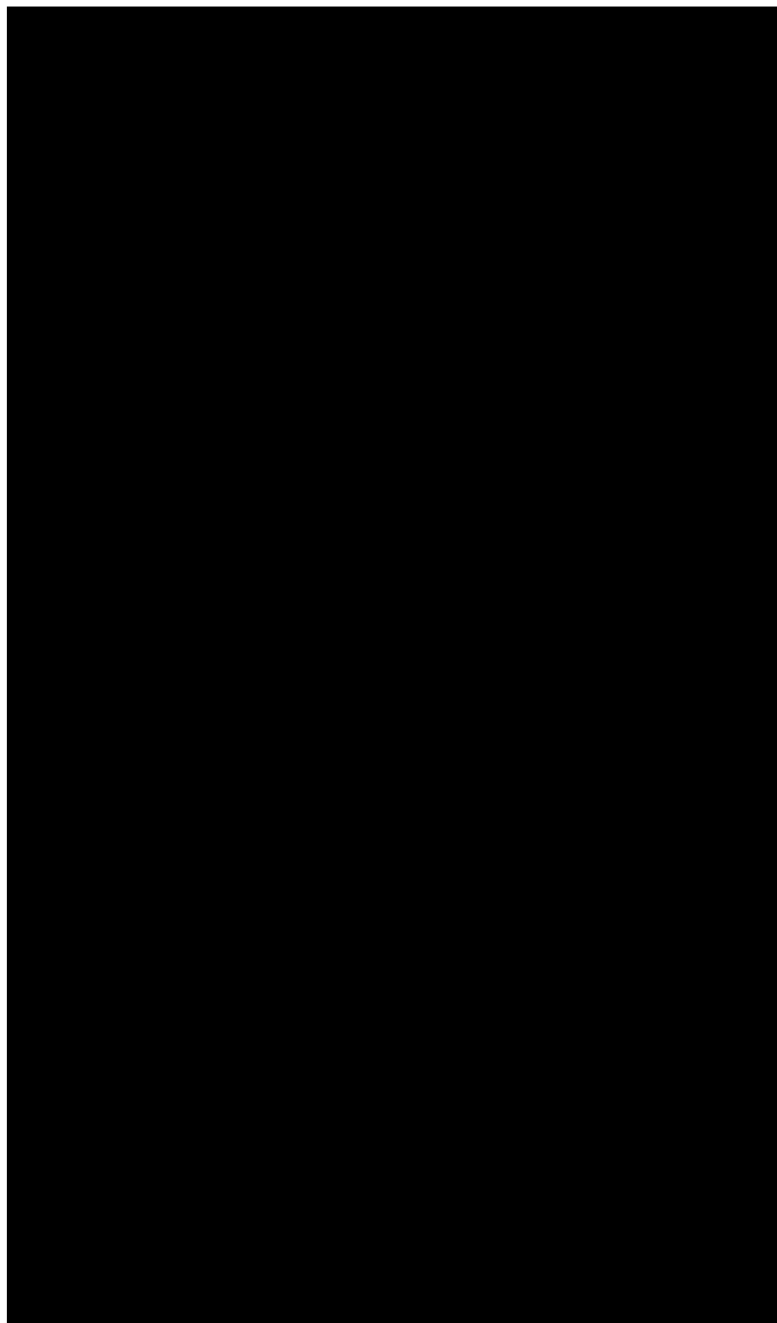


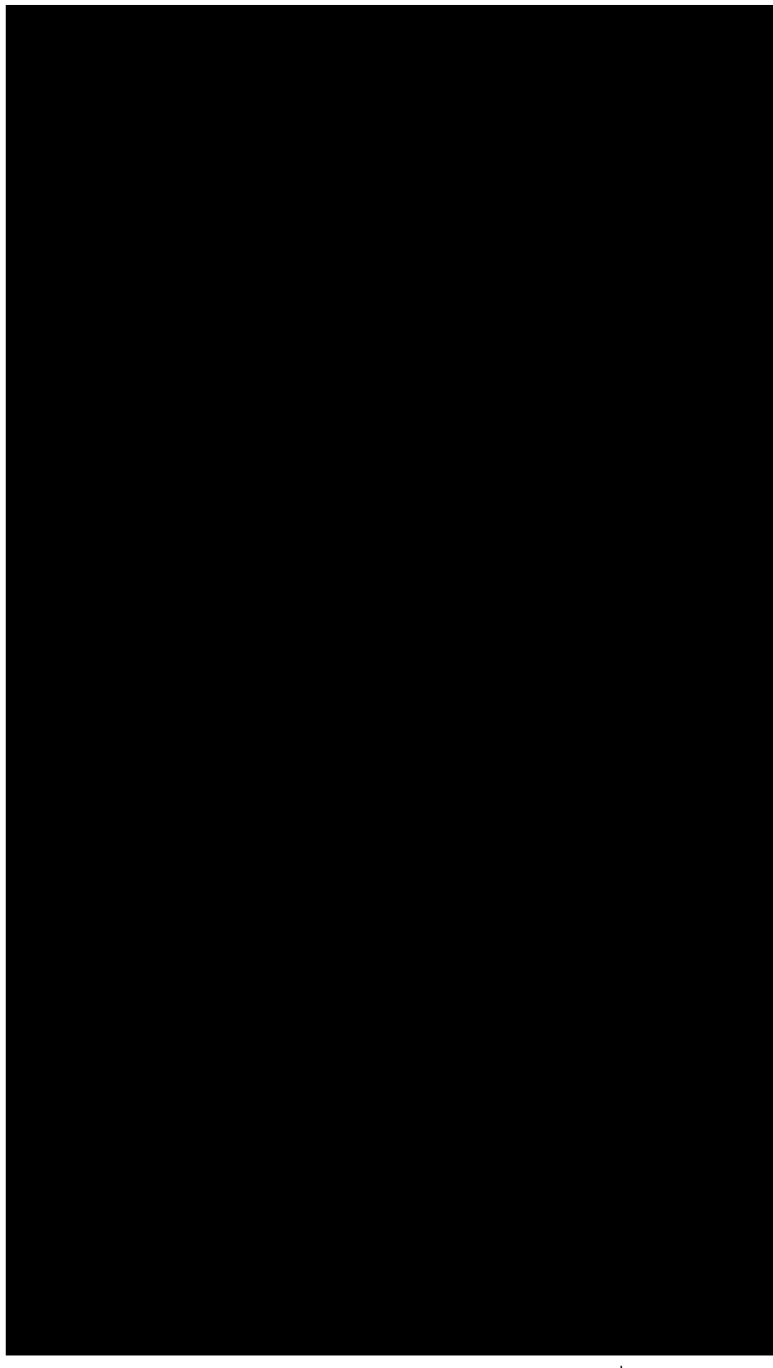


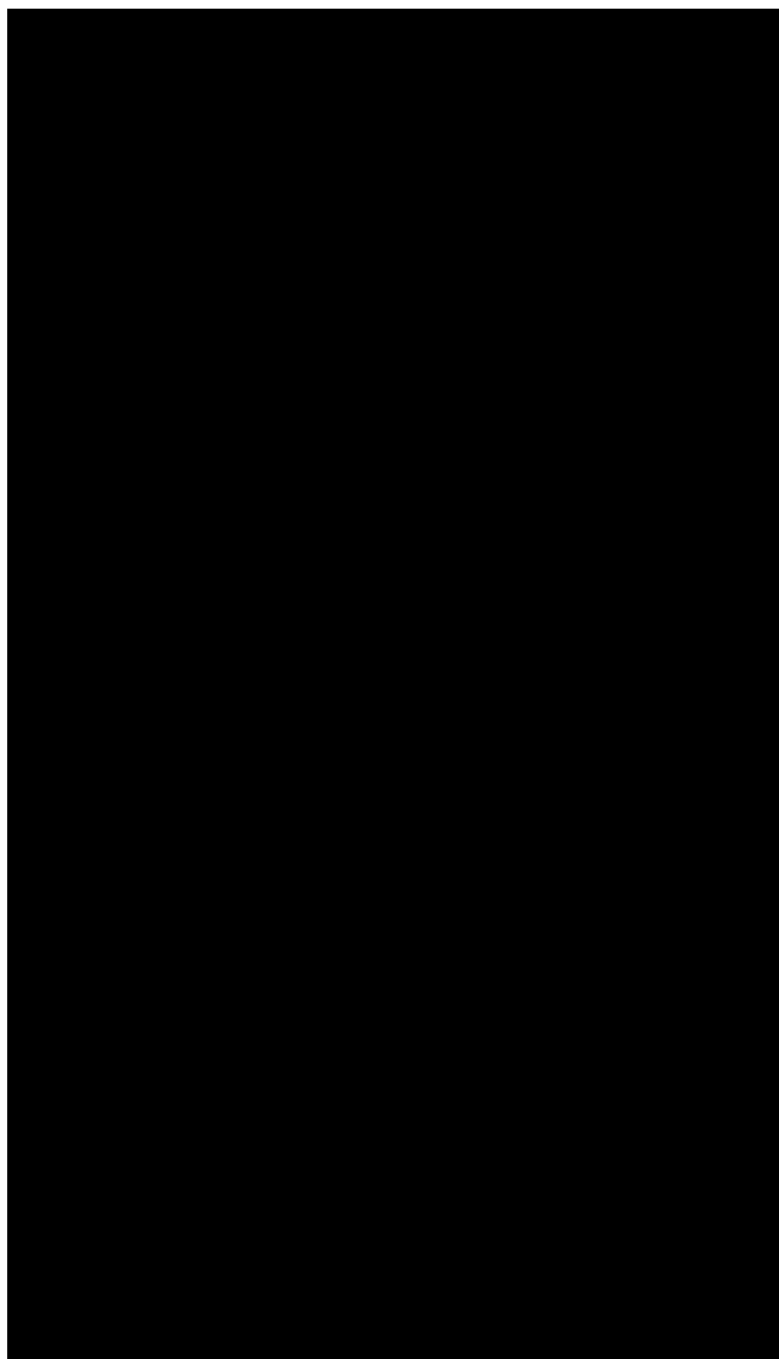


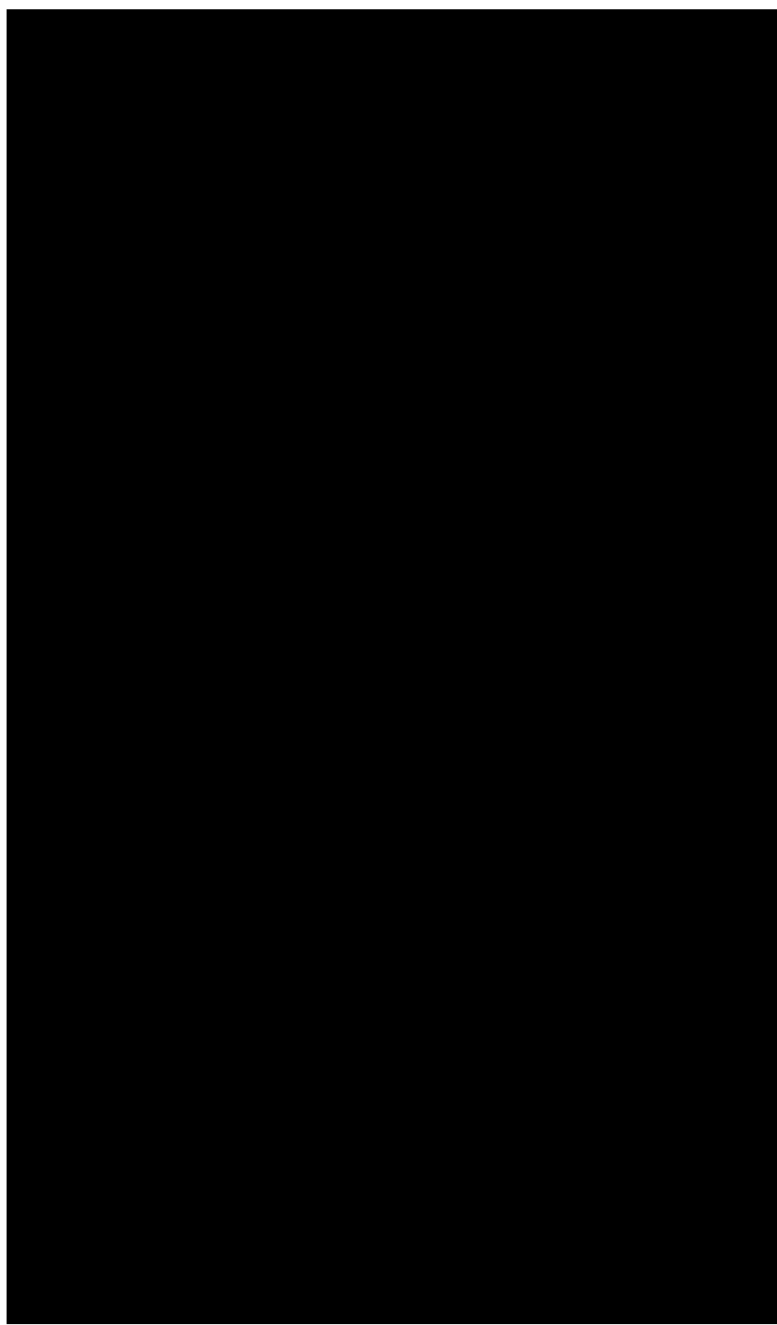


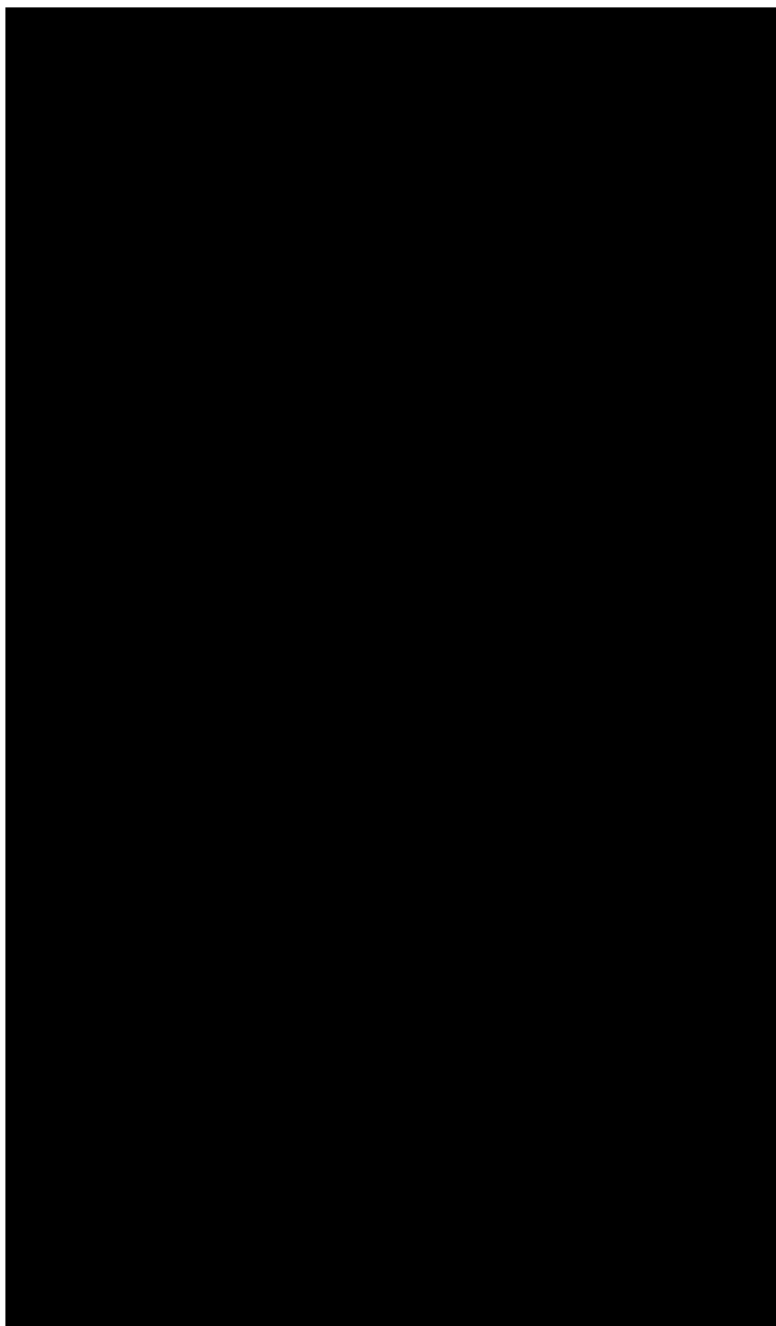


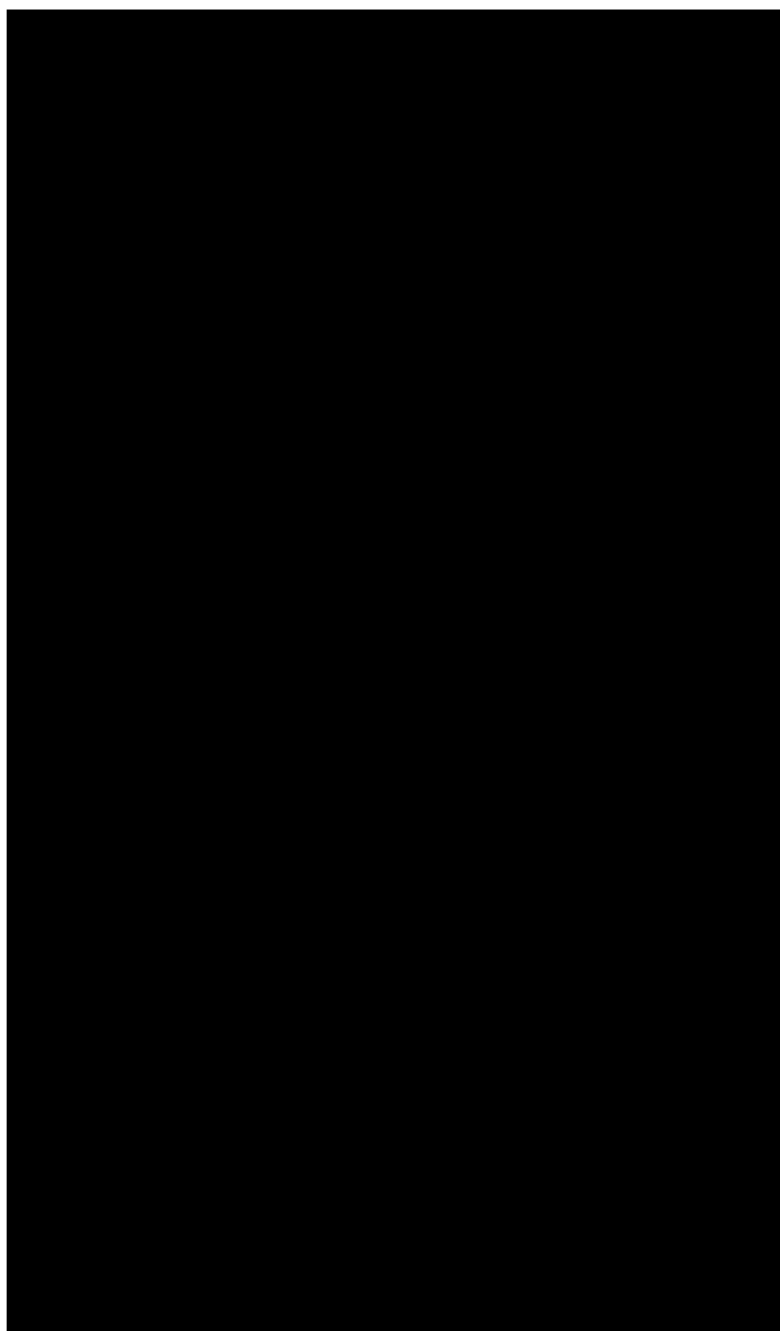


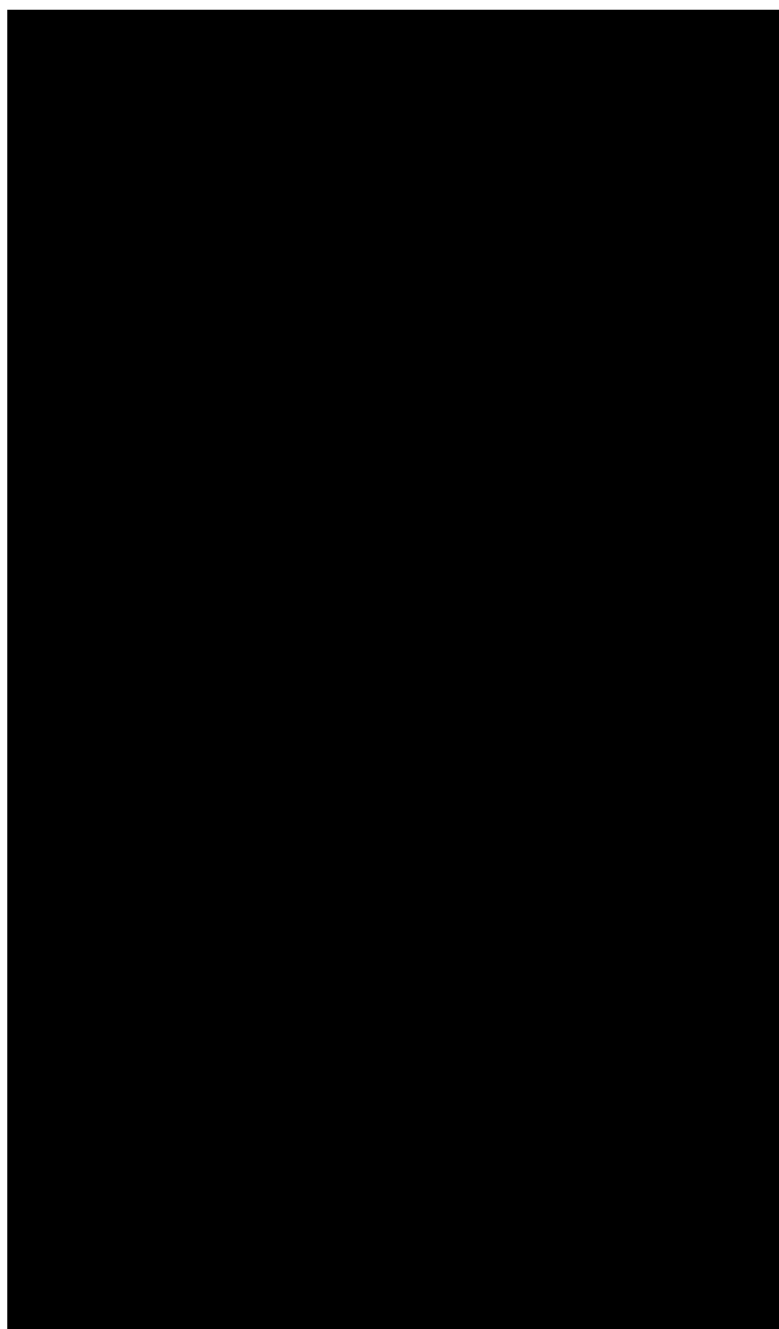


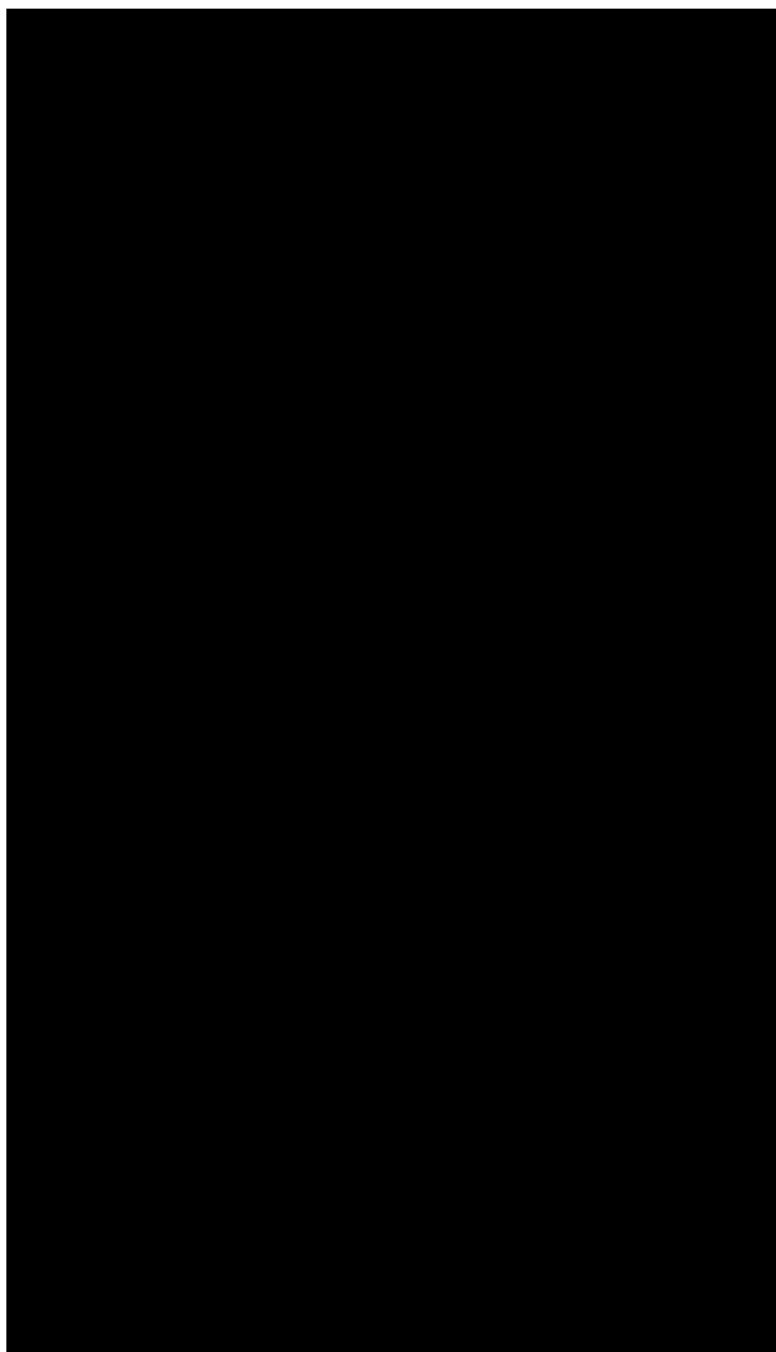


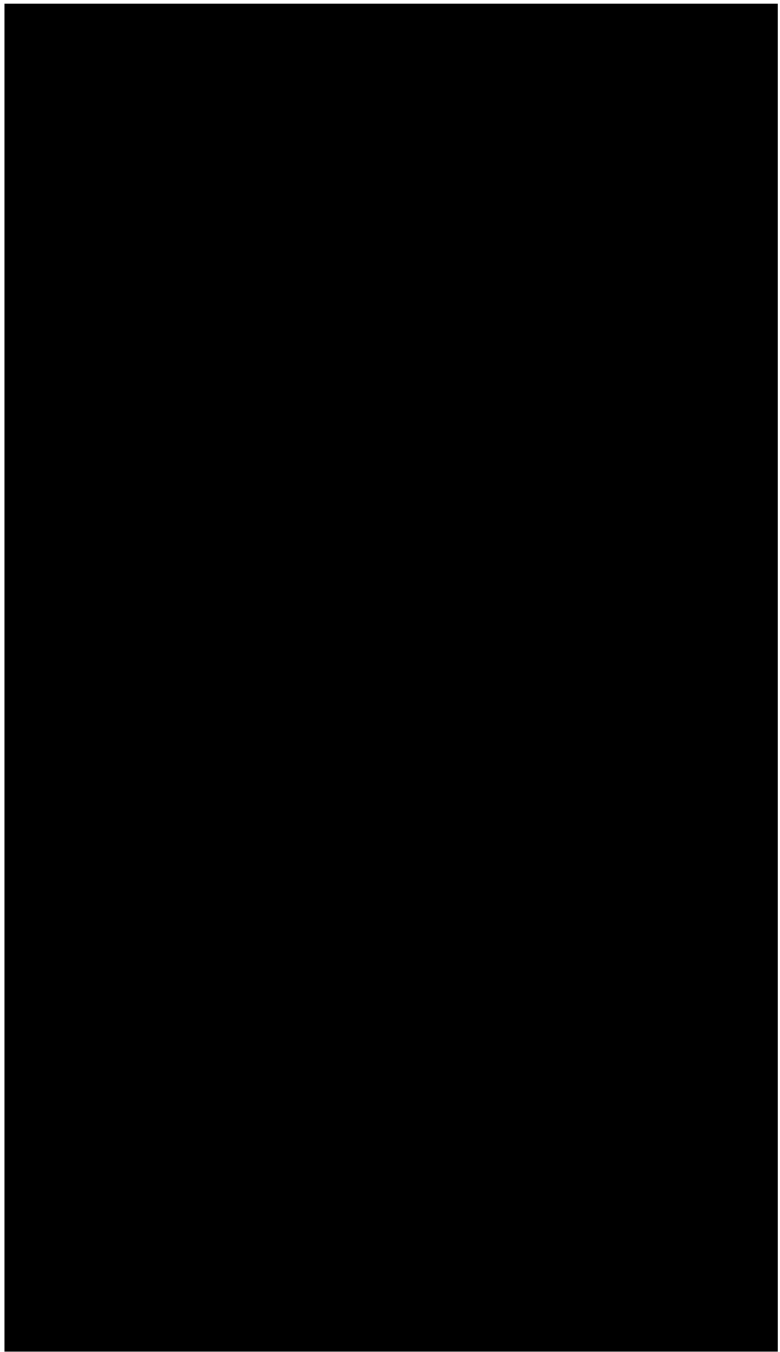


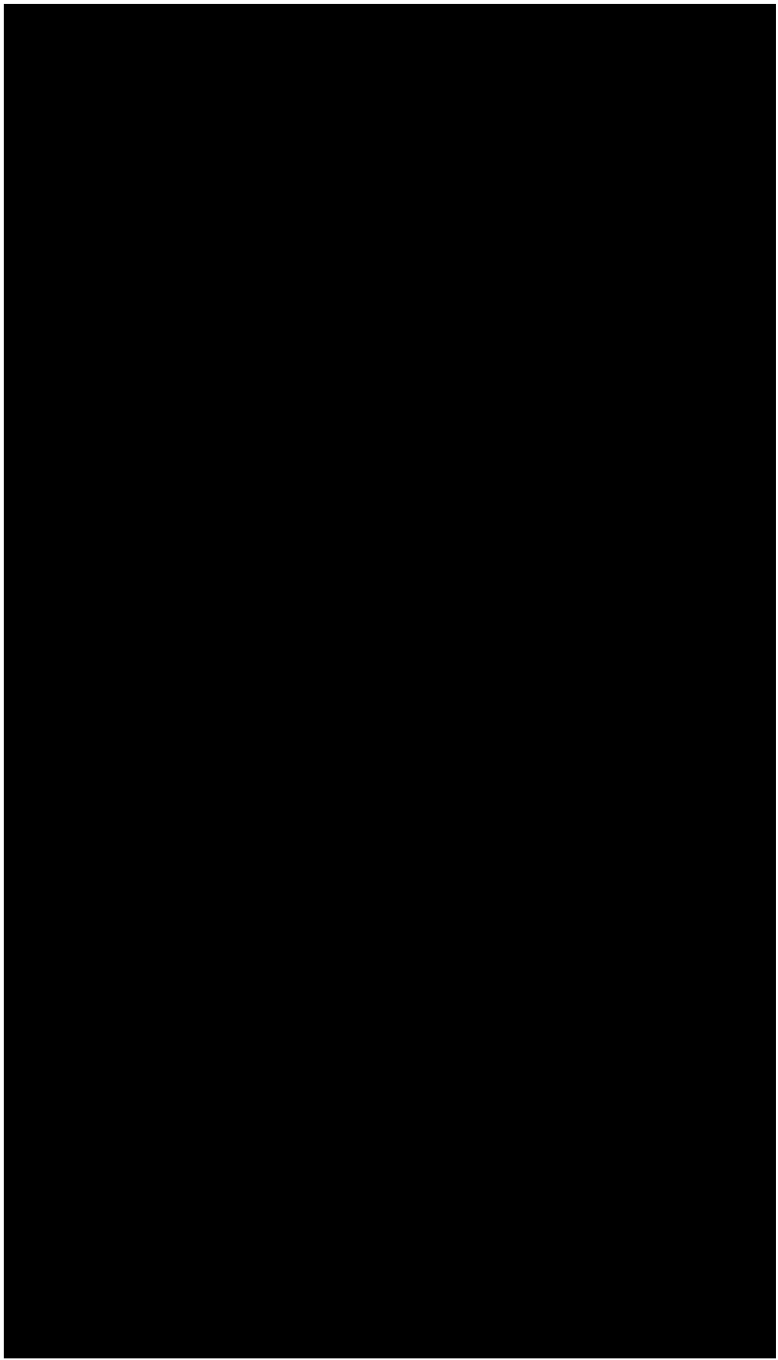


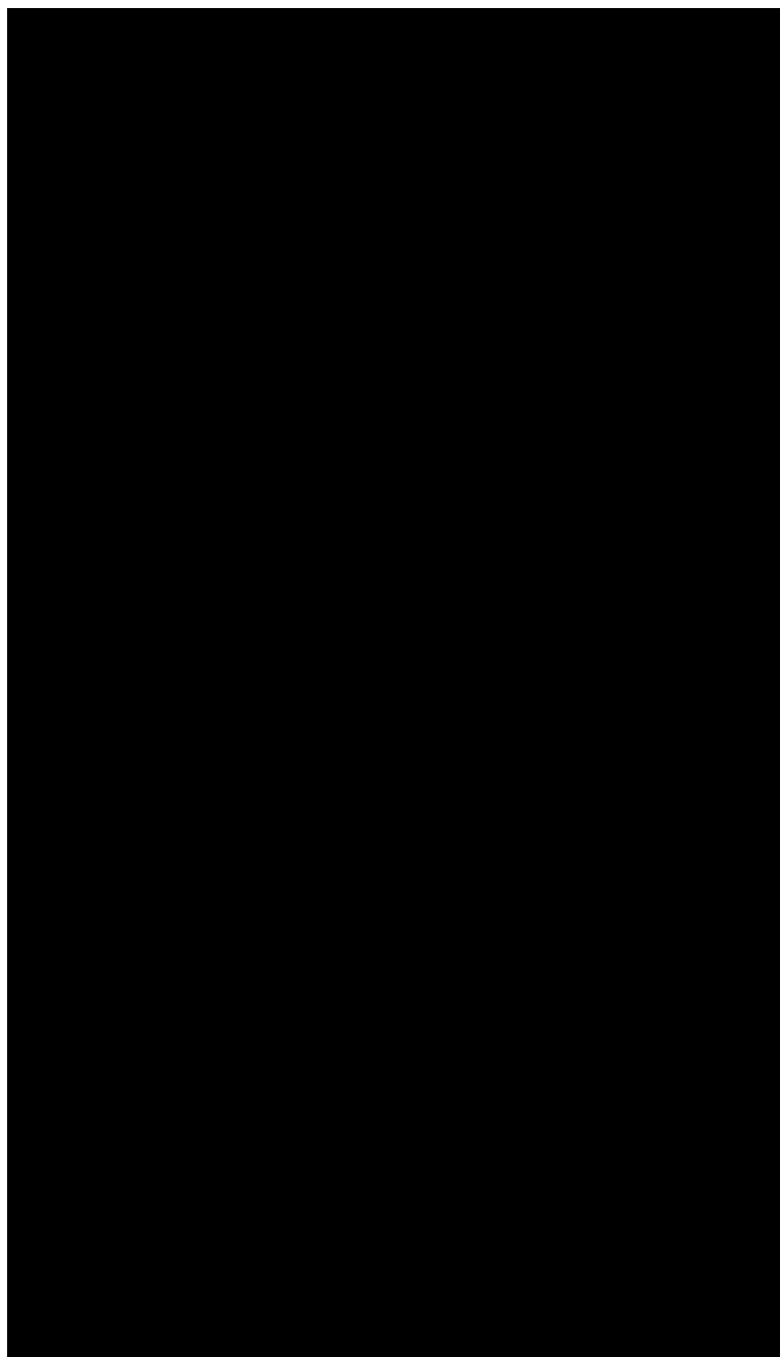


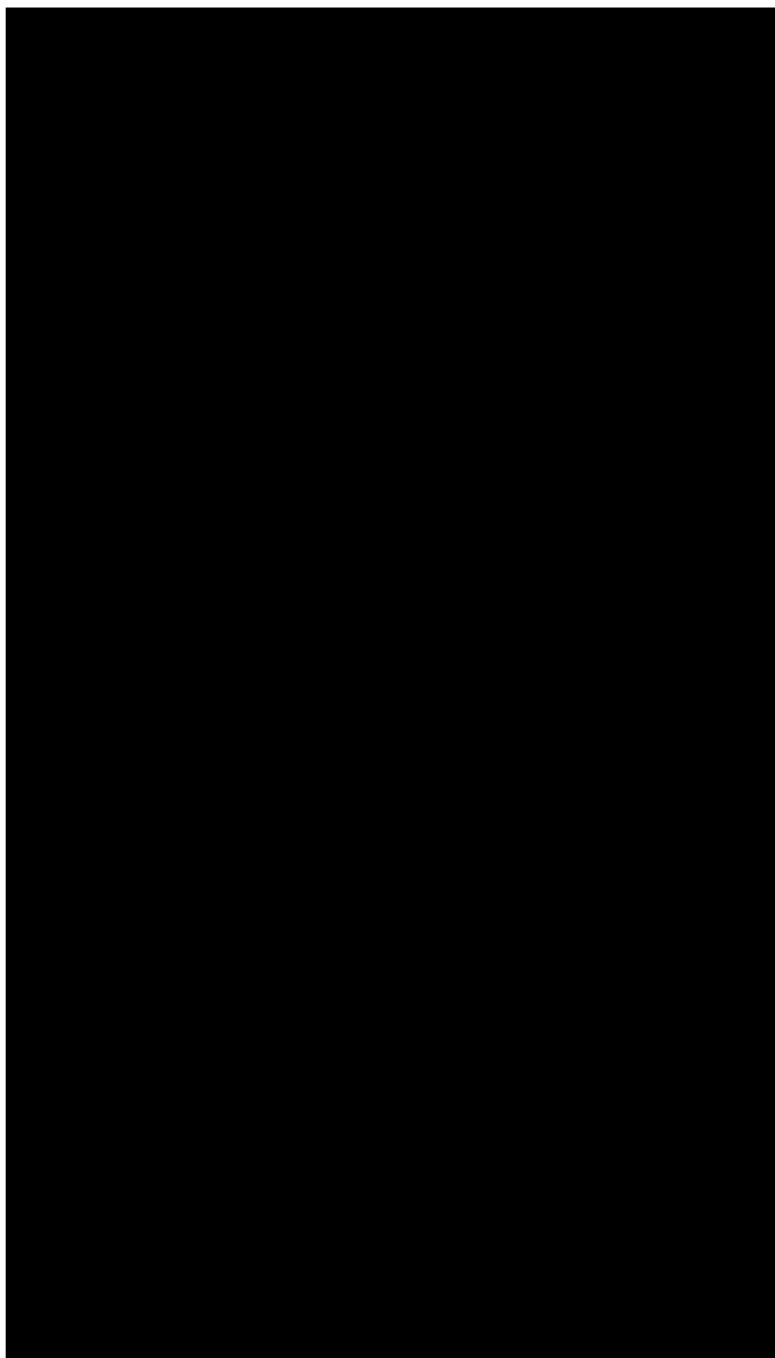


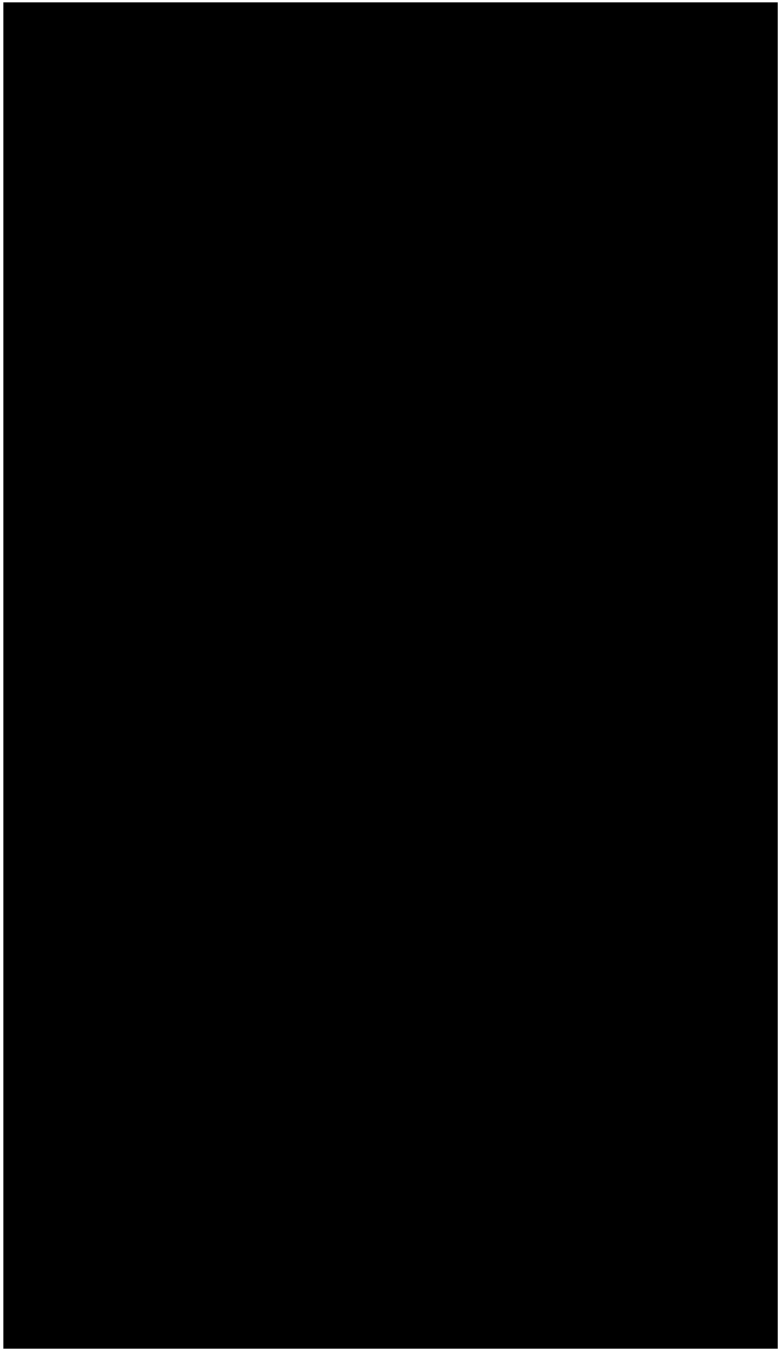


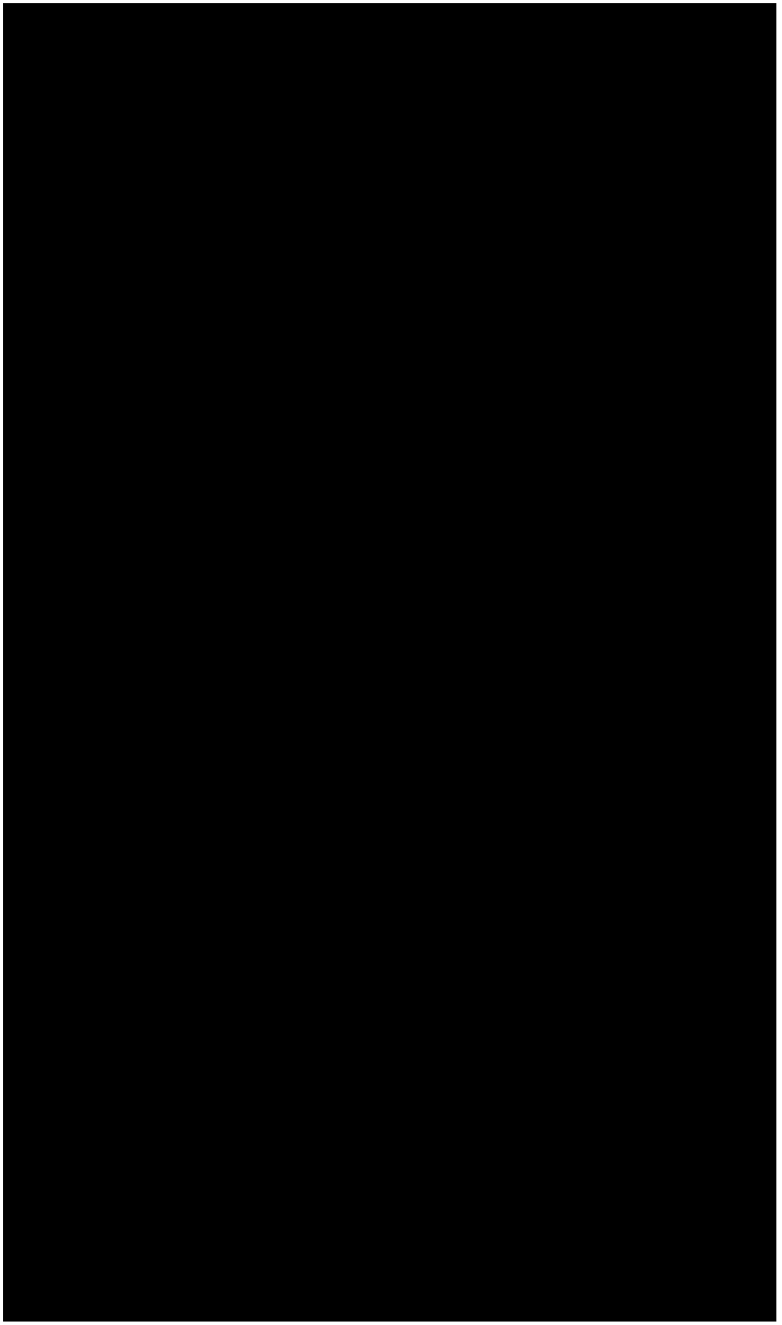


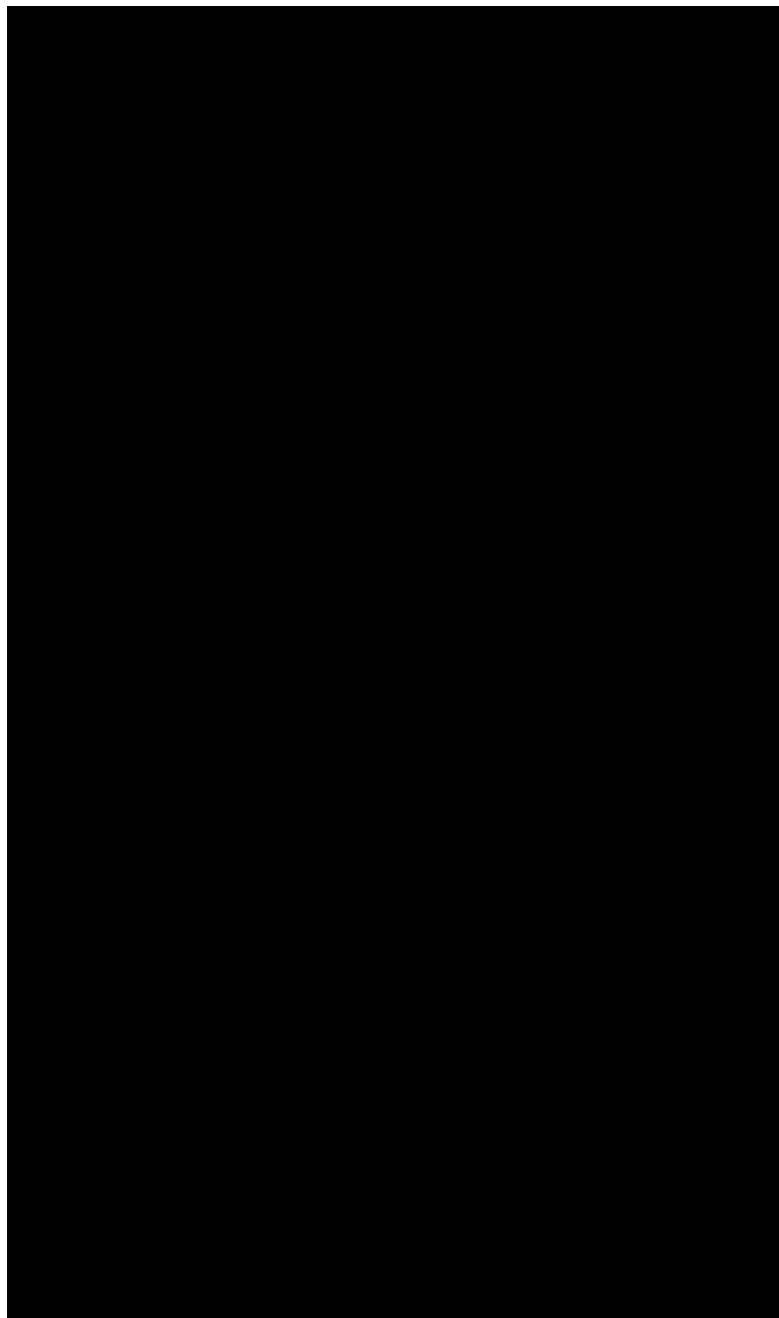


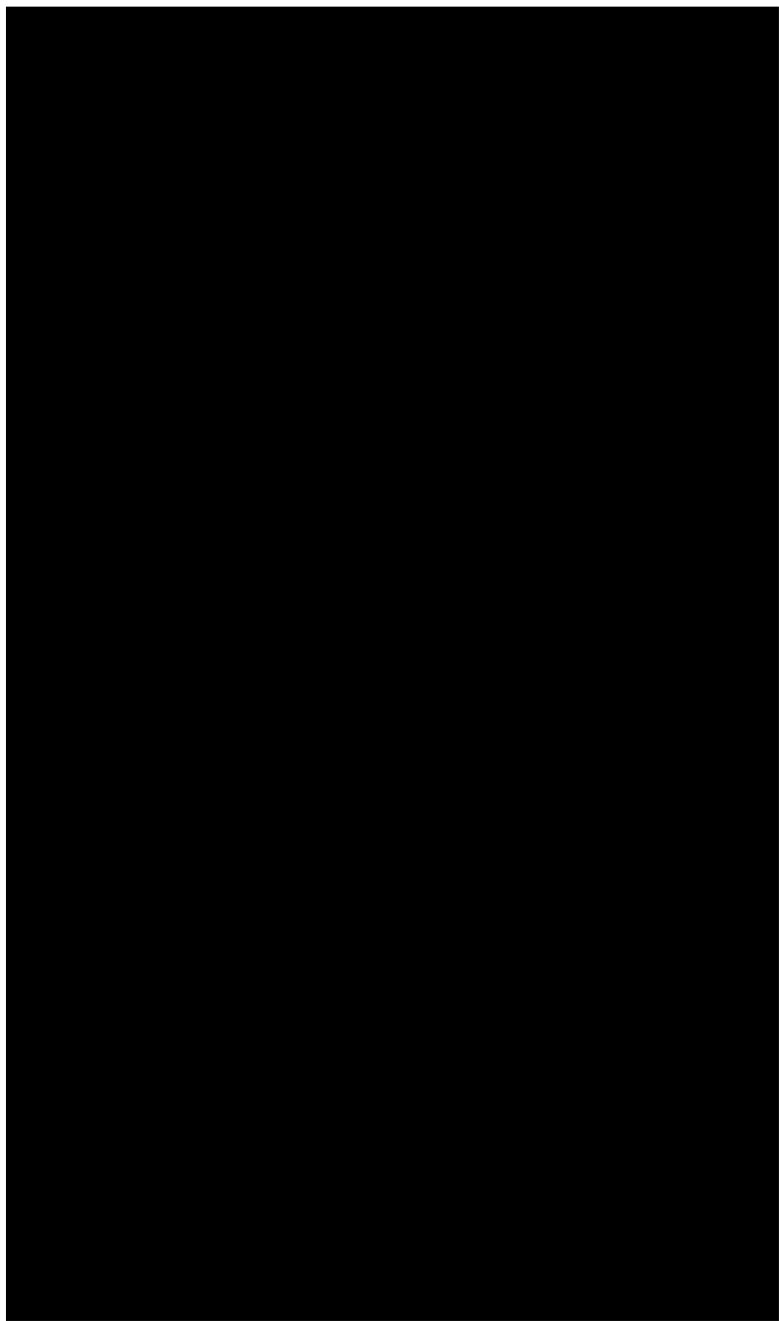


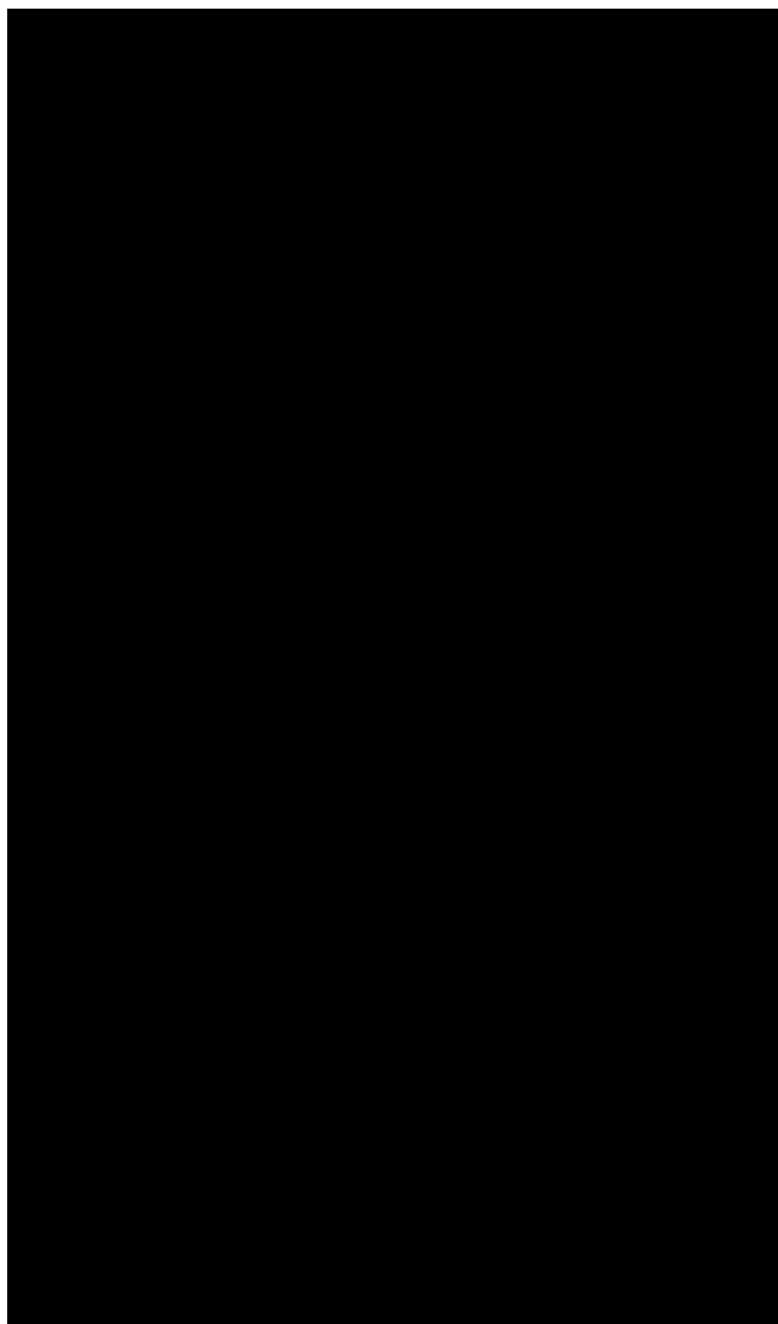


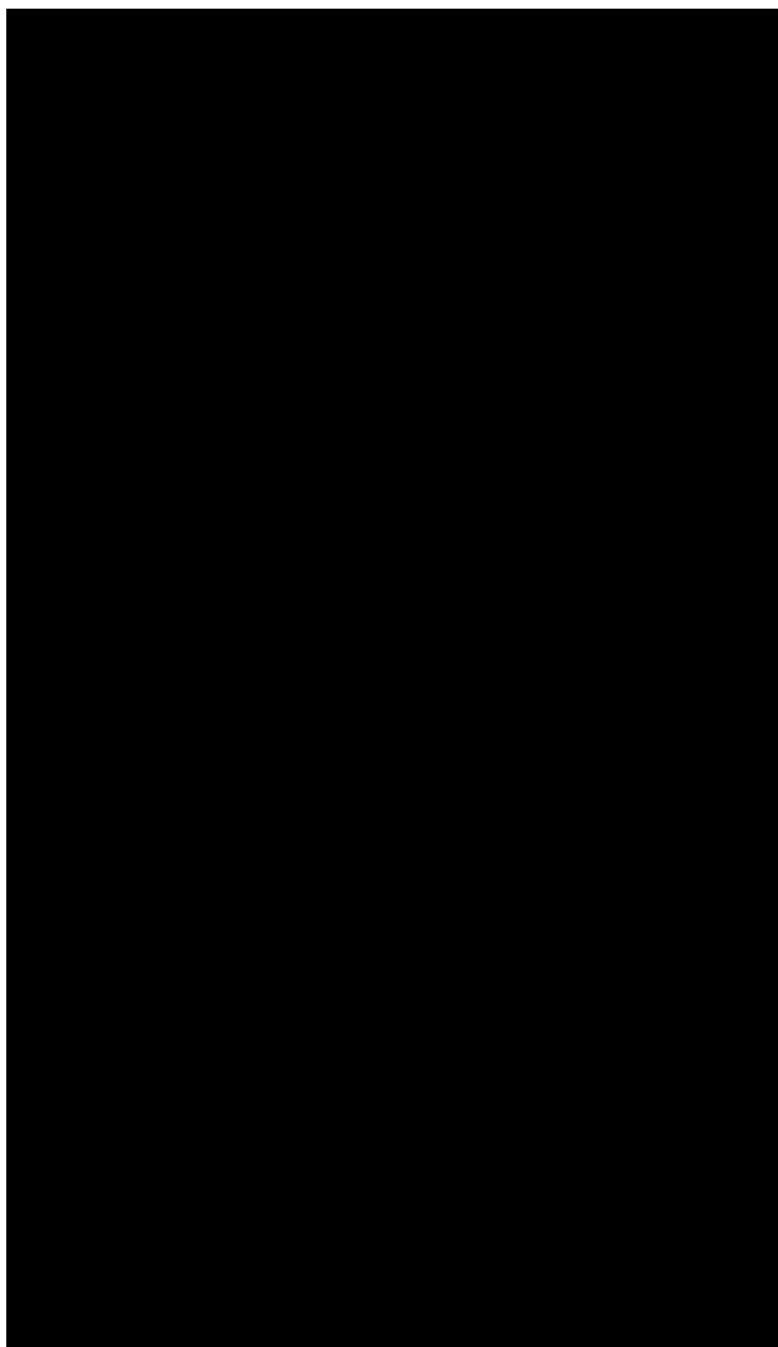


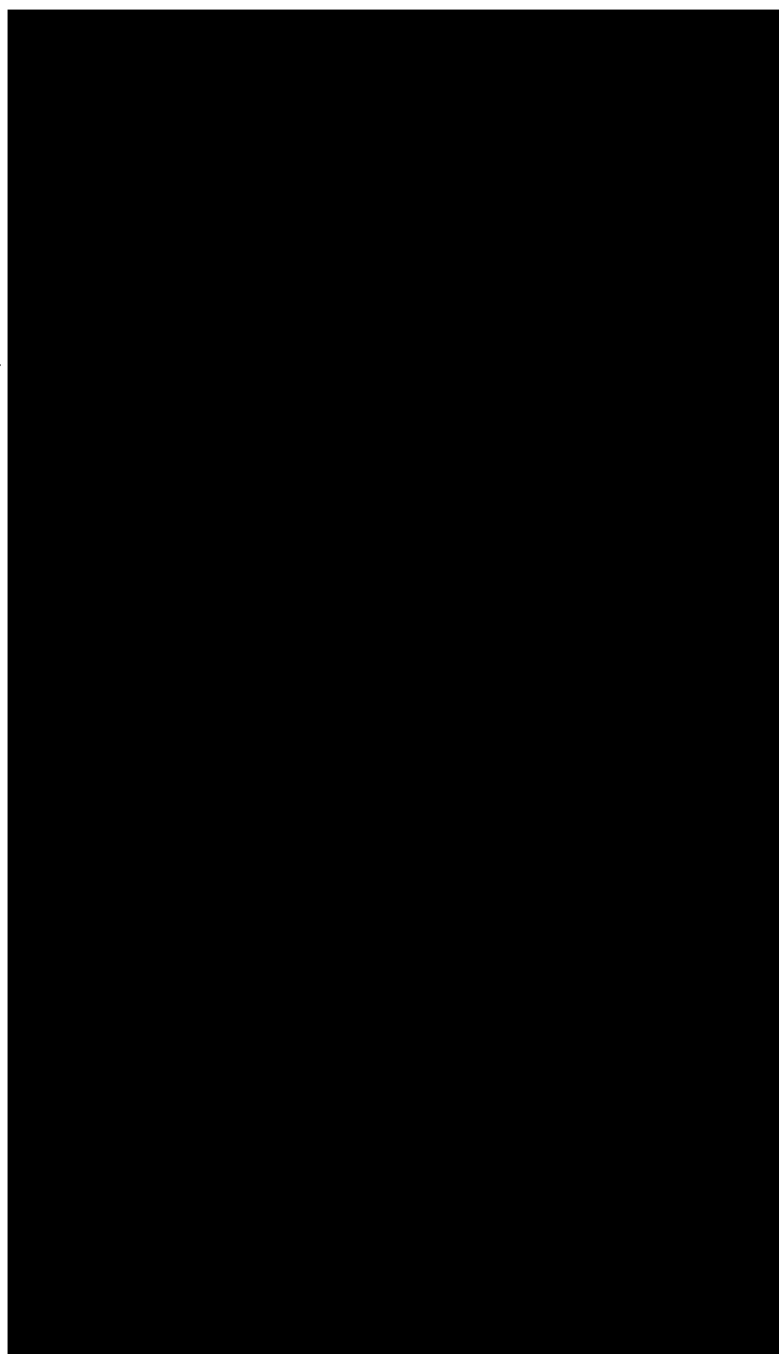


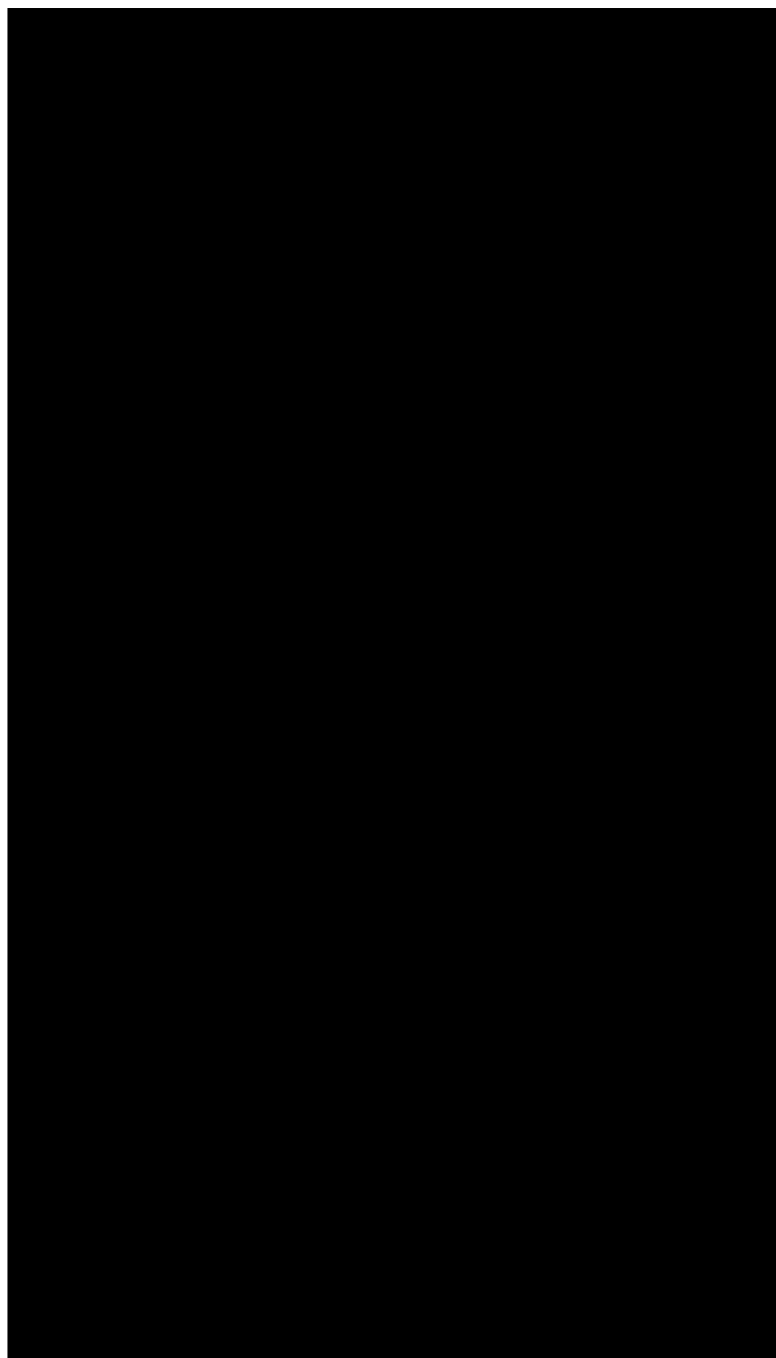




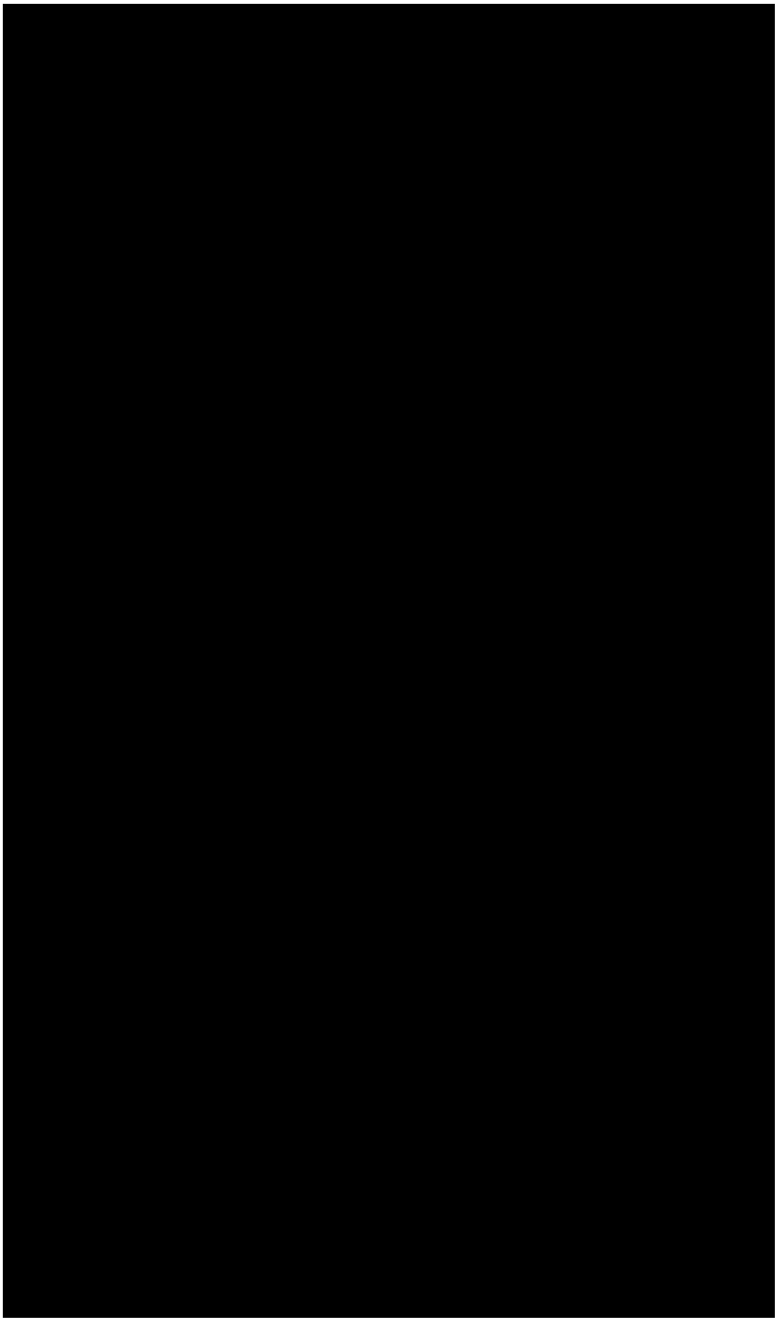


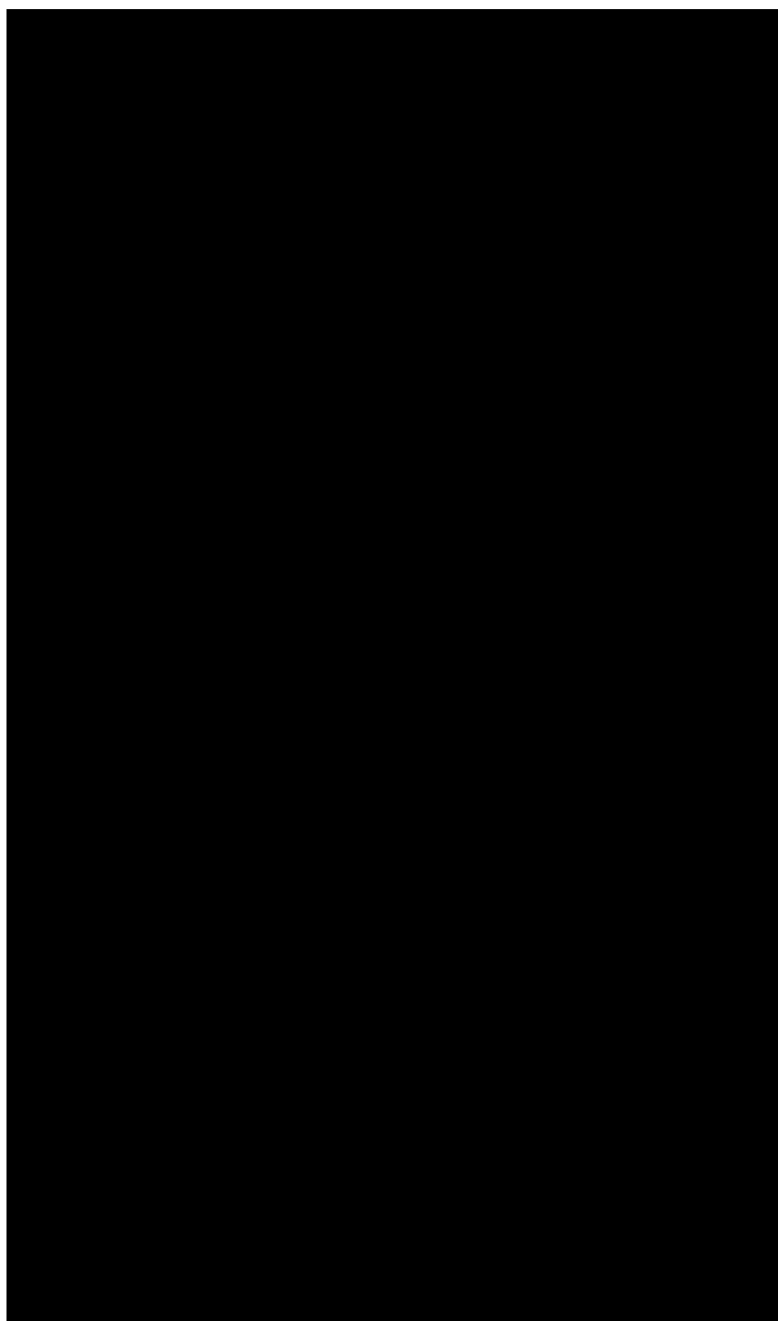


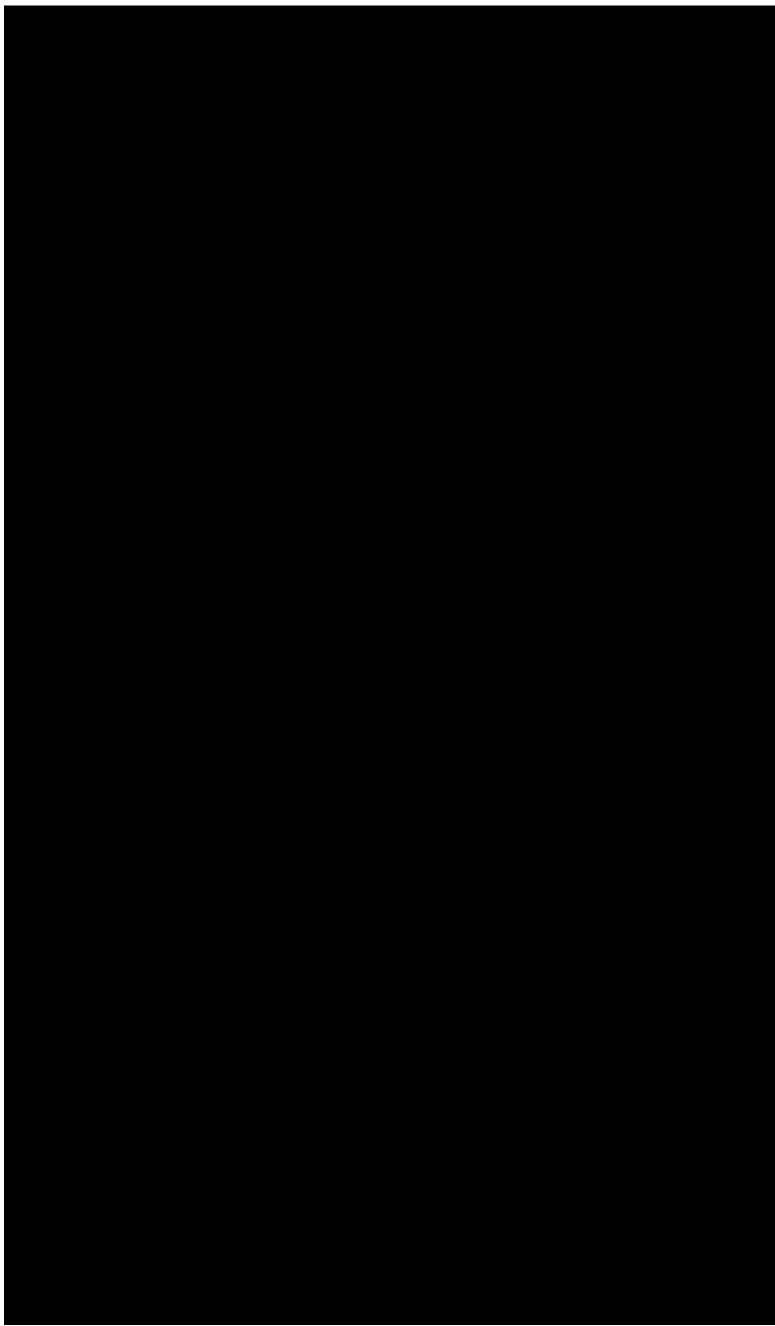


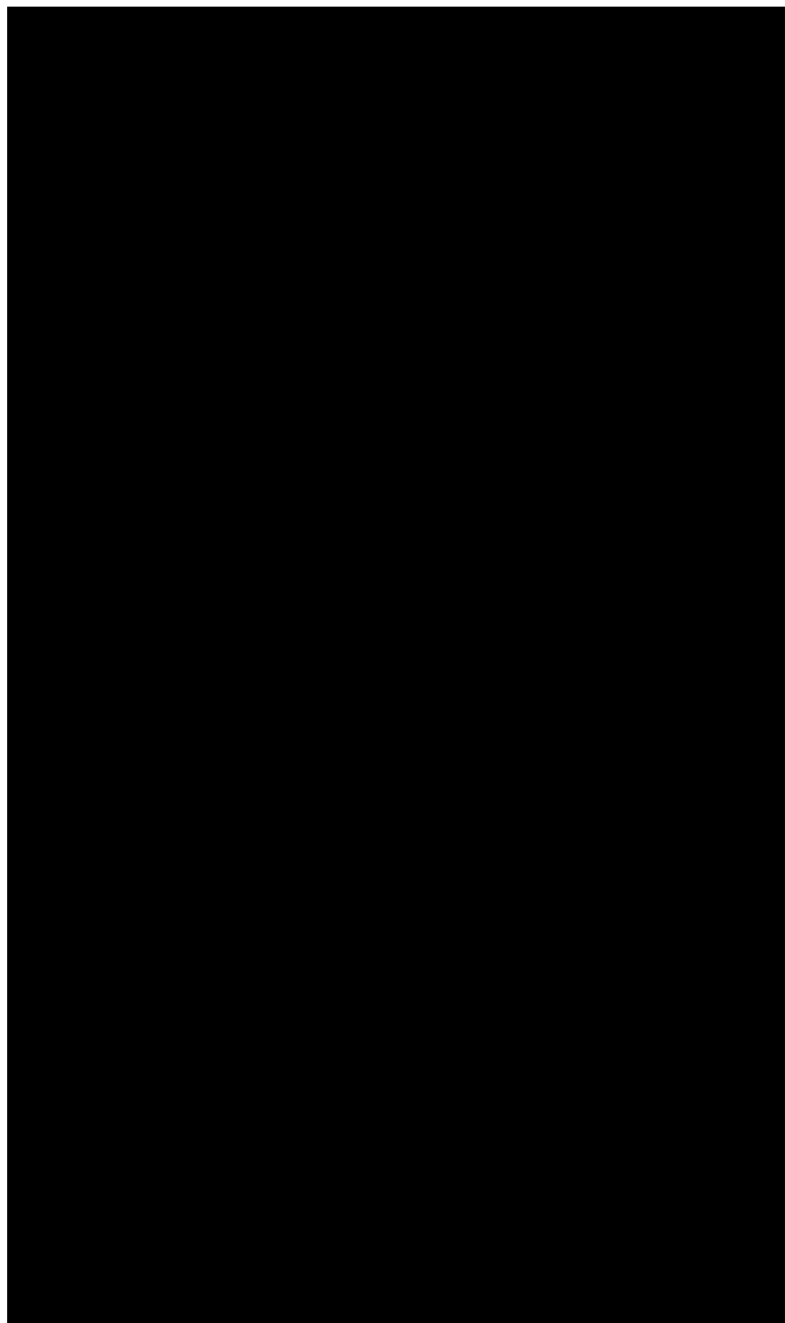




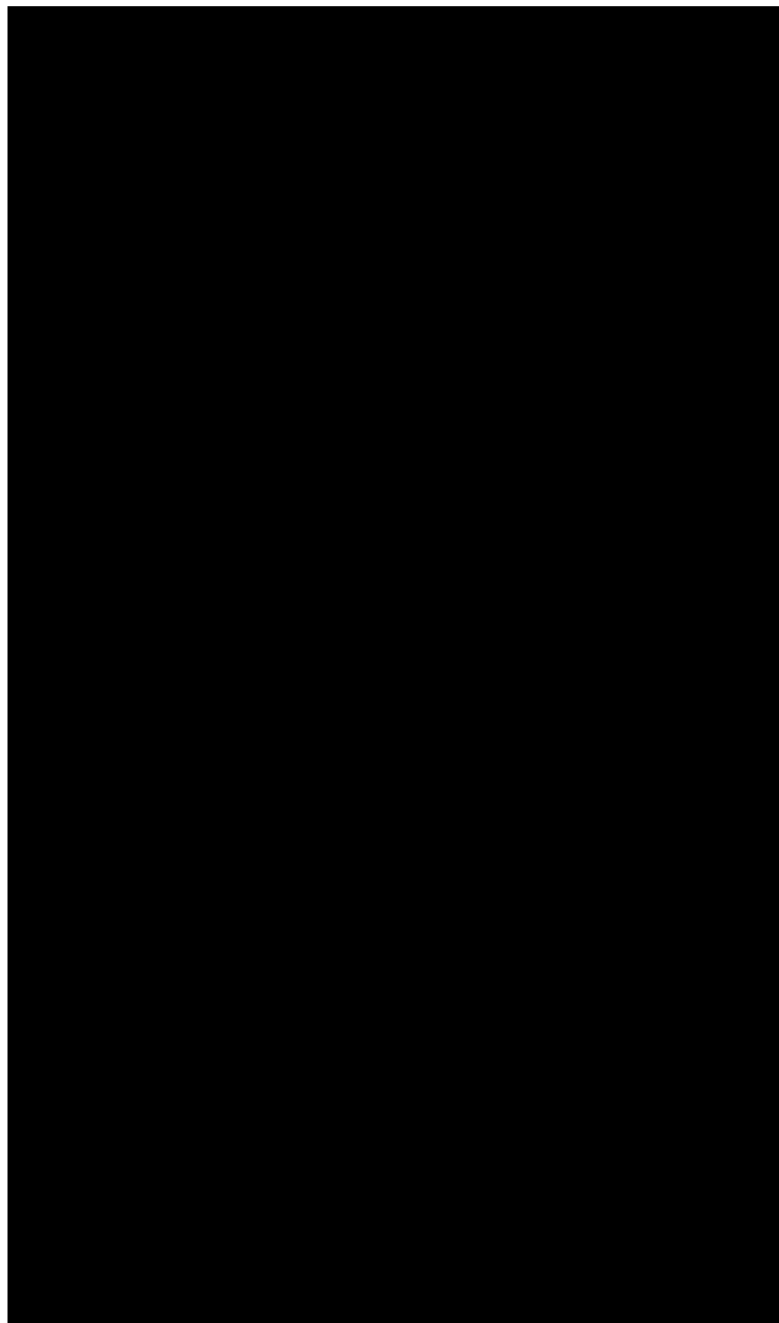








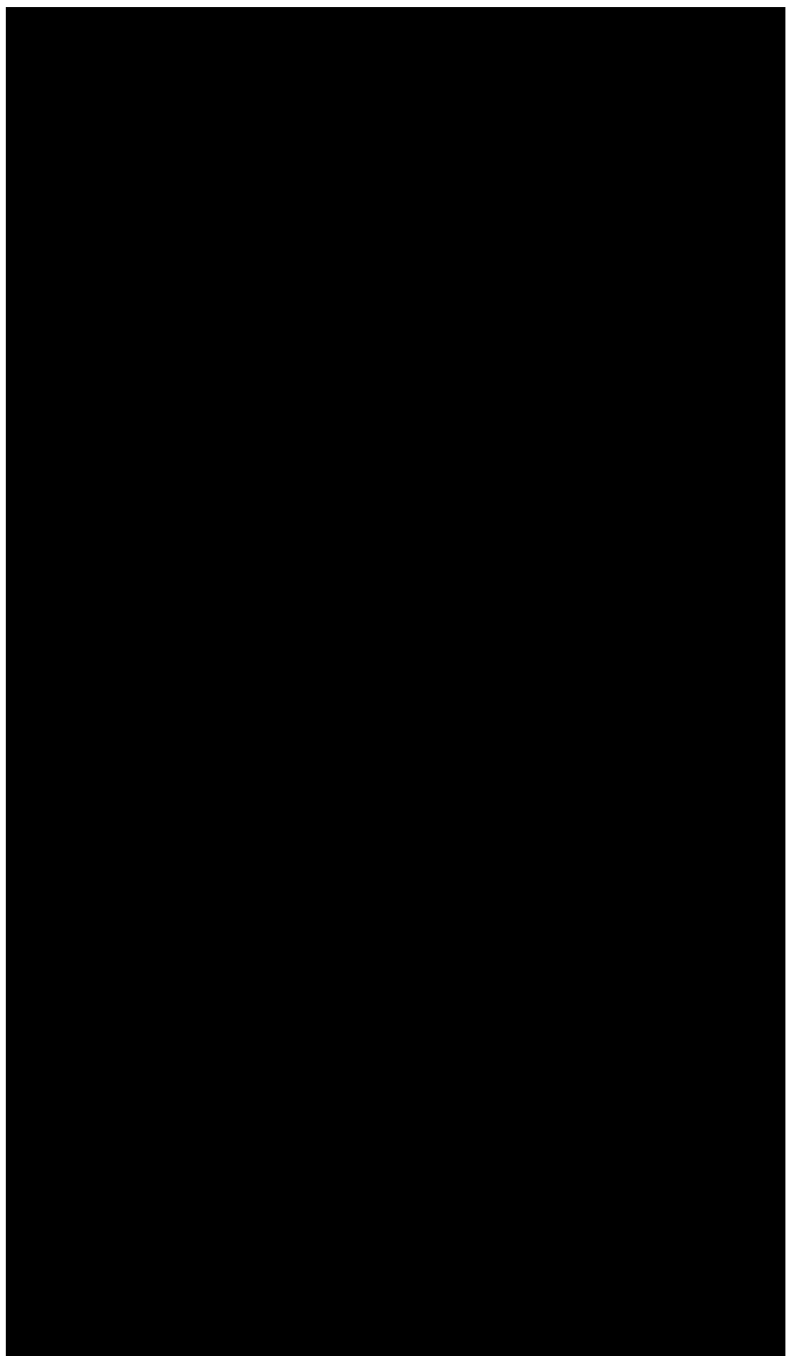


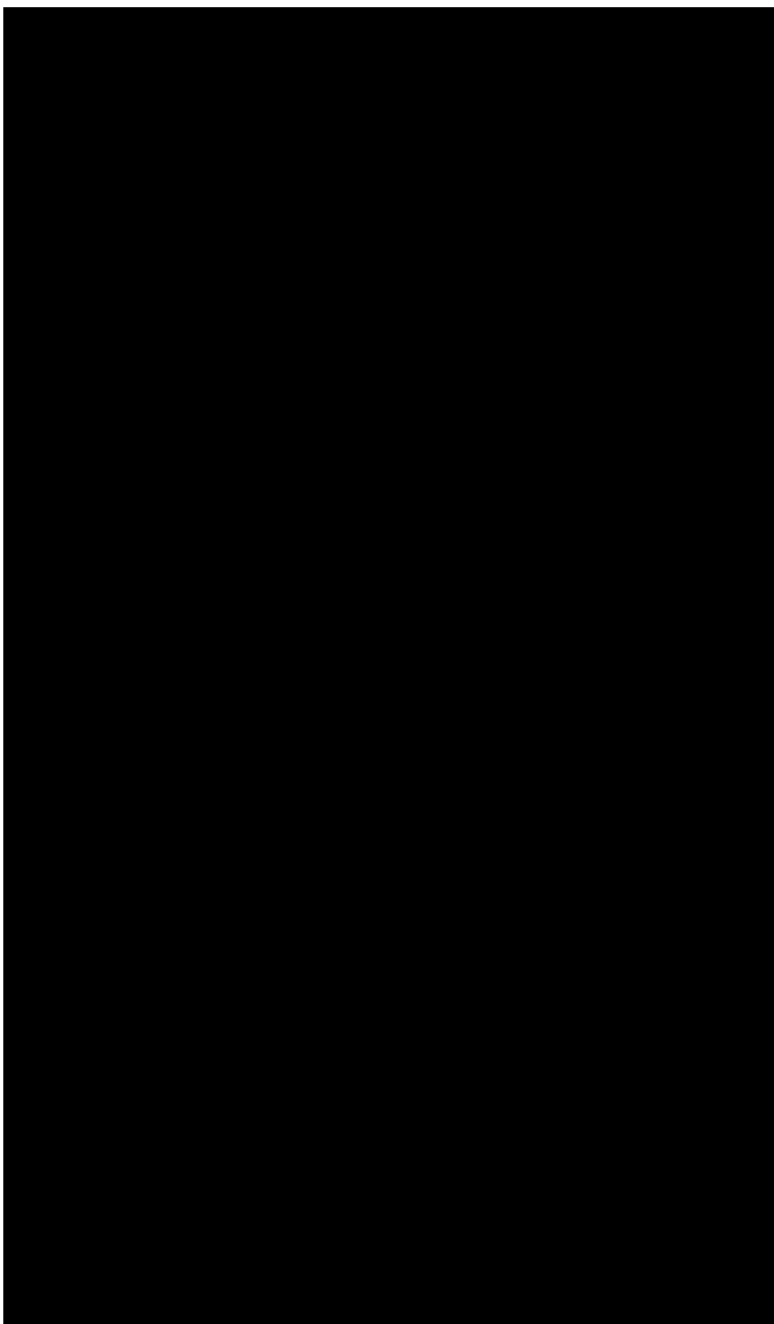


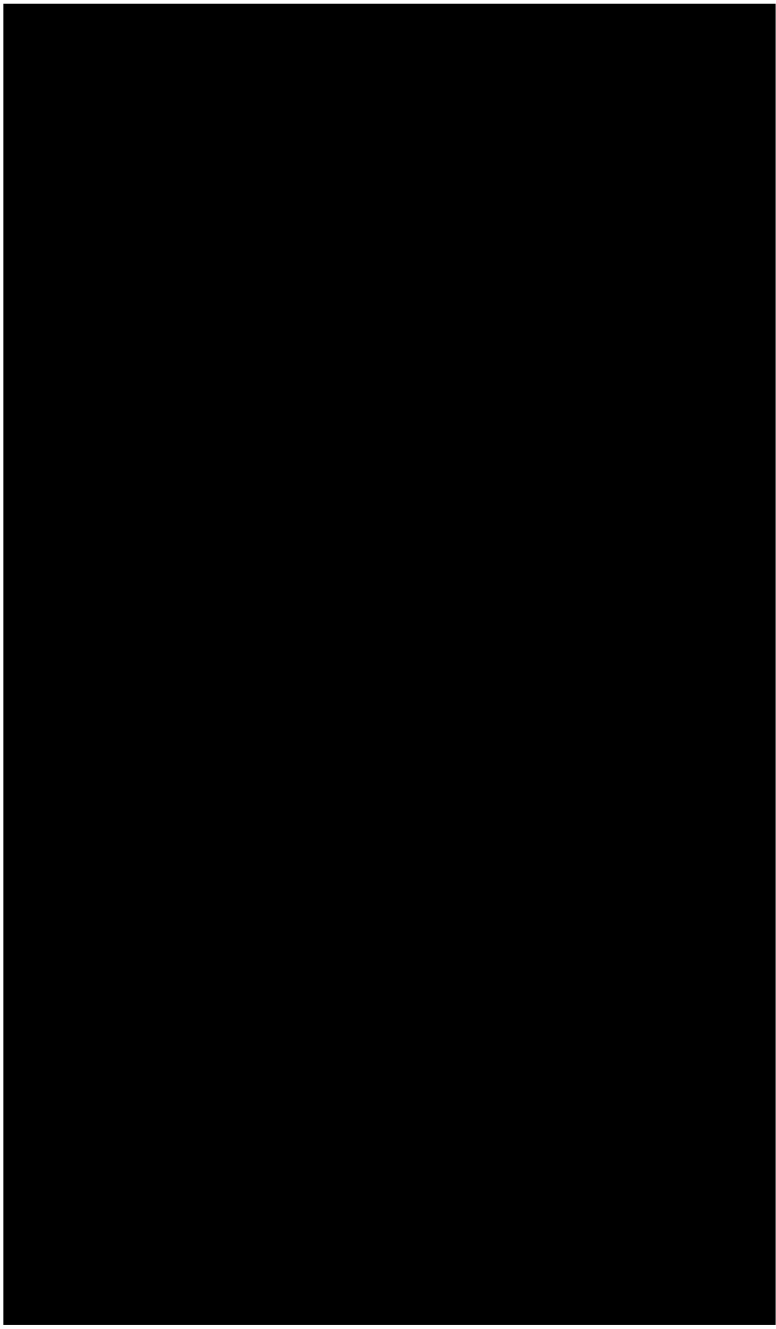


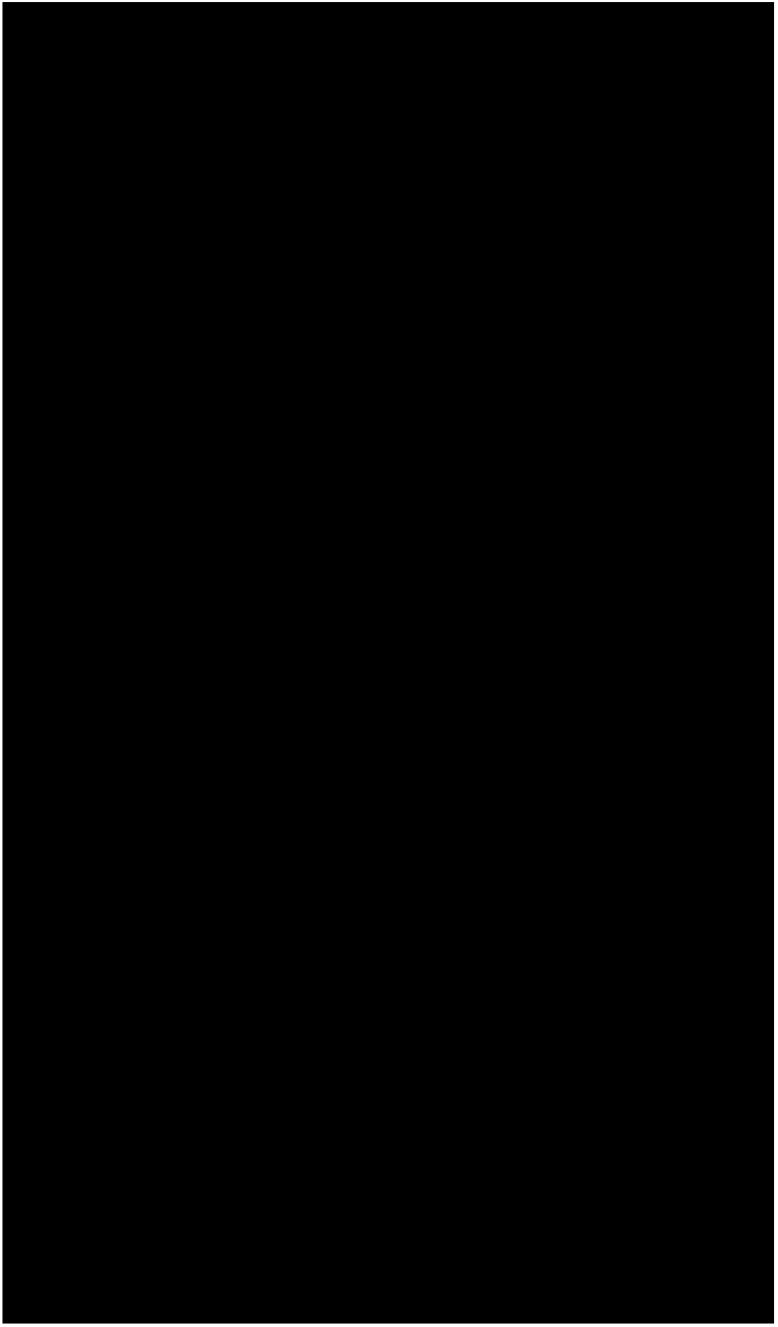


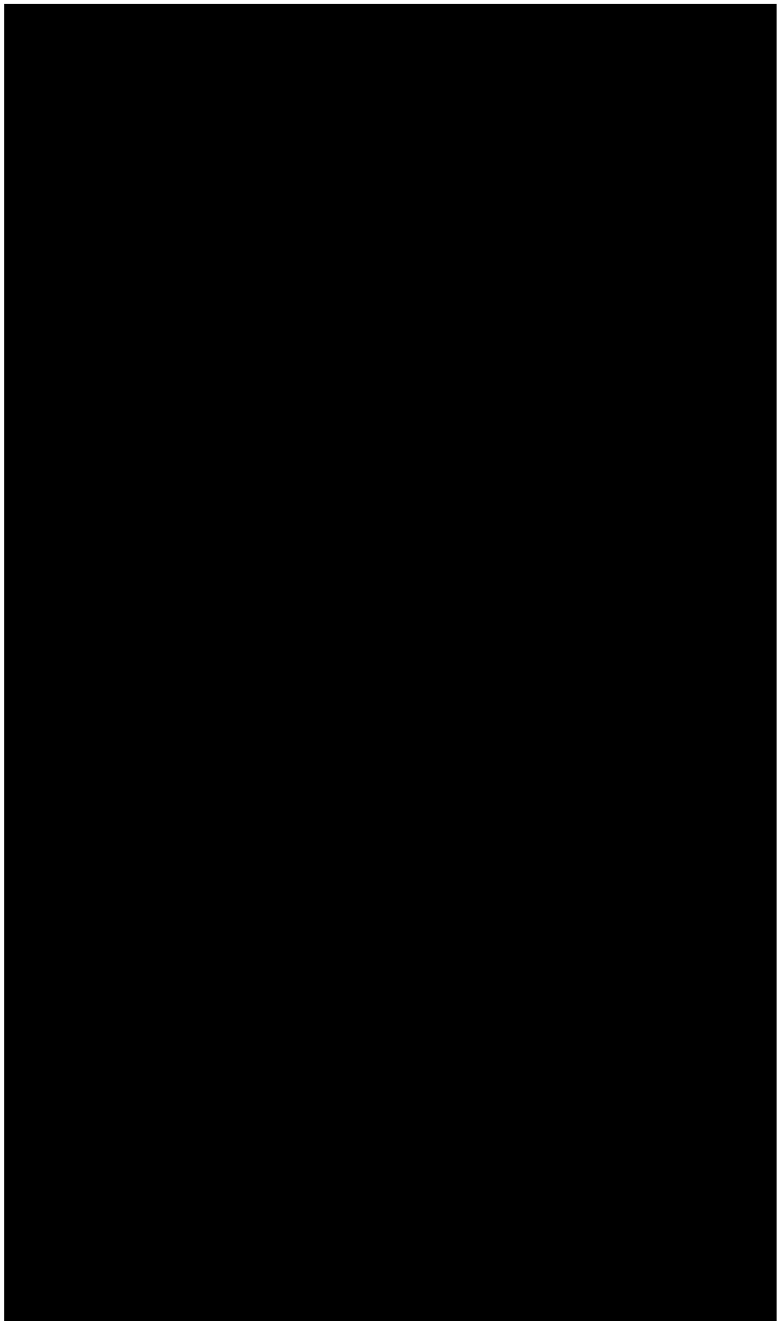


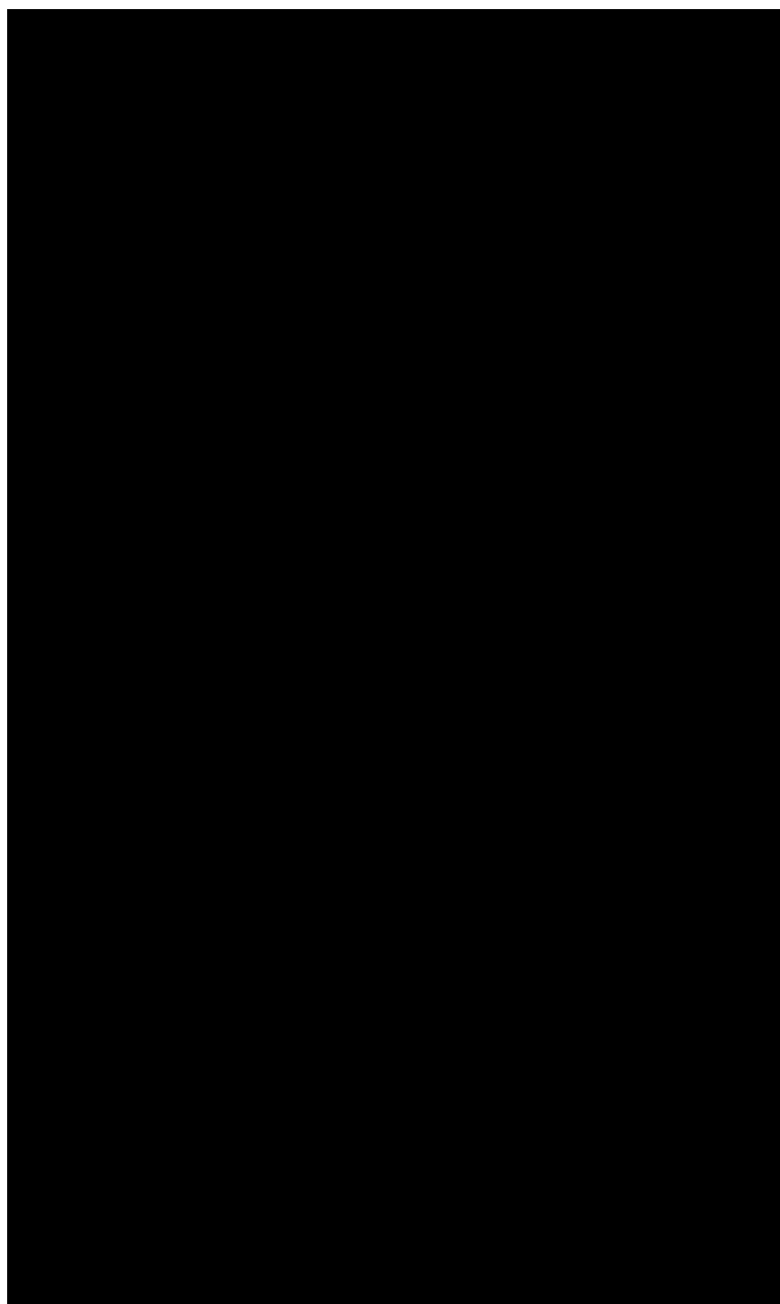


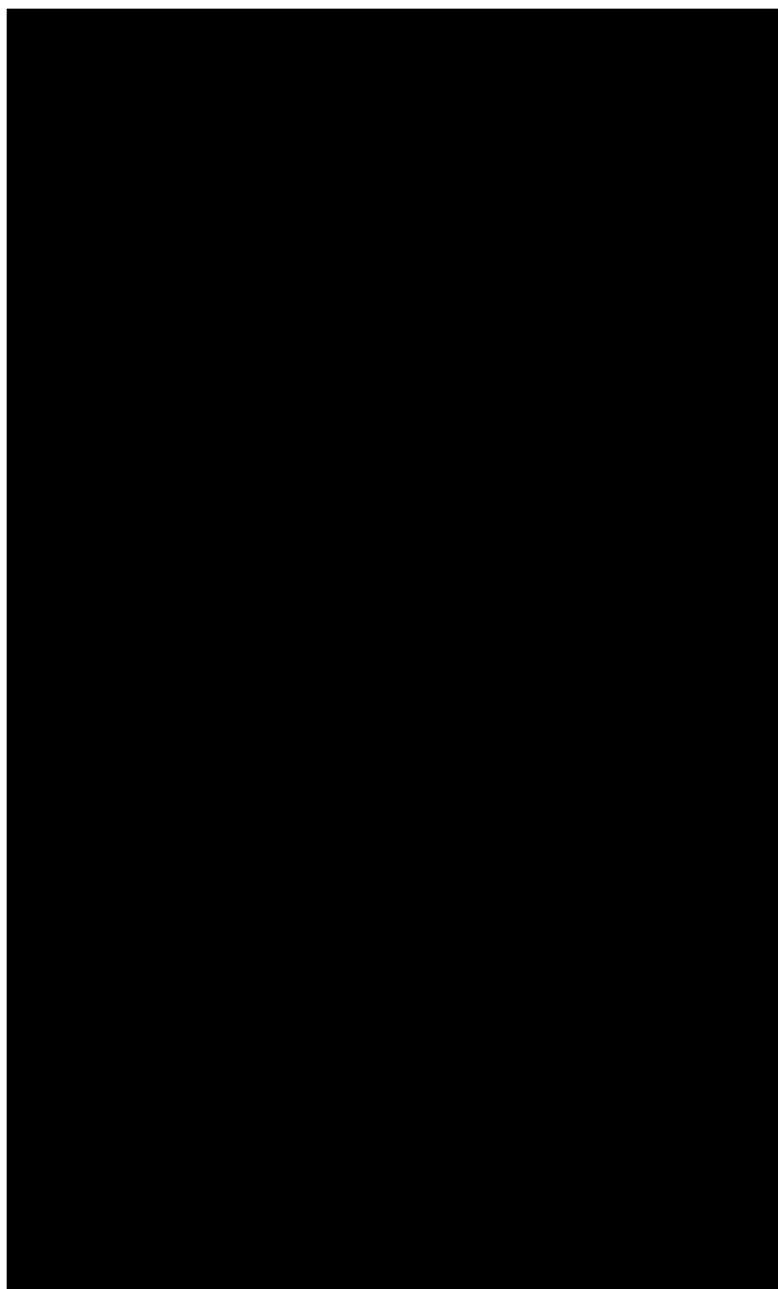


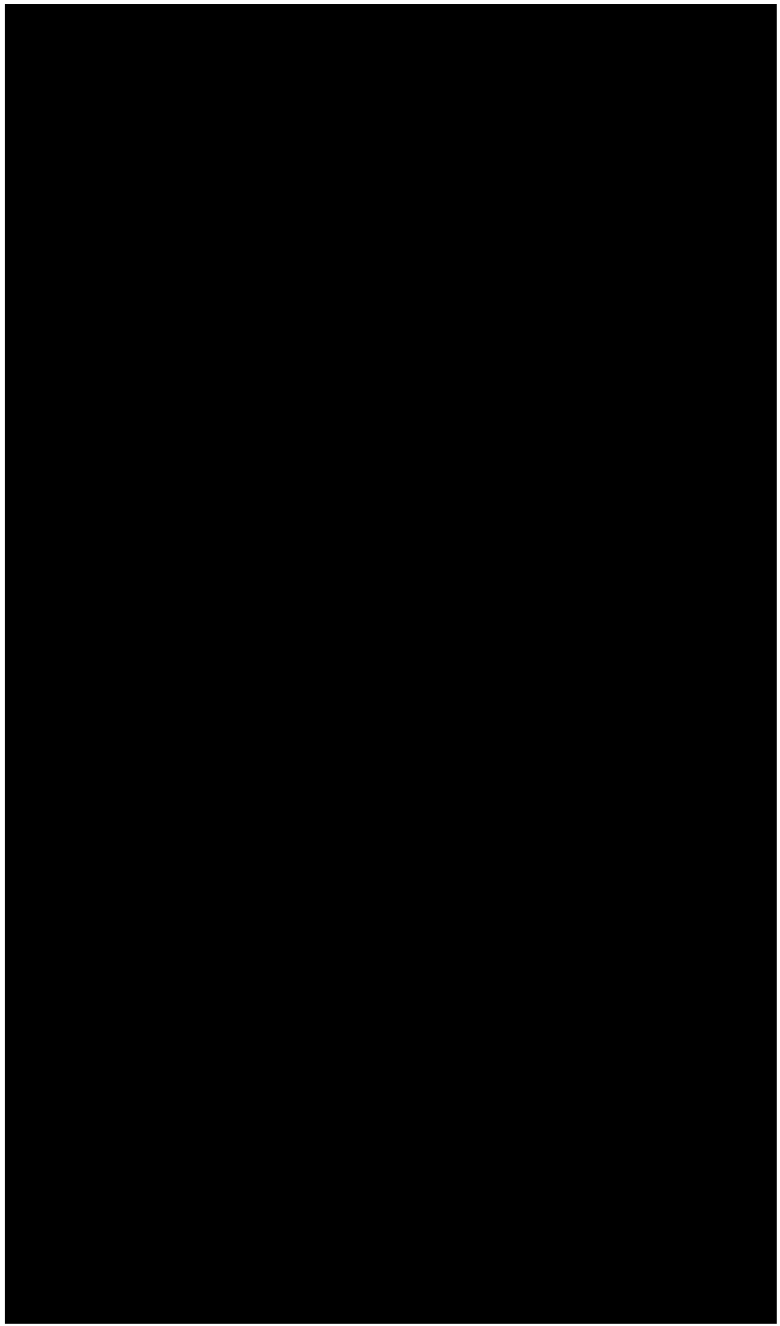


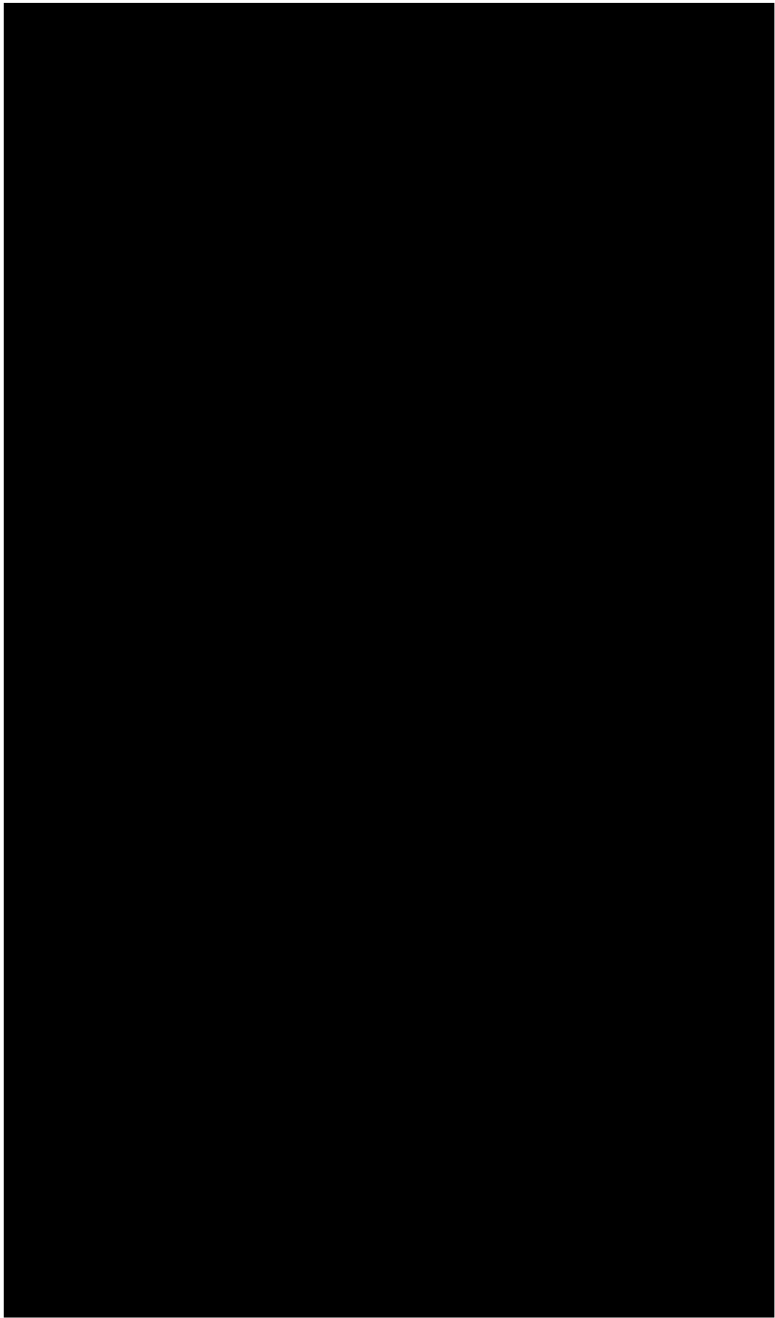


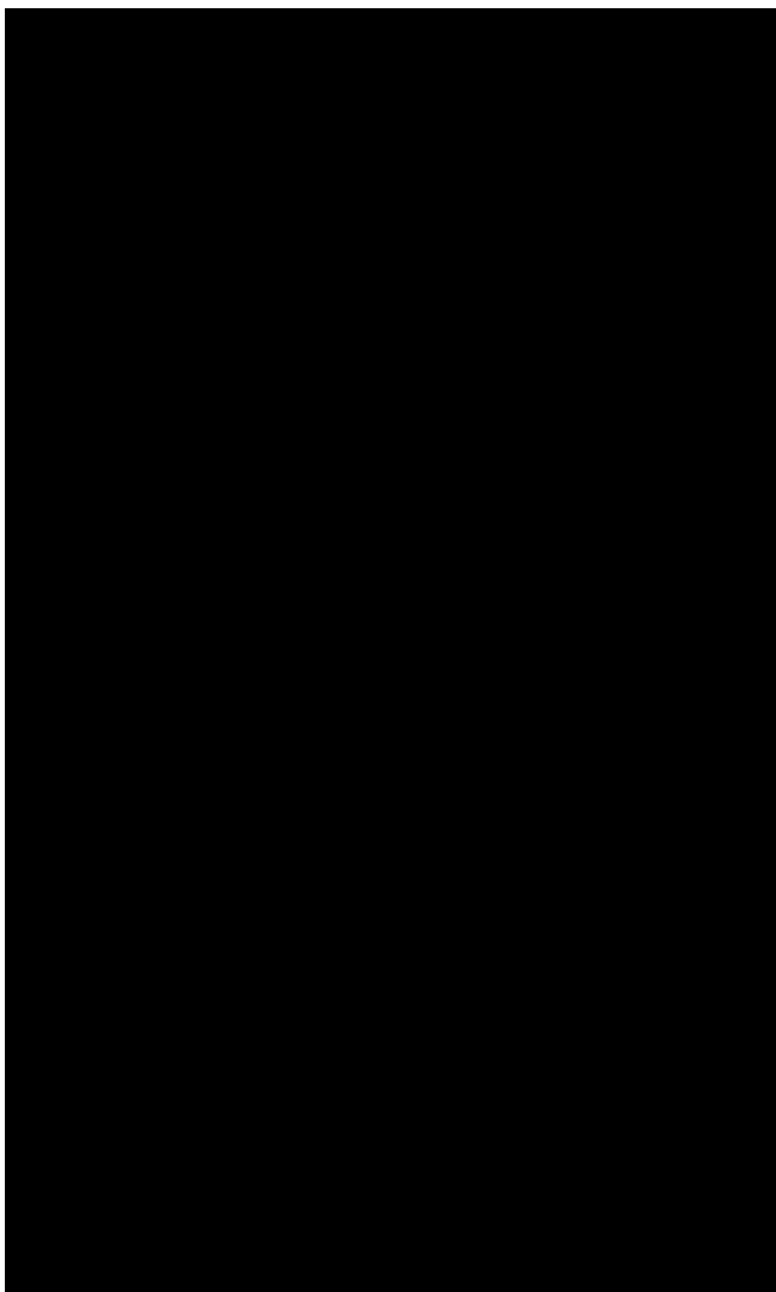




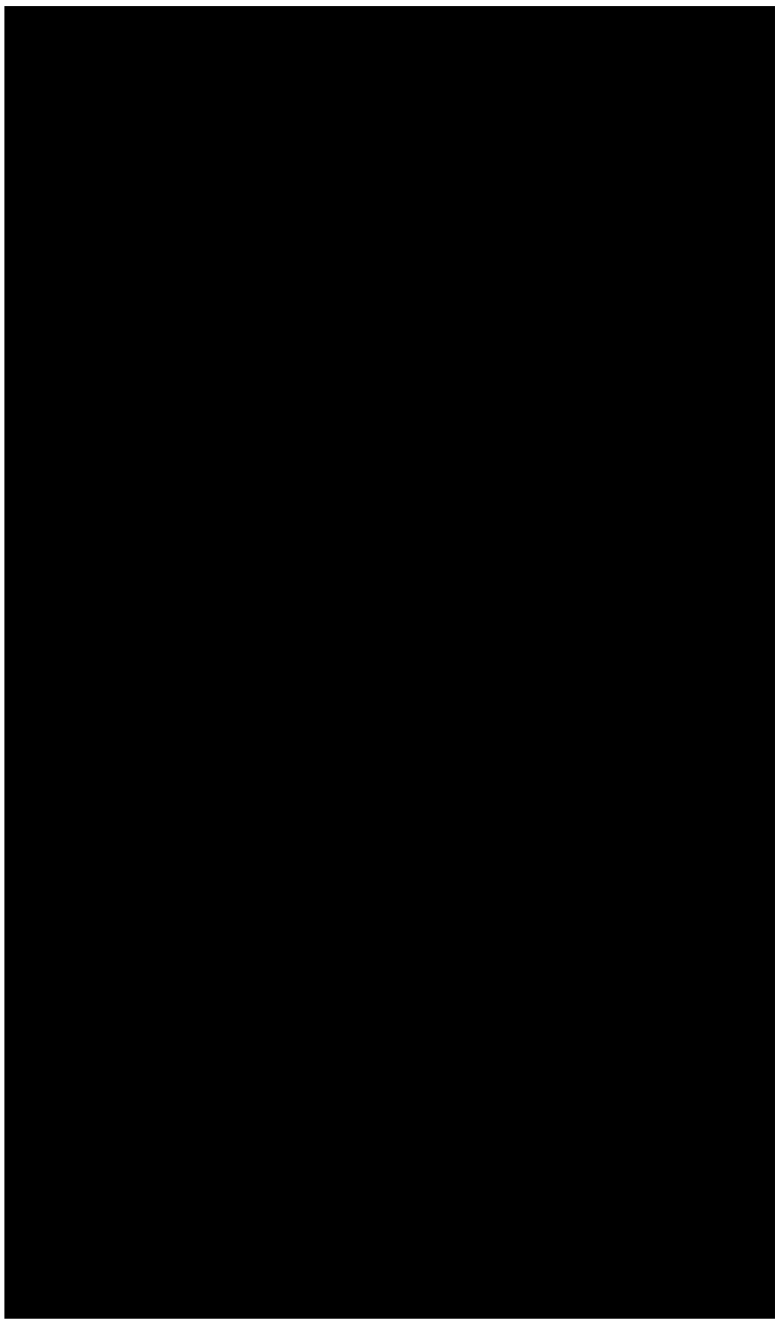


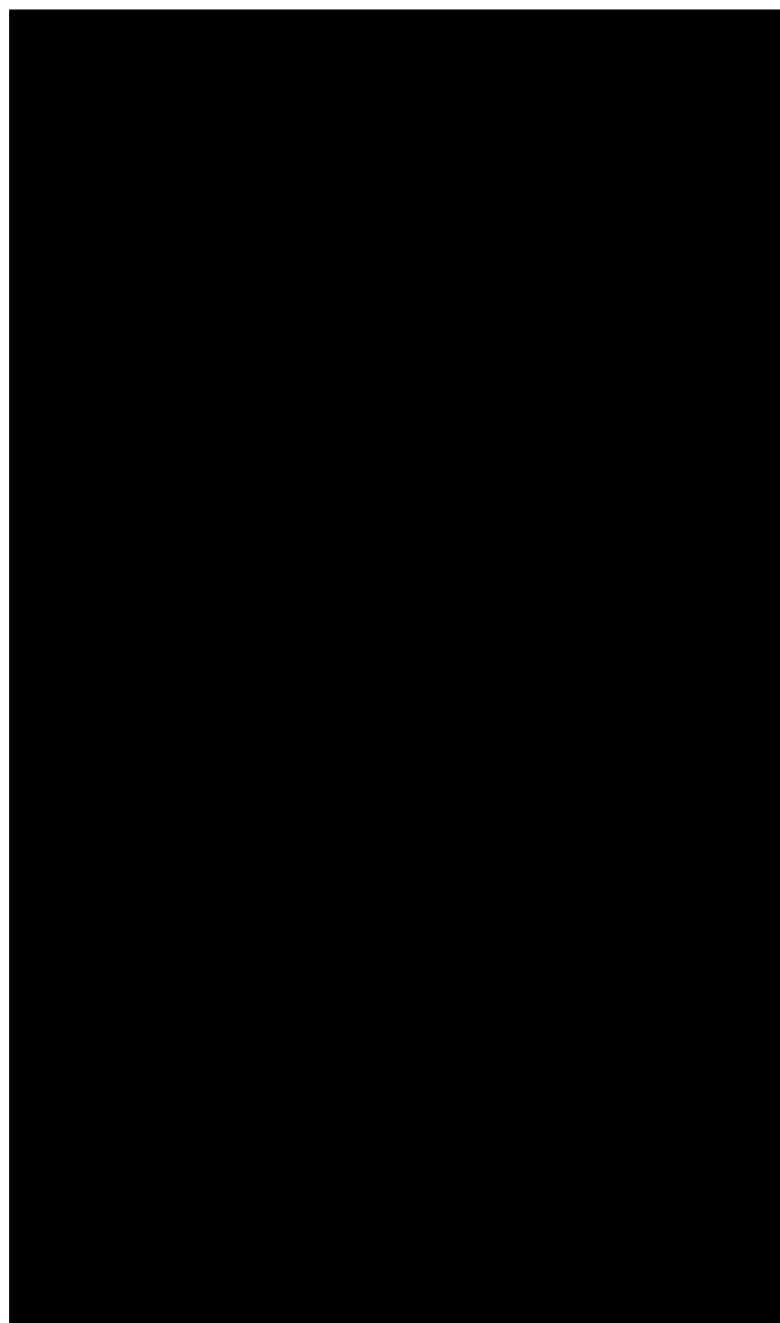


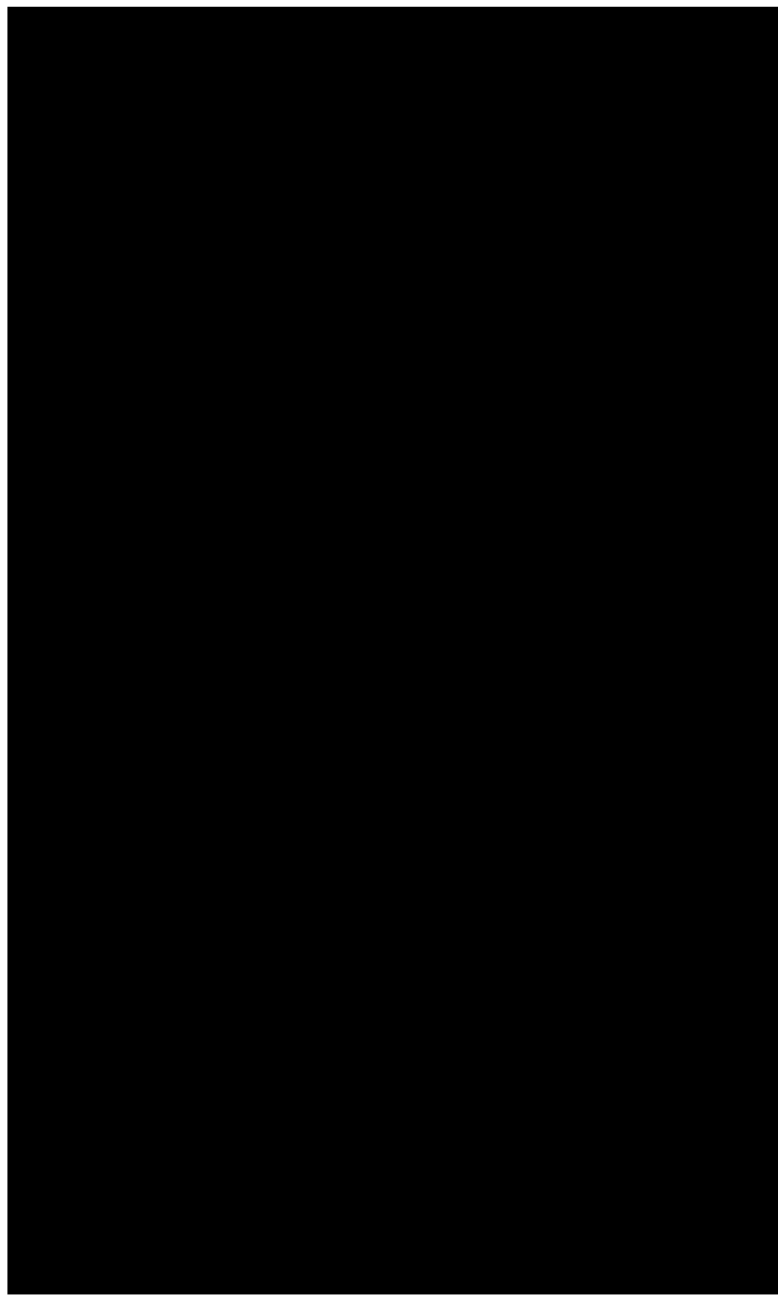


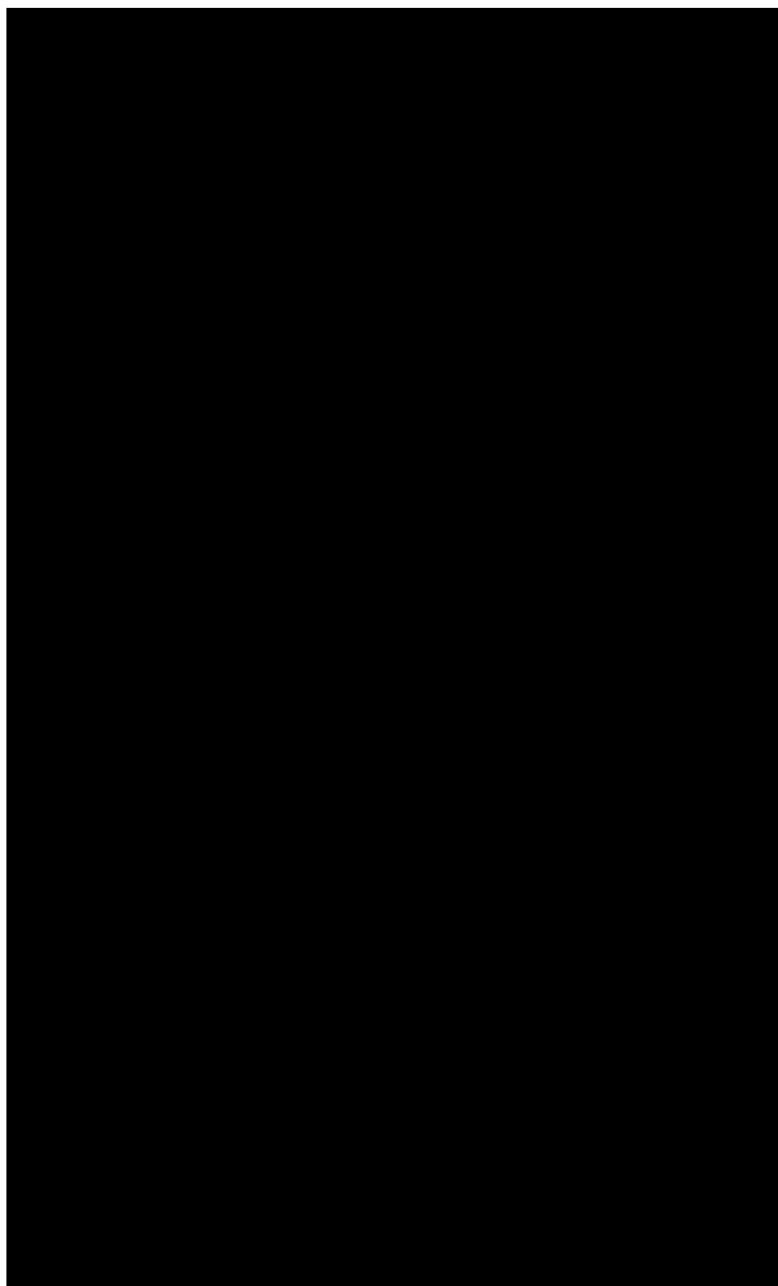


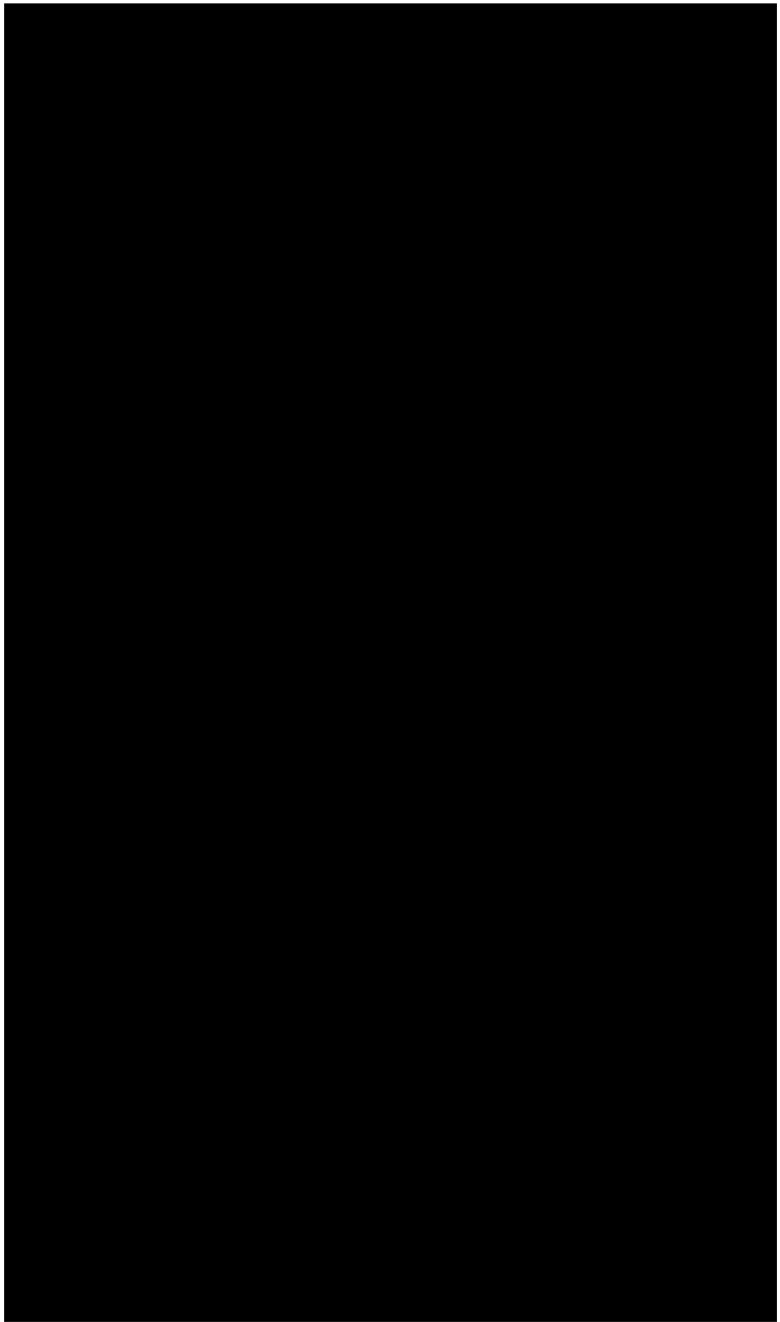


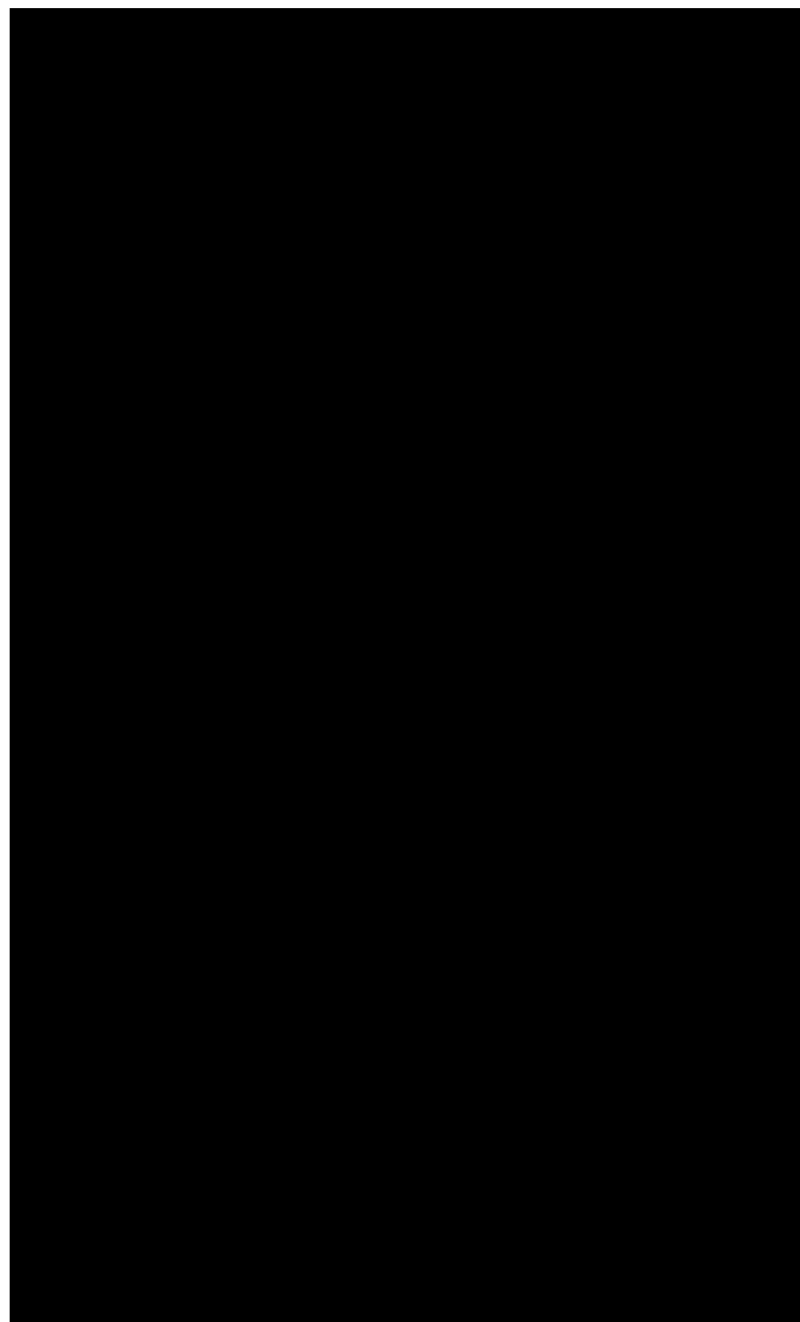


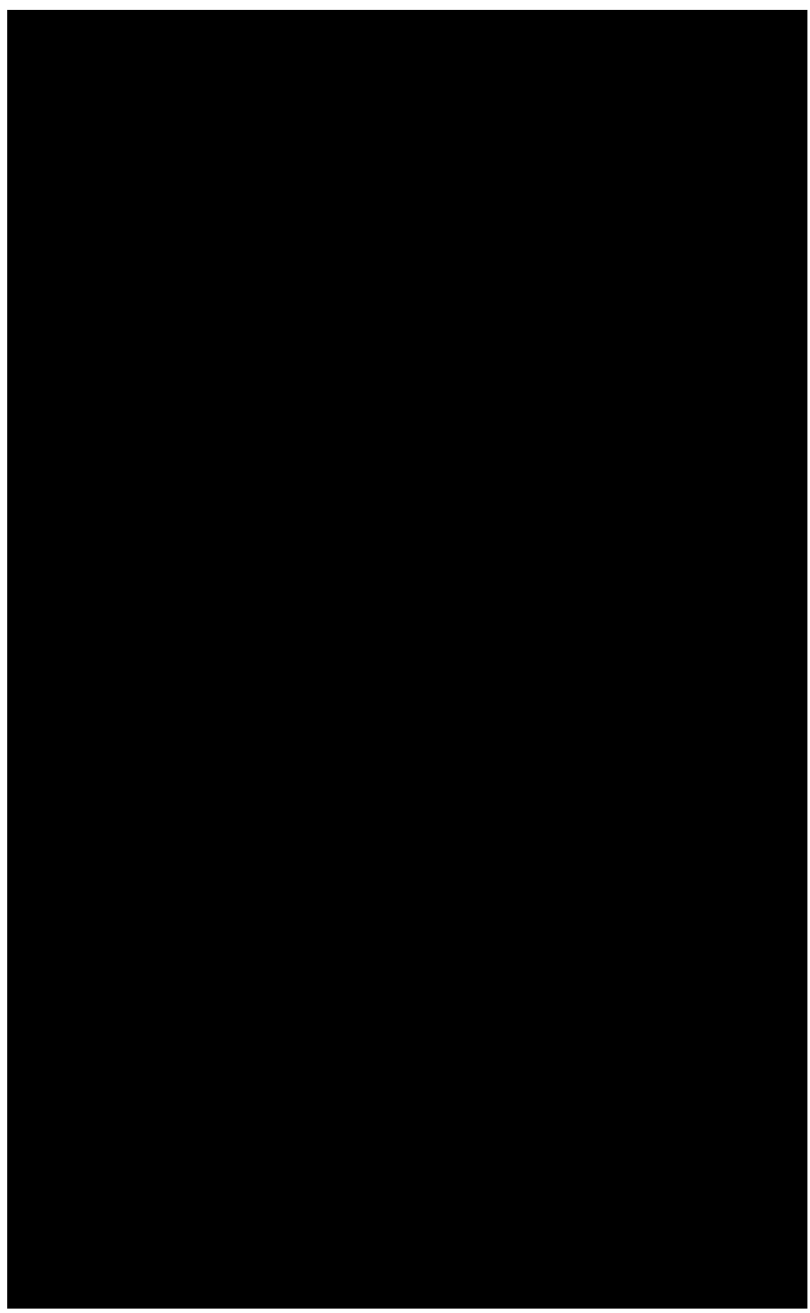


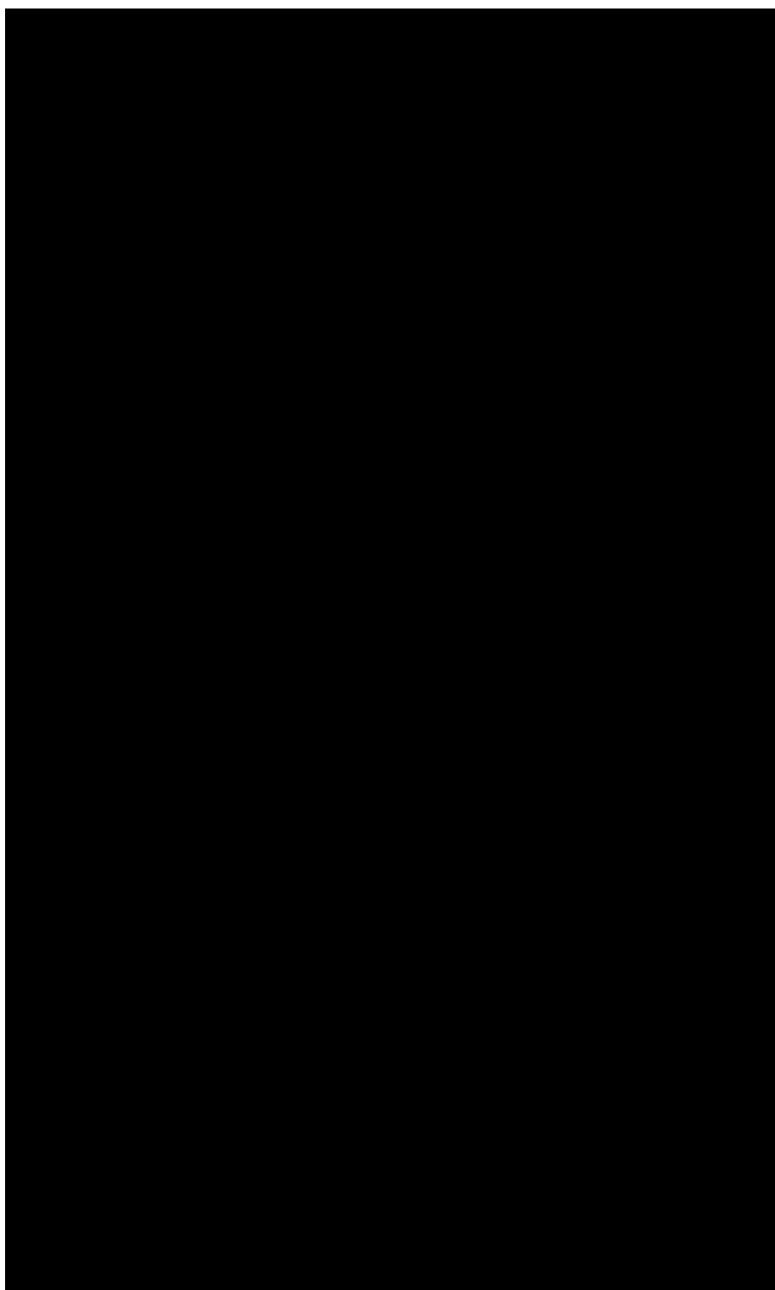


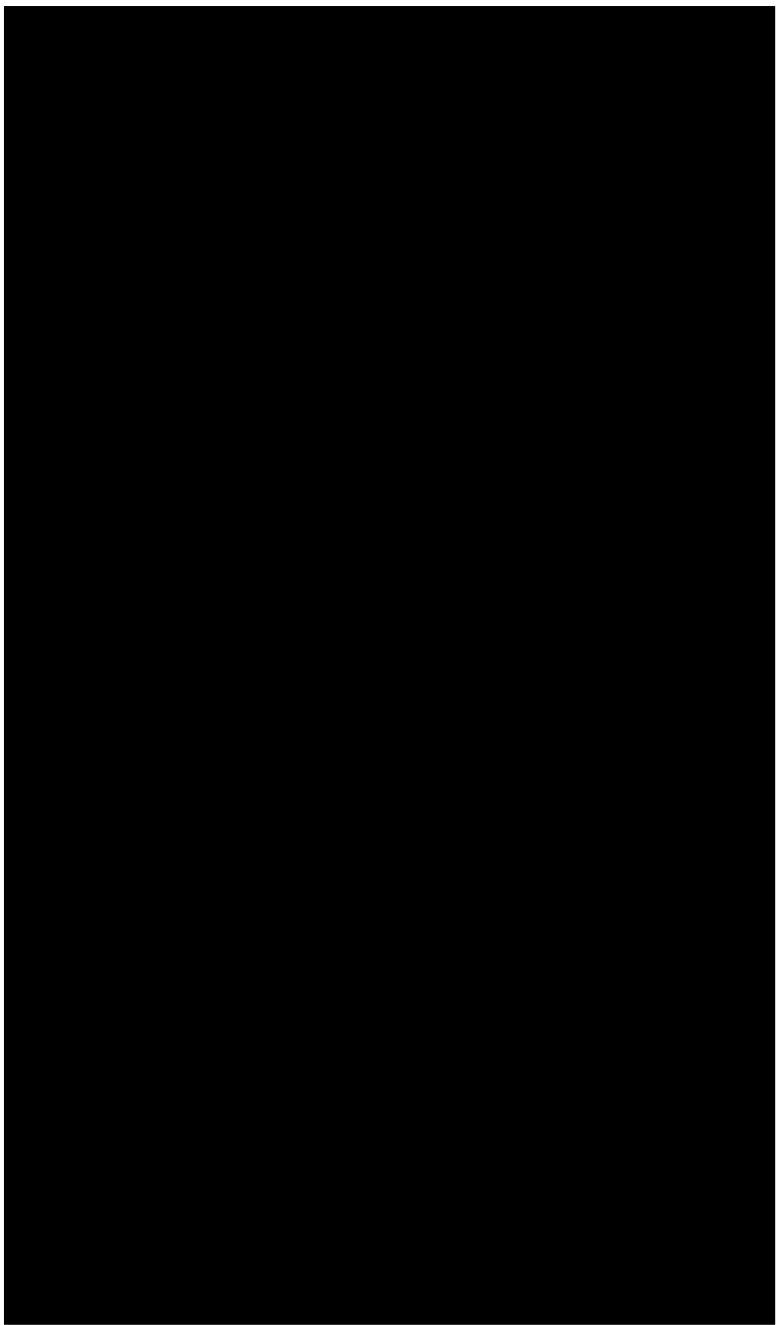


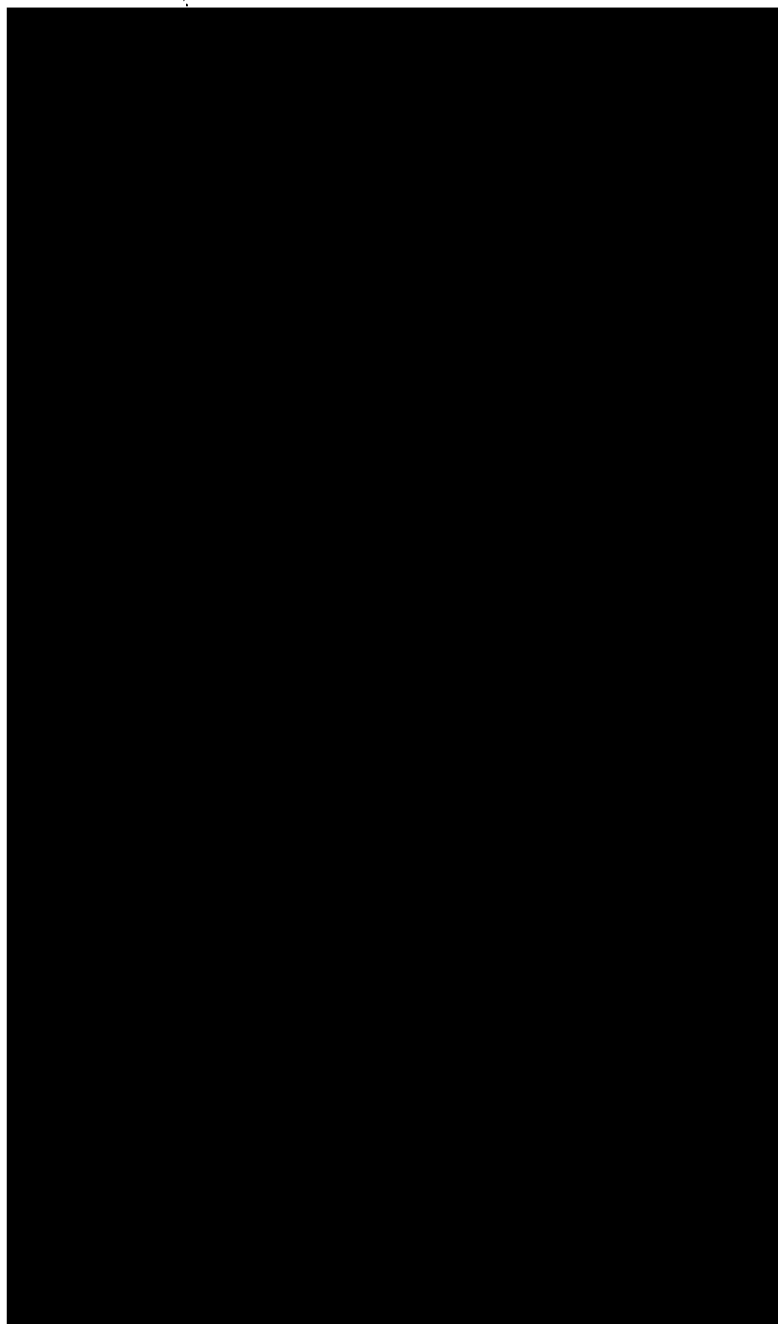


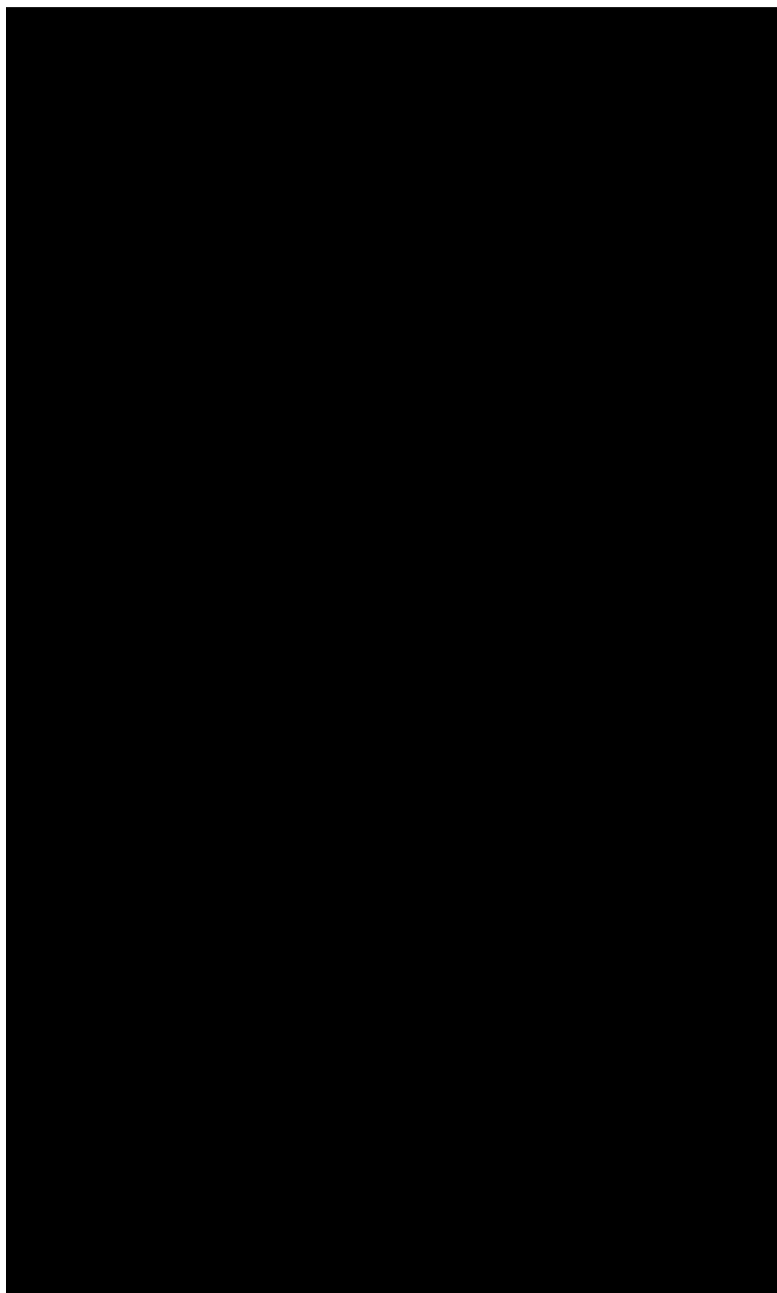


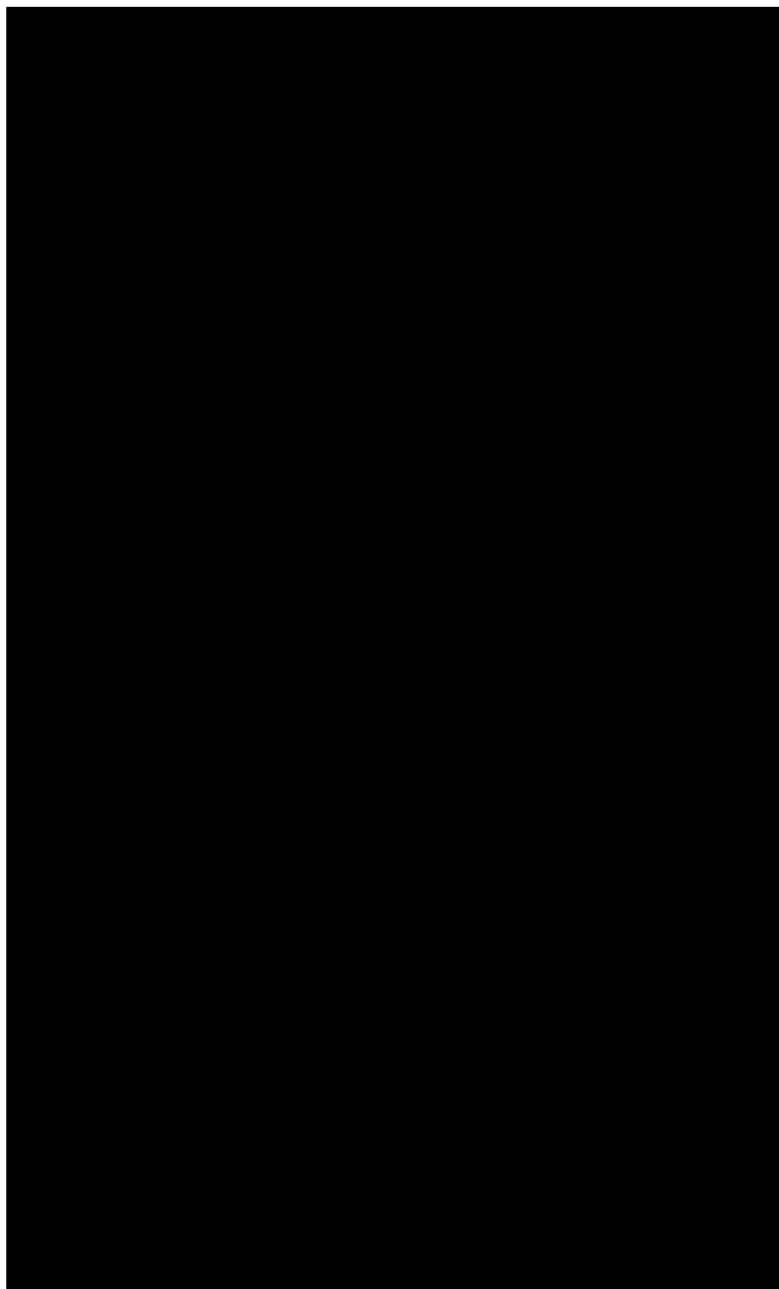


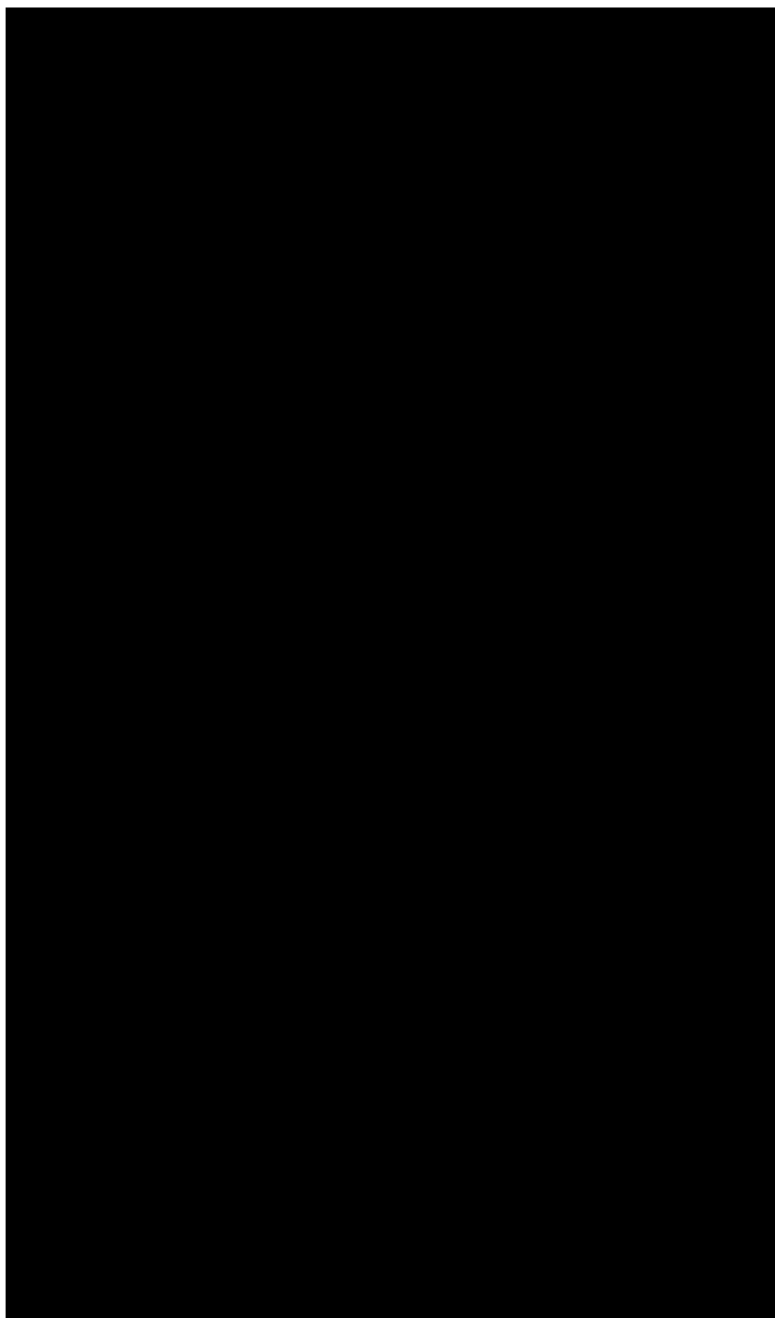


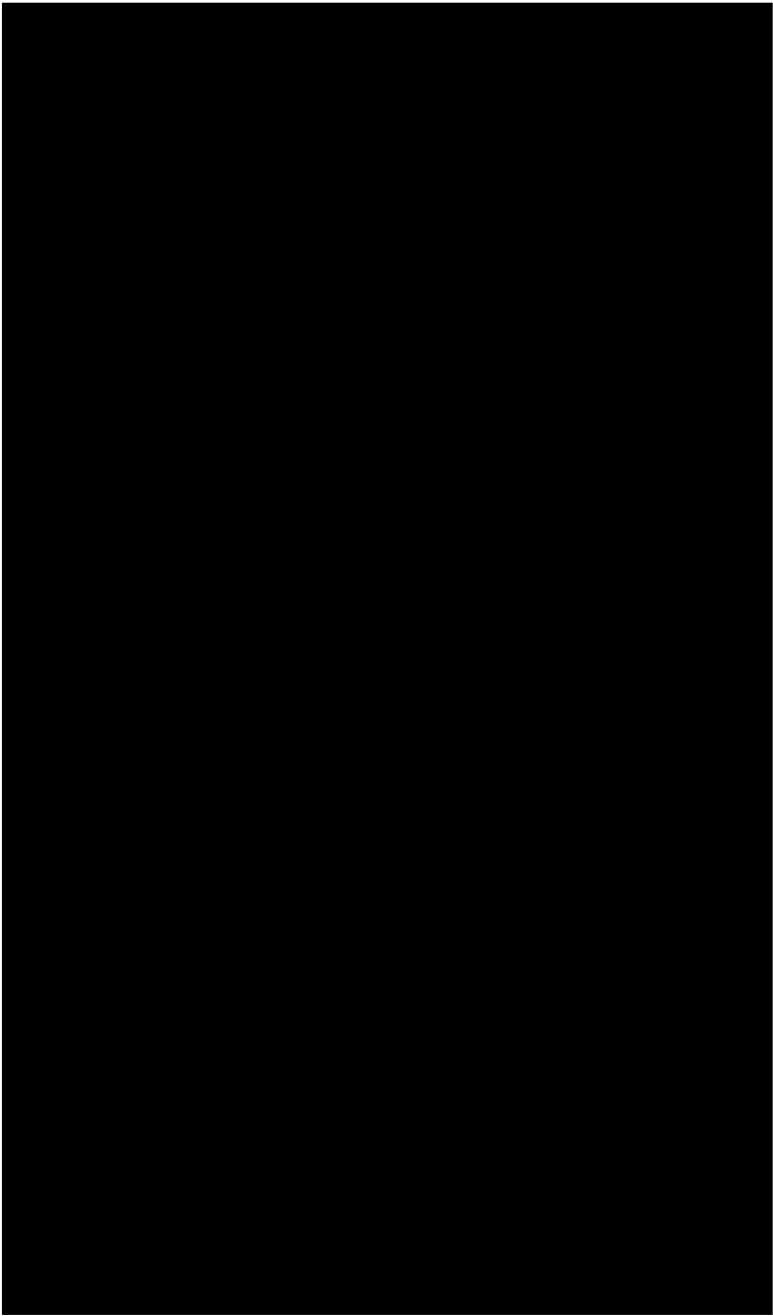


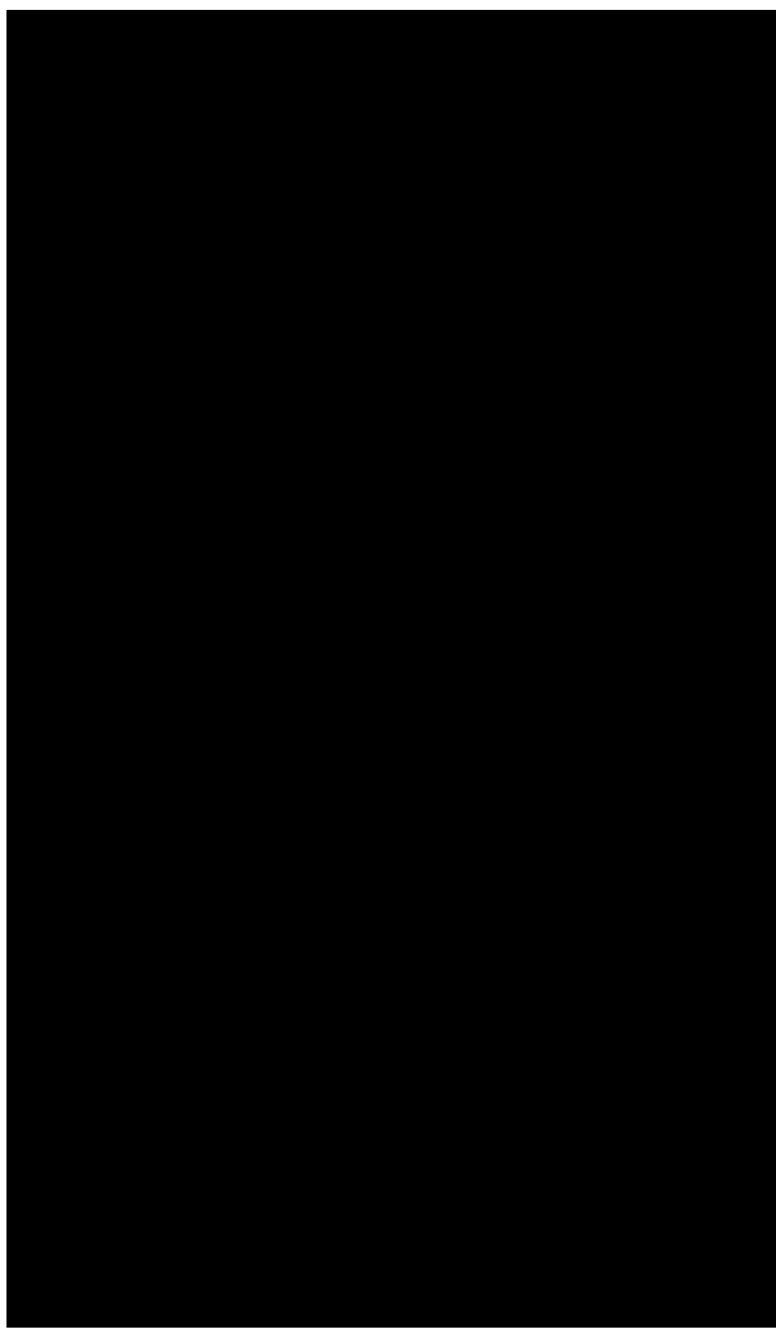


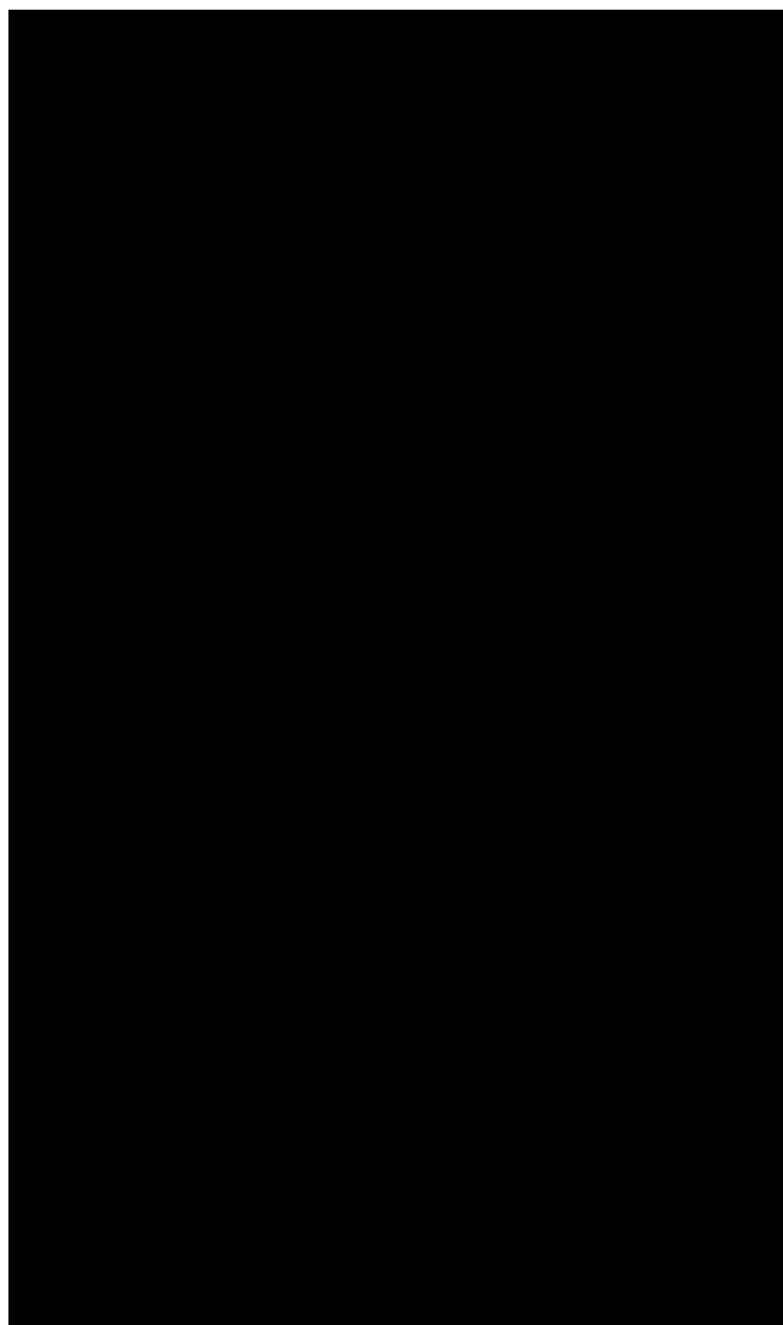


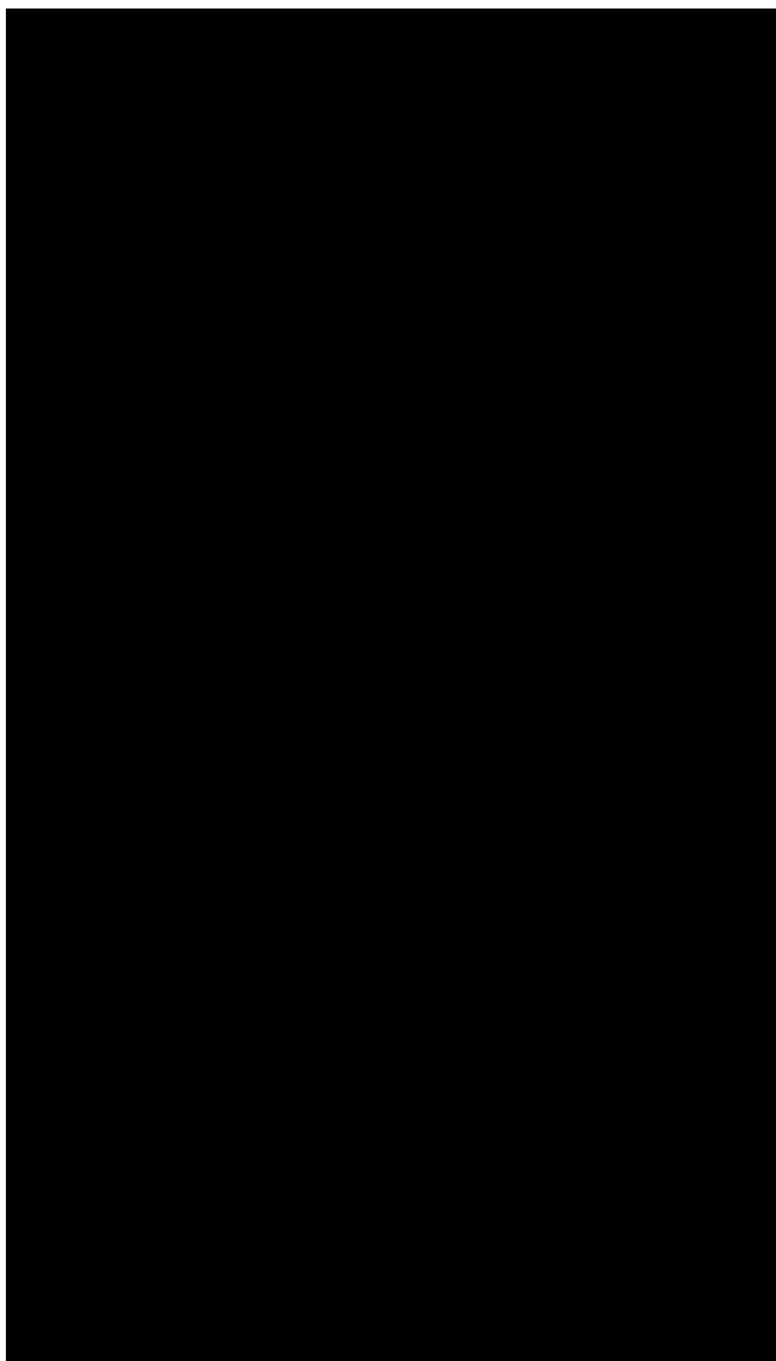


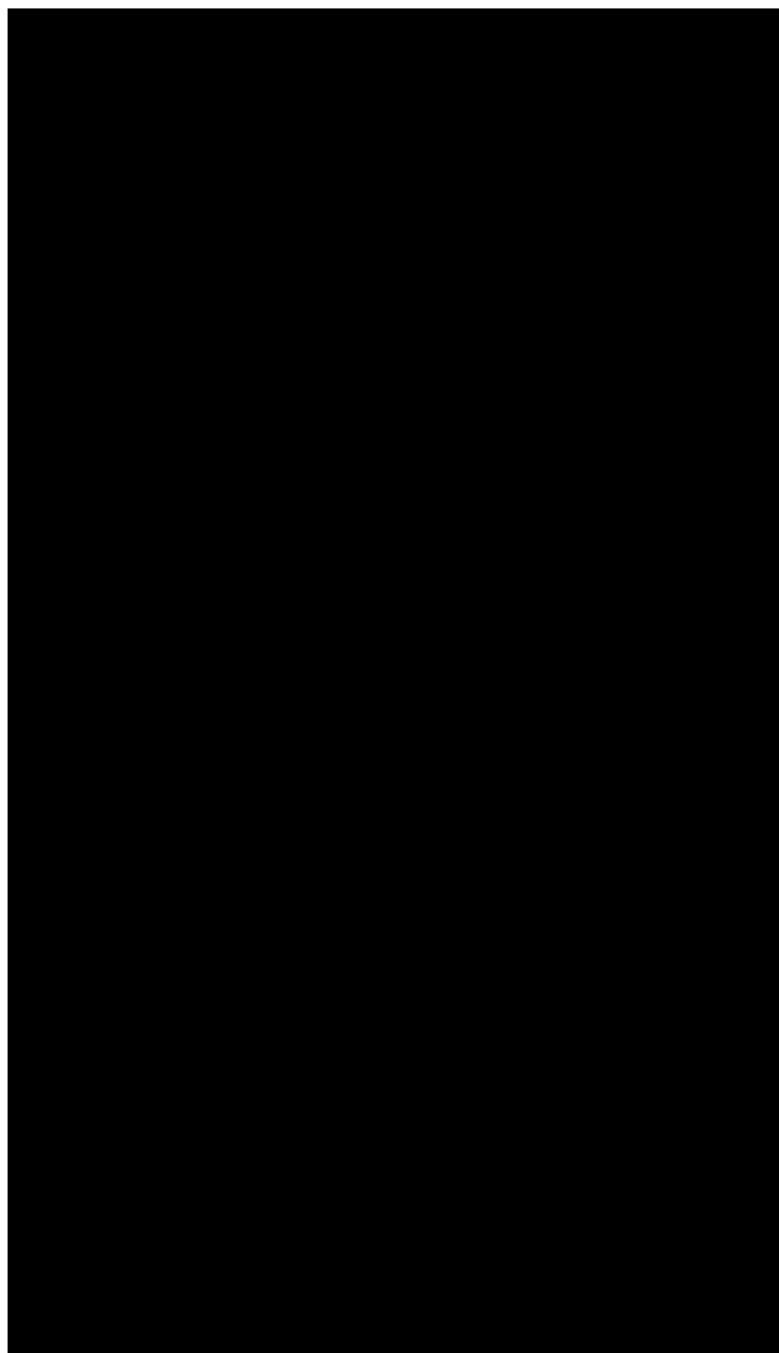






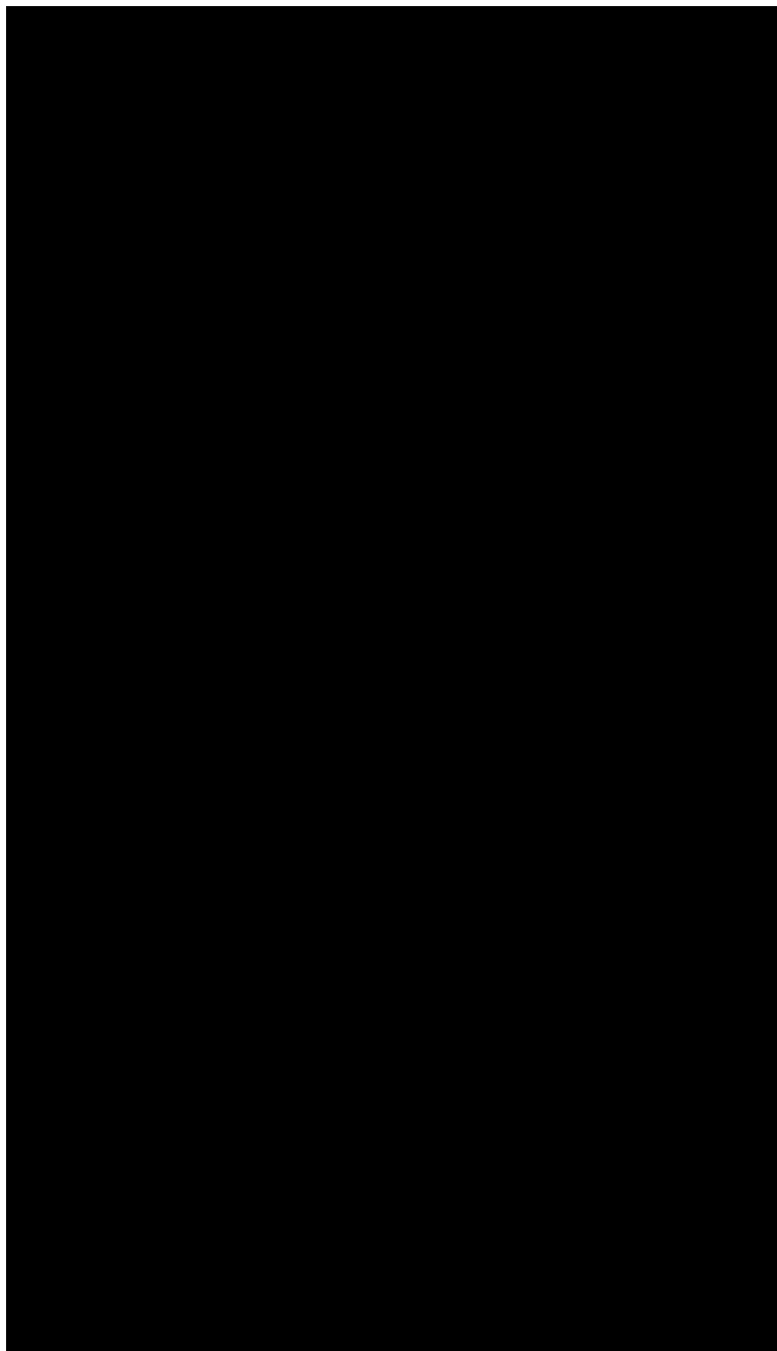


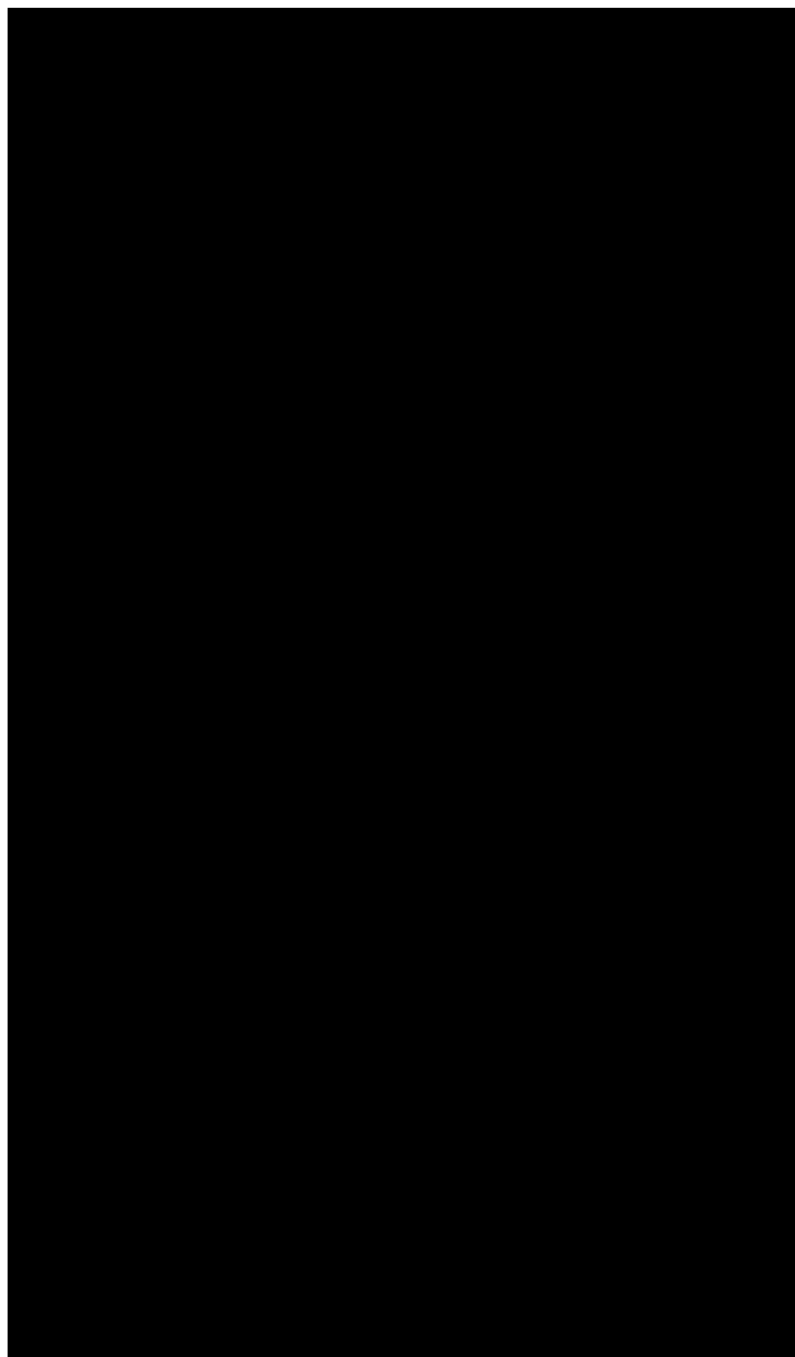


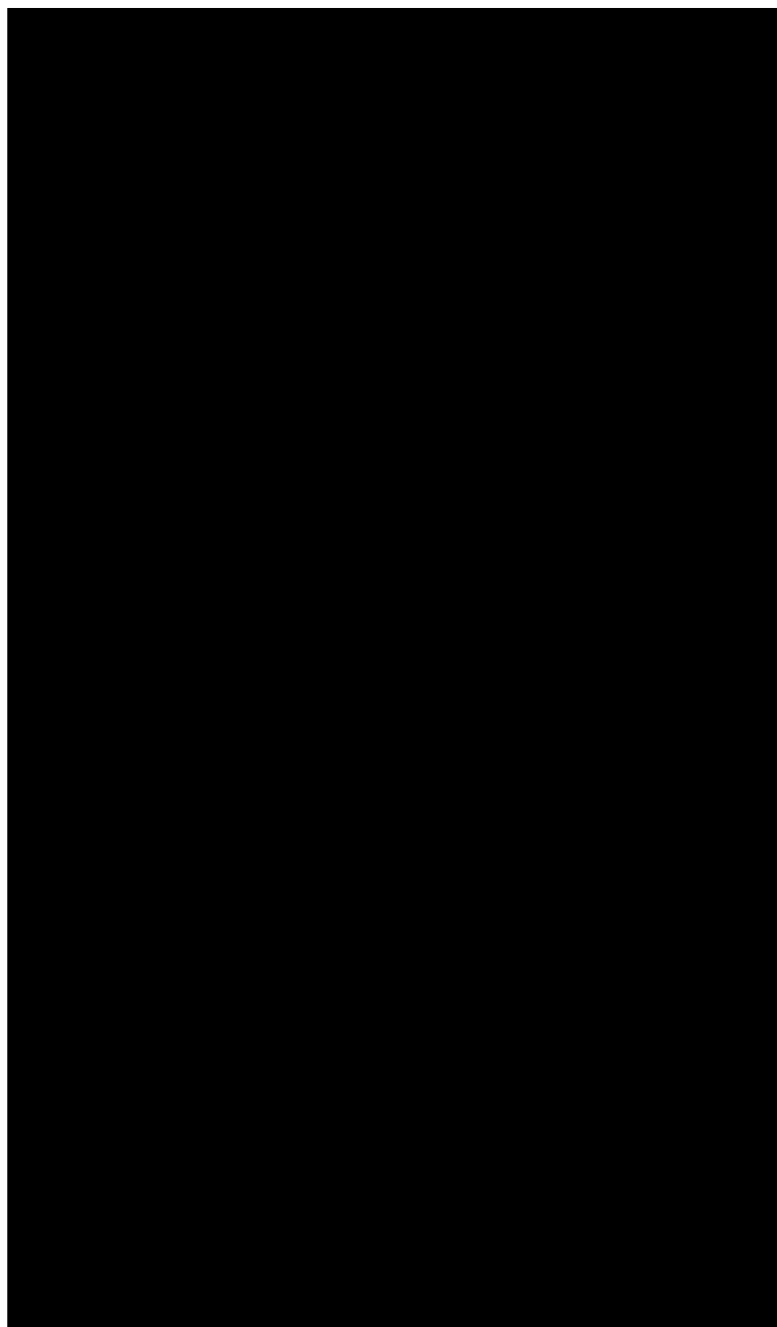


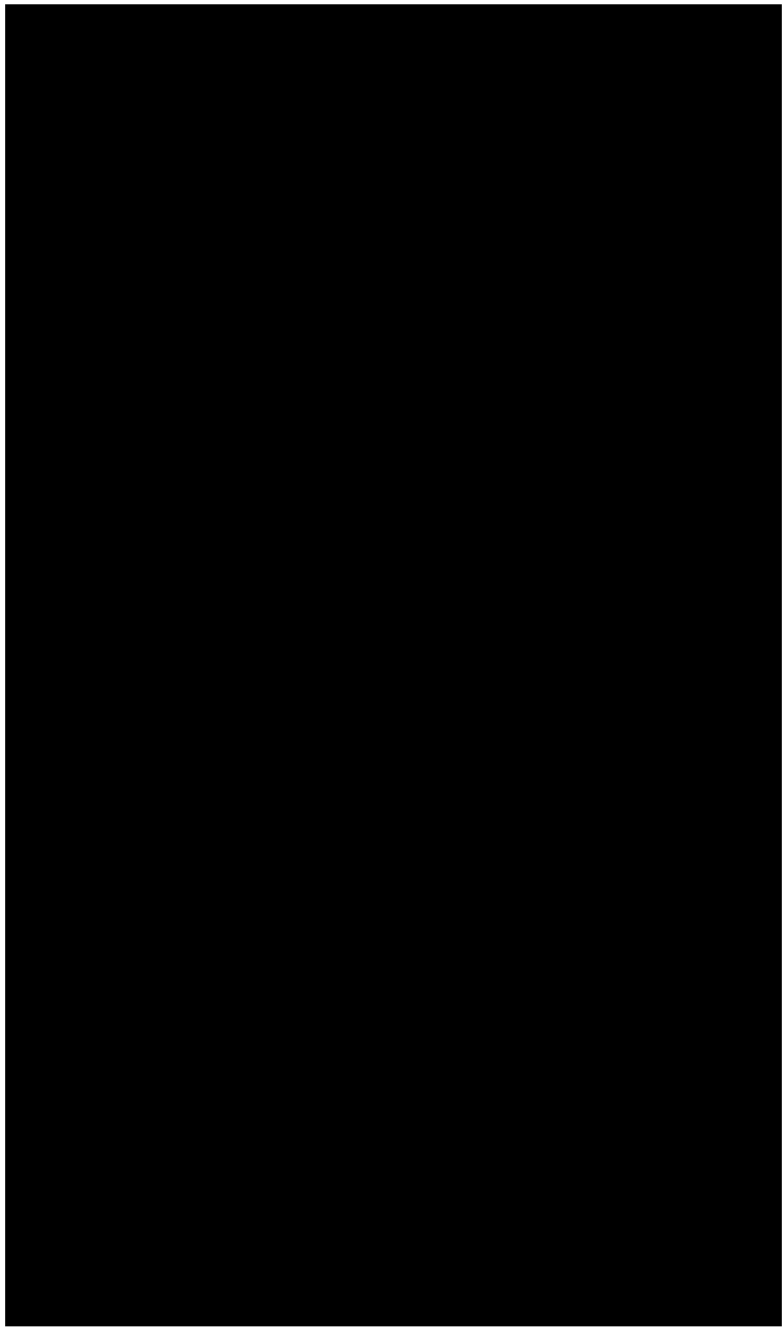


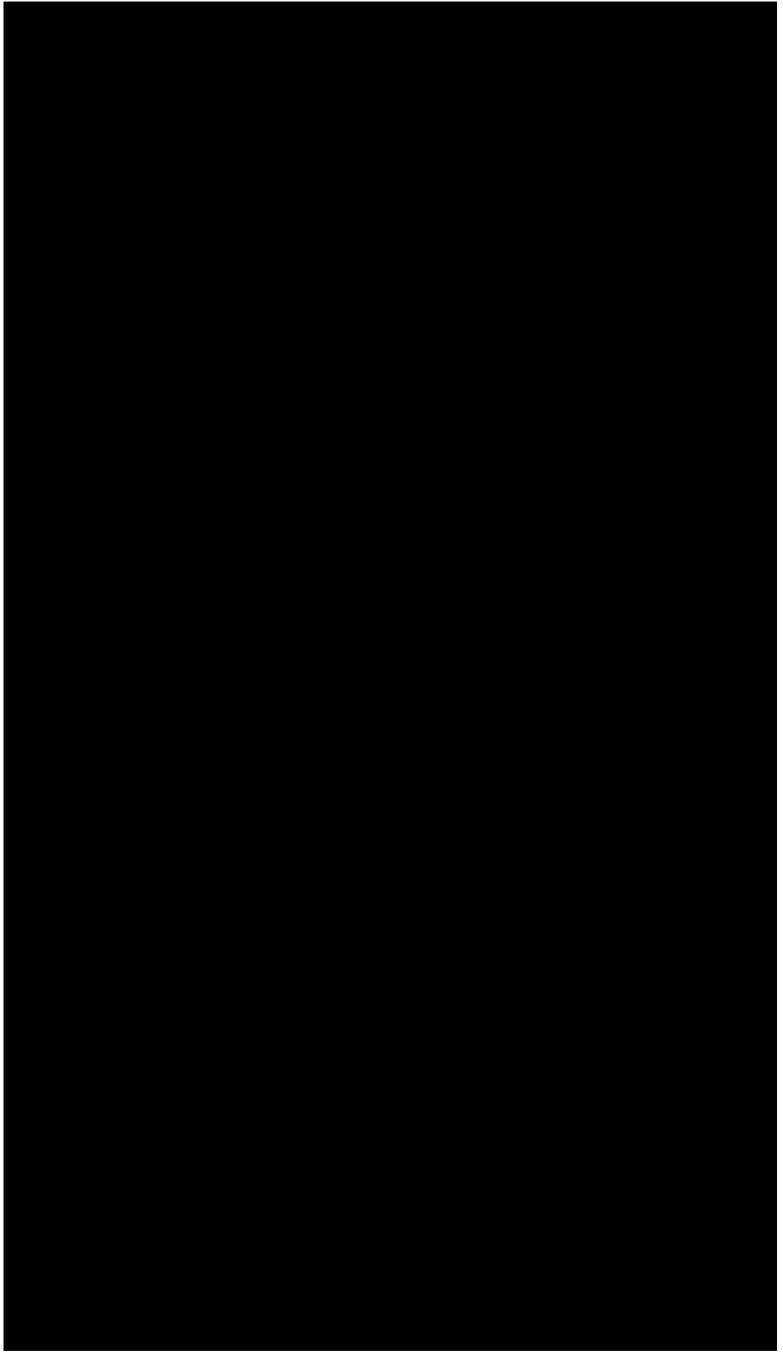


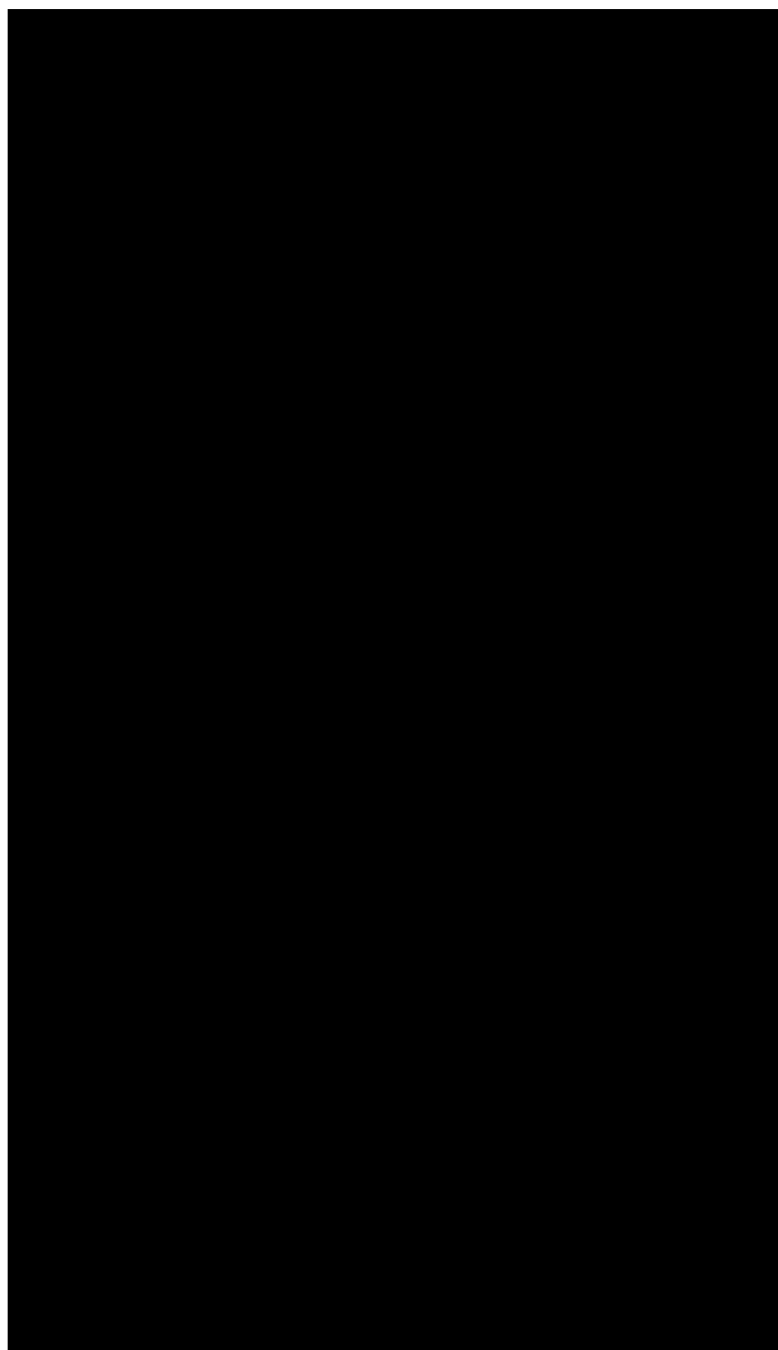


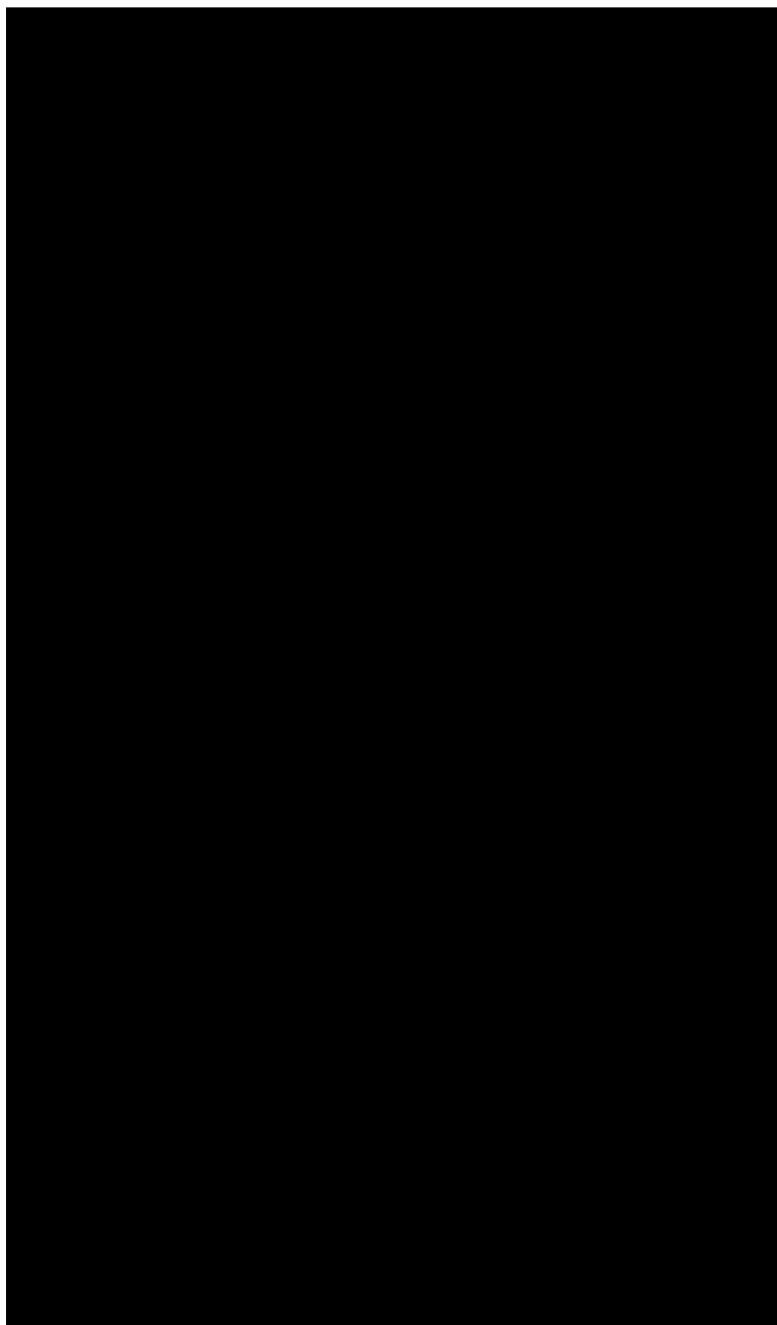


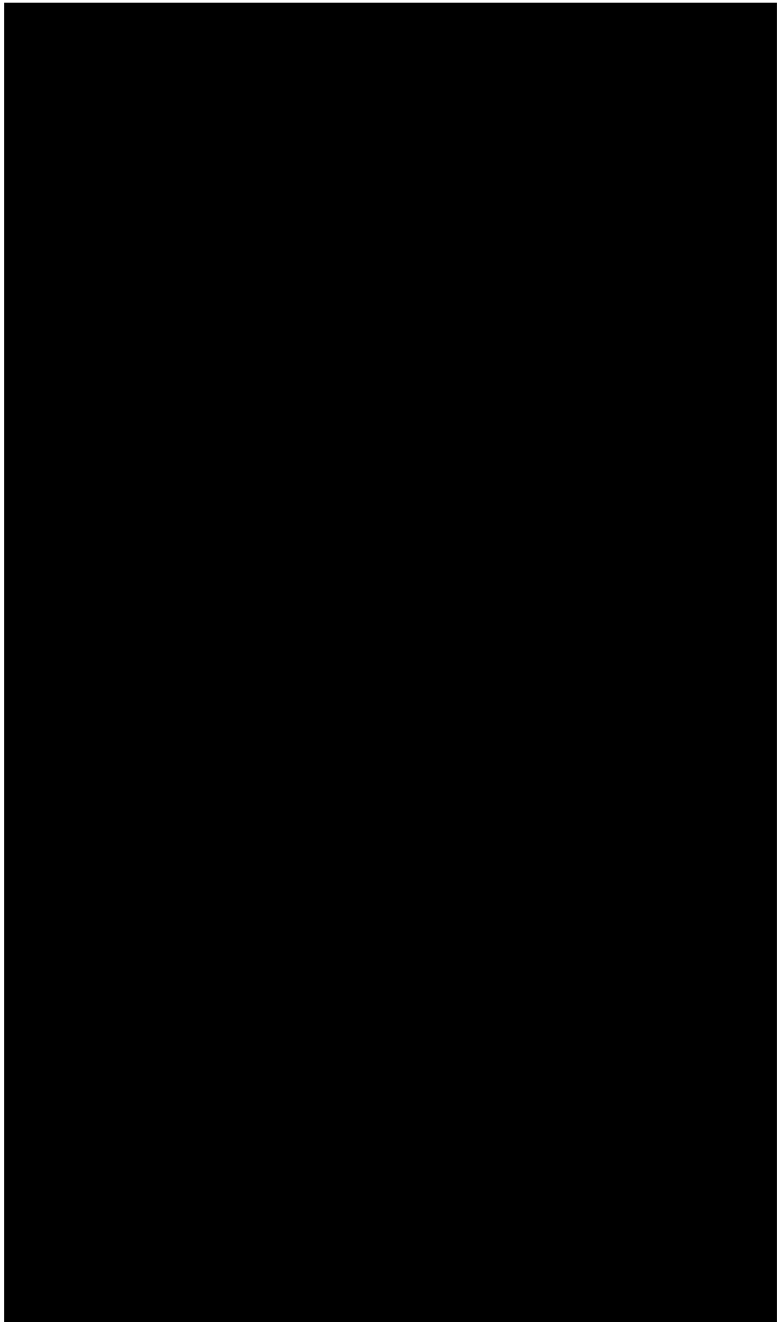


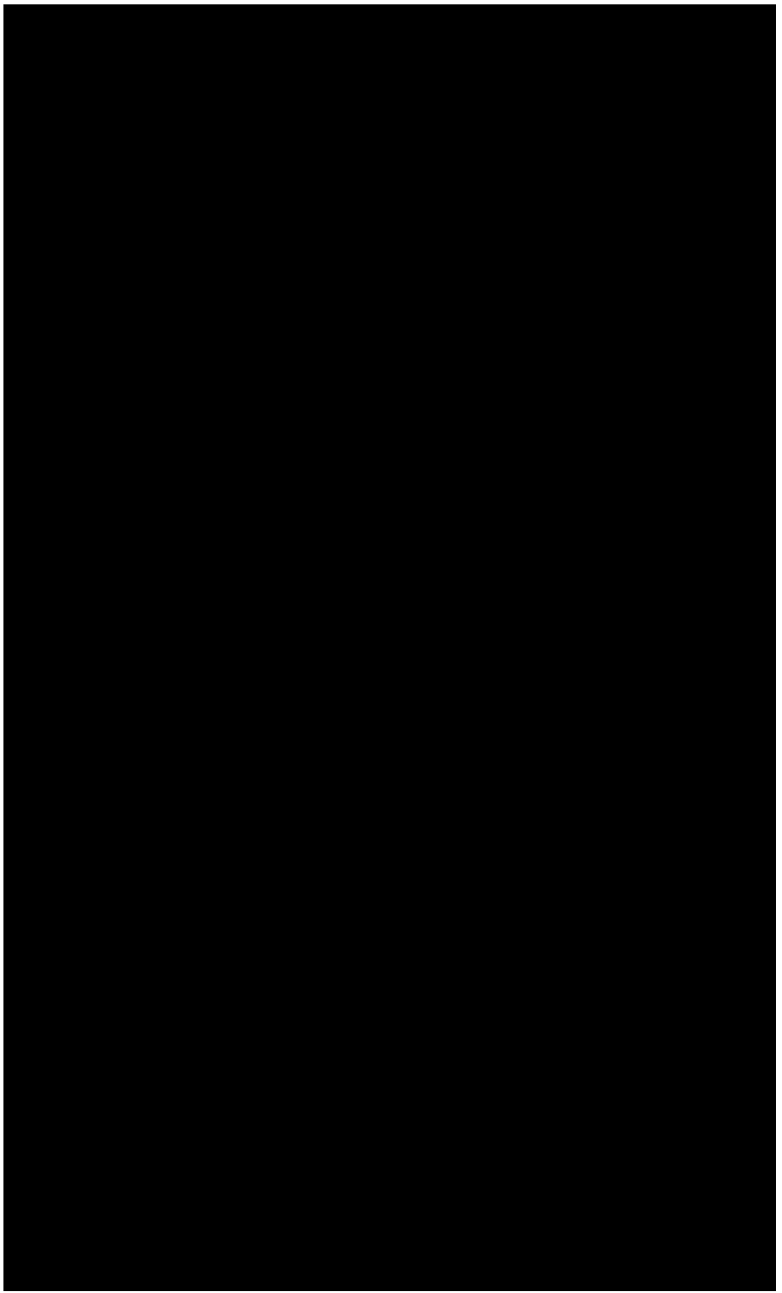




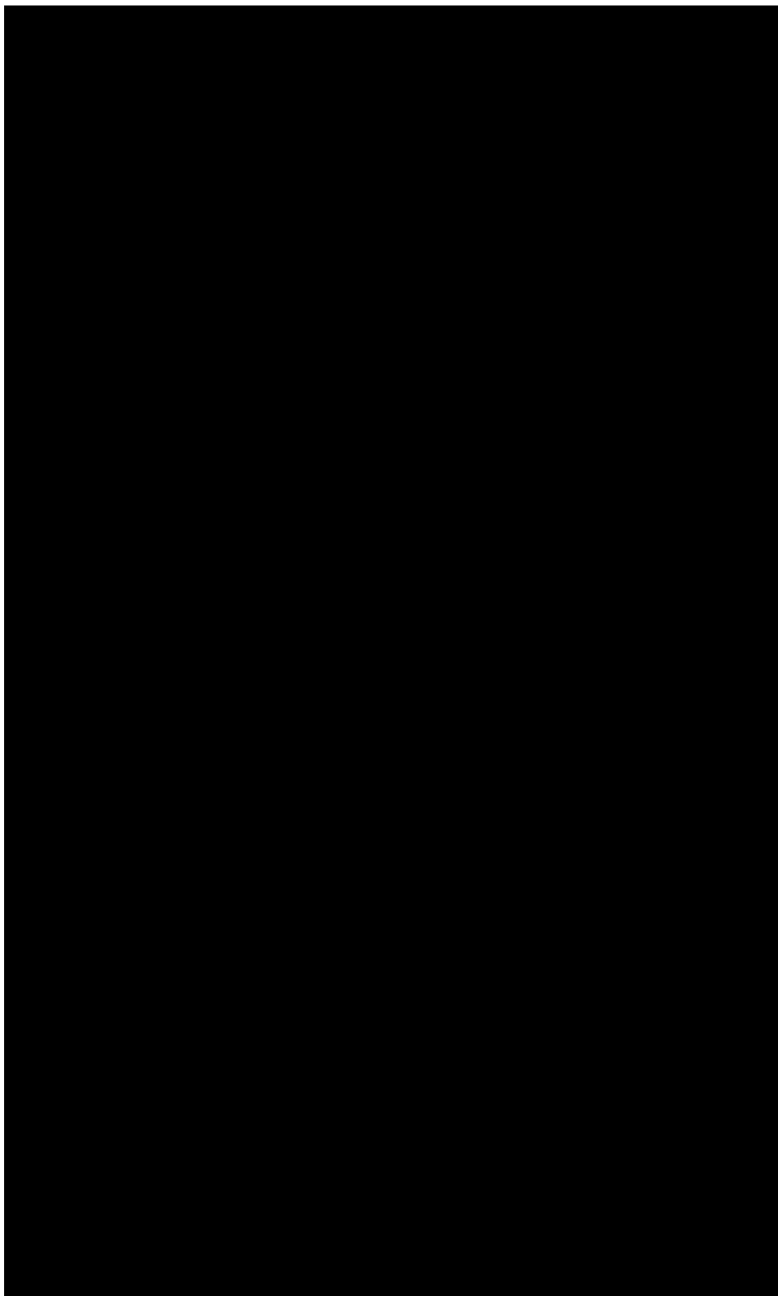


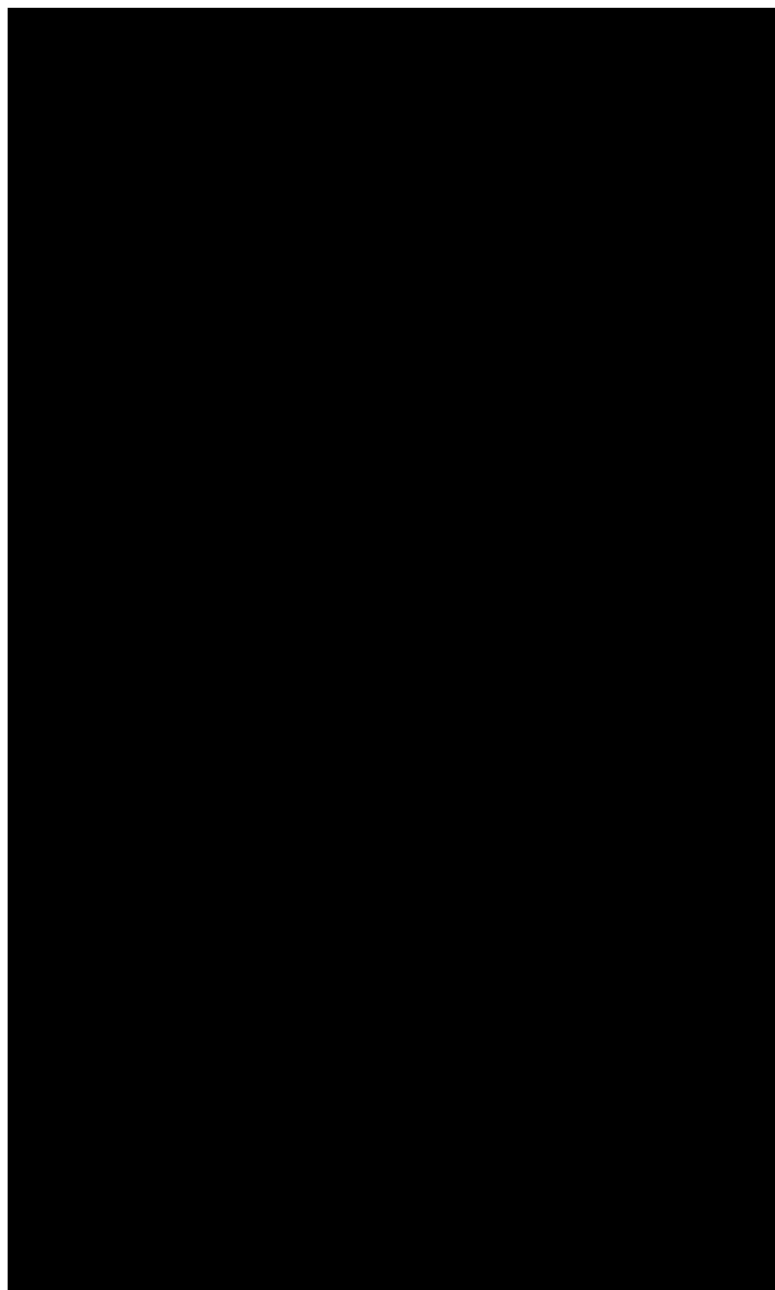


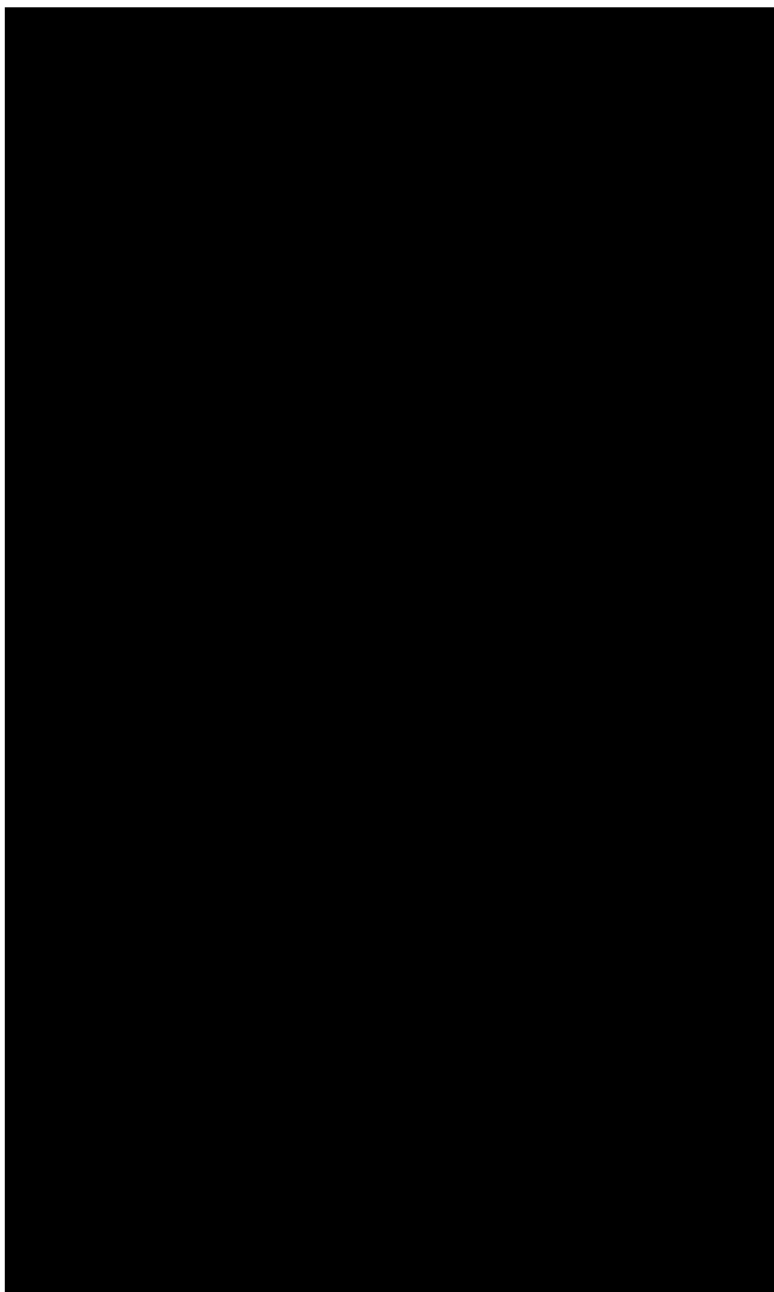












the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million (1990-1999) (Office for National Statistics 2000).

There is a growing awareness of the need to address the health care needs of the elderly population. The Department of Health (2000) has set out a strategy for the care of the elderly, which includes a commitment to improve the quality of care for the elderly.

The aim of this paper is to explore the experiences of elderly people who are living in care homes, and to identify the factors that influence their quality of life. The paper is based on a qualitative study of elderly people living in care homes in the UK.

The study was conducted in three care homes in the south of England. The care homes were selected on the basis of their size and the number of elderly residents. The study was conducted over a period of 12 months.

The data were collected through semi-structured interviews with elderly residents. The interviews were conducted in the care homes, and lasted approximately 30 minutes. The interviews were audio taped, and lasted approximately 30 minutes.

The data were analysed using the grounded theory approach (Glaser and Strauss 1967). This approach involves the development of a theory that is grounded in the data. The theory is developed through a process of constant comparison, in which the researcher compares the data with existing theories and with the data themselves.

The results of the study are presented in this paper. The results show that elderly people living in care homes experience a range of challenges, including isolation, loss of autonomy, and a lack of control over their lives. The results also show that elderly people living in care homes have a strong sense of community and a strong sense of belonging.

The implications of the study are discussed in this paper. The study suggests that care homes should be designed to meet the needs of elderly people, and that care homes should provide a range of activities and services that are meaningful to elderly people. The study also suggests that care homes should provide a sense of community and a sense of belonging for elderly people.

The study has a number of limitations. The study was conducted in three care homes, and the results may not be generalisable to all care homes. The study was also a cross-sectional study, and the results may not reflect the experiences of elderly people over time.

Despite these limitations, the study provides valuable insights into the experiences of elderly people living in care homes. The study suggests that care homes should be designed to meet the needs of elderly people, and that care homes should provide a range of activities and services that are meaningful to elderly people.

The study also suggests that care homes should provide a sense of community and a sense of belonging for elderly people. The study suggests that care homes should provide a range of activities and services that are meaningful to elderly people, and that care homes should provide a sense of community and a sense of belonging for elderly people.

The study has a number of implications for practice. The study suggests that care homes should be designed to meet the needs of elderly people, and that care homes should provide a range of activities and services that are meaningful to elderly people. The study also suggests that care homes should provide a sense of community and a sense of belonging for elderly people.

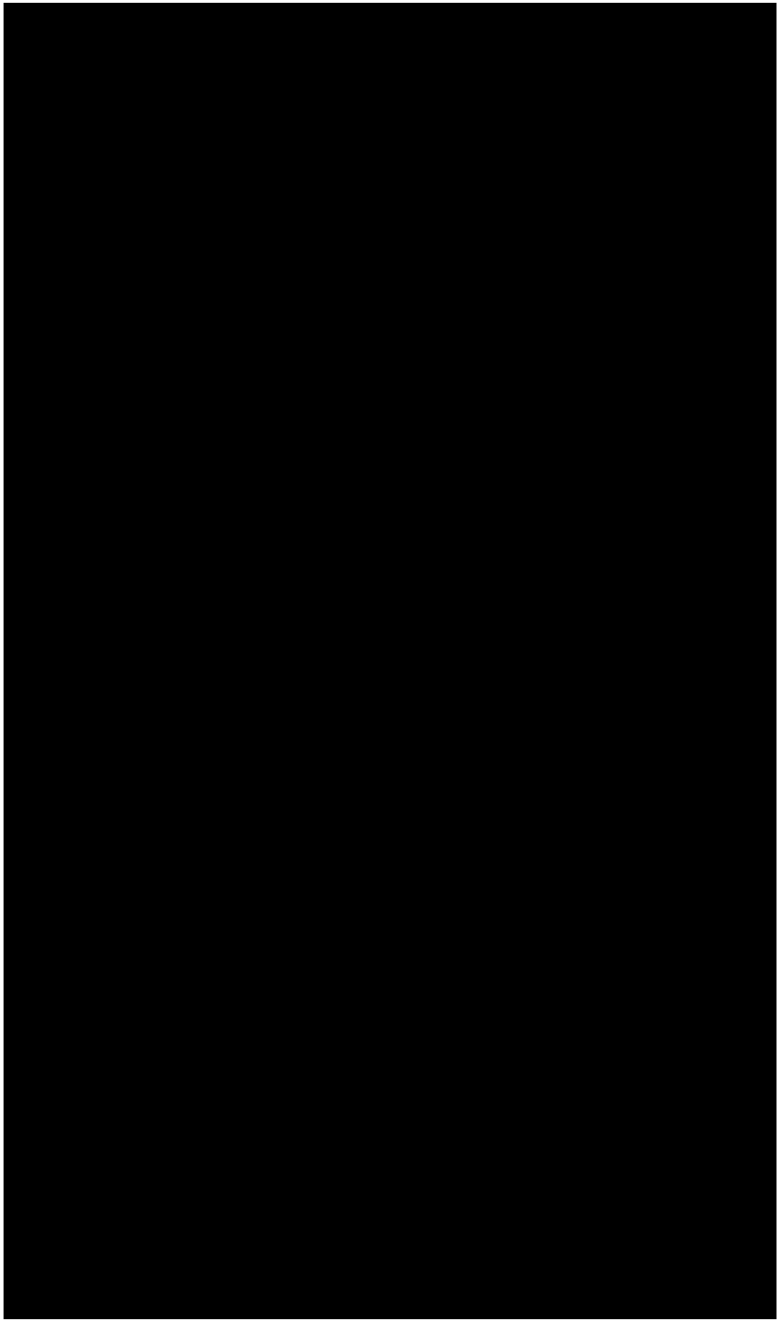
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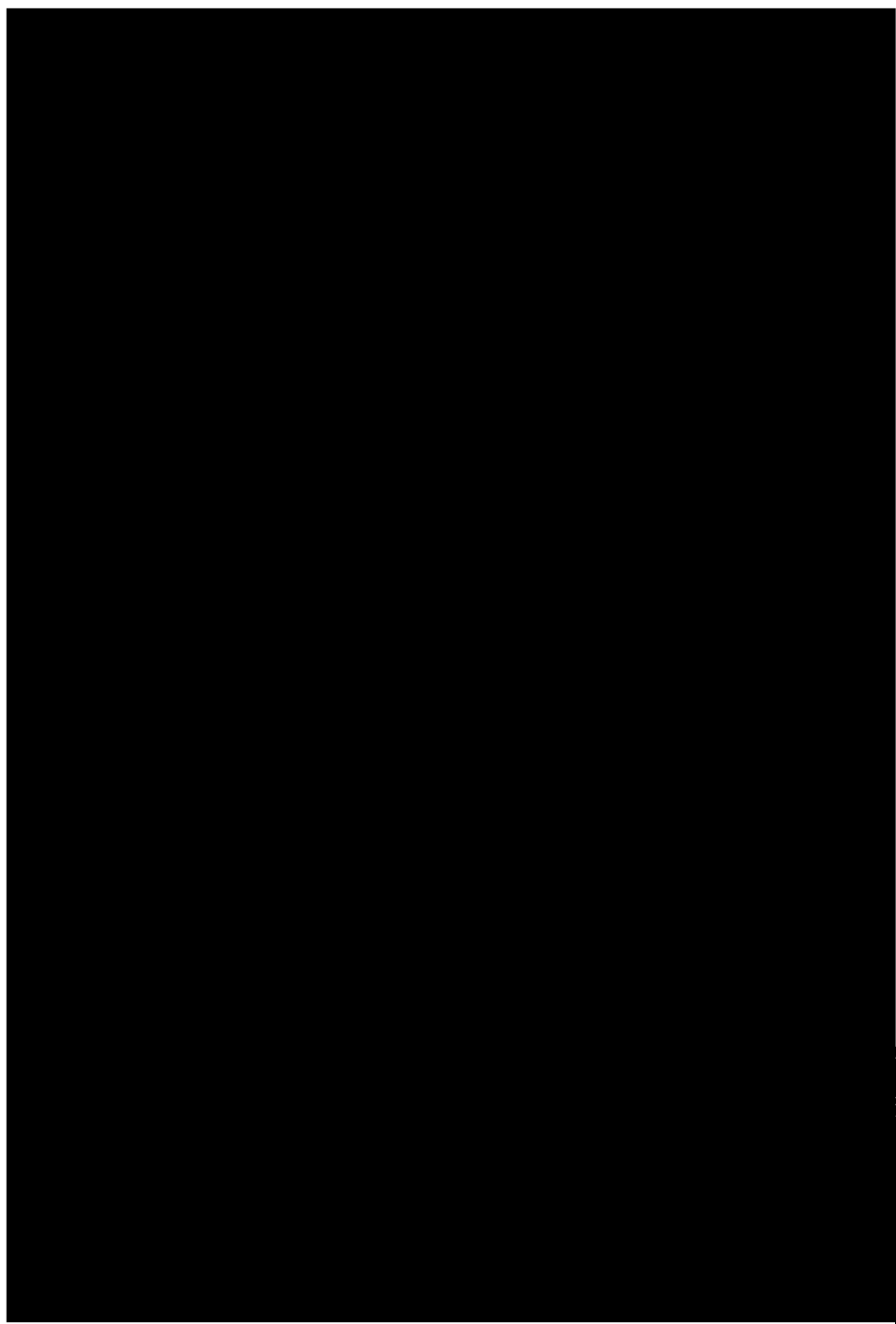
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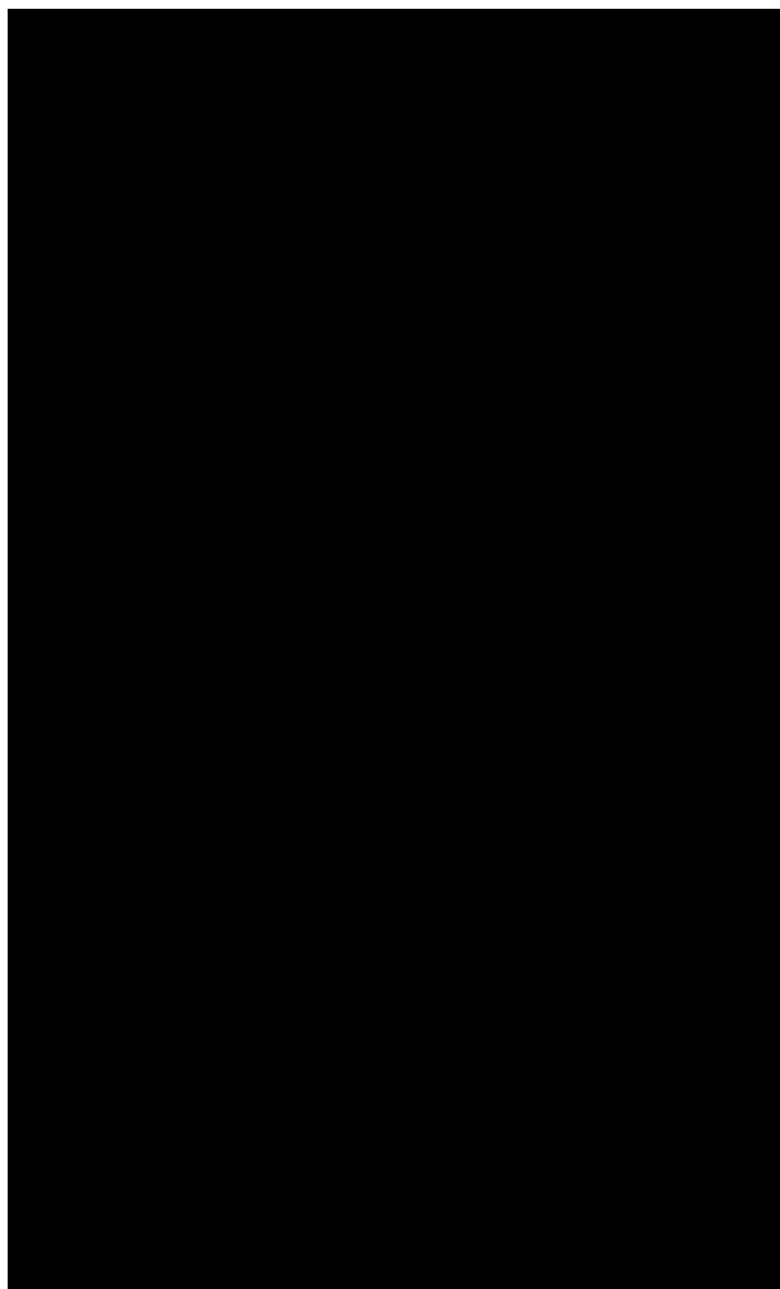
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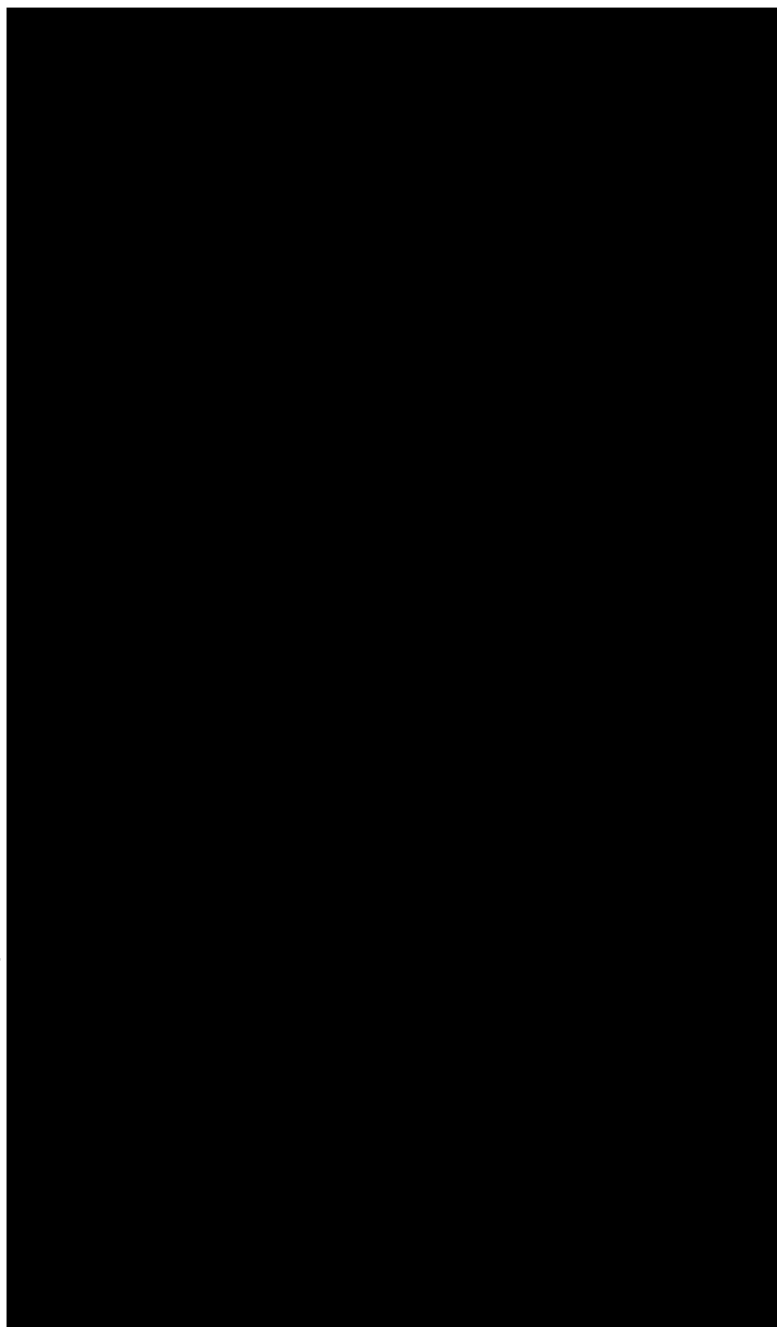


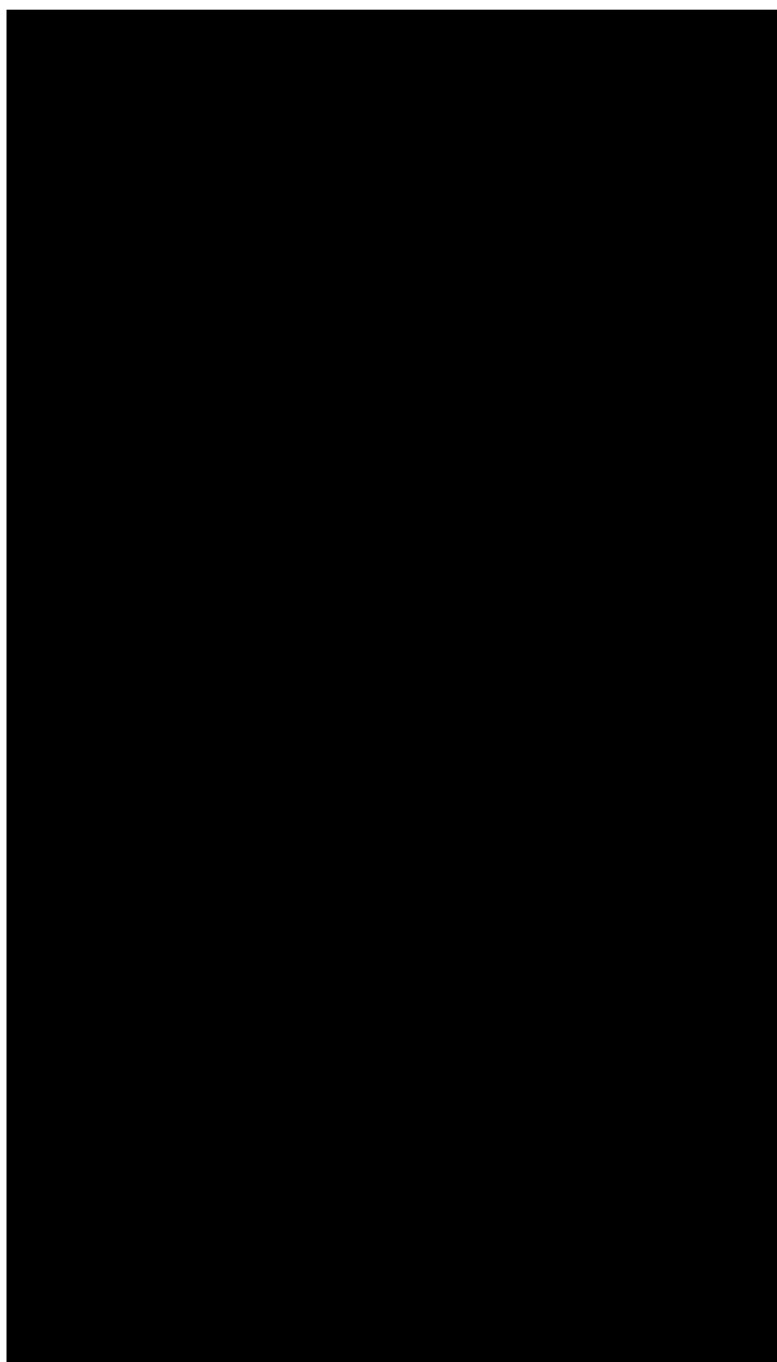


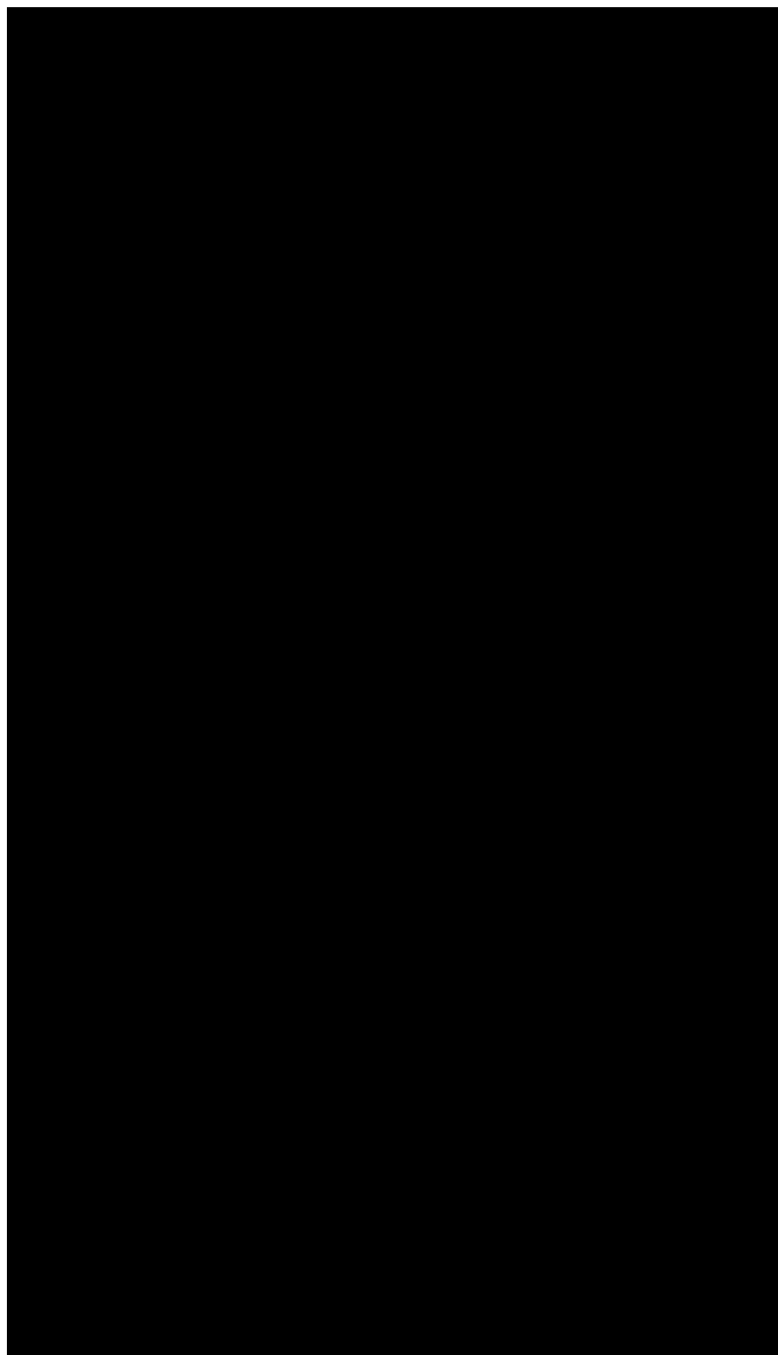


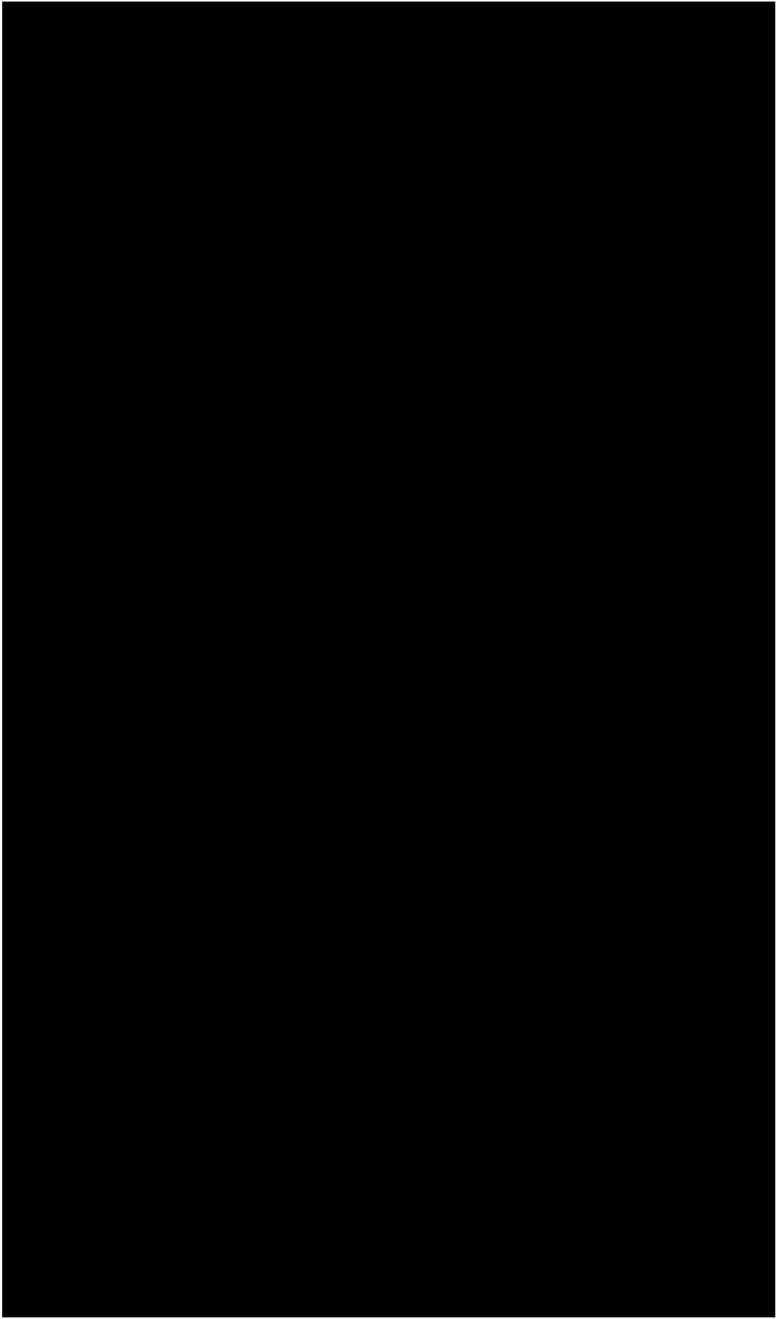


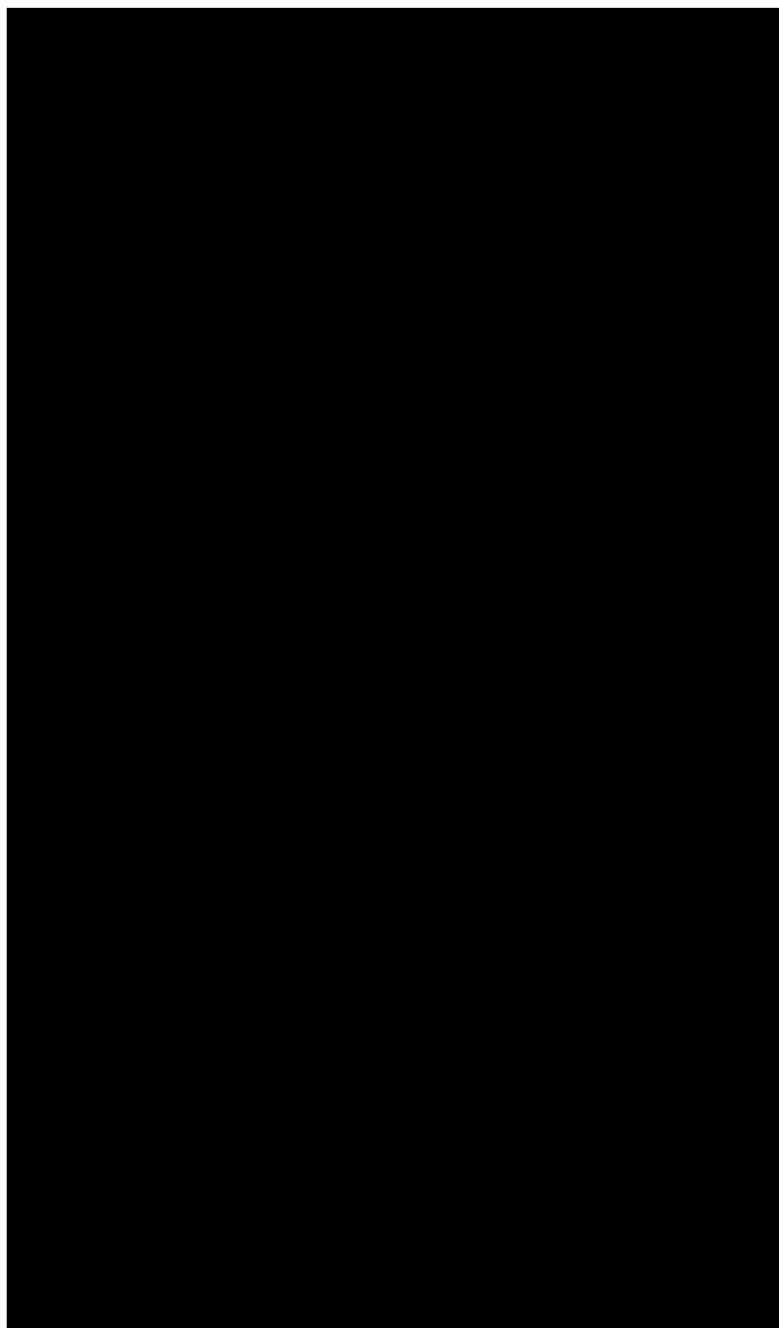


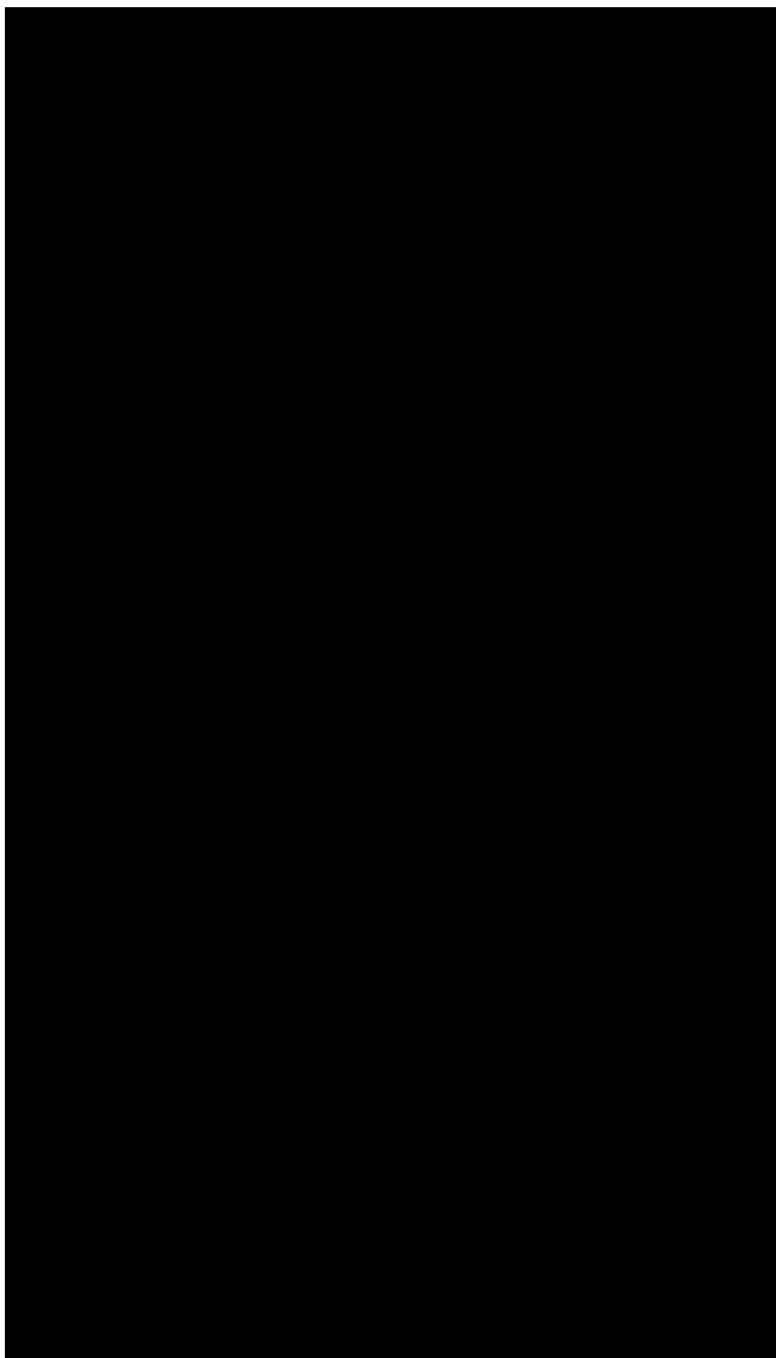


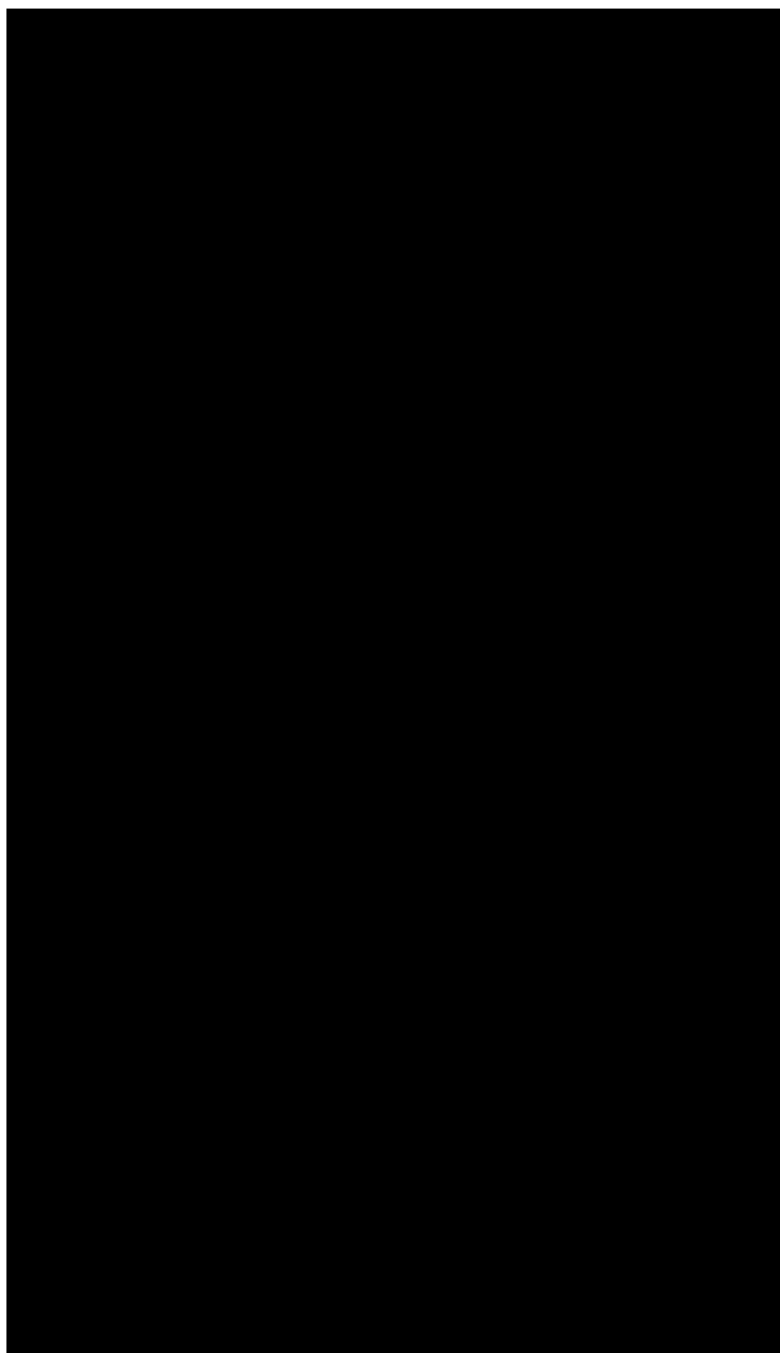


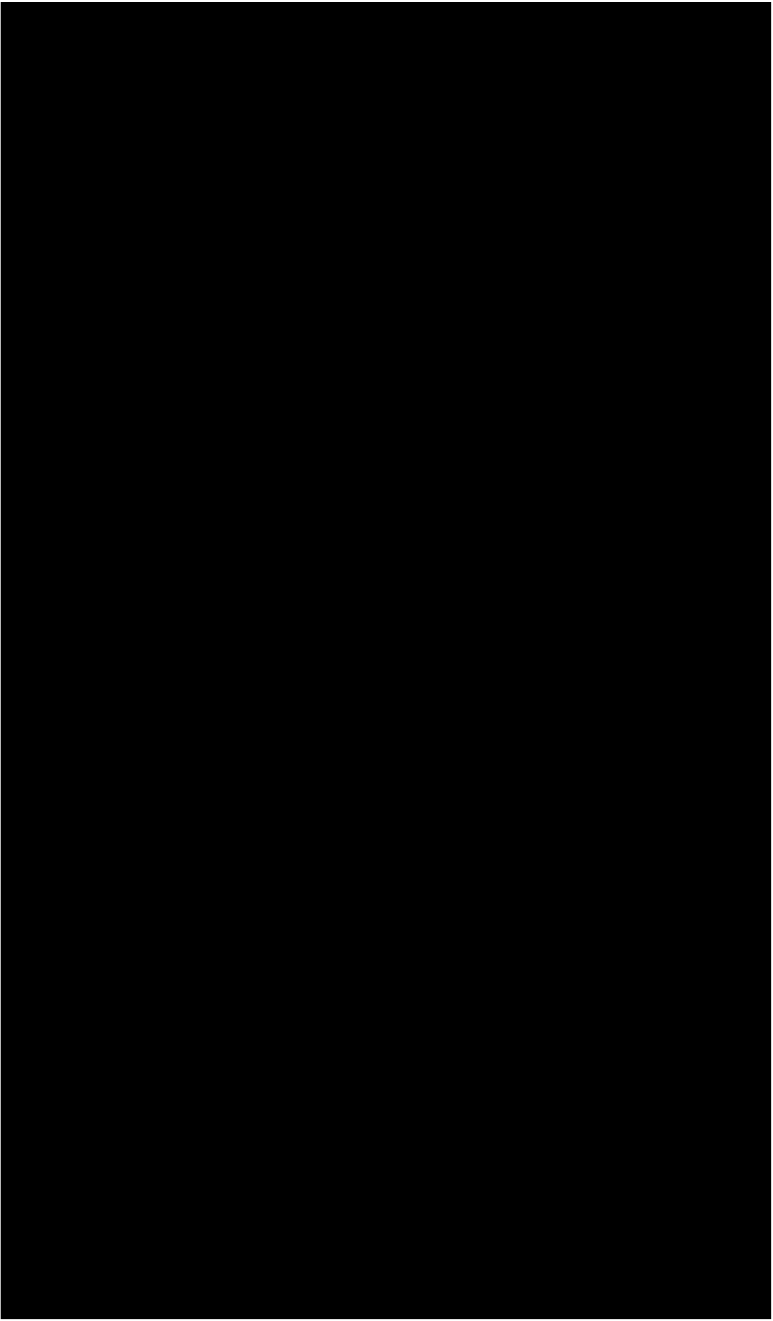


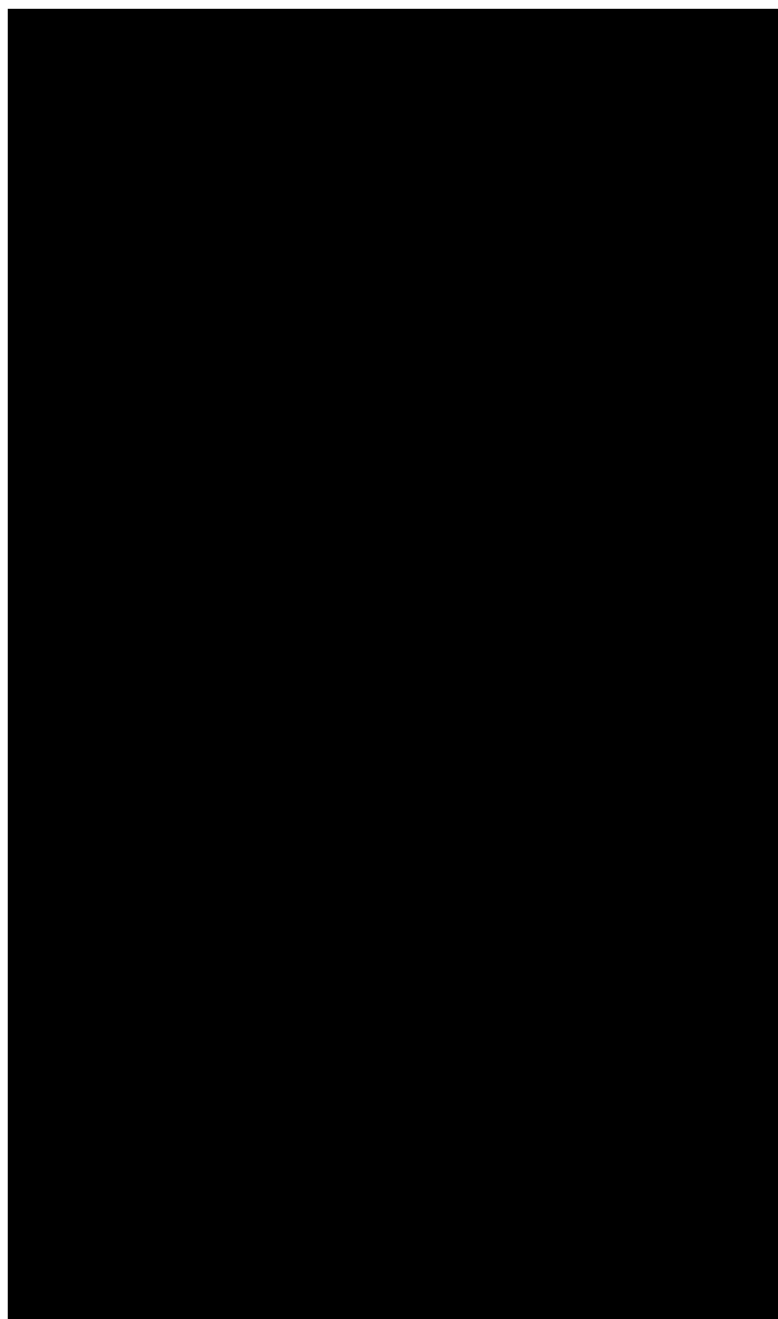


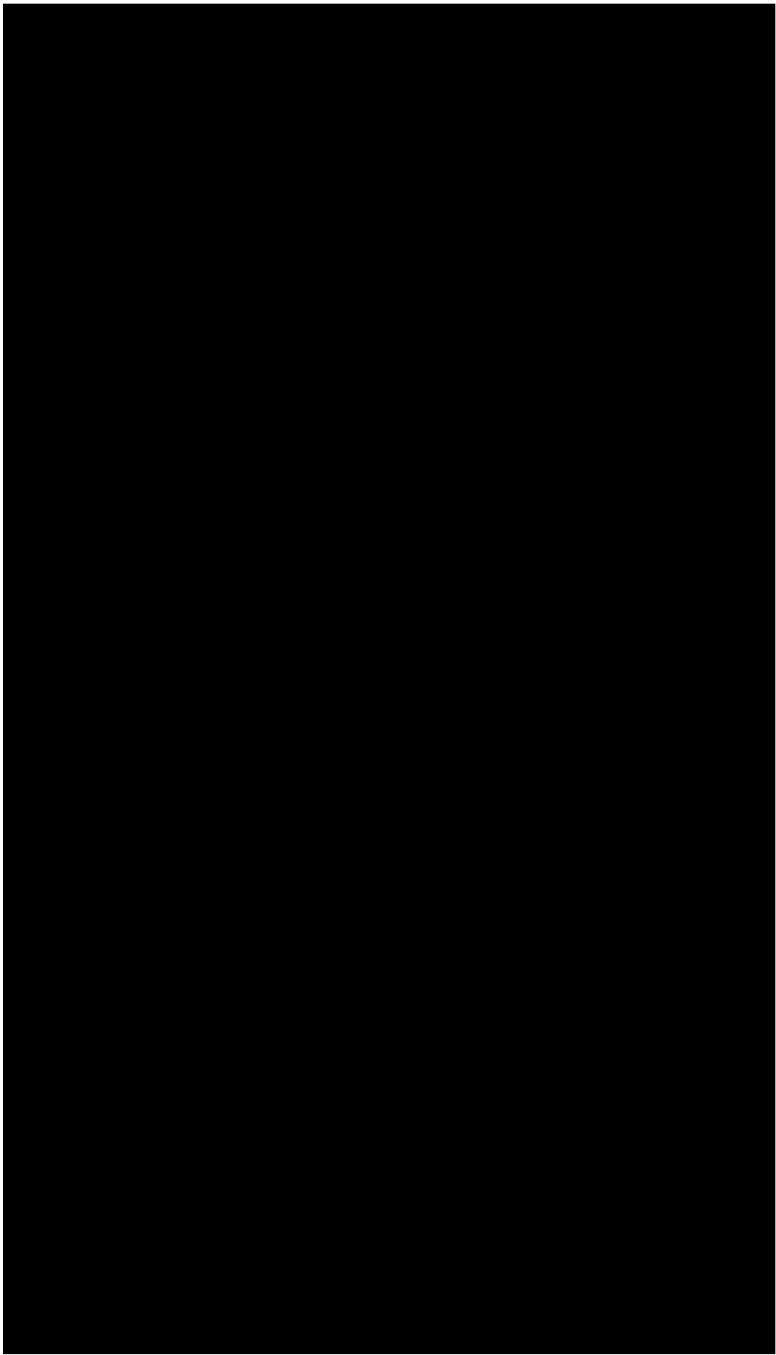




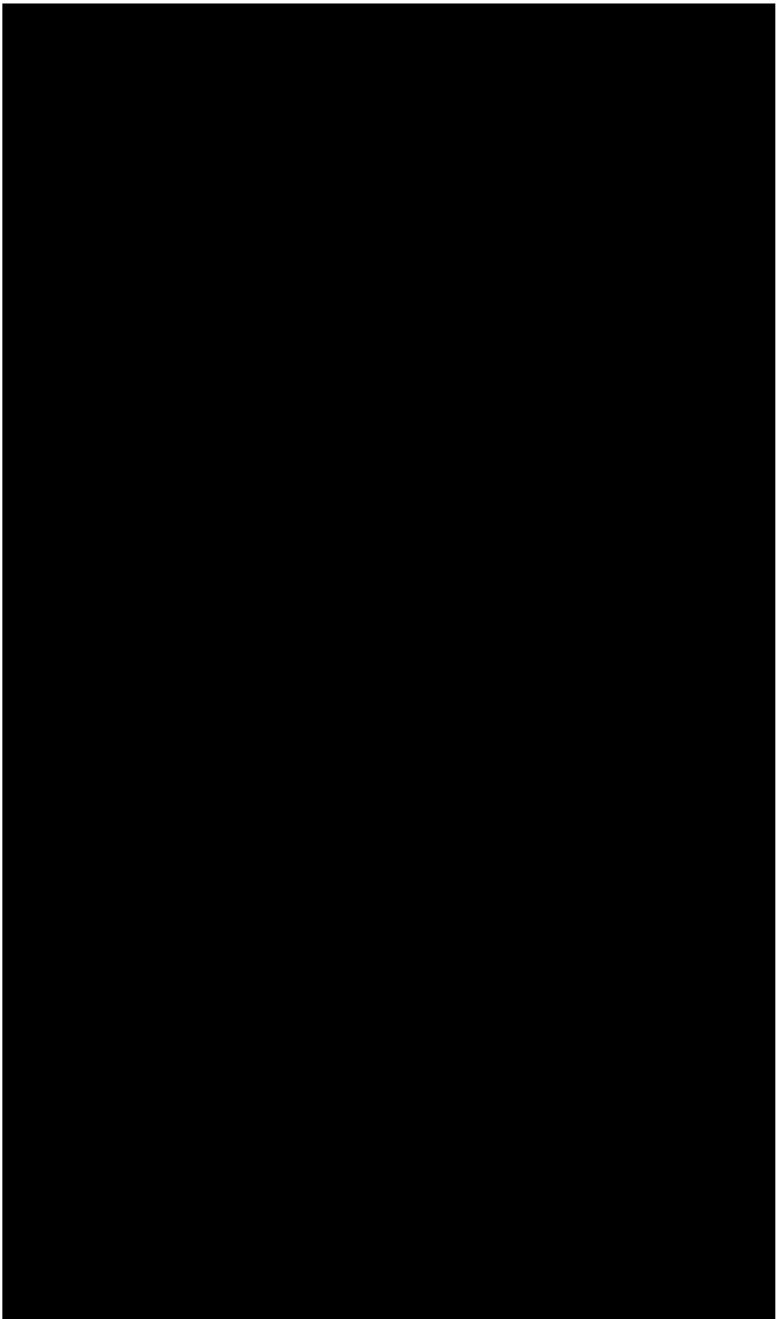


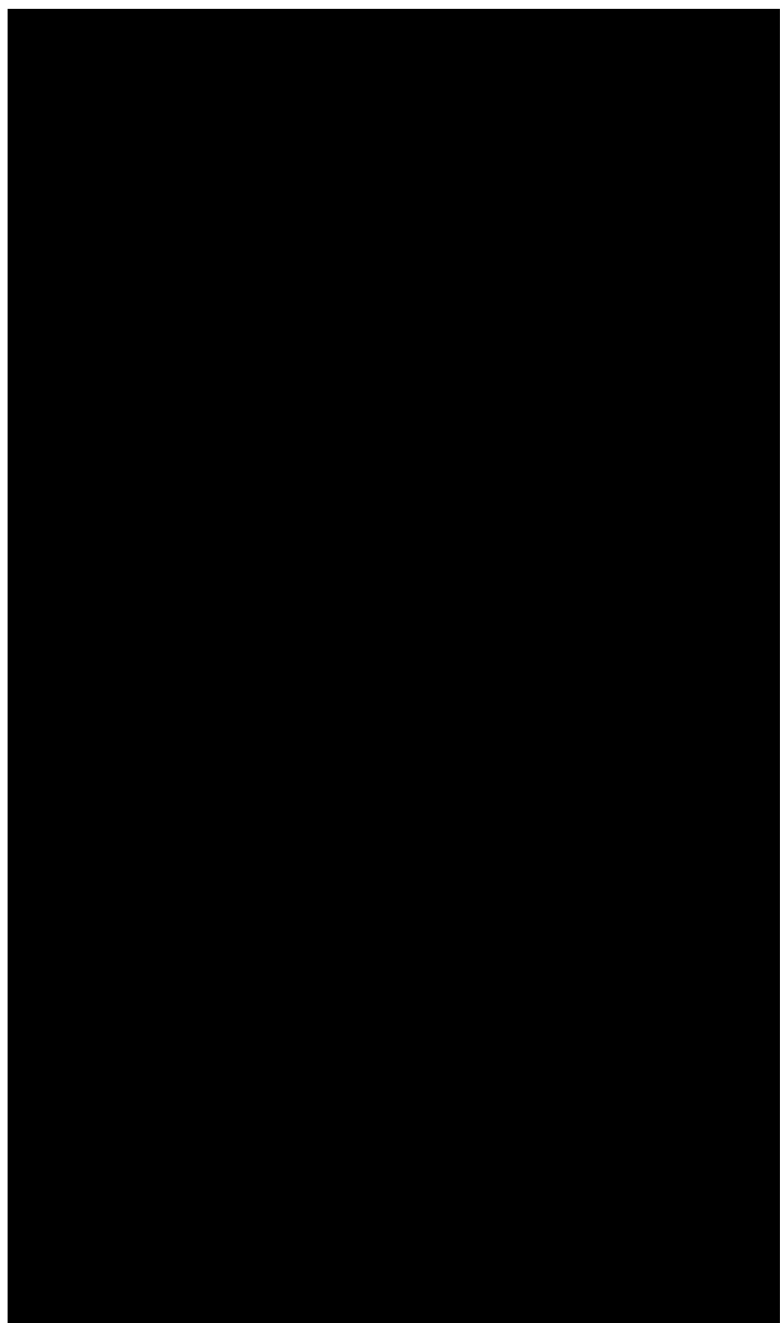


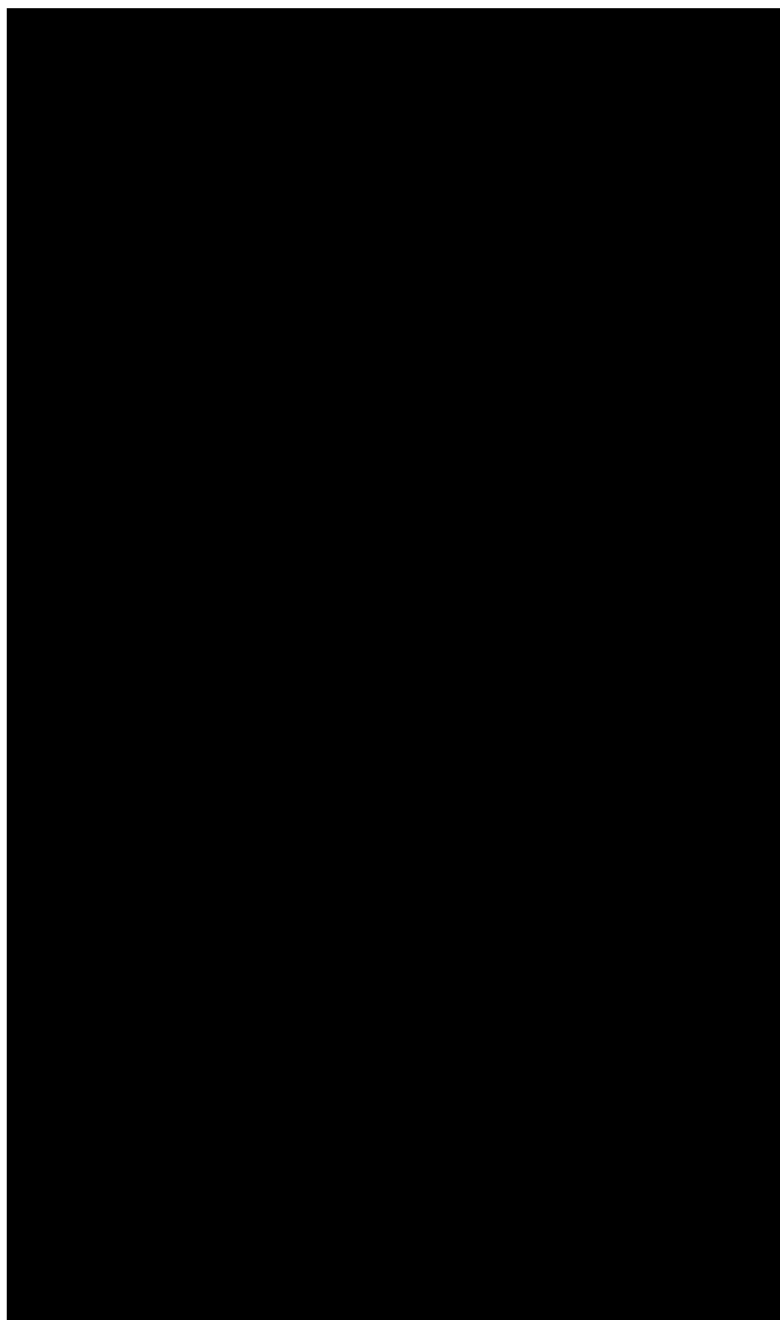


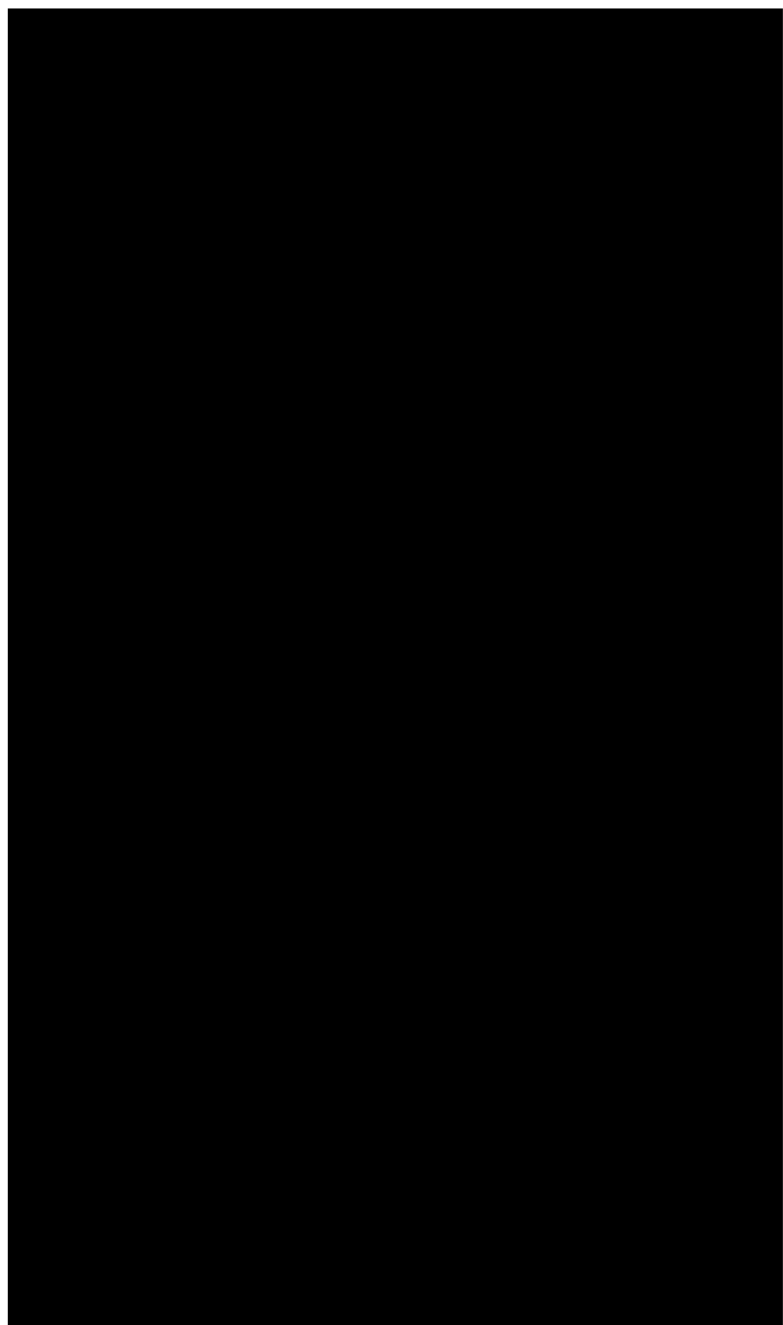


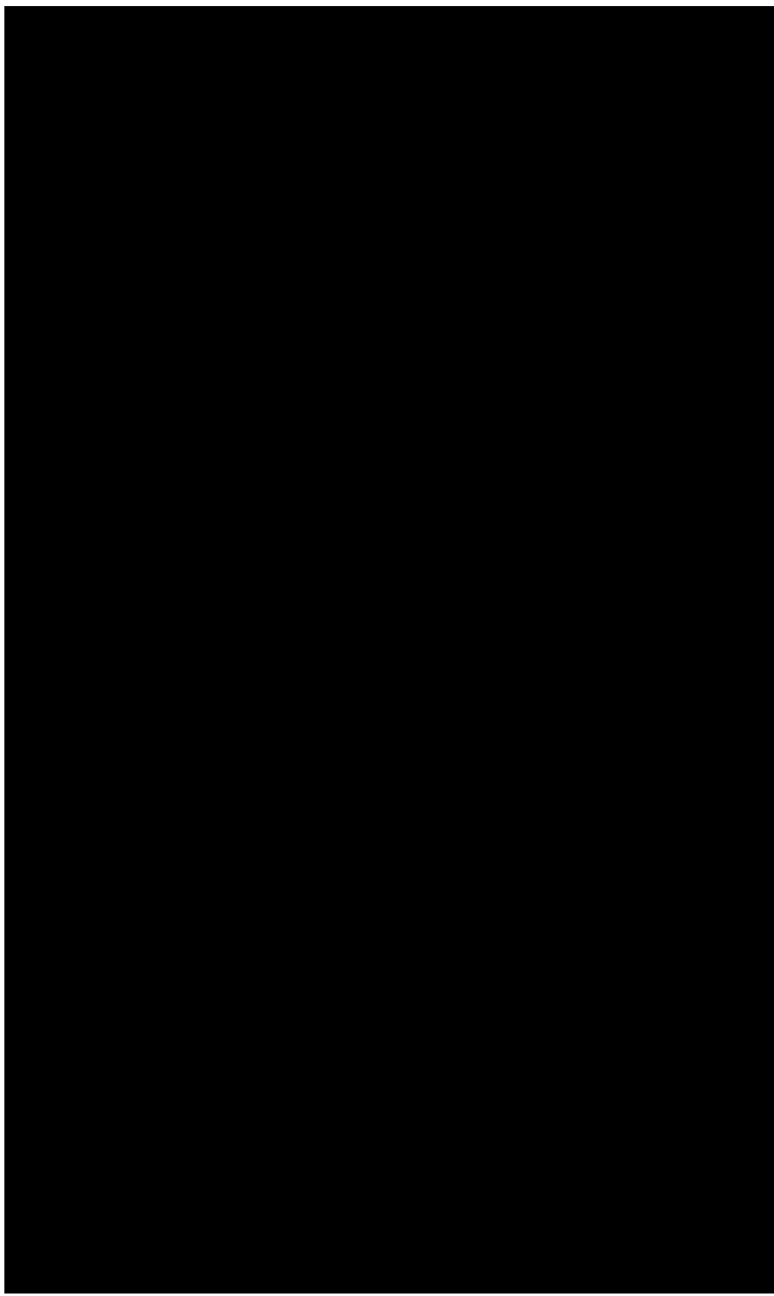


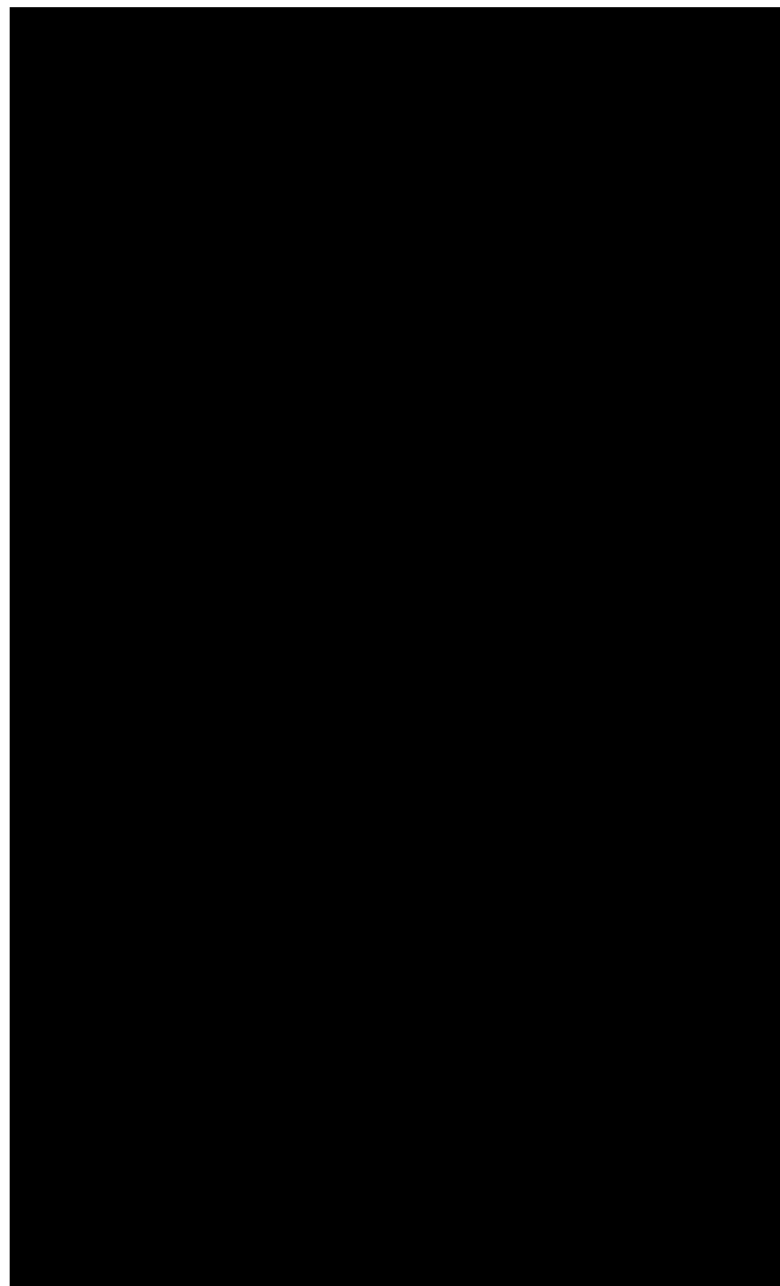


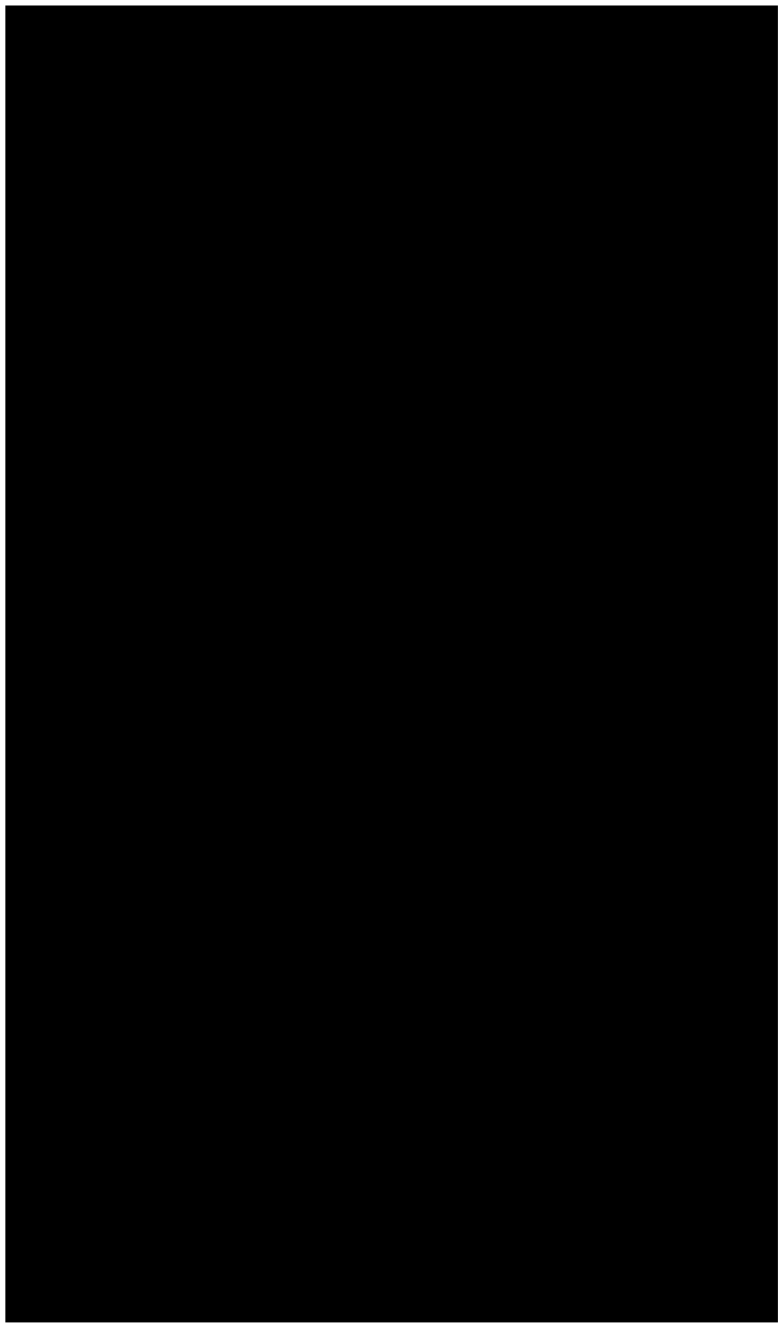


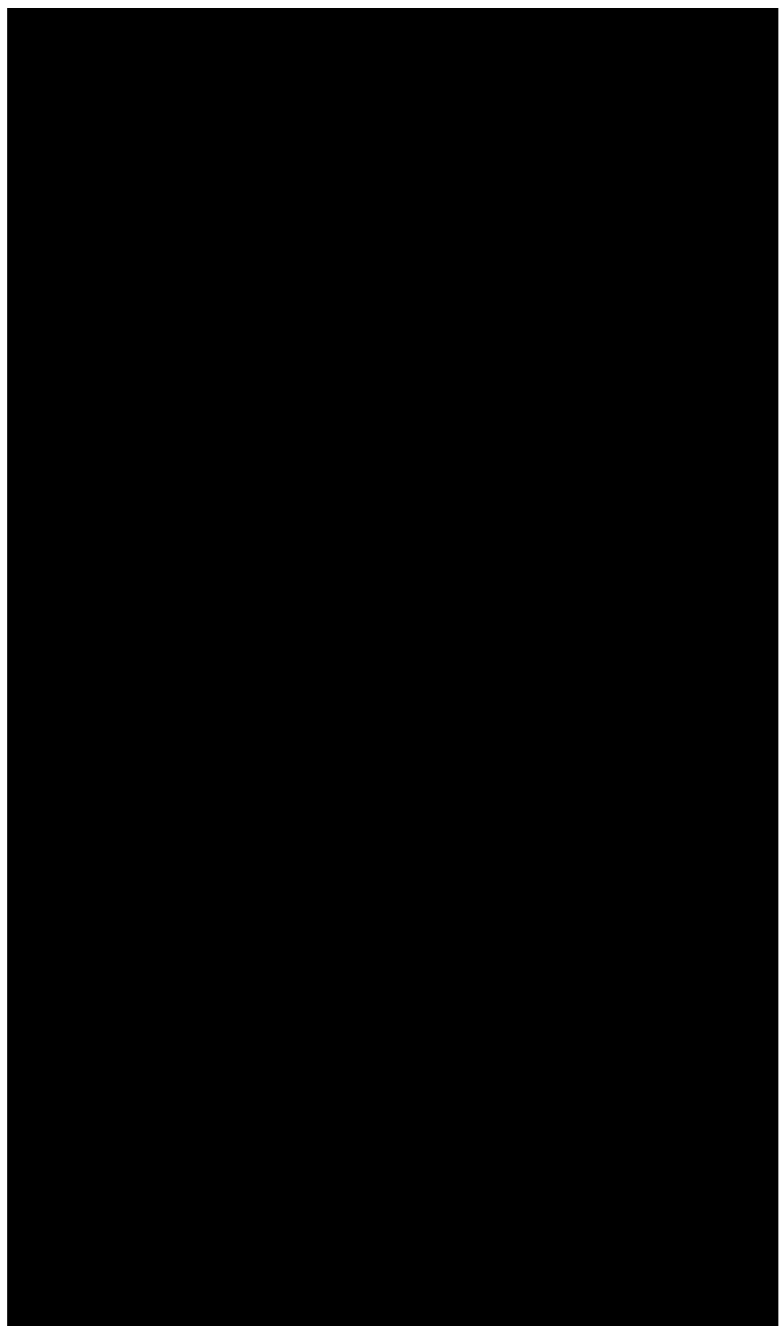


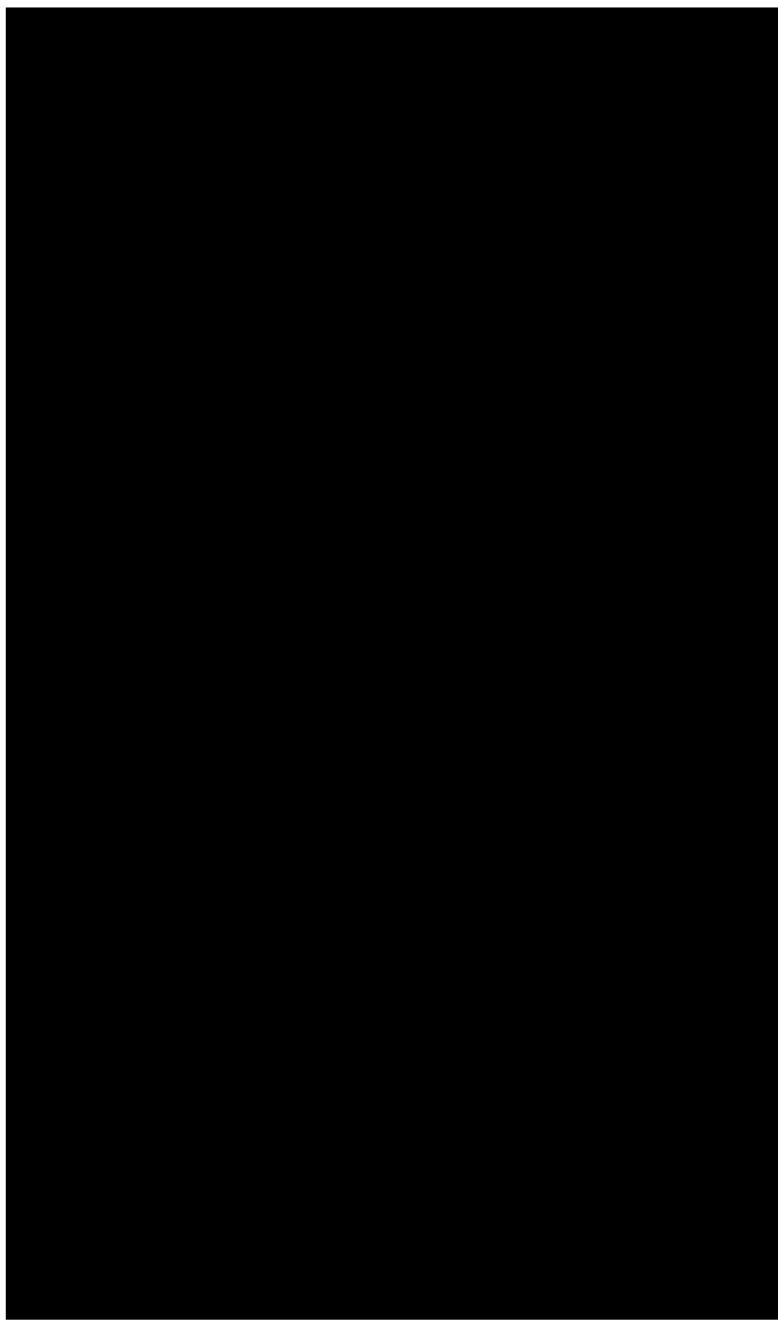




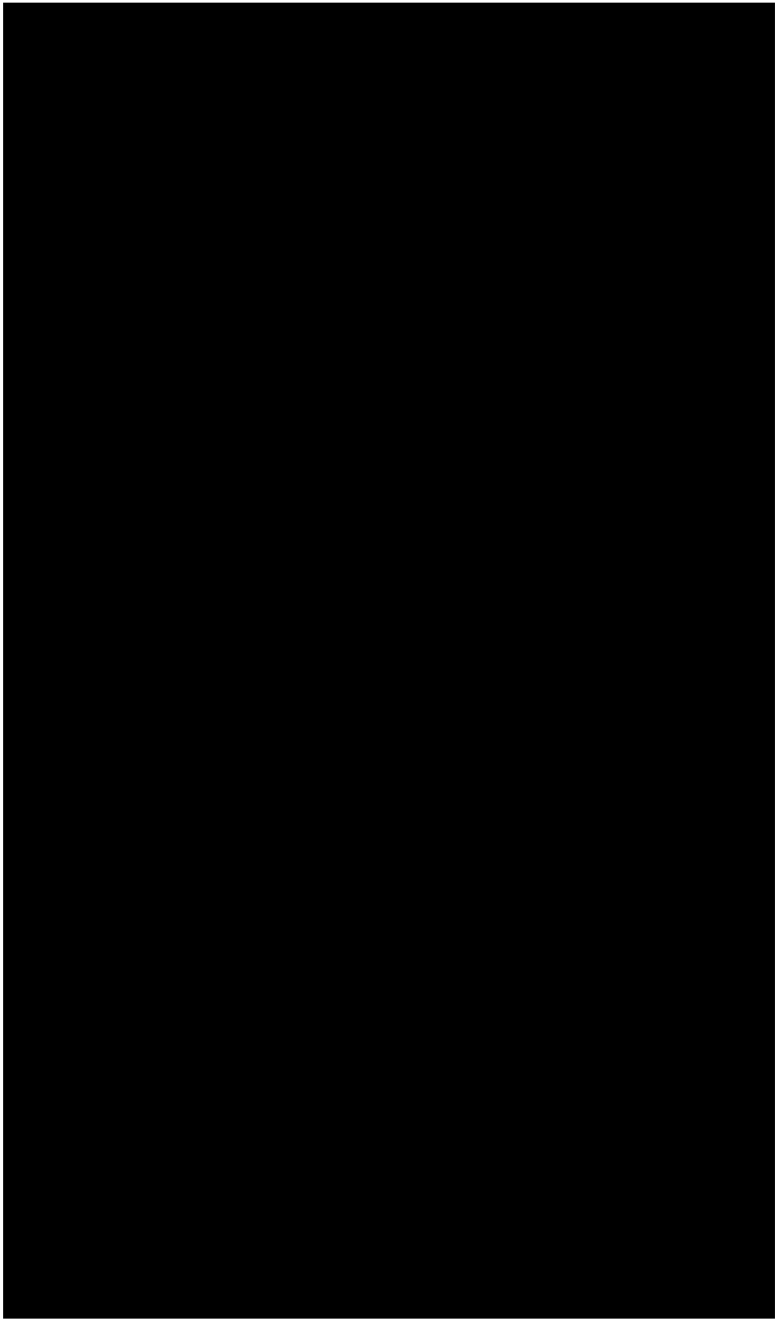


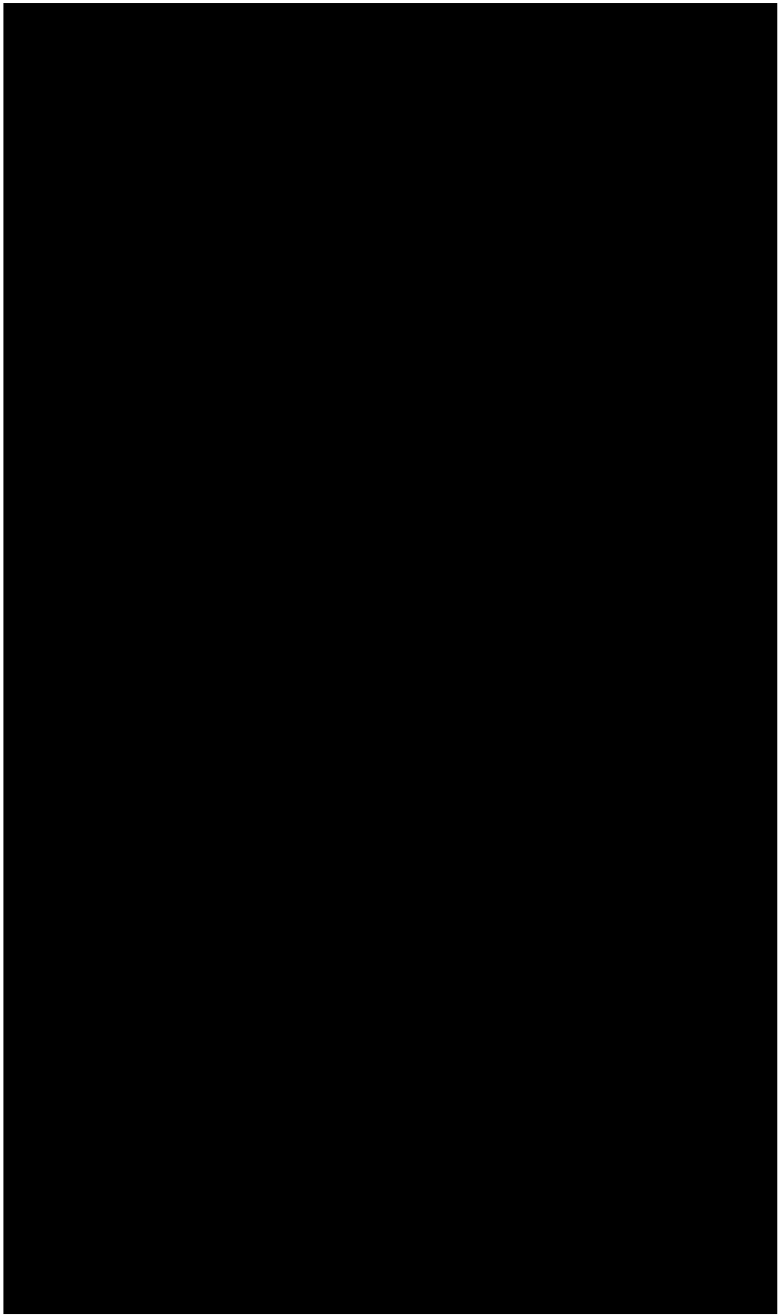


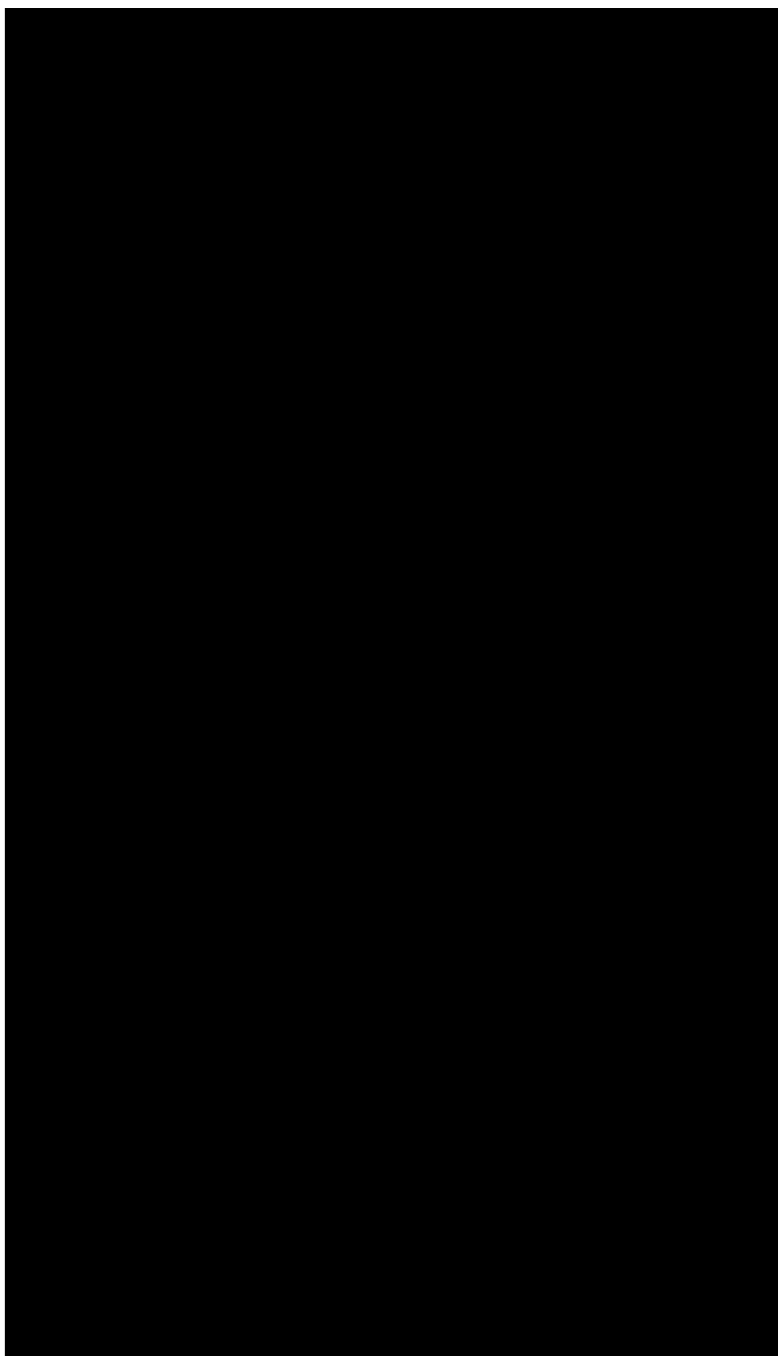


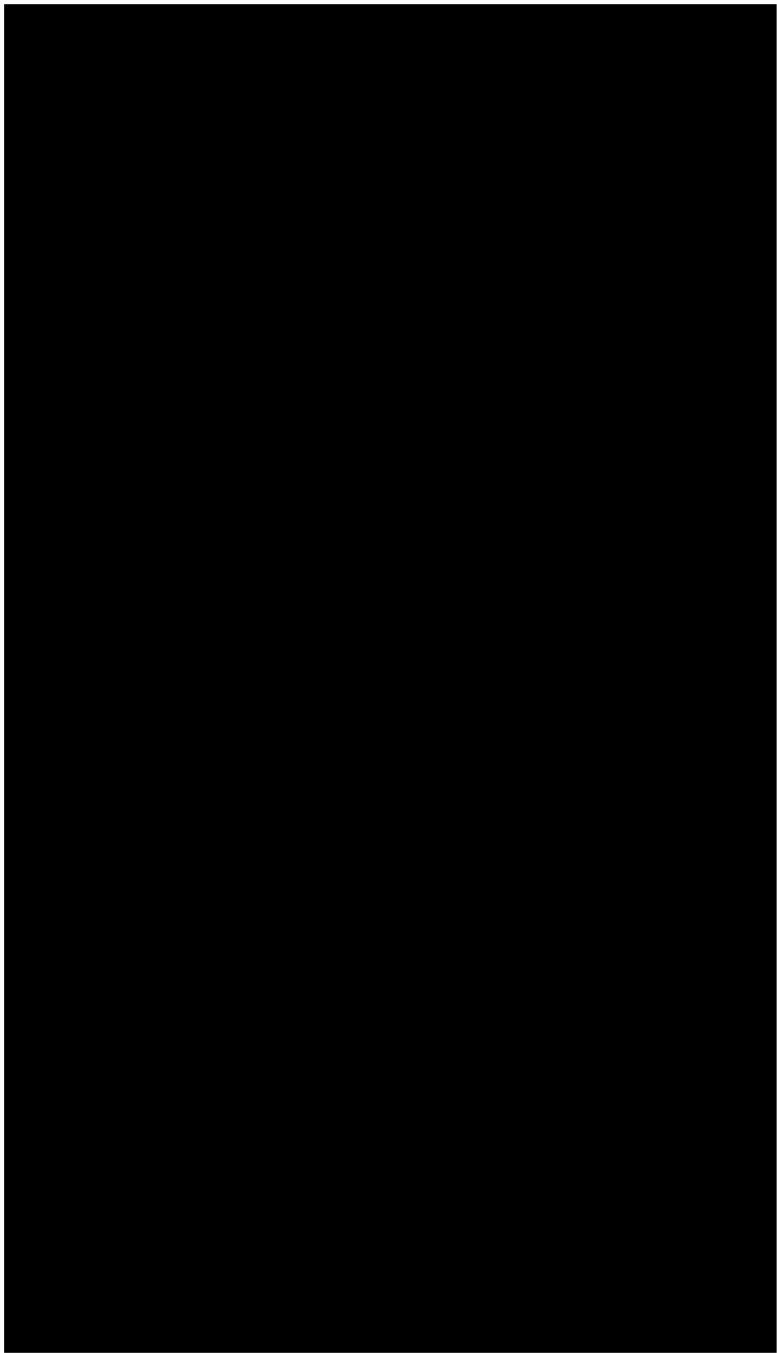


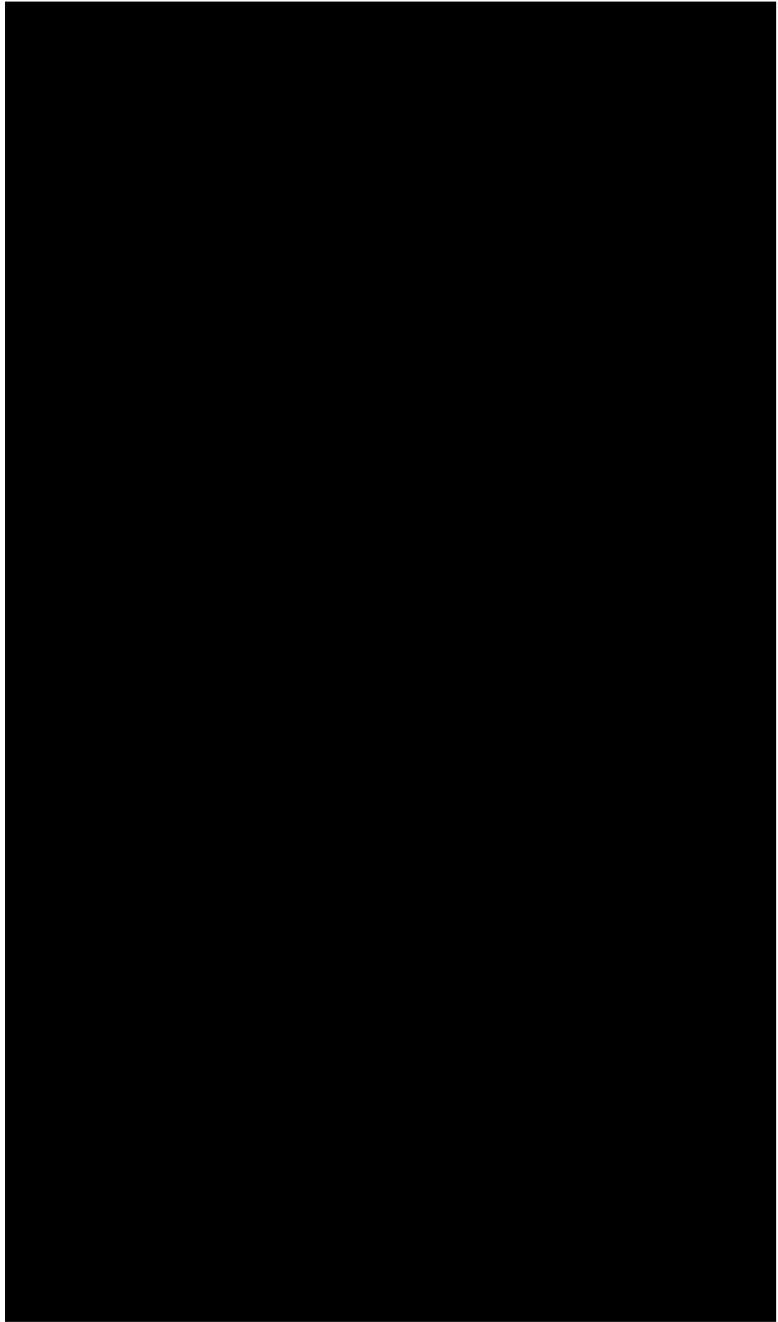


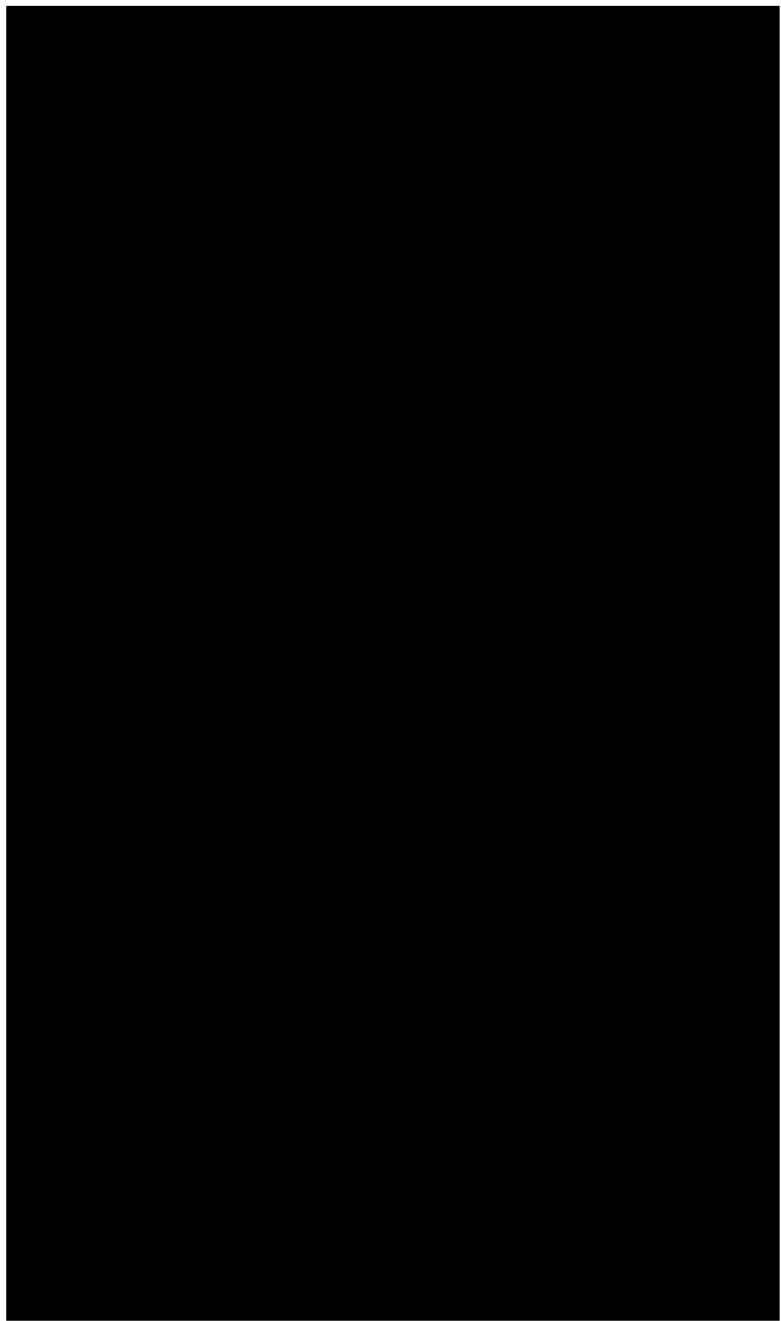


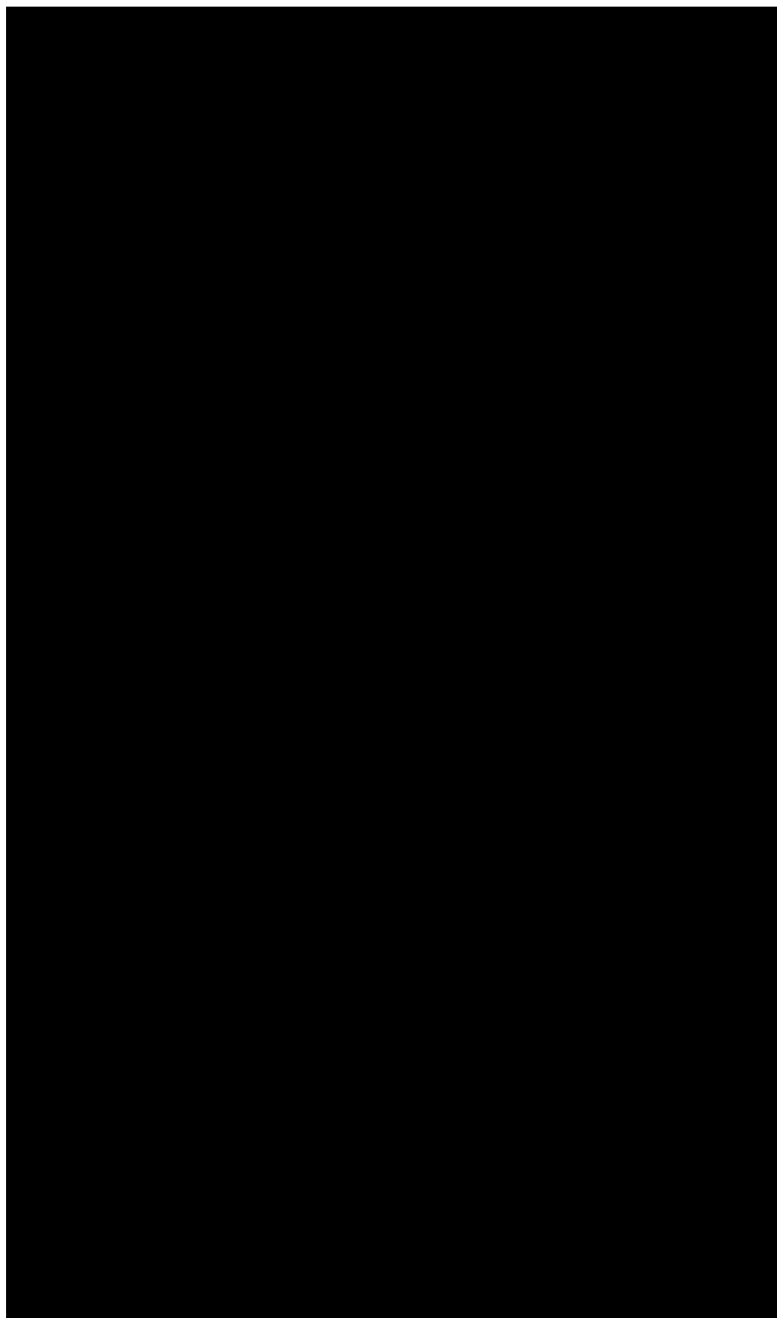


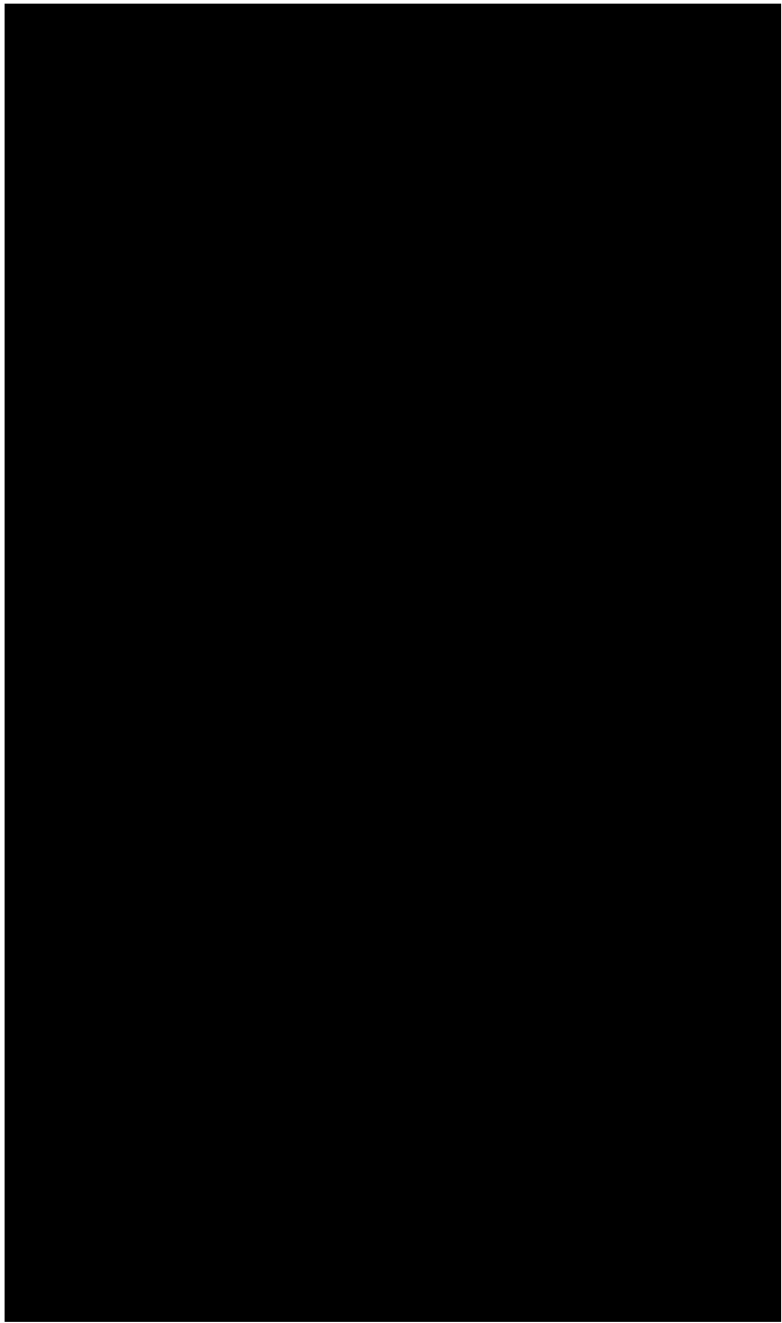


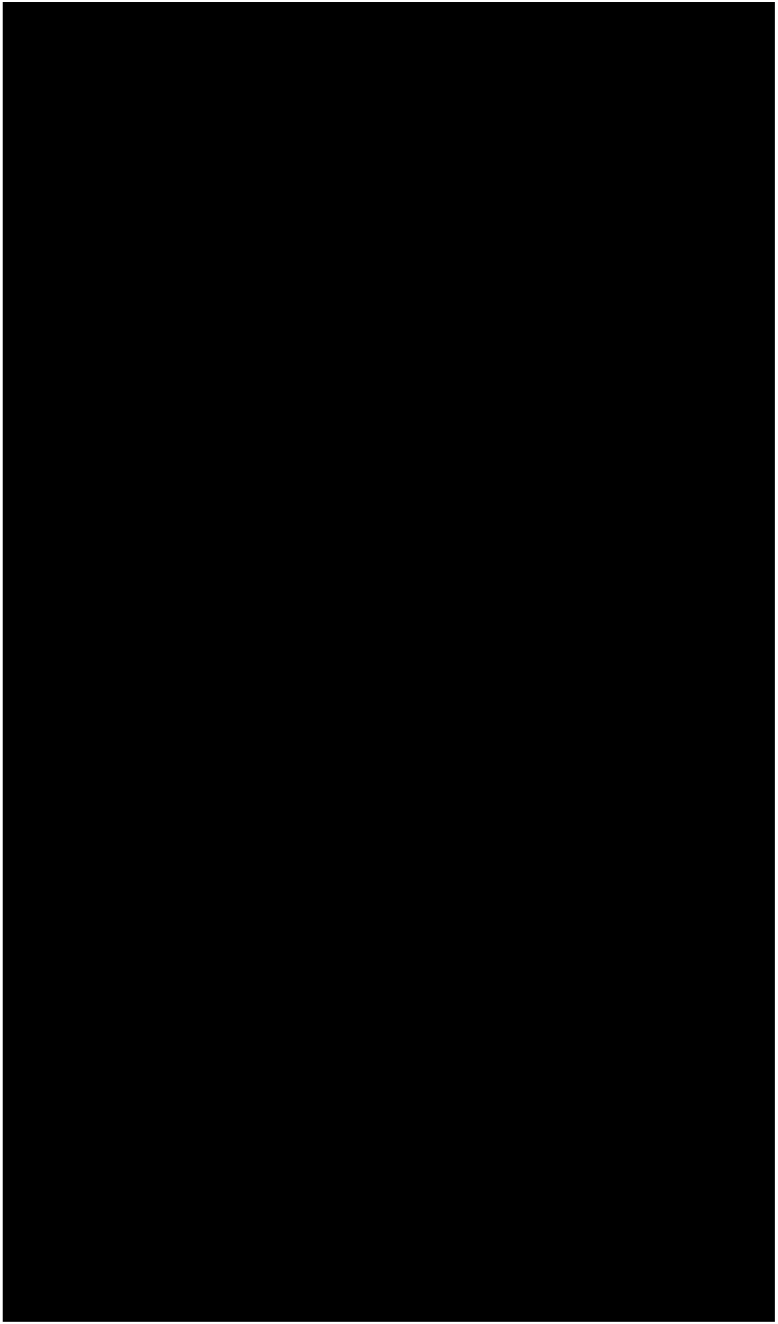


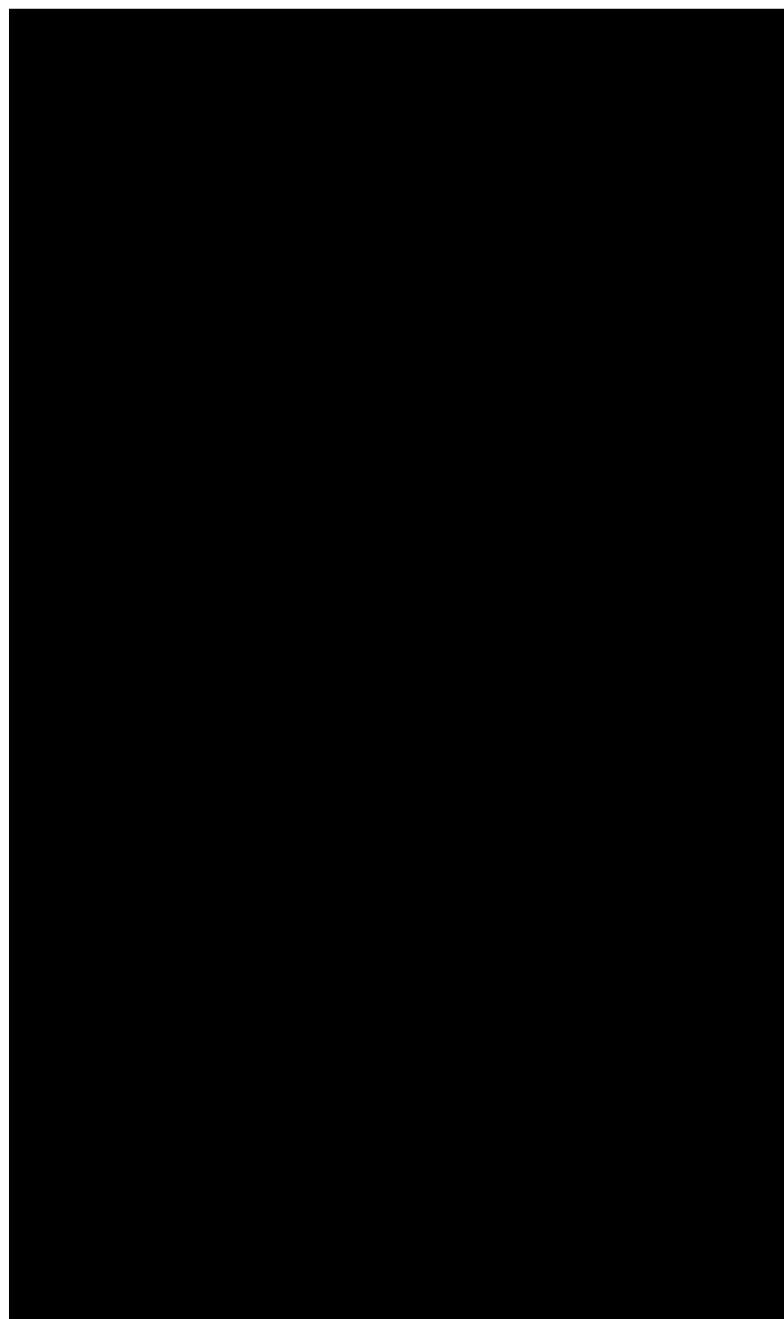


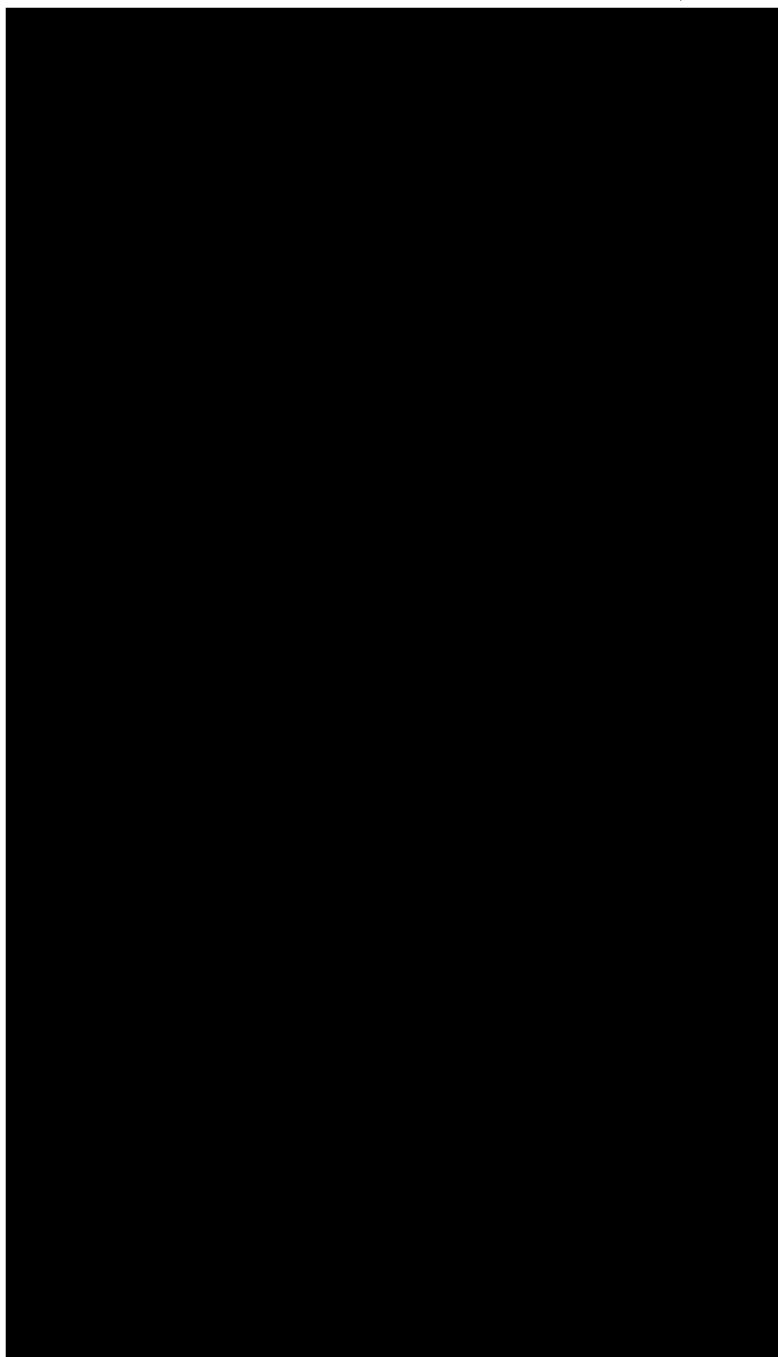


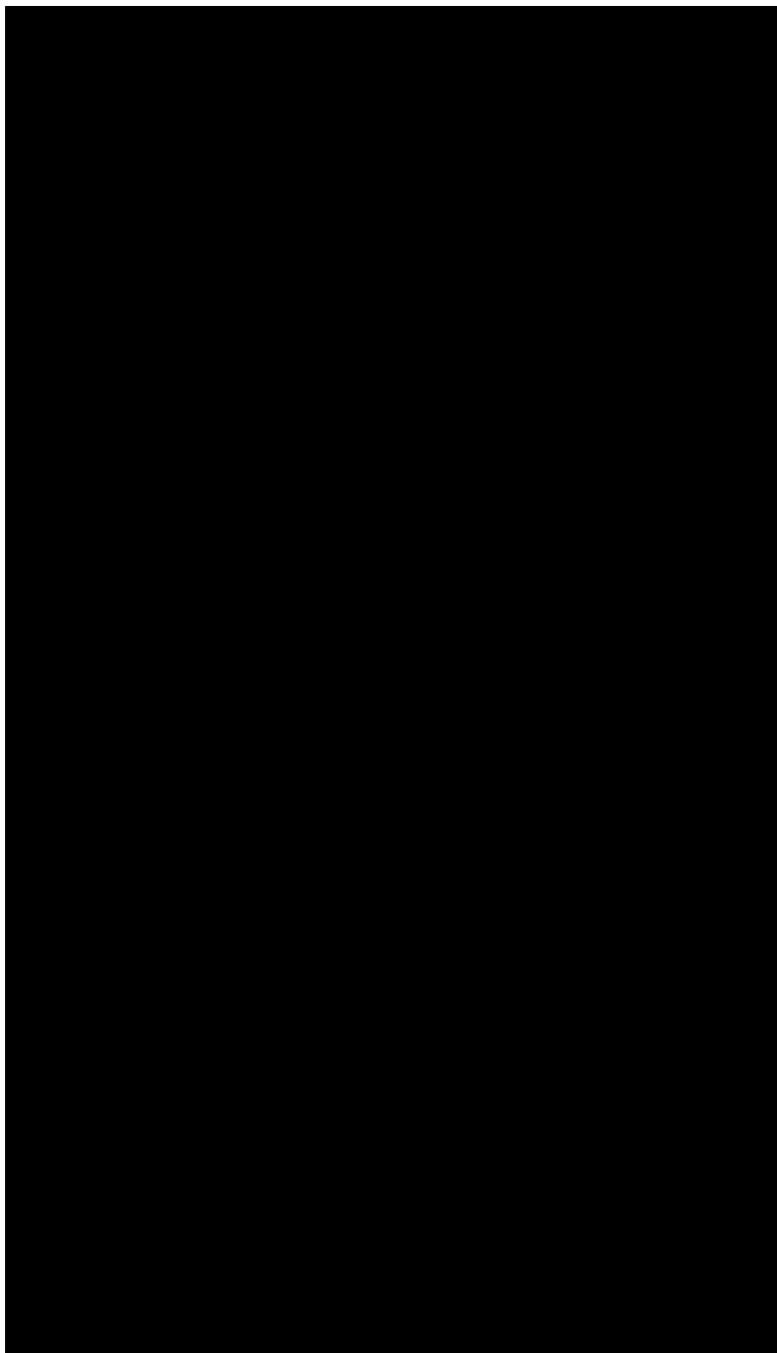


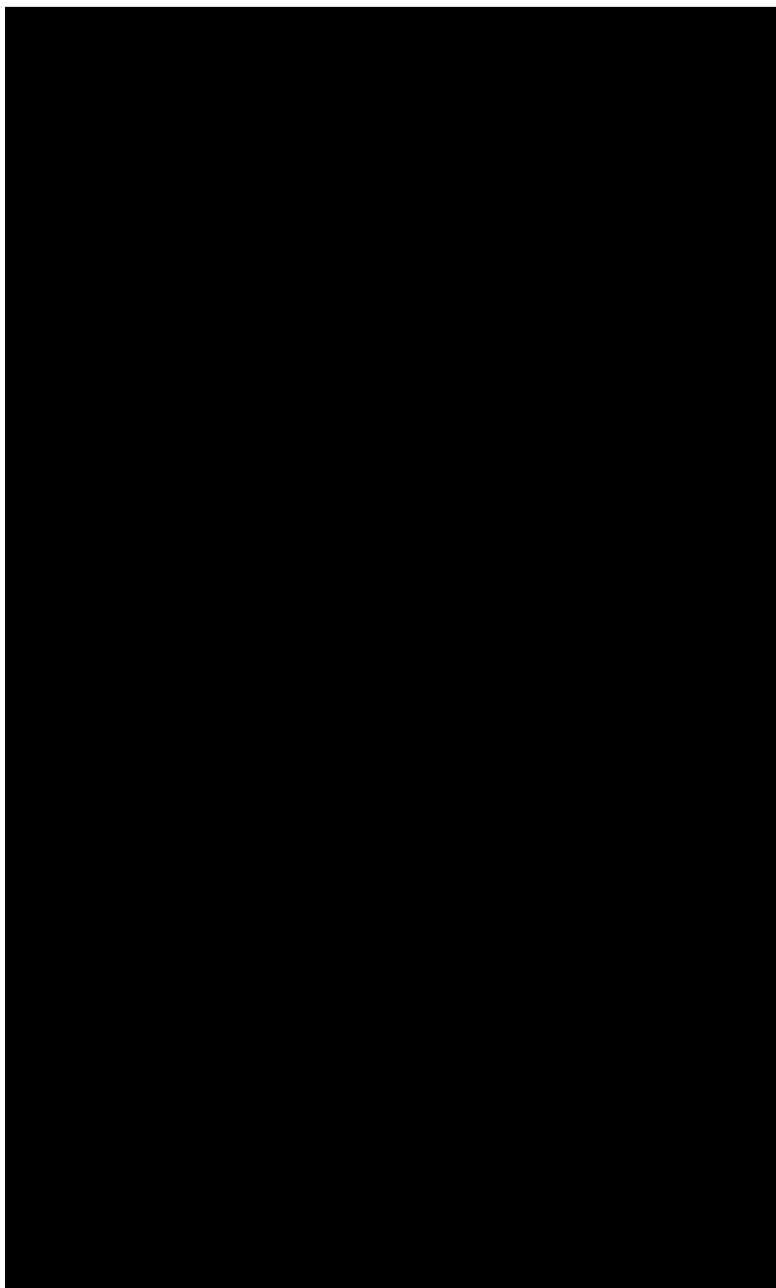


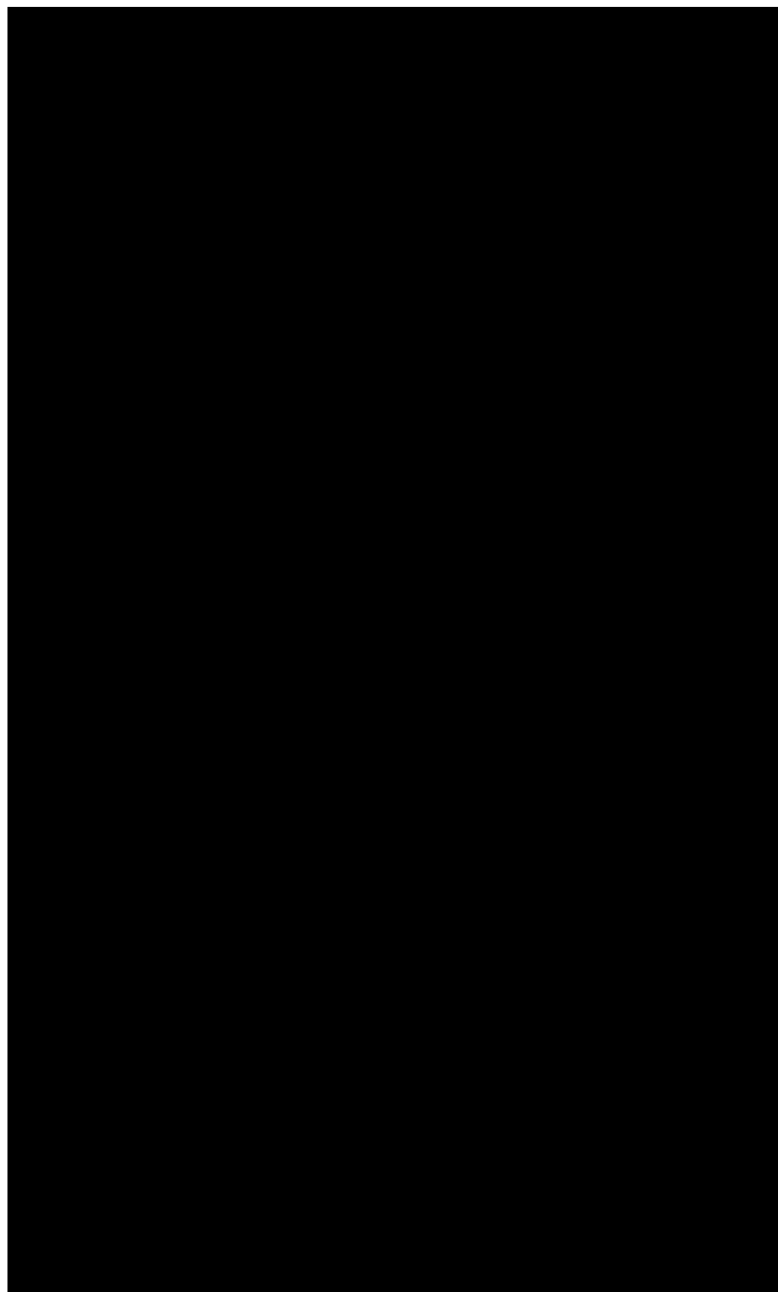


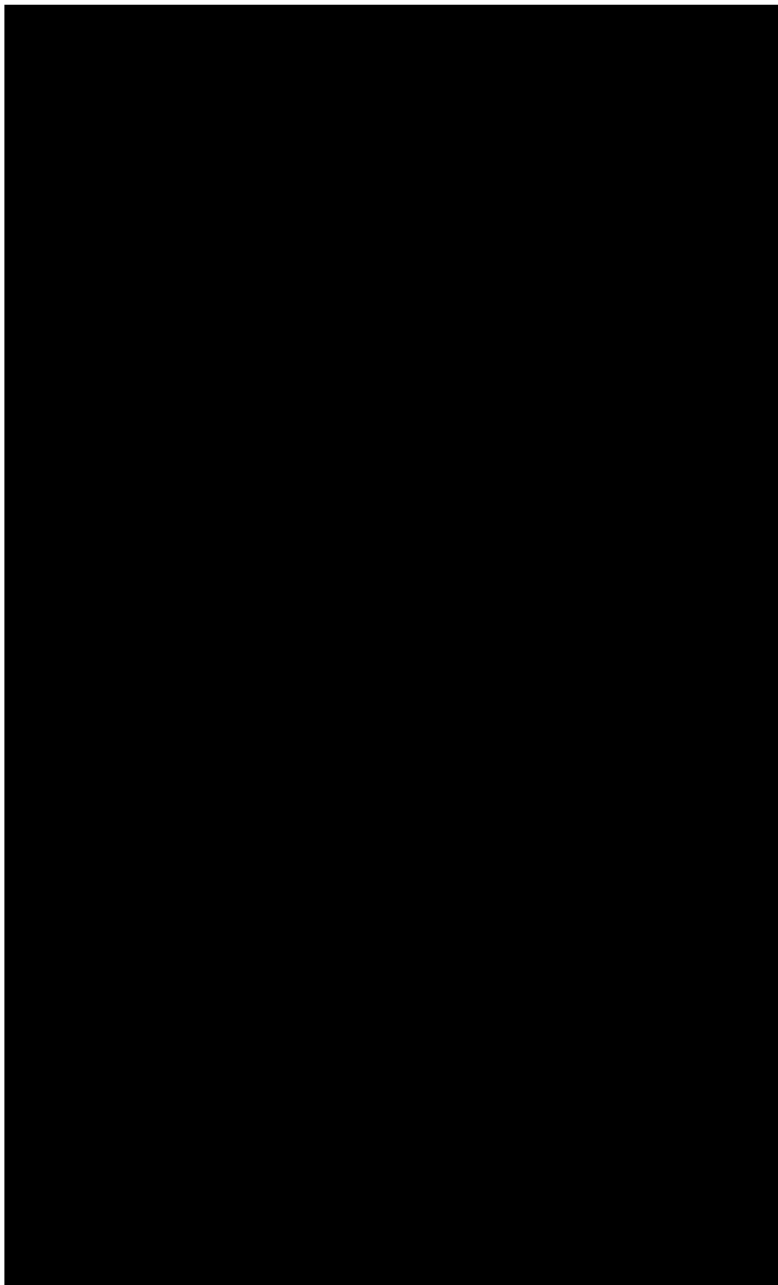


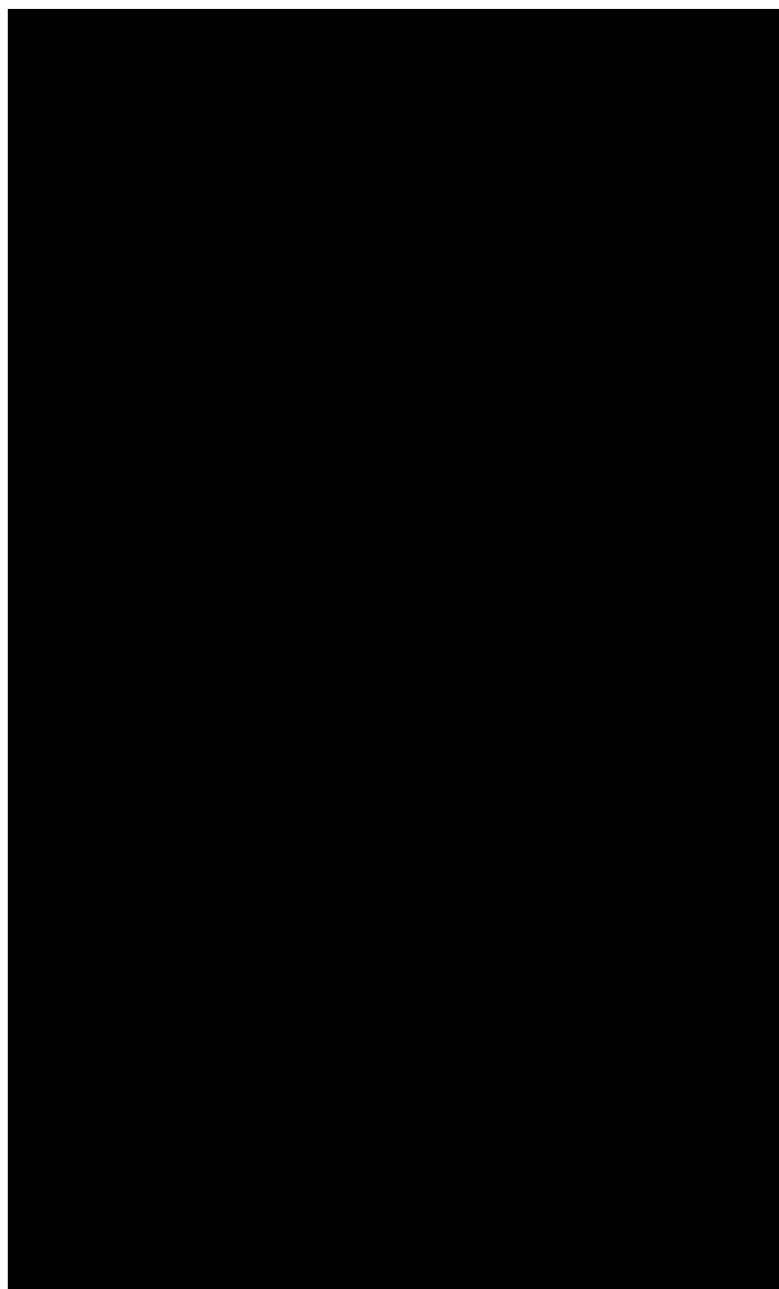


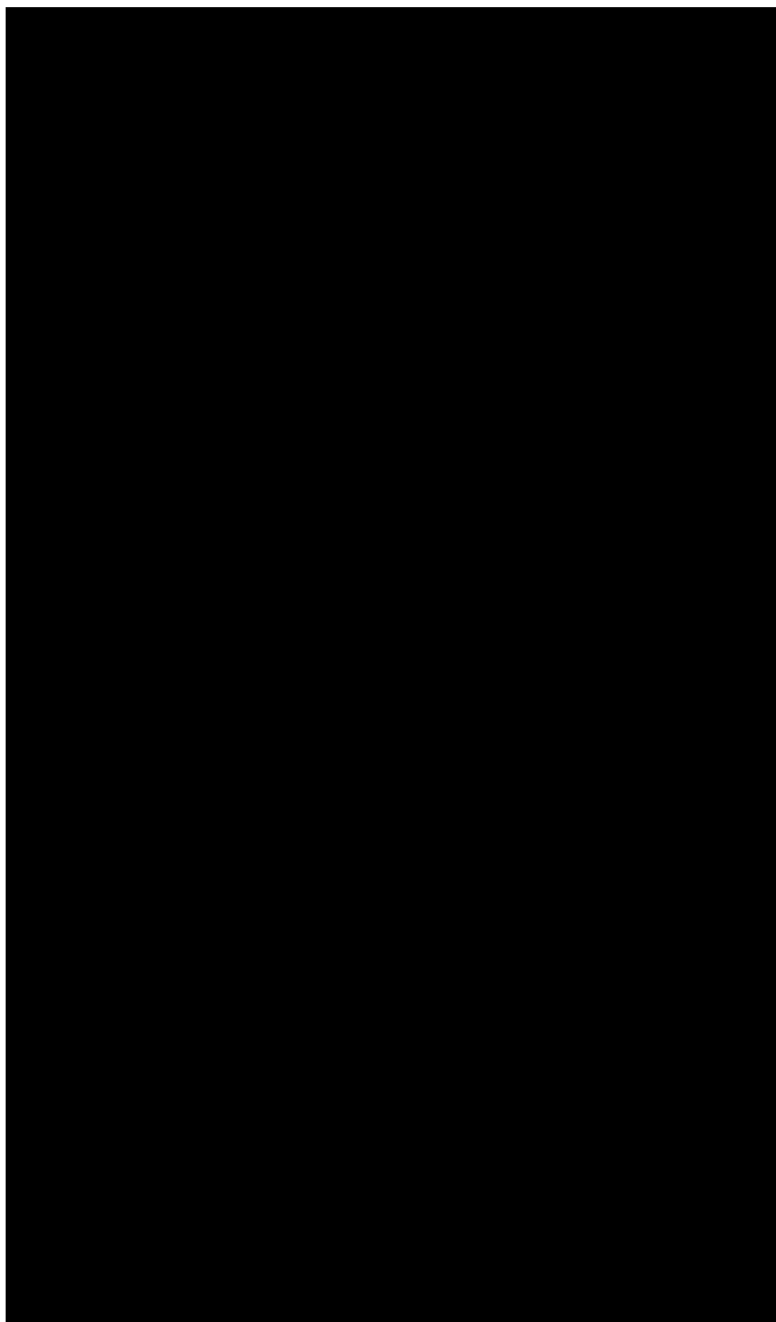


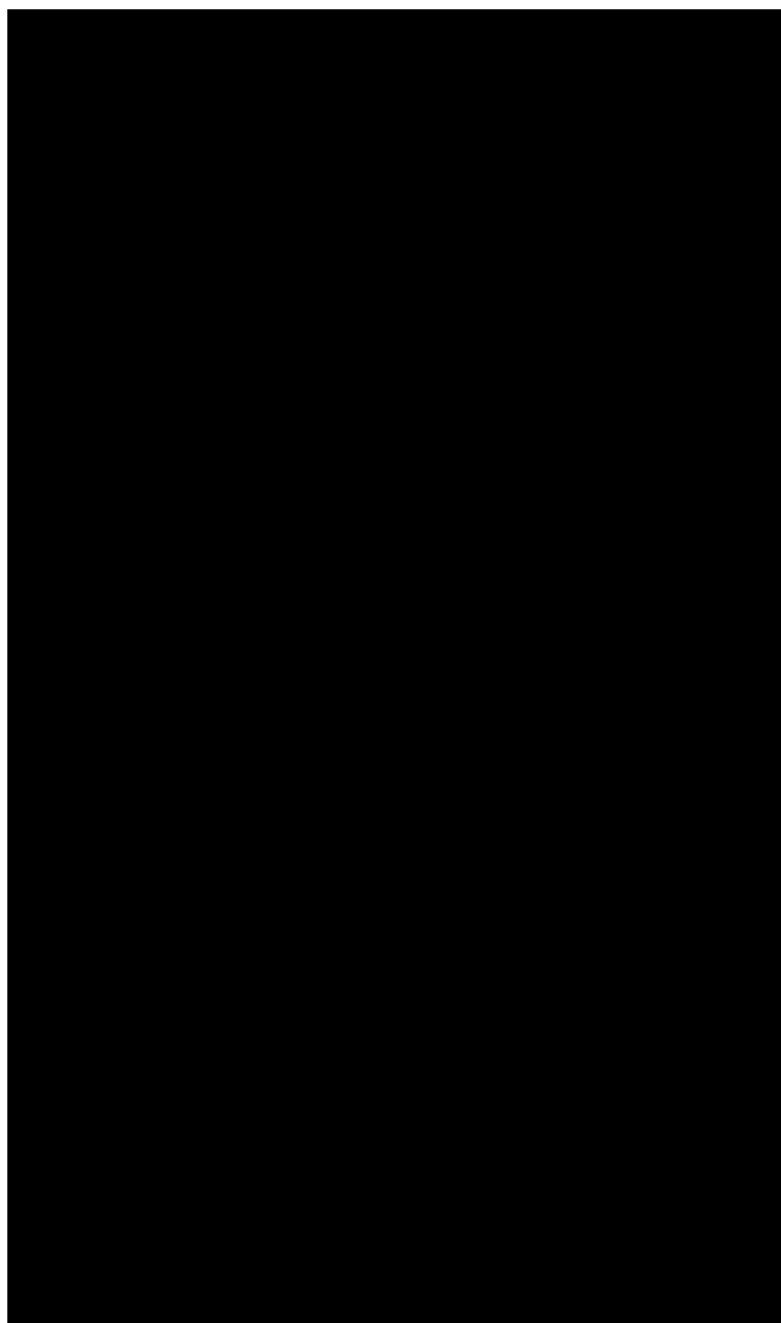


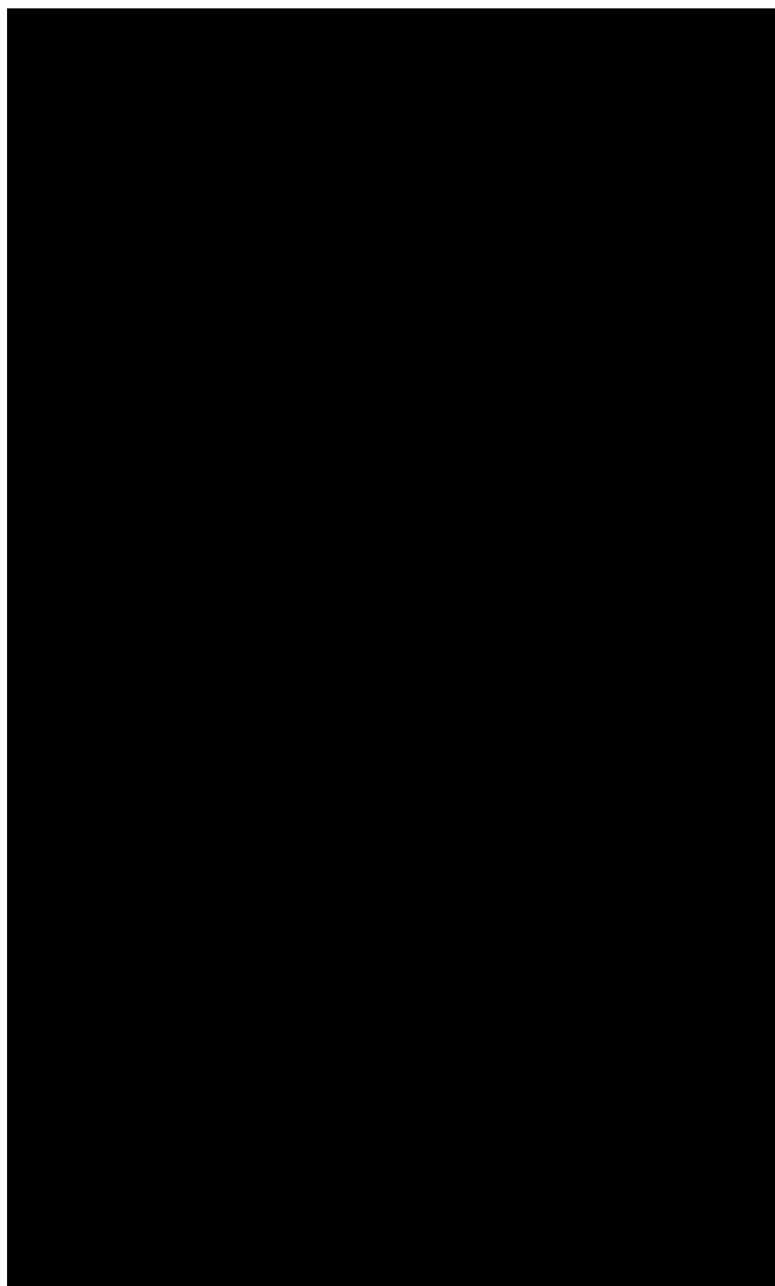


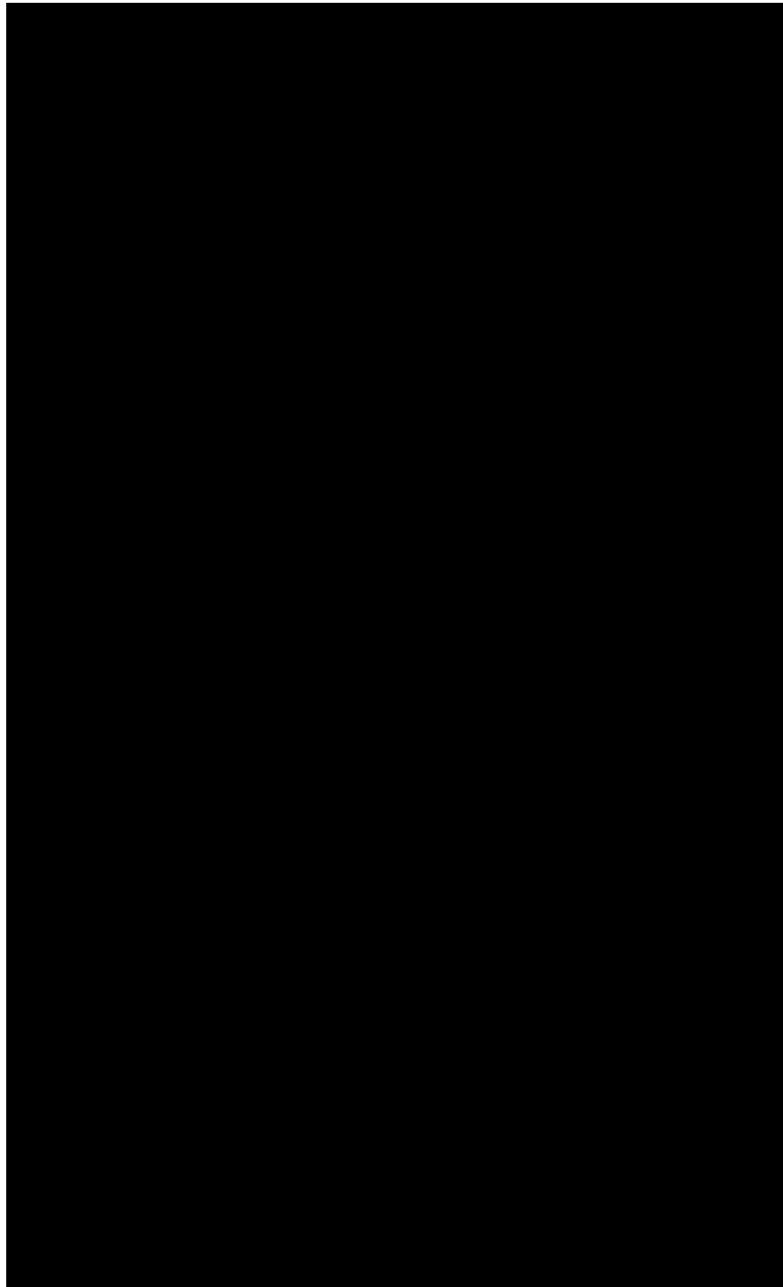


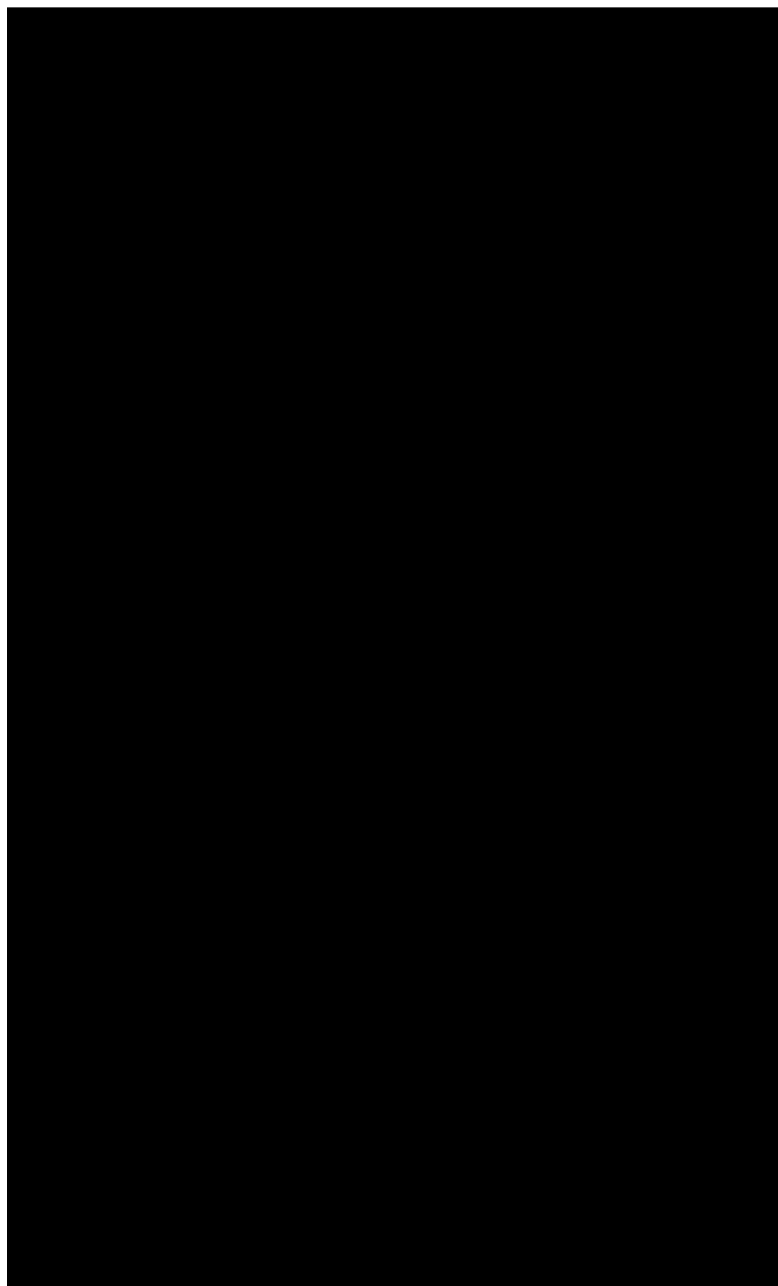


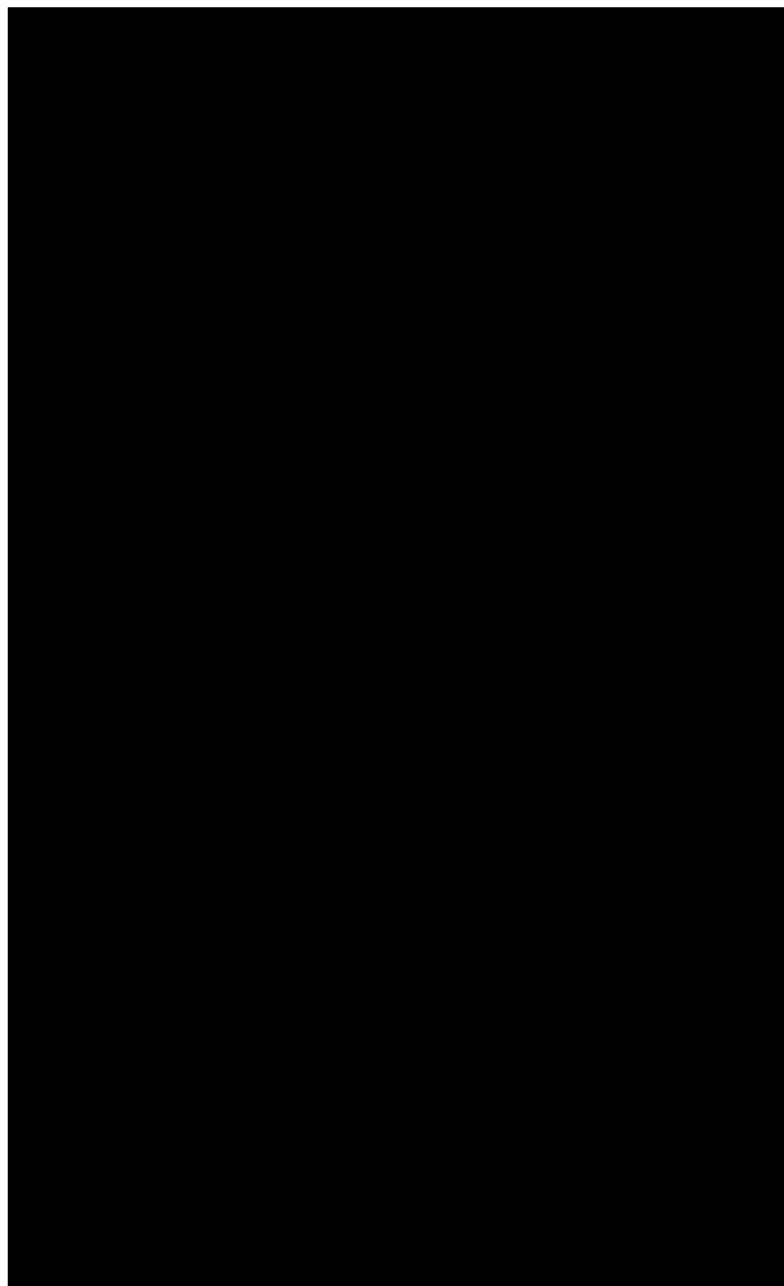


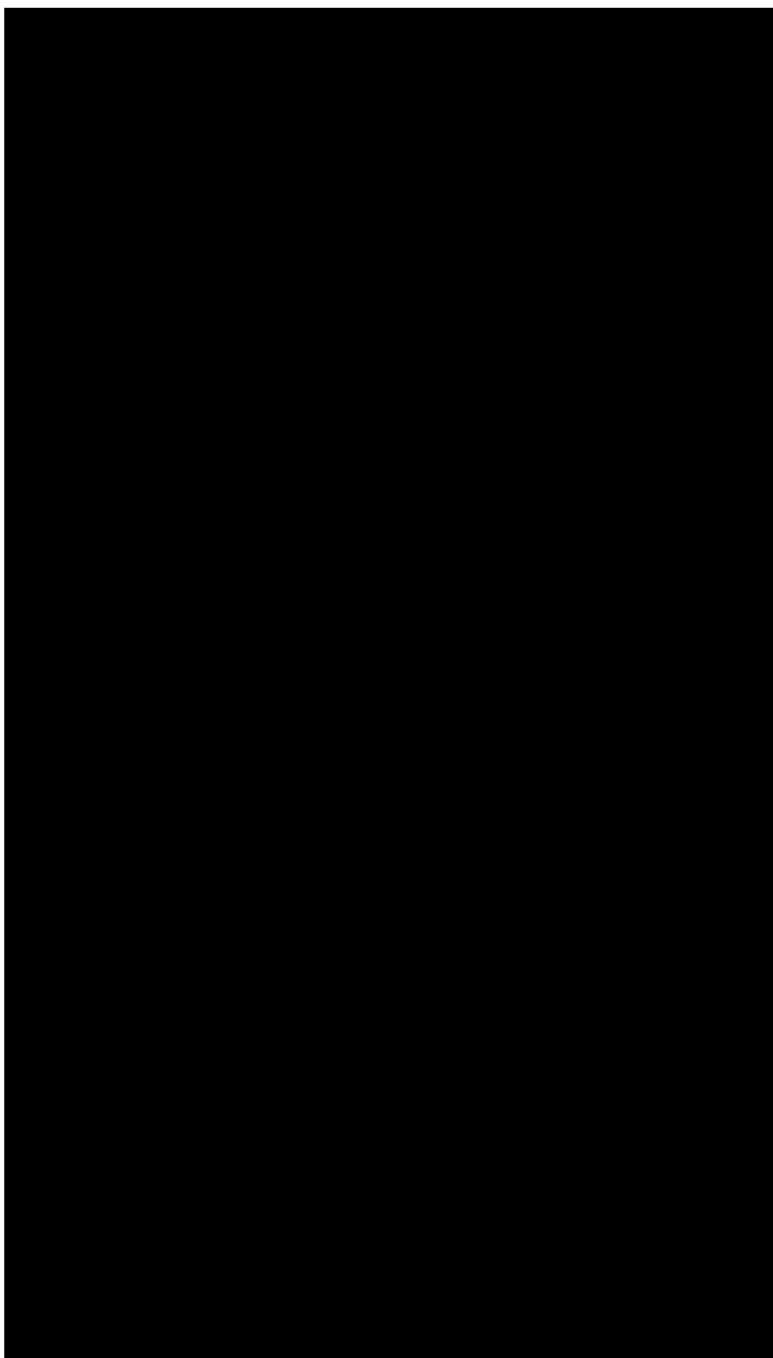


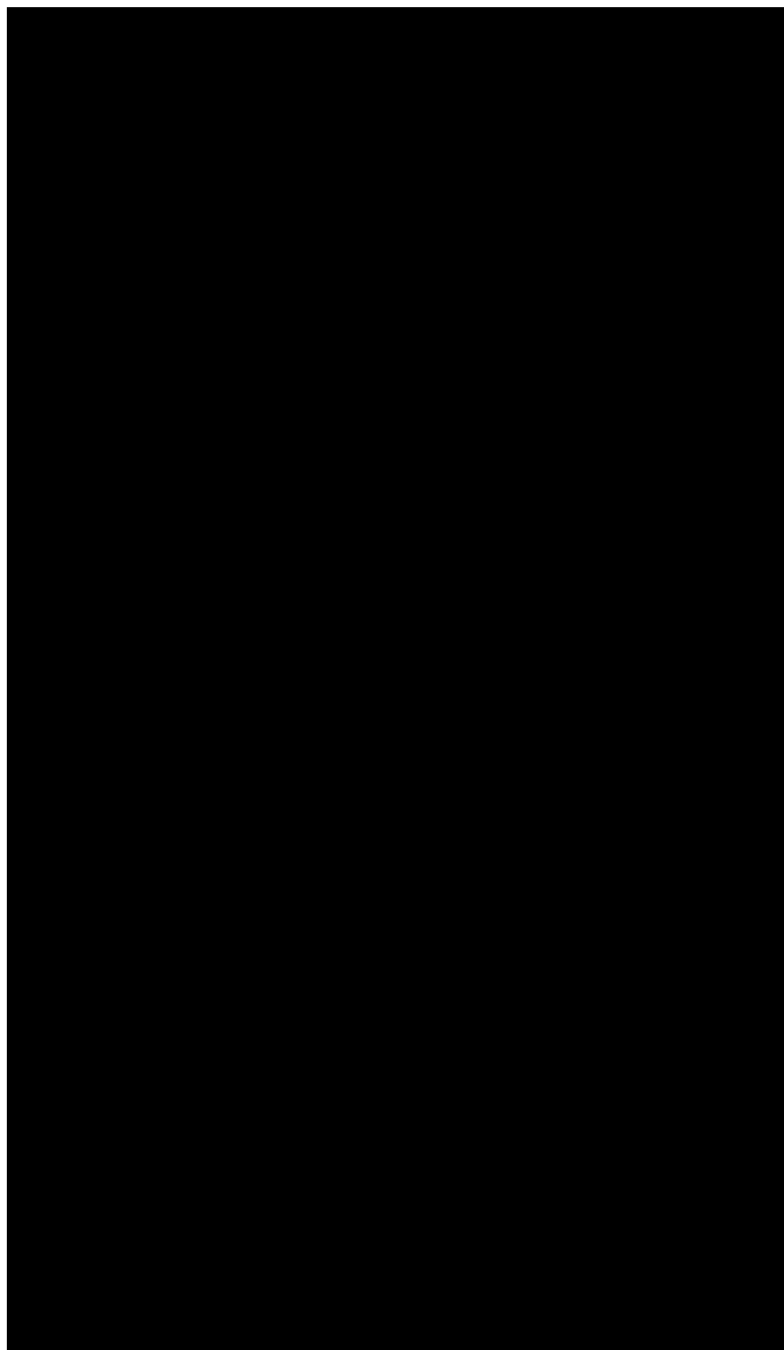


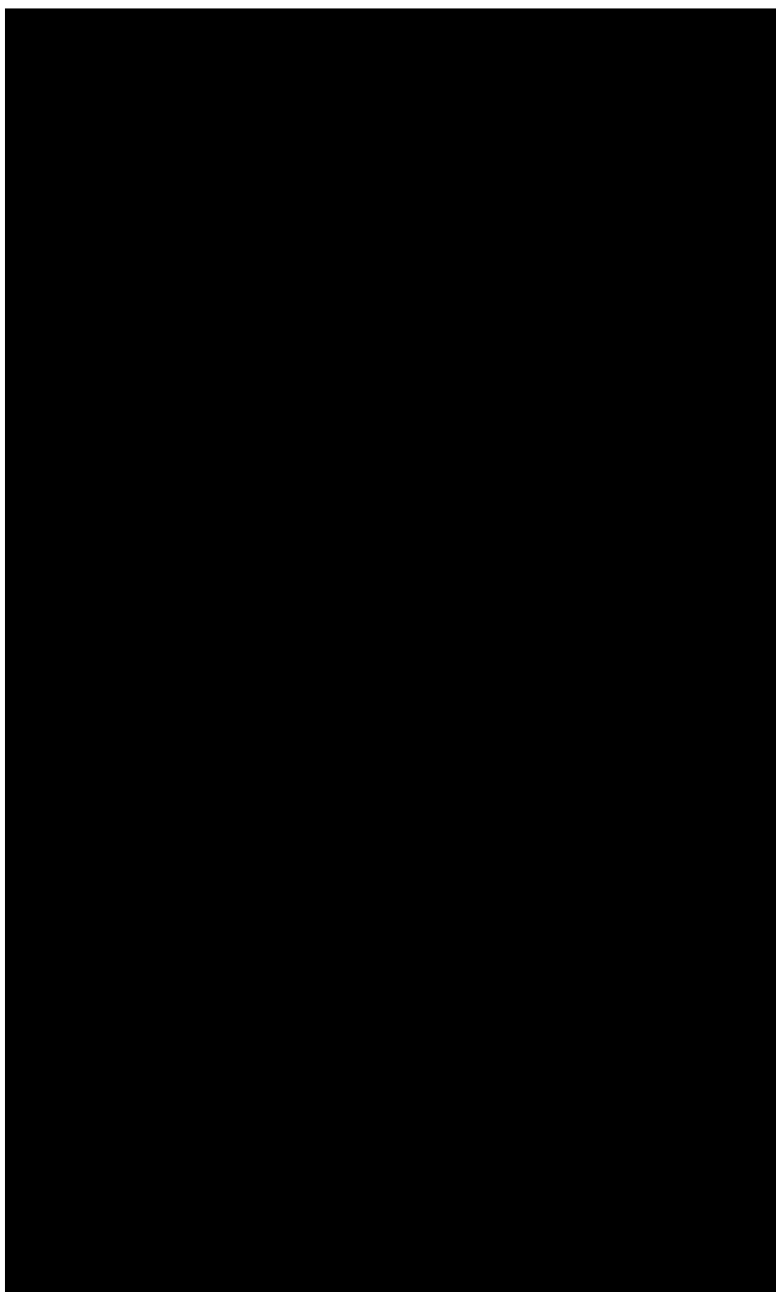


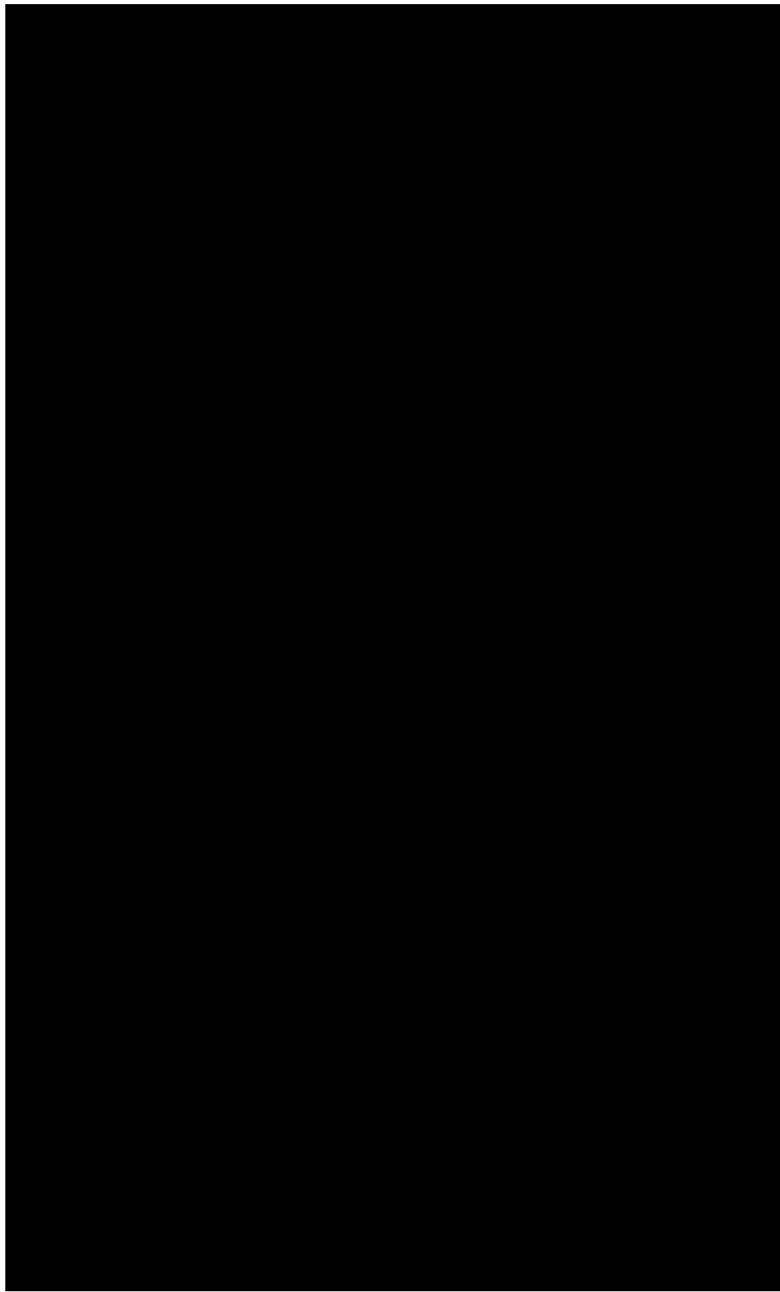


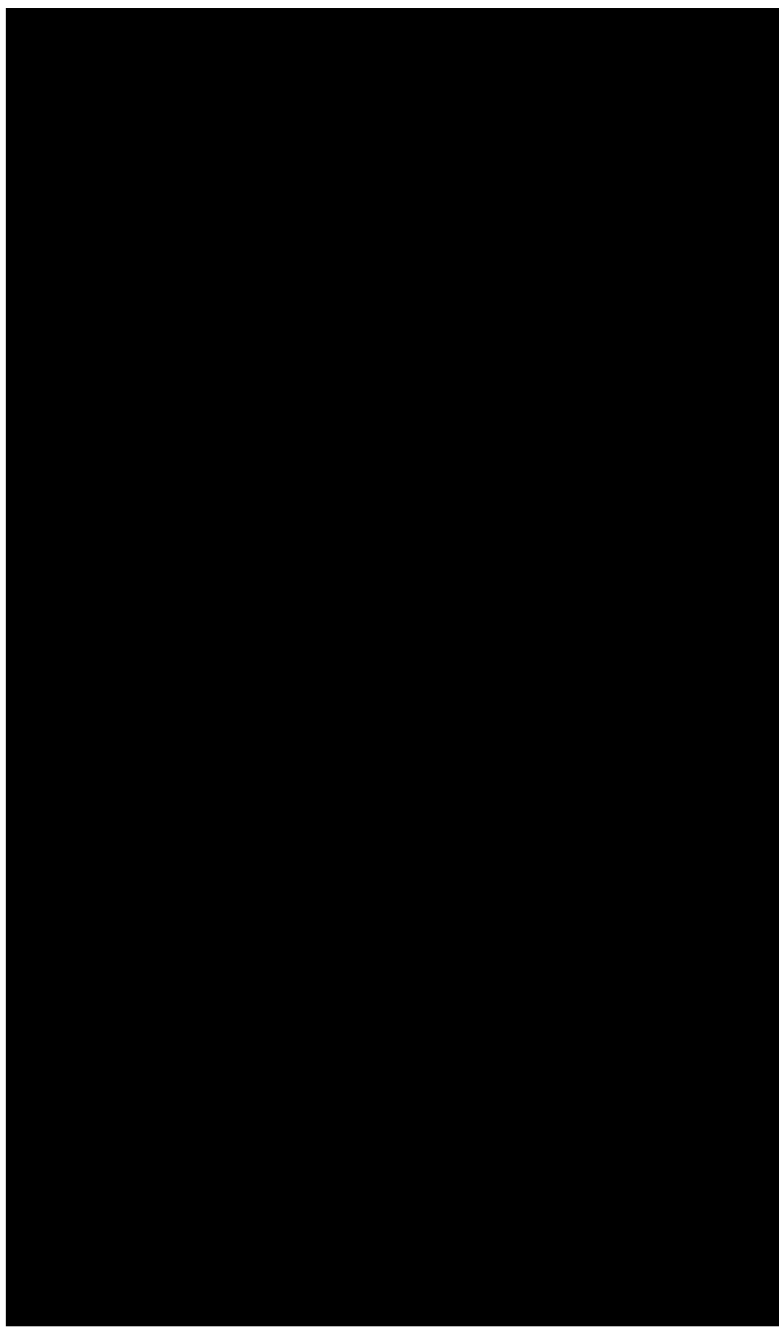


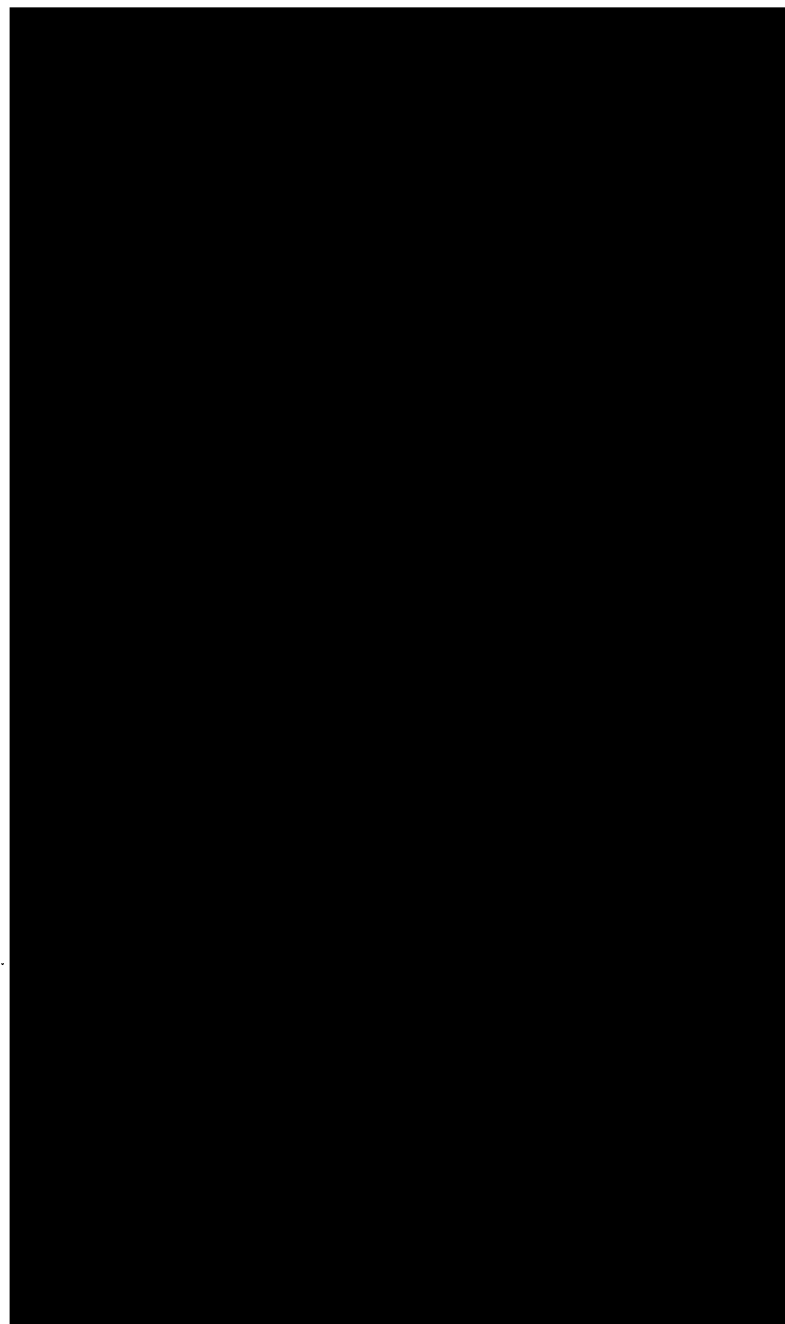


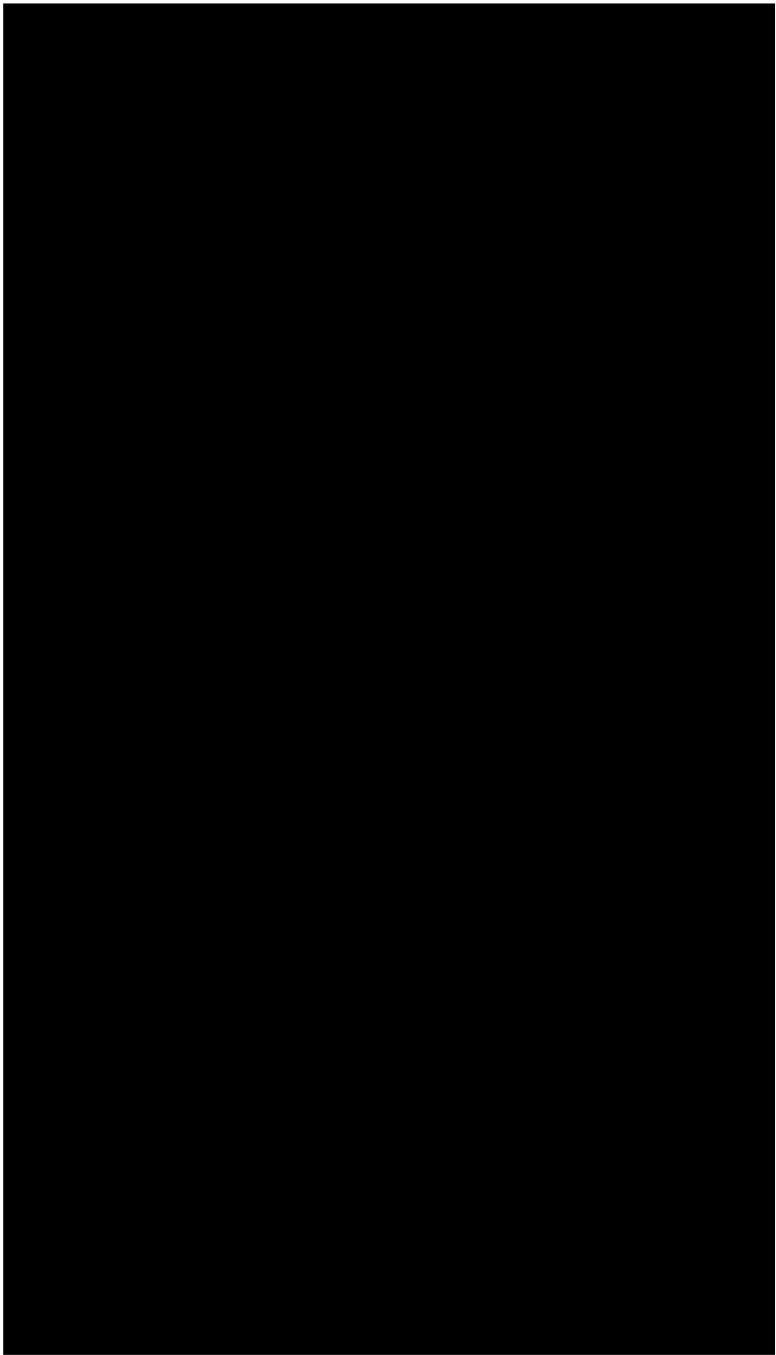




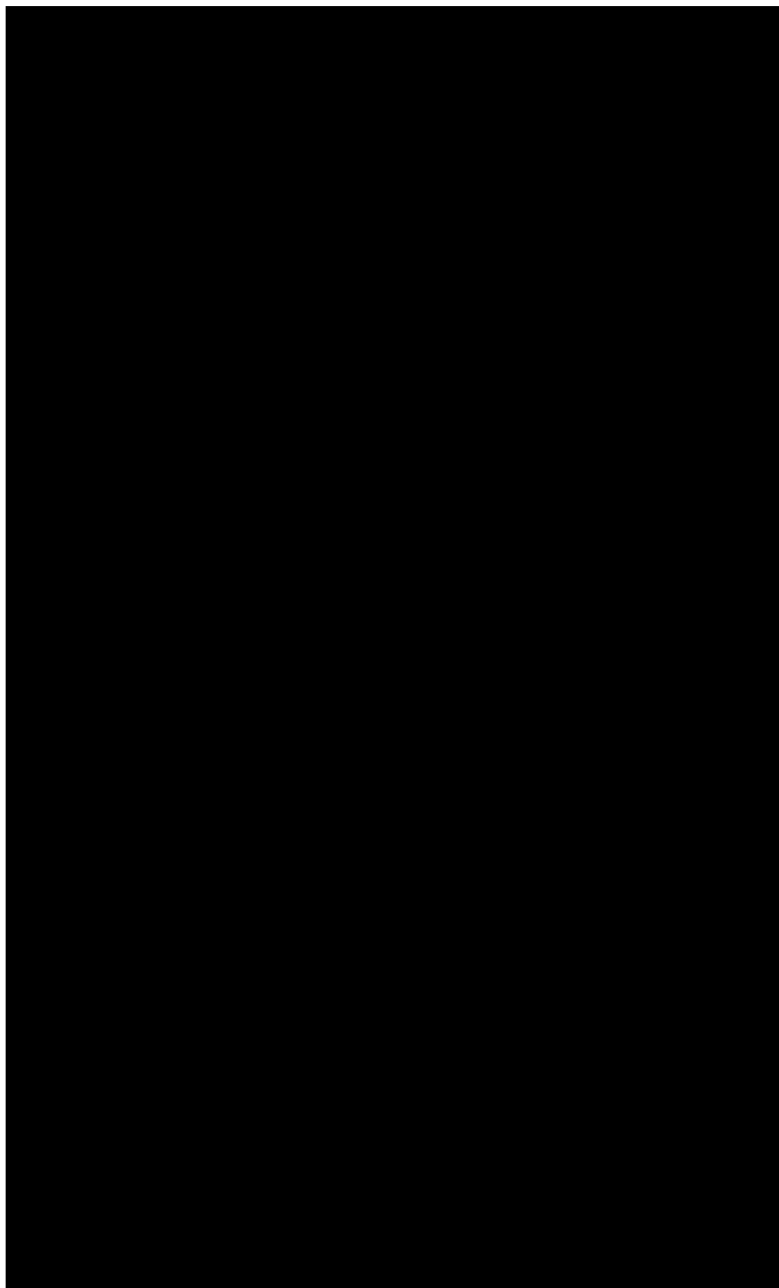


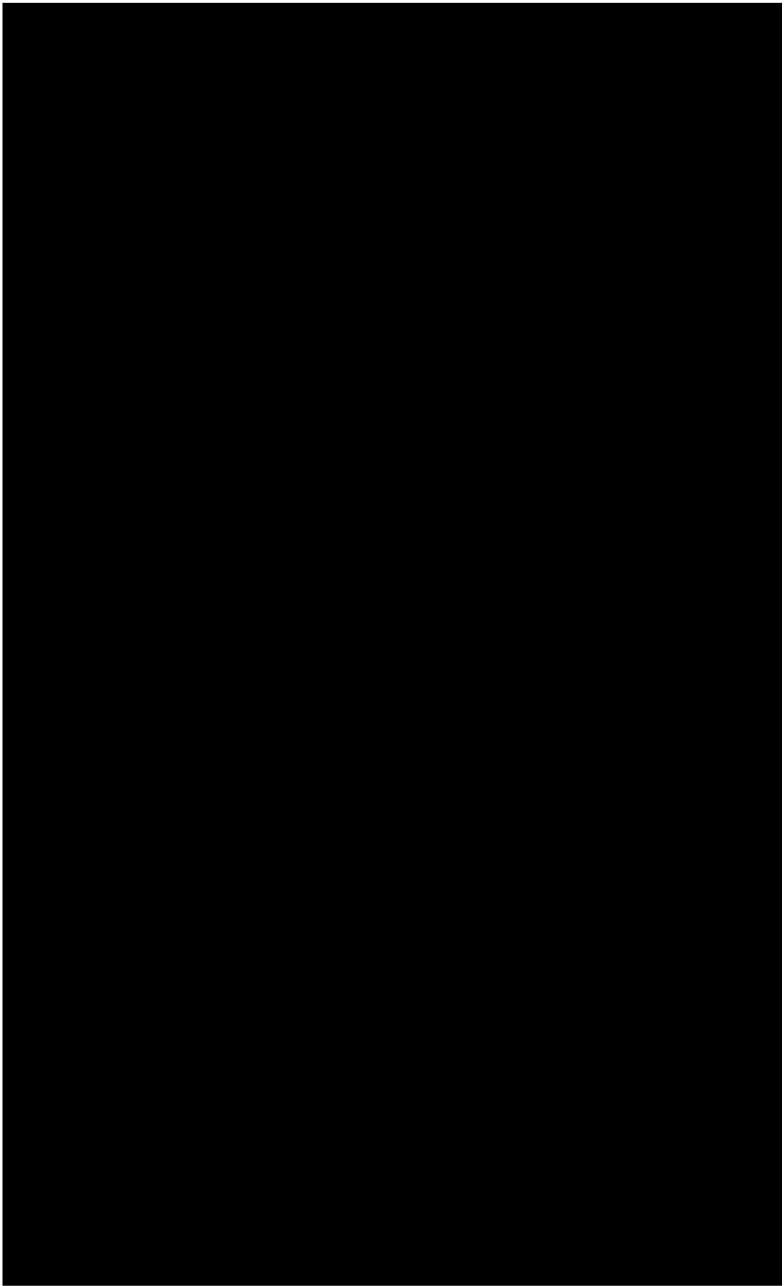


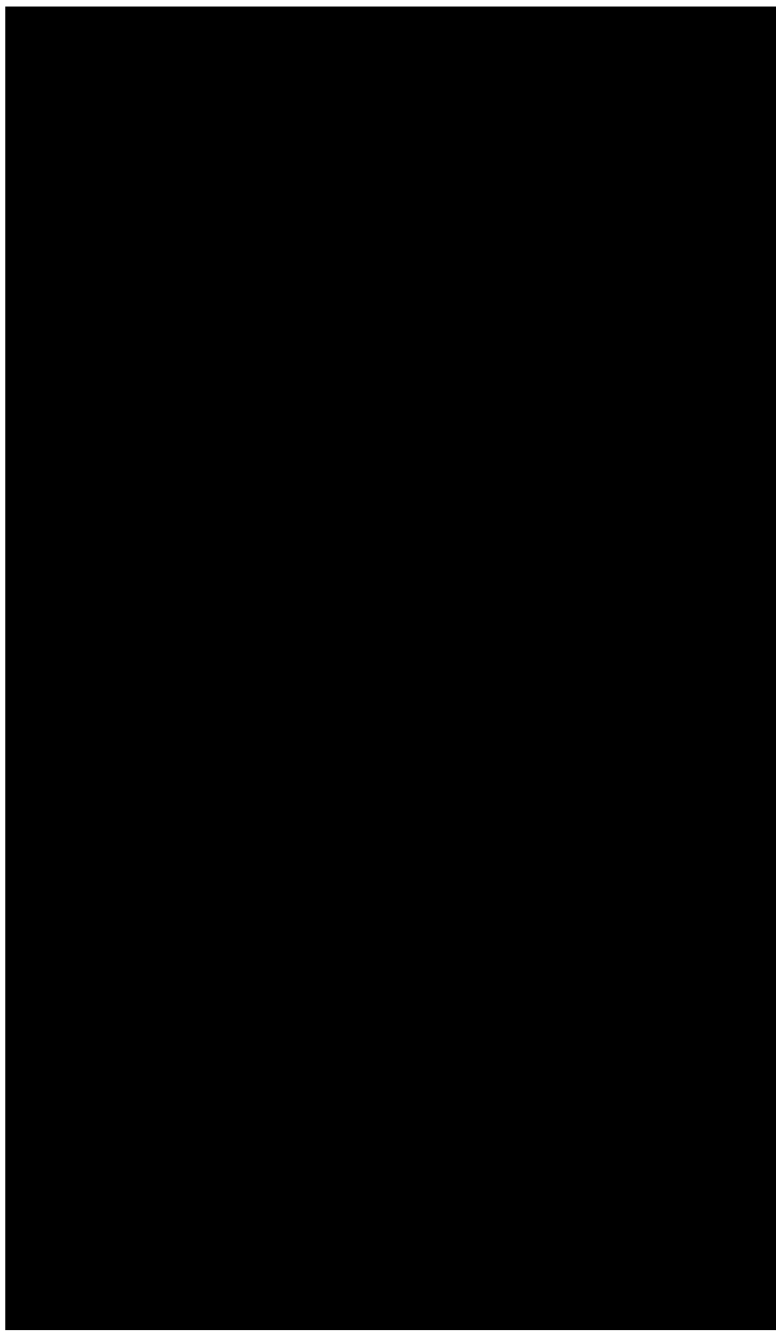


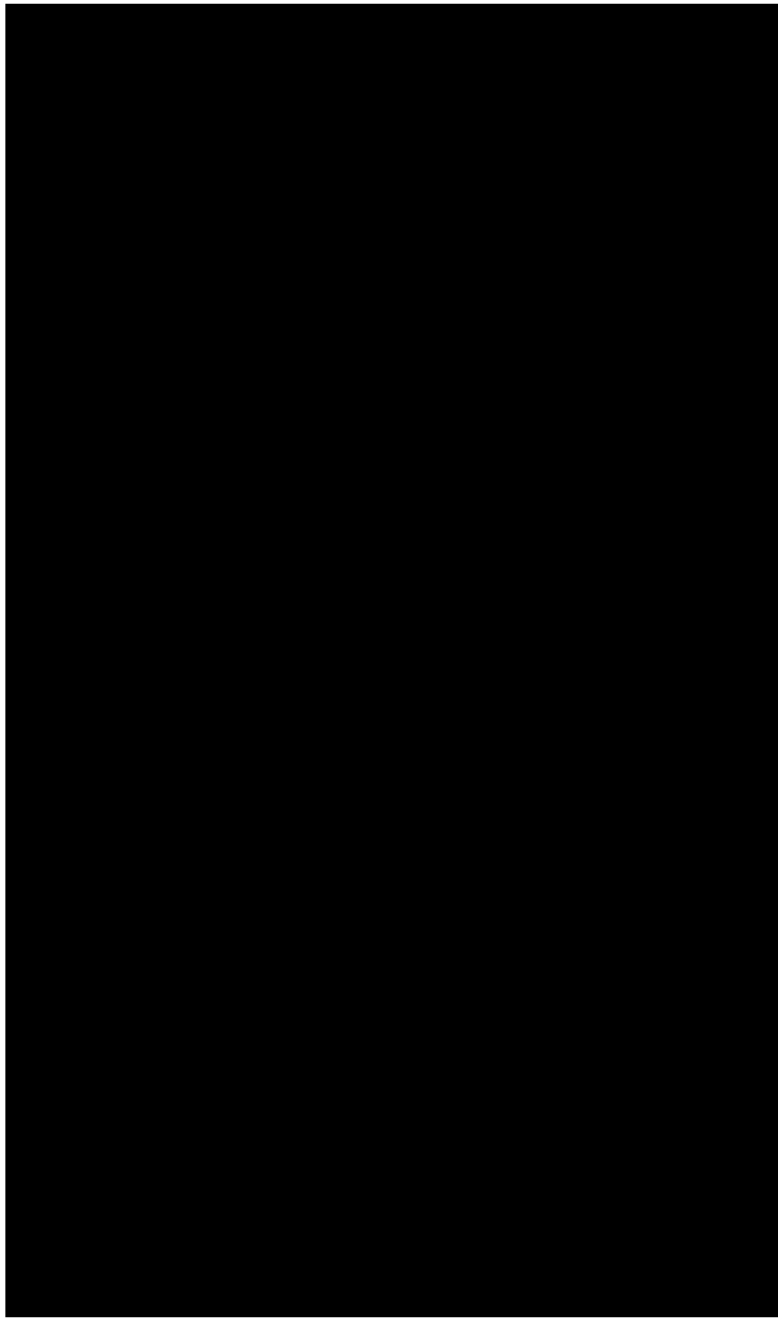


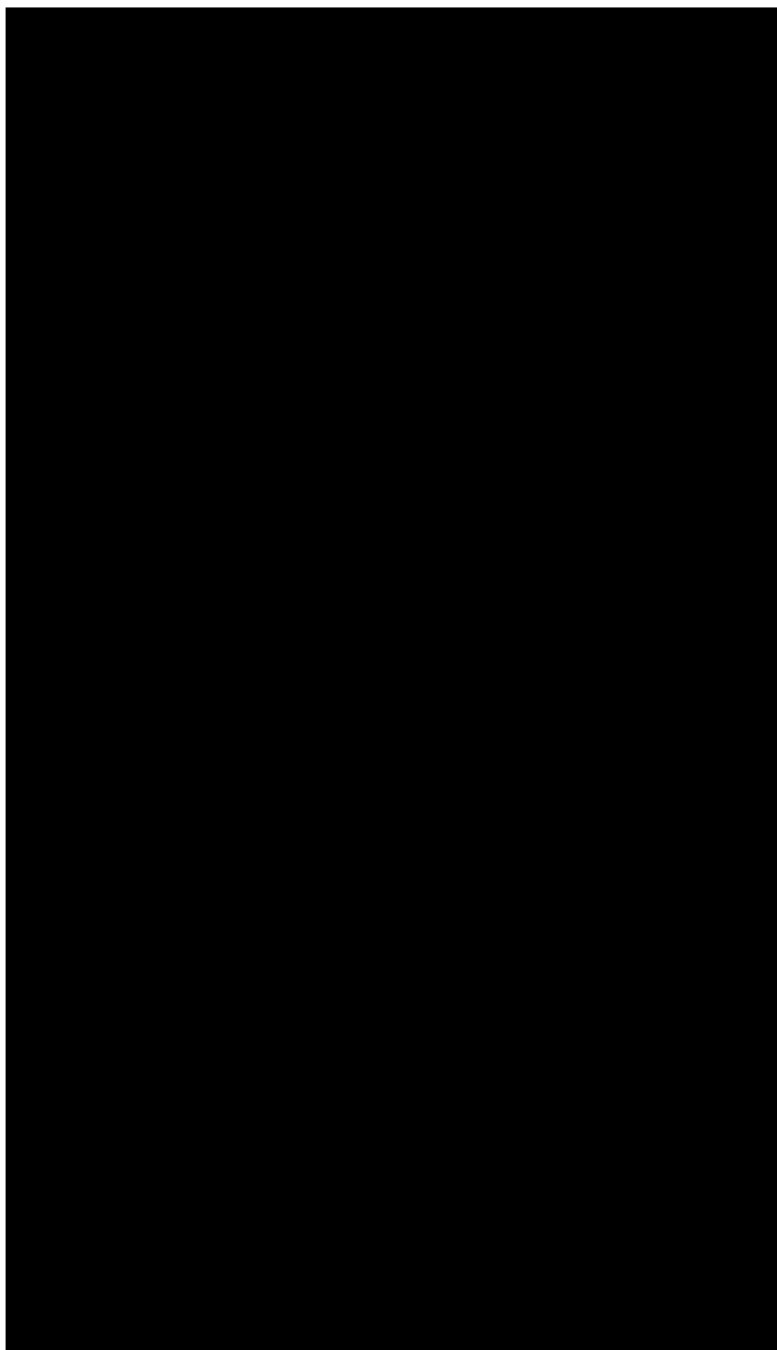


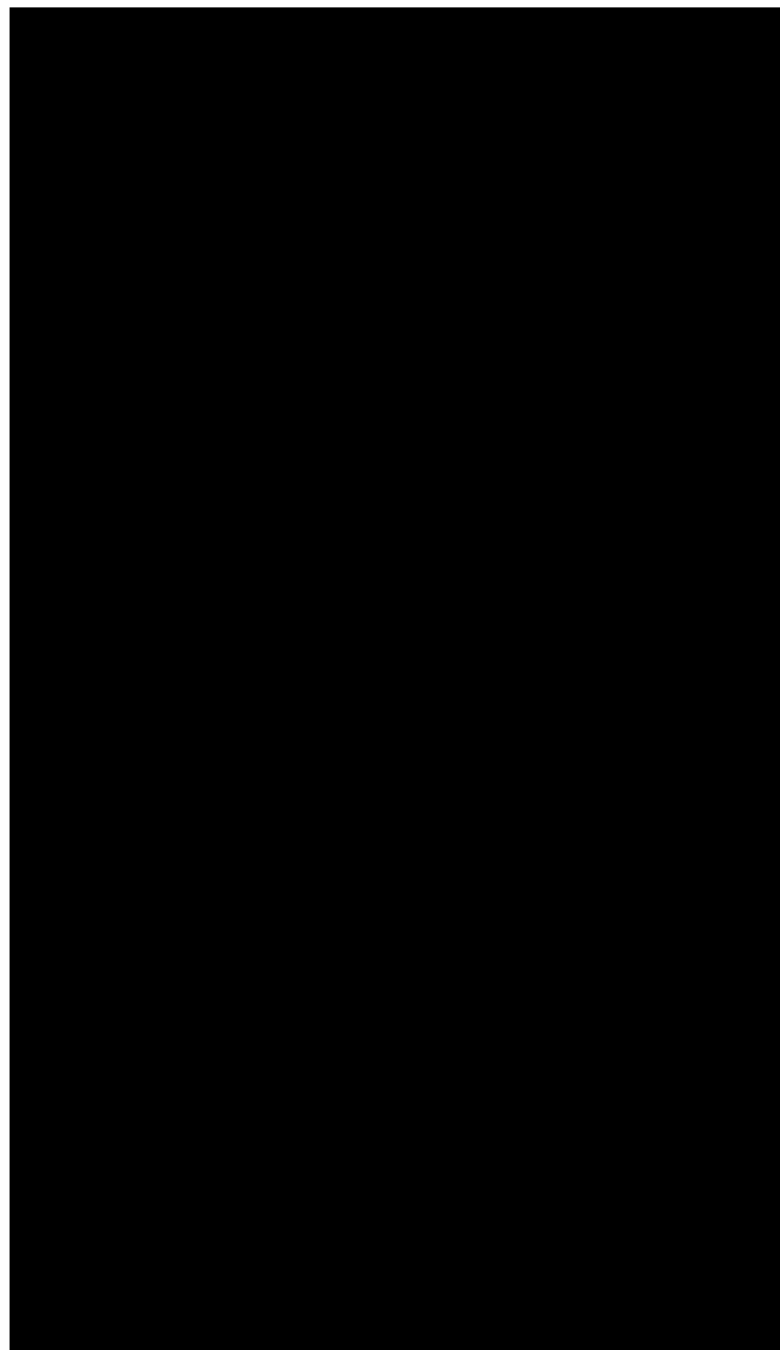


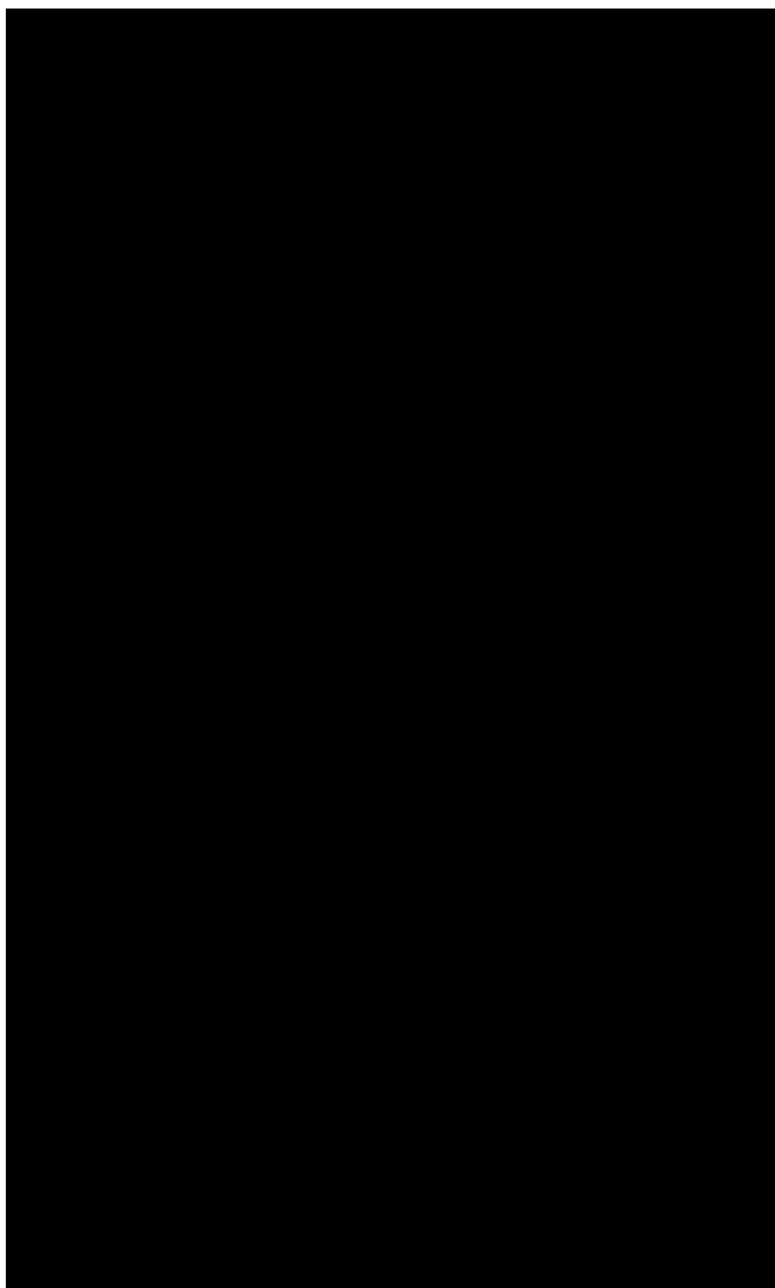




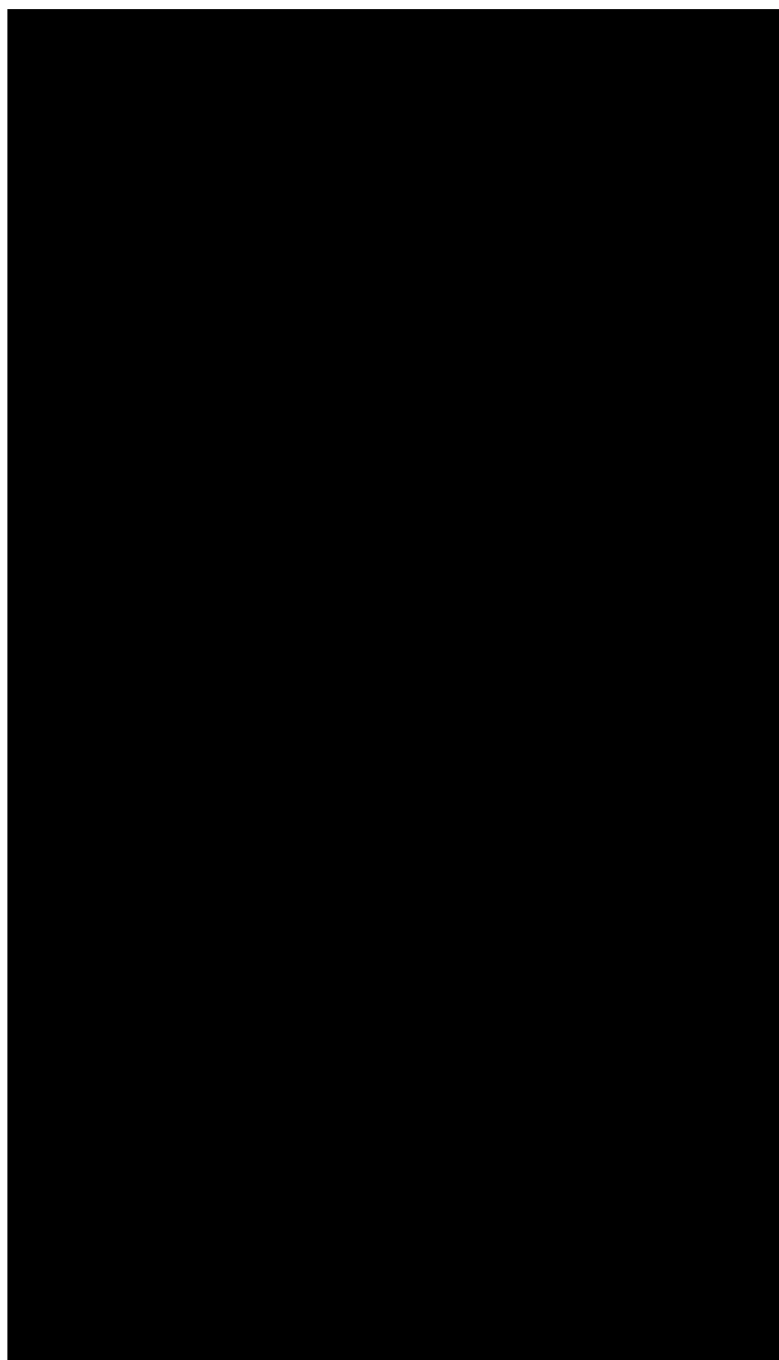


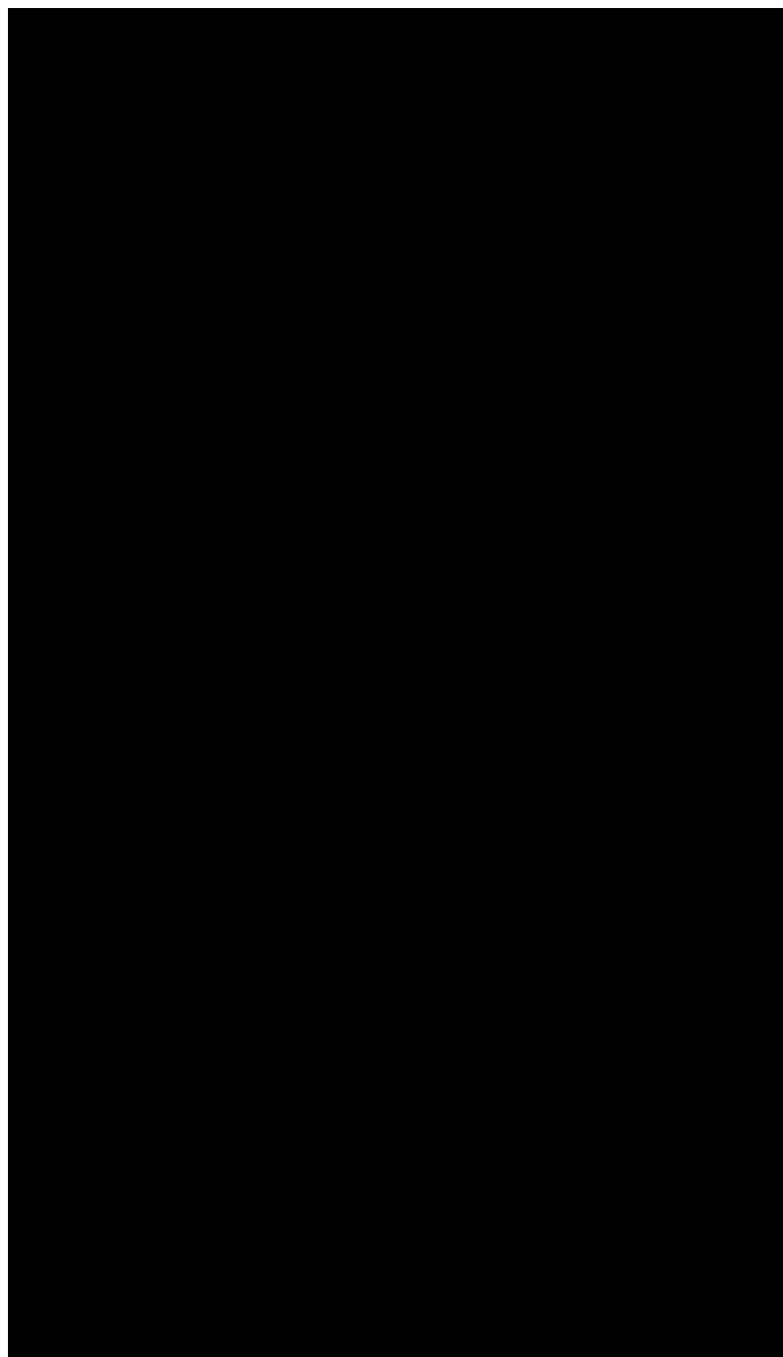


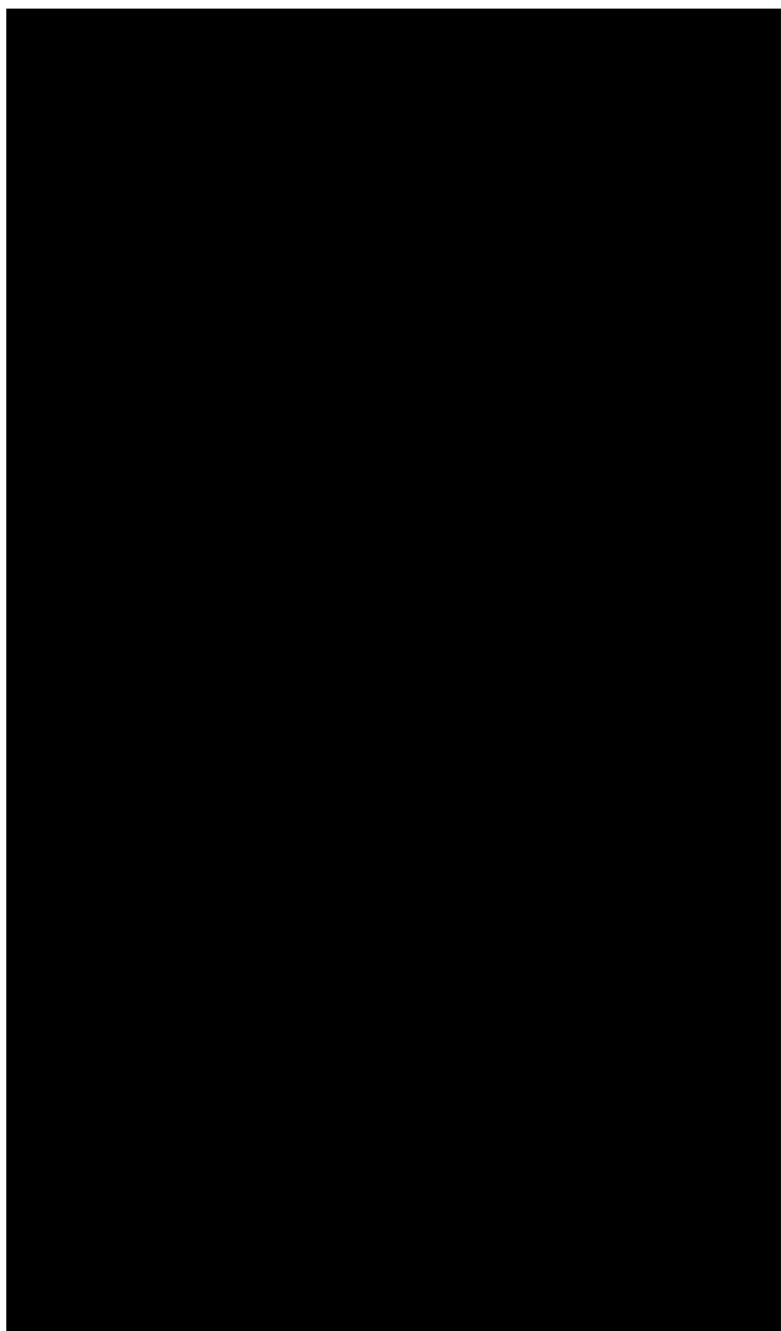


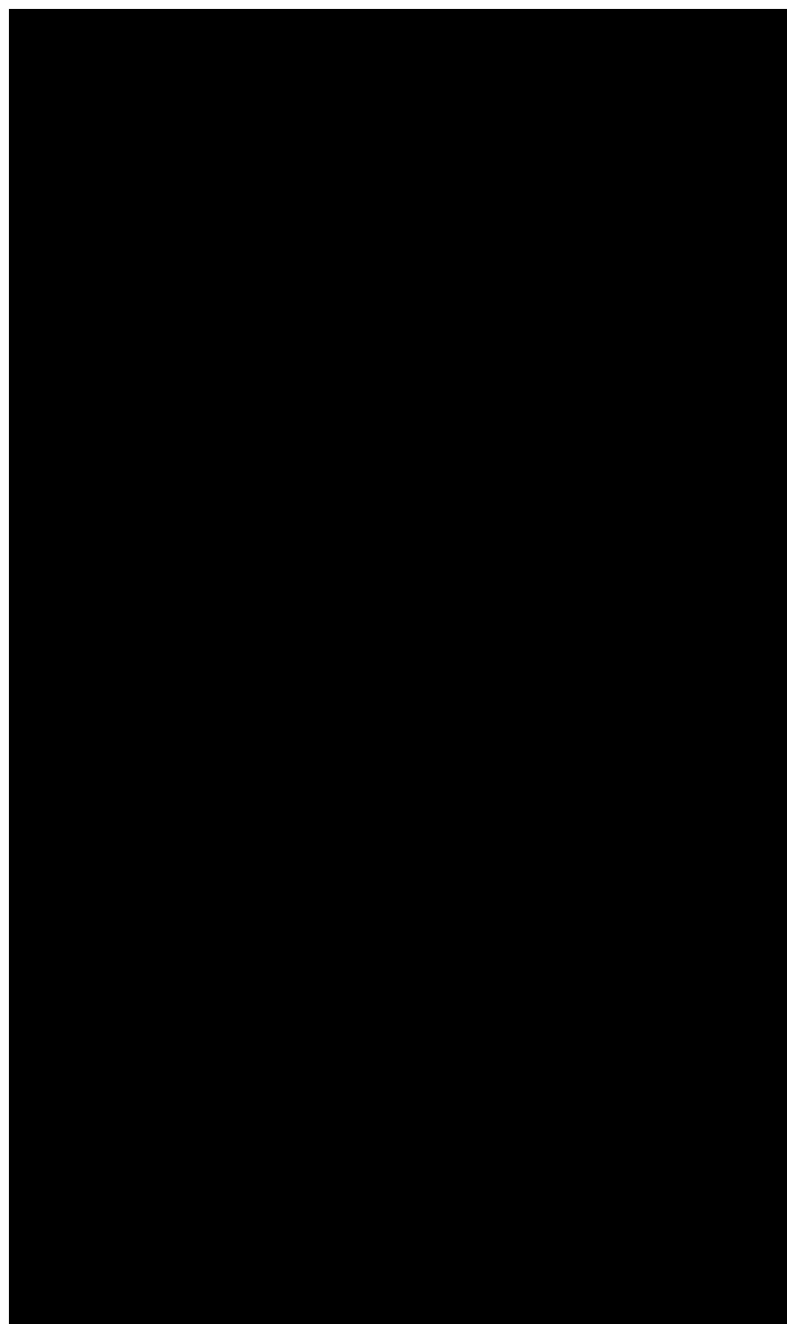


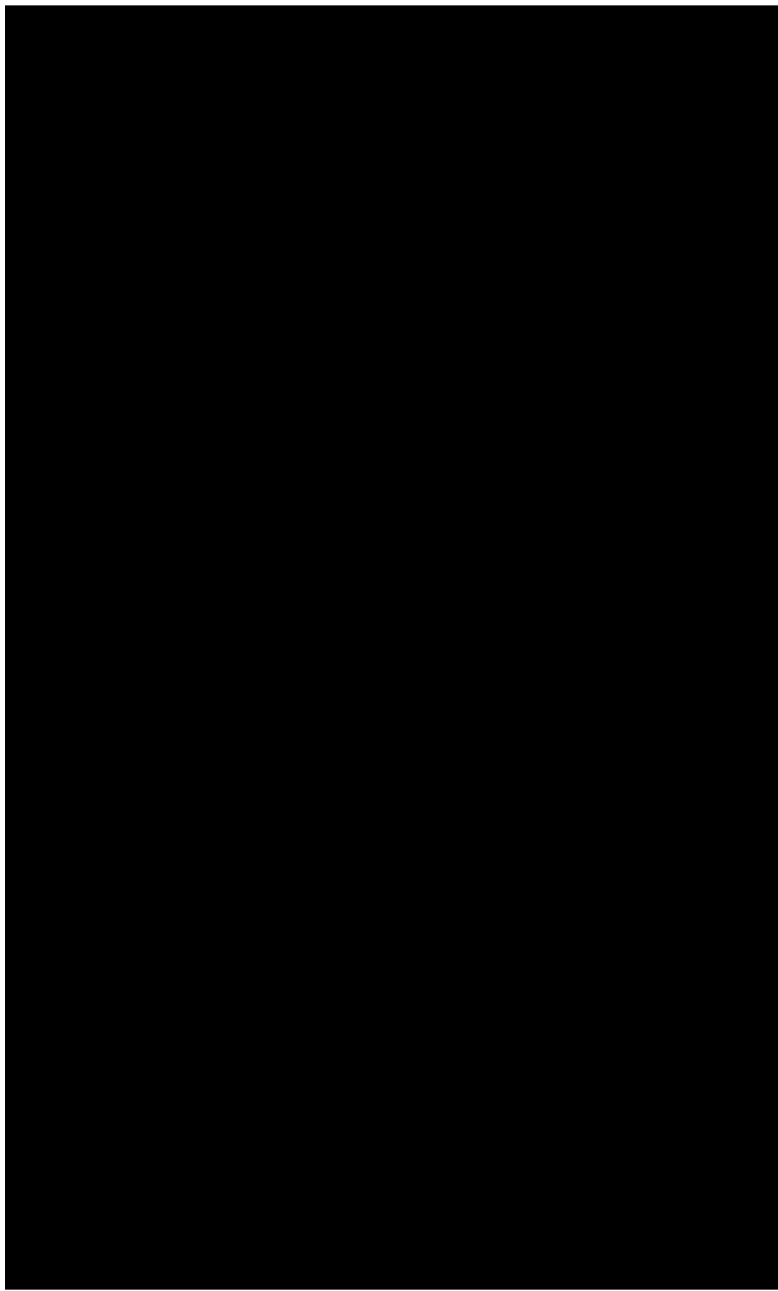


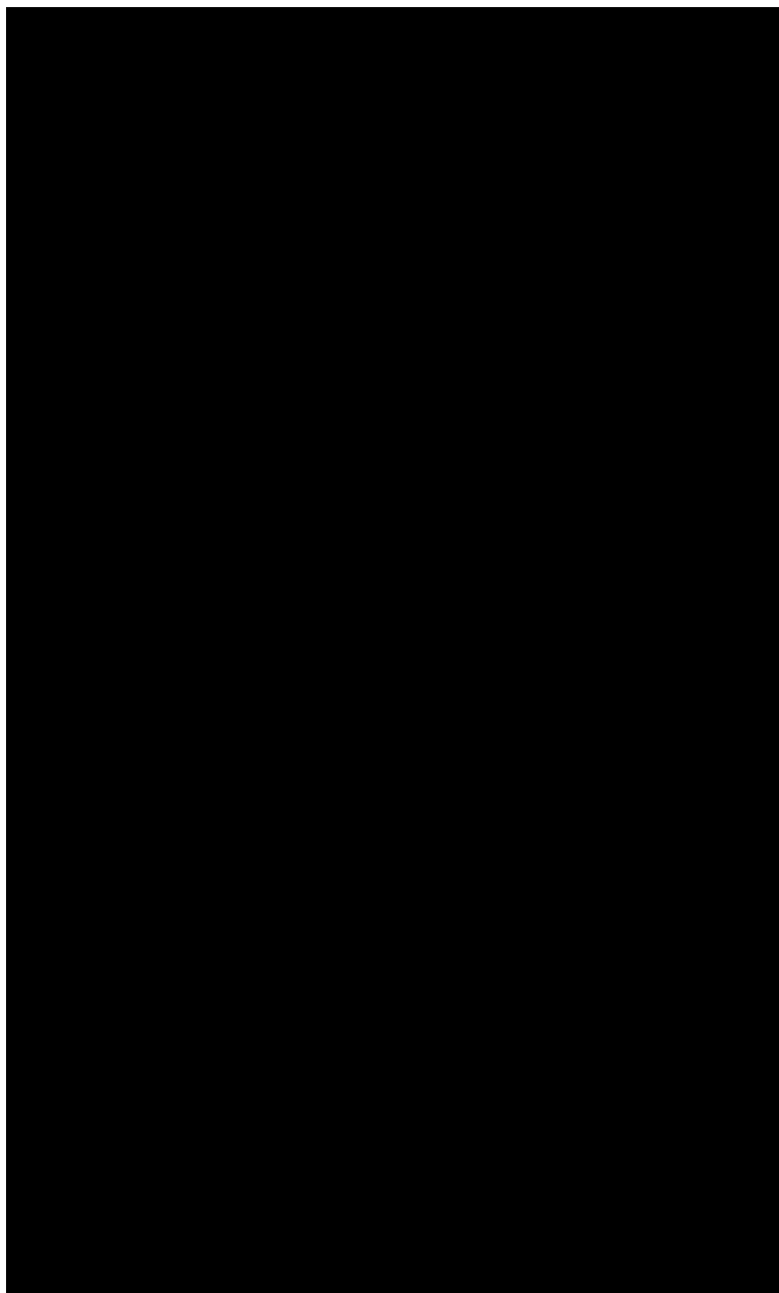


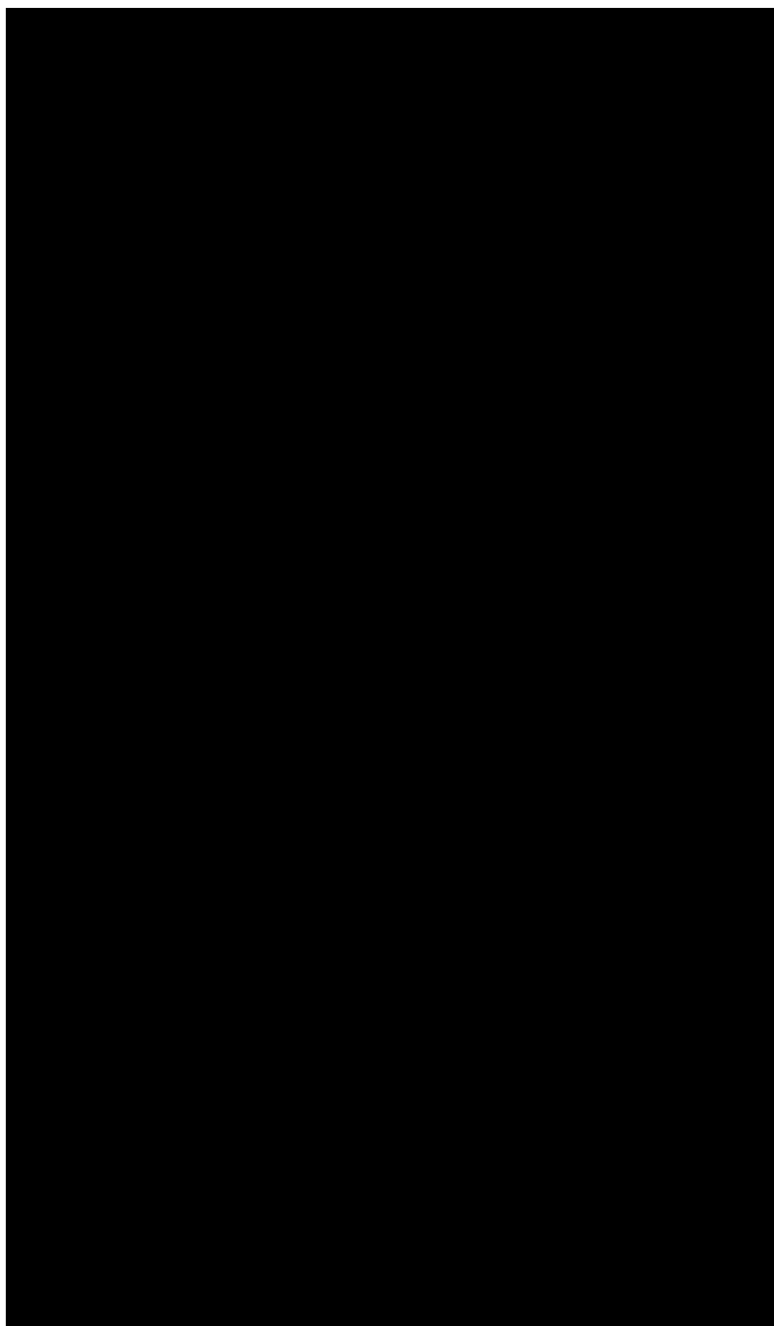




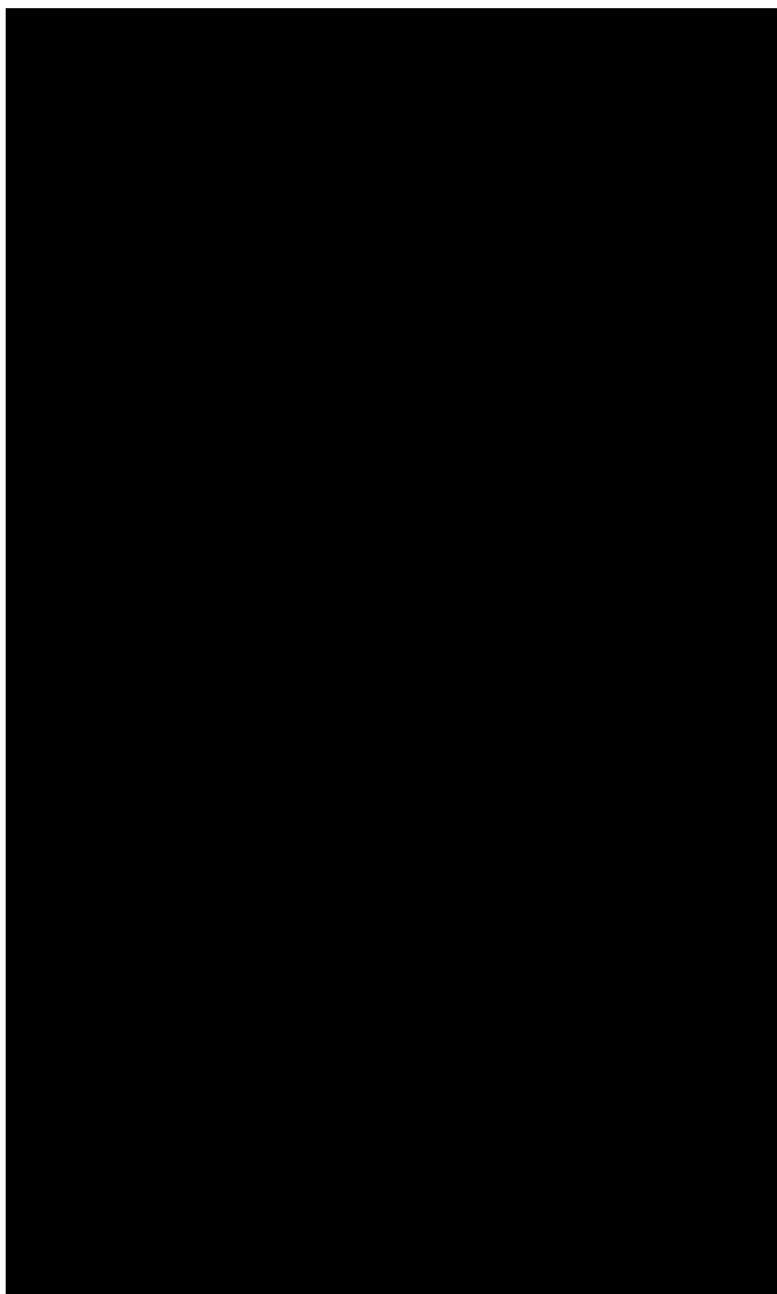


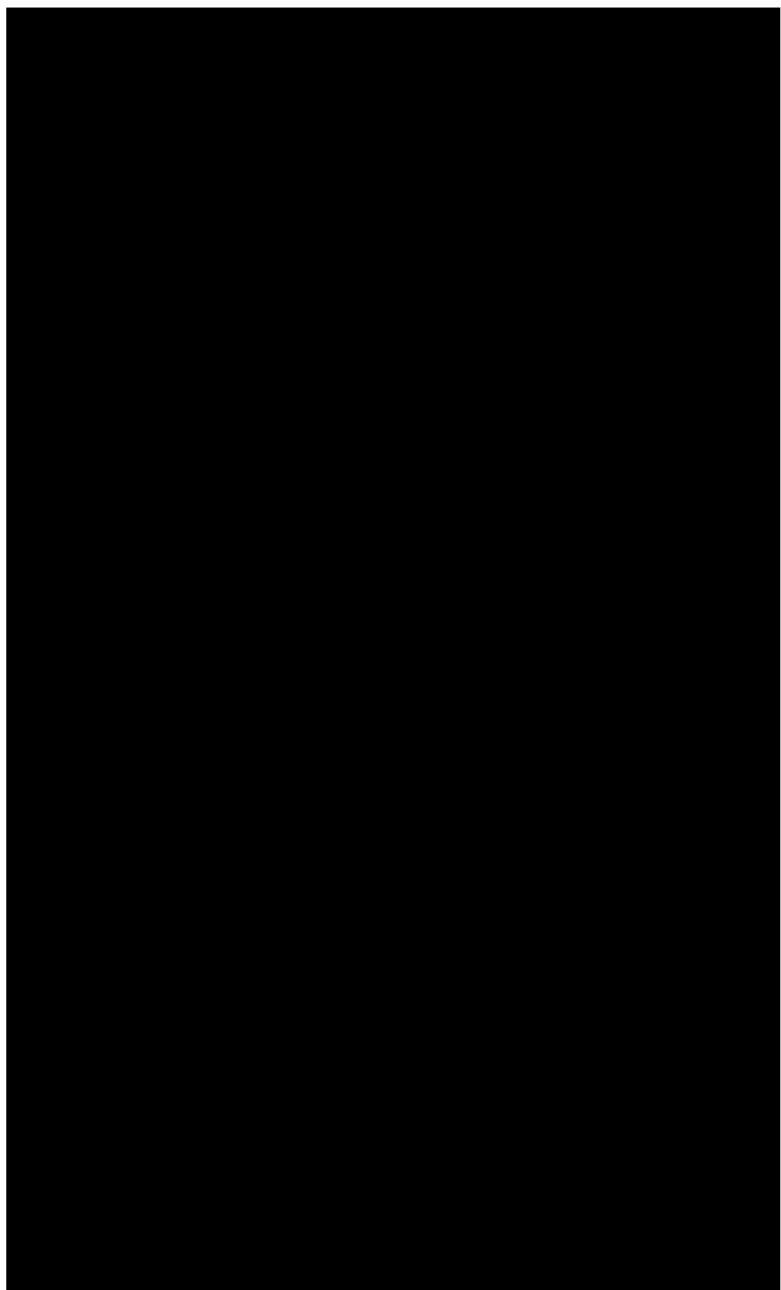


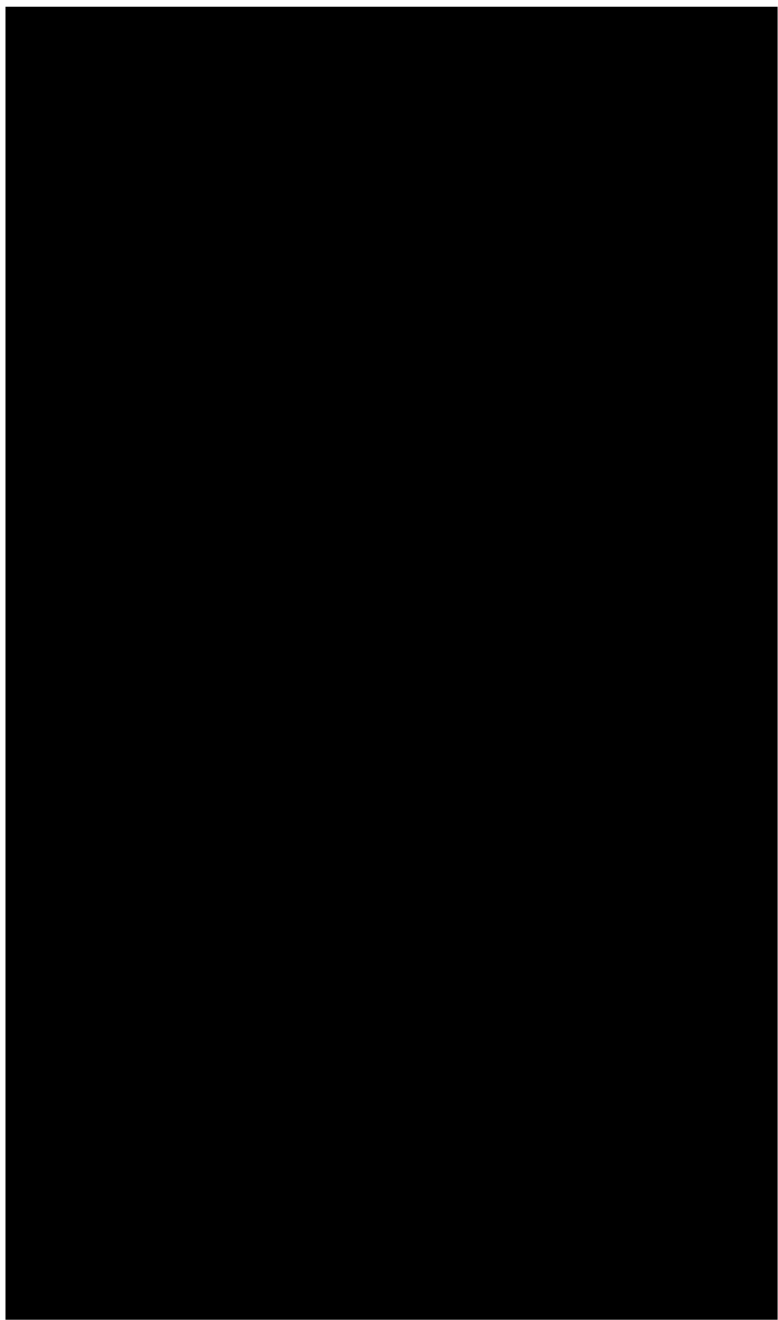


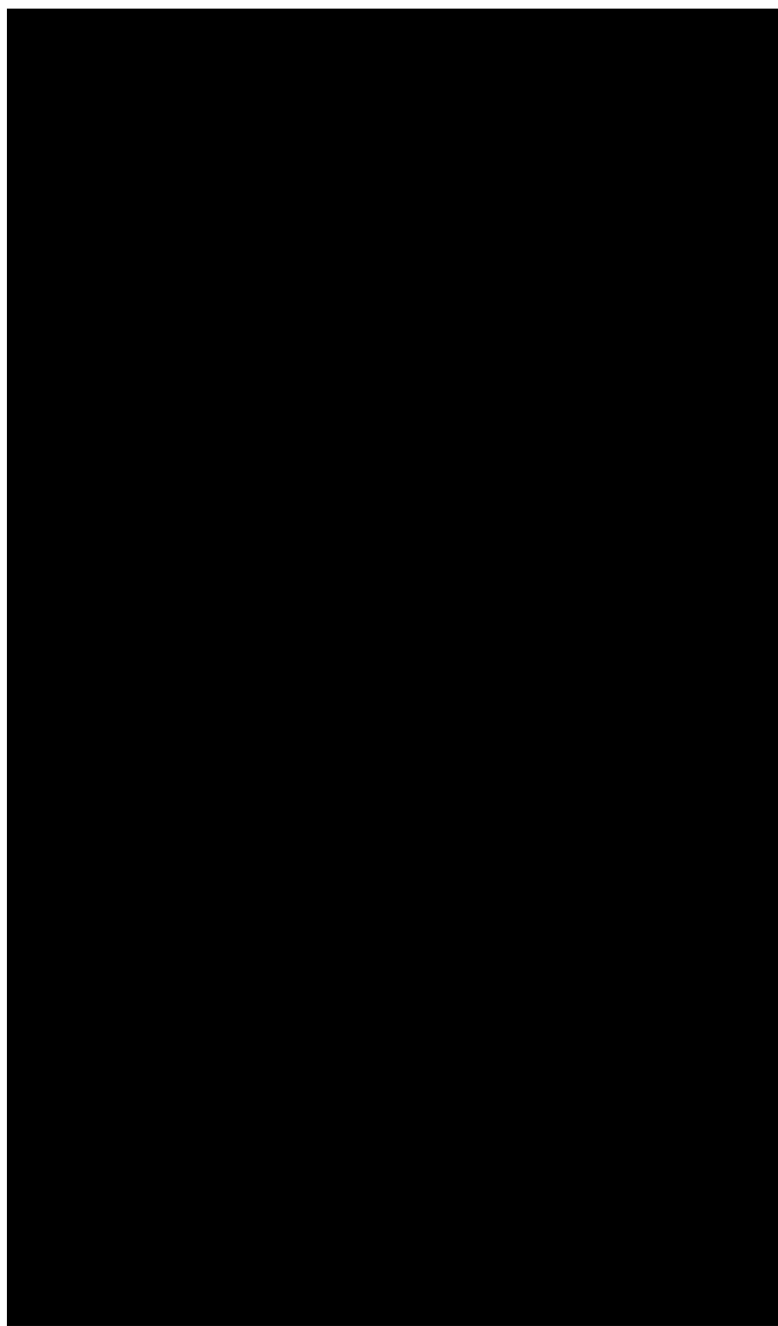


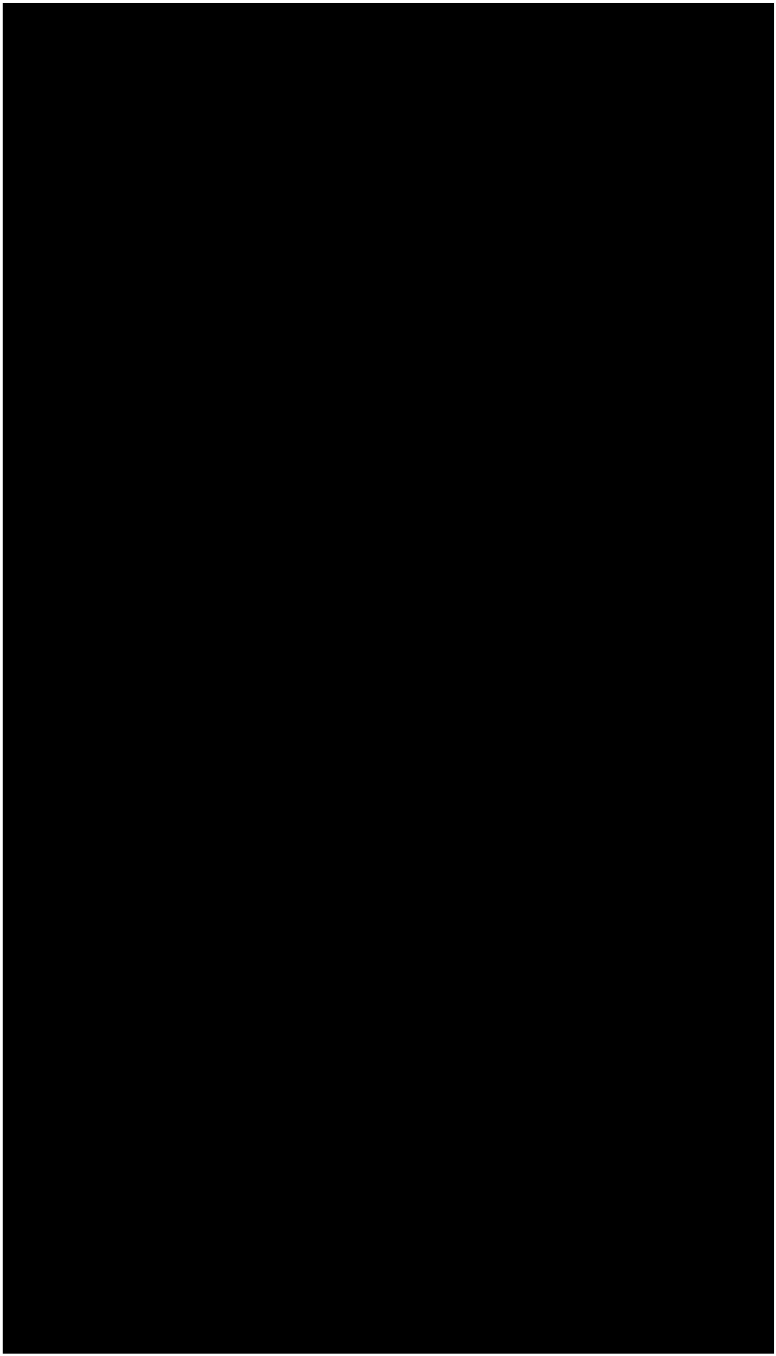


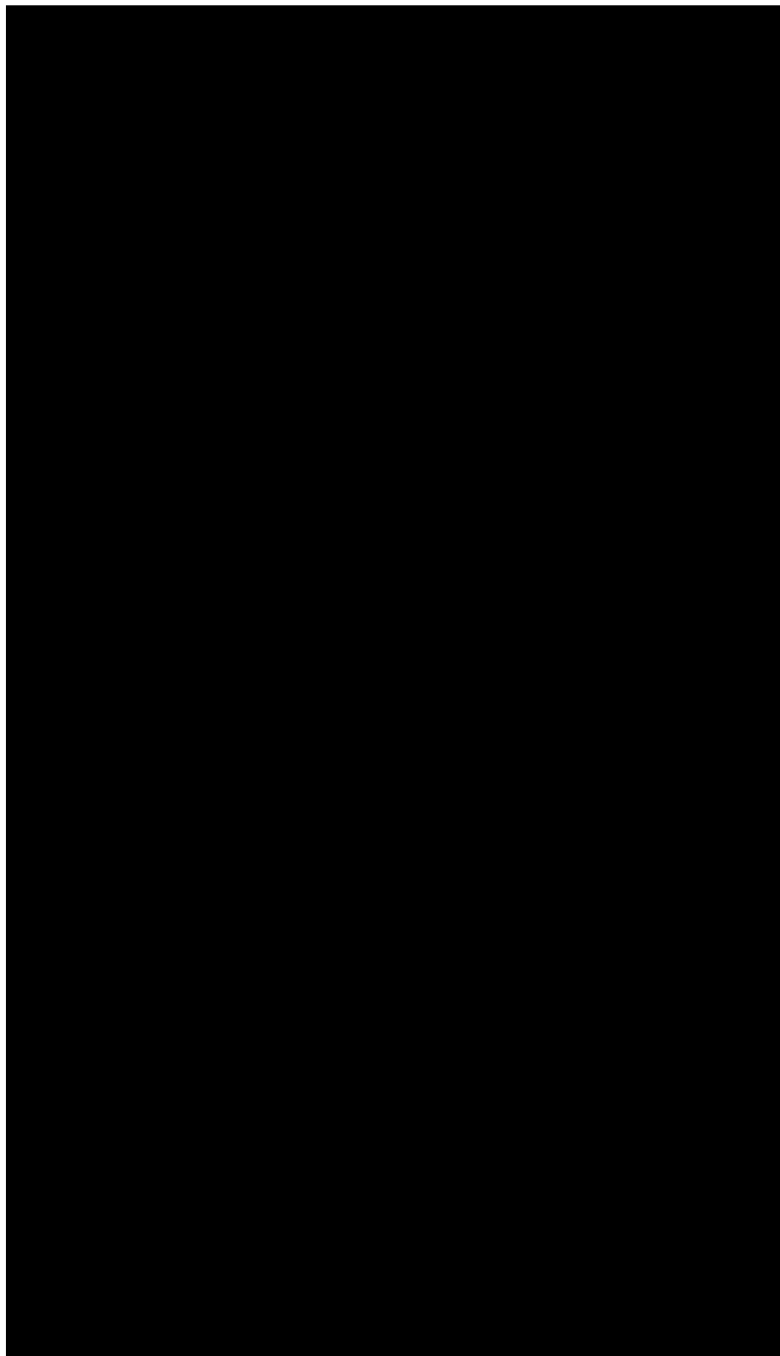


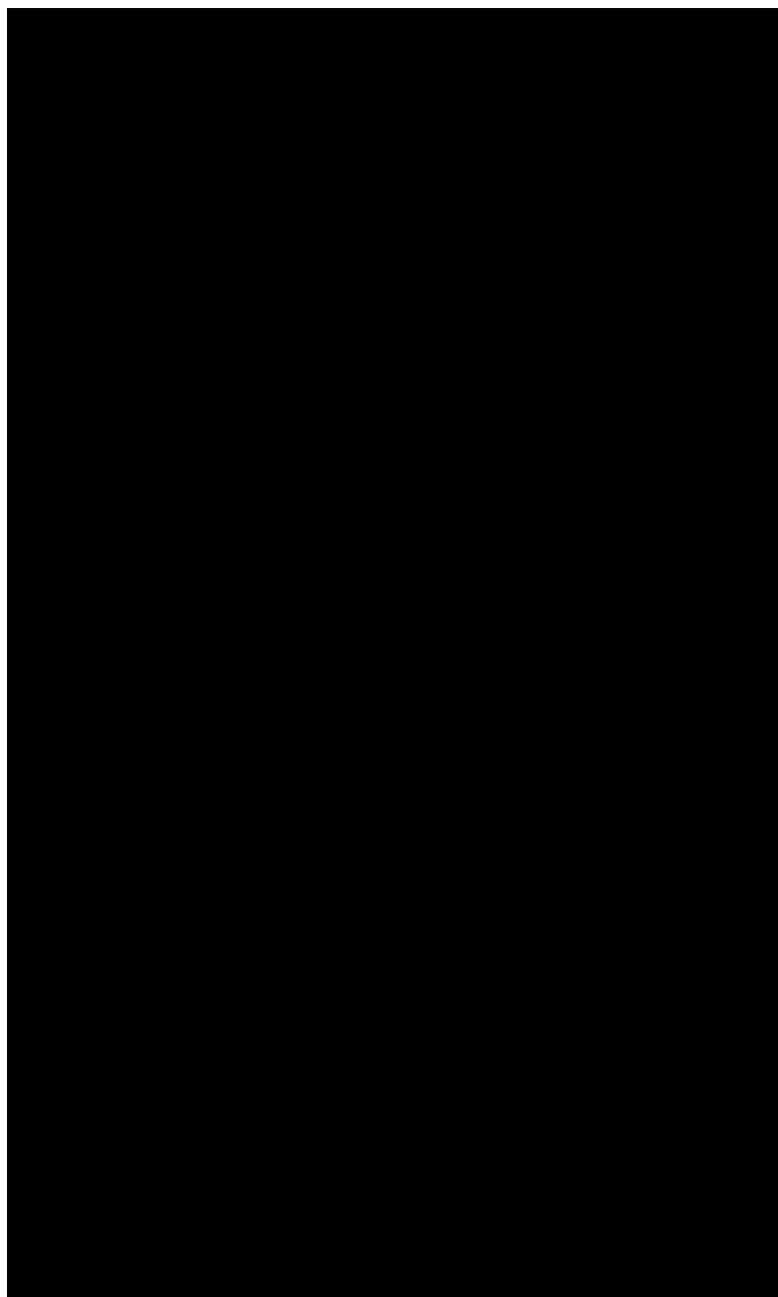


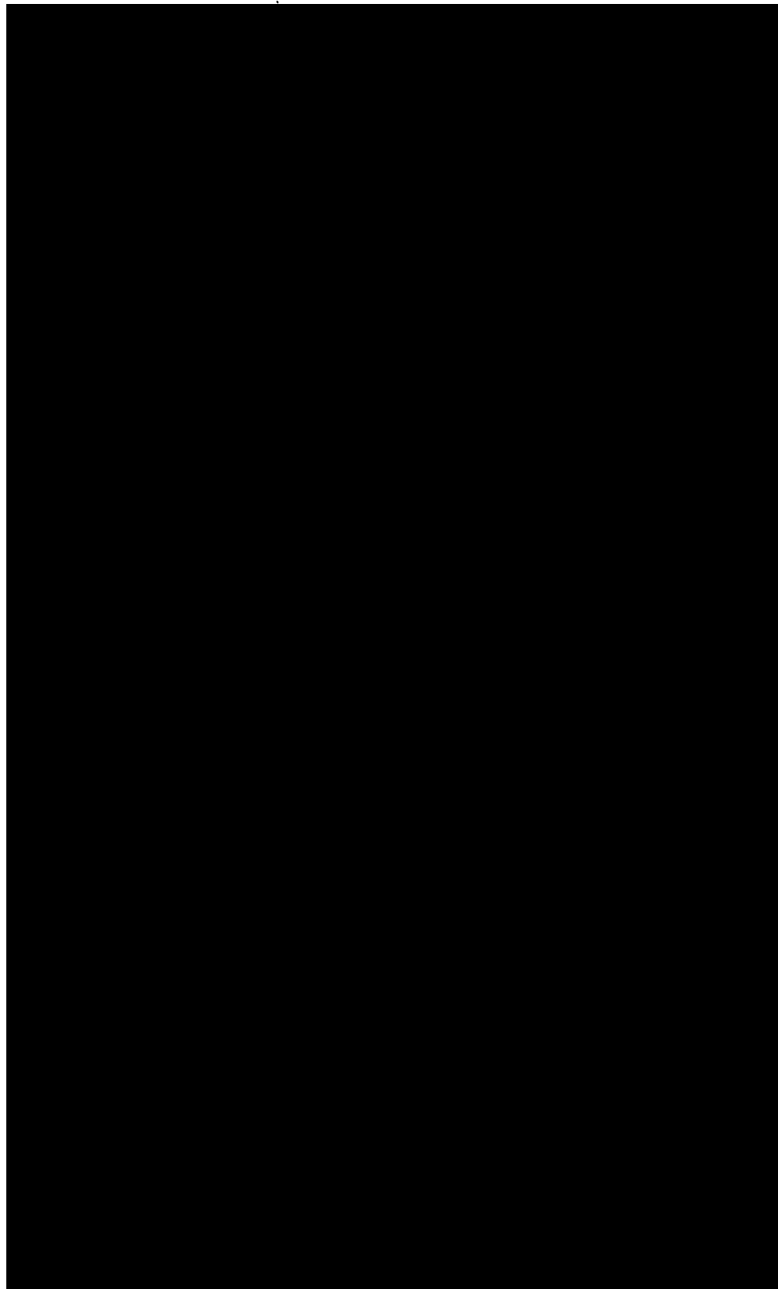


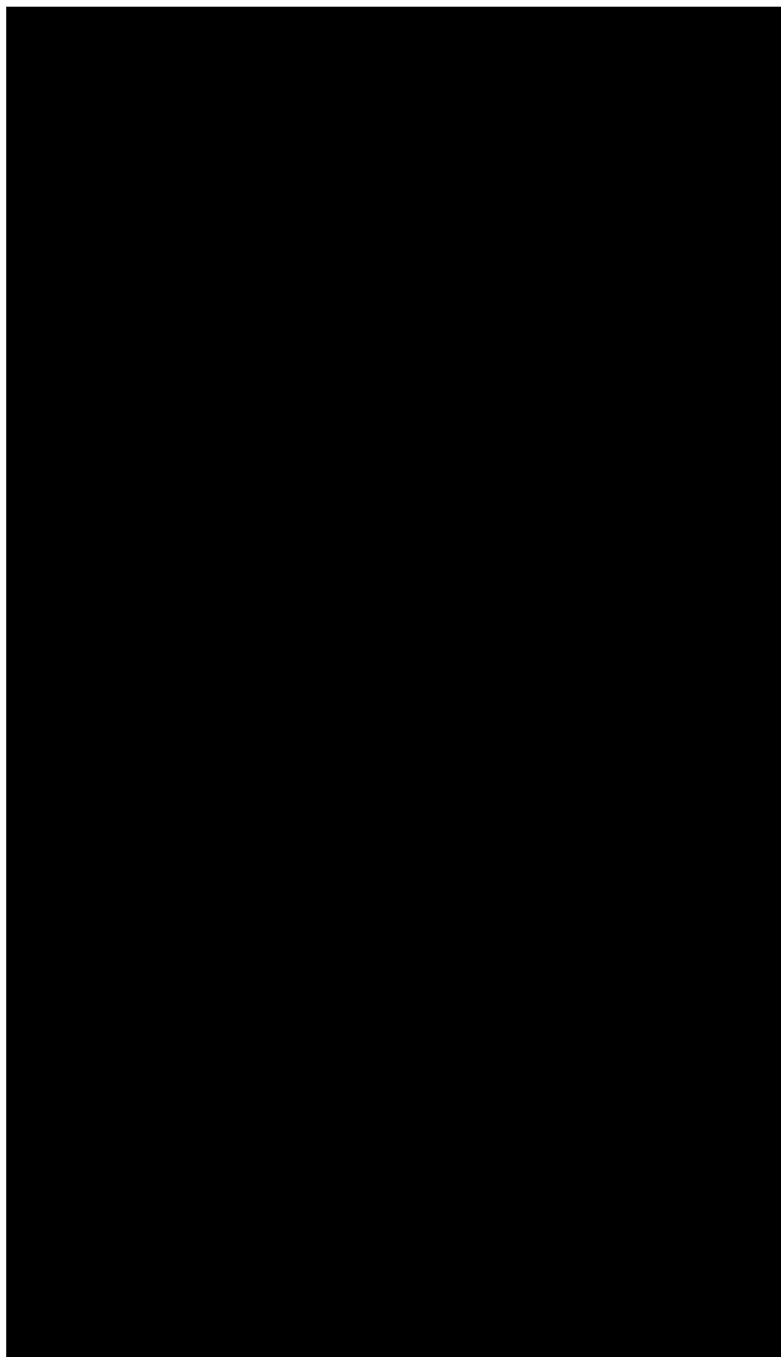


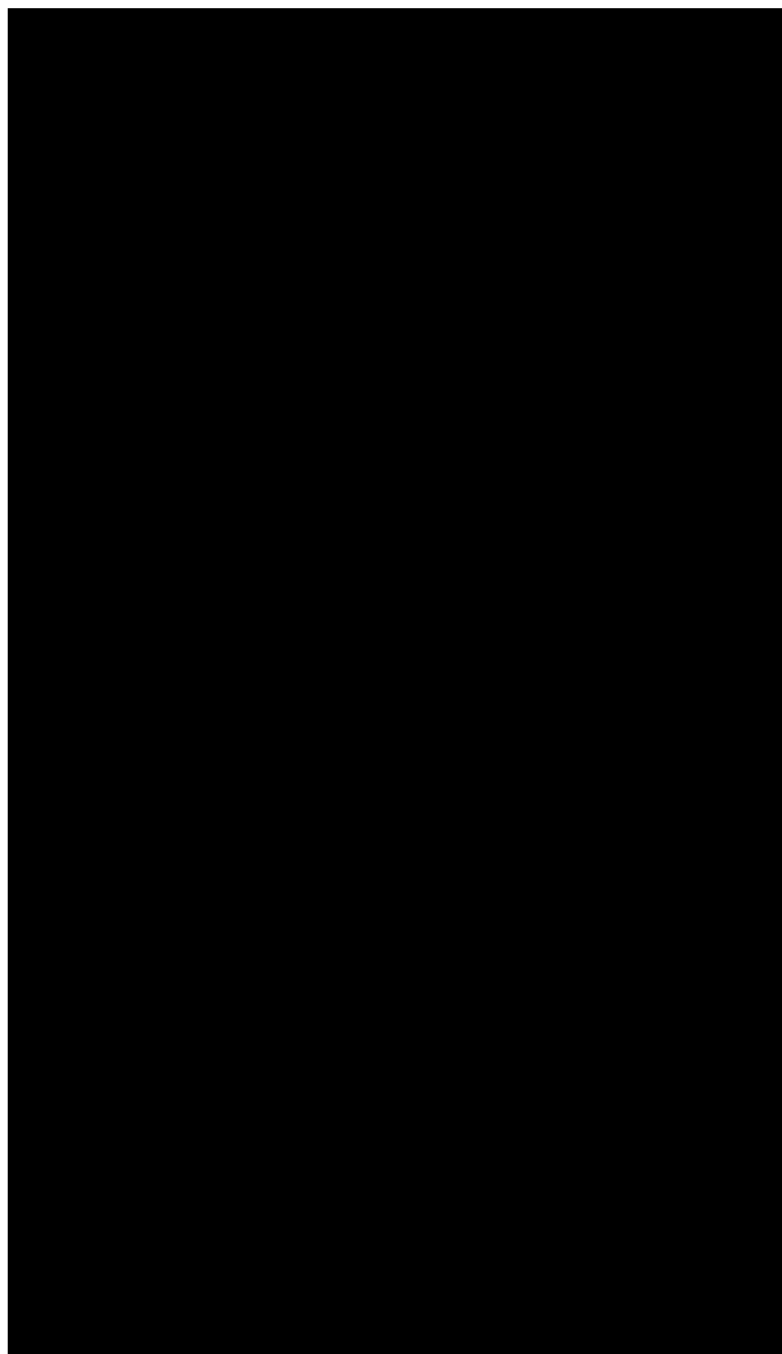


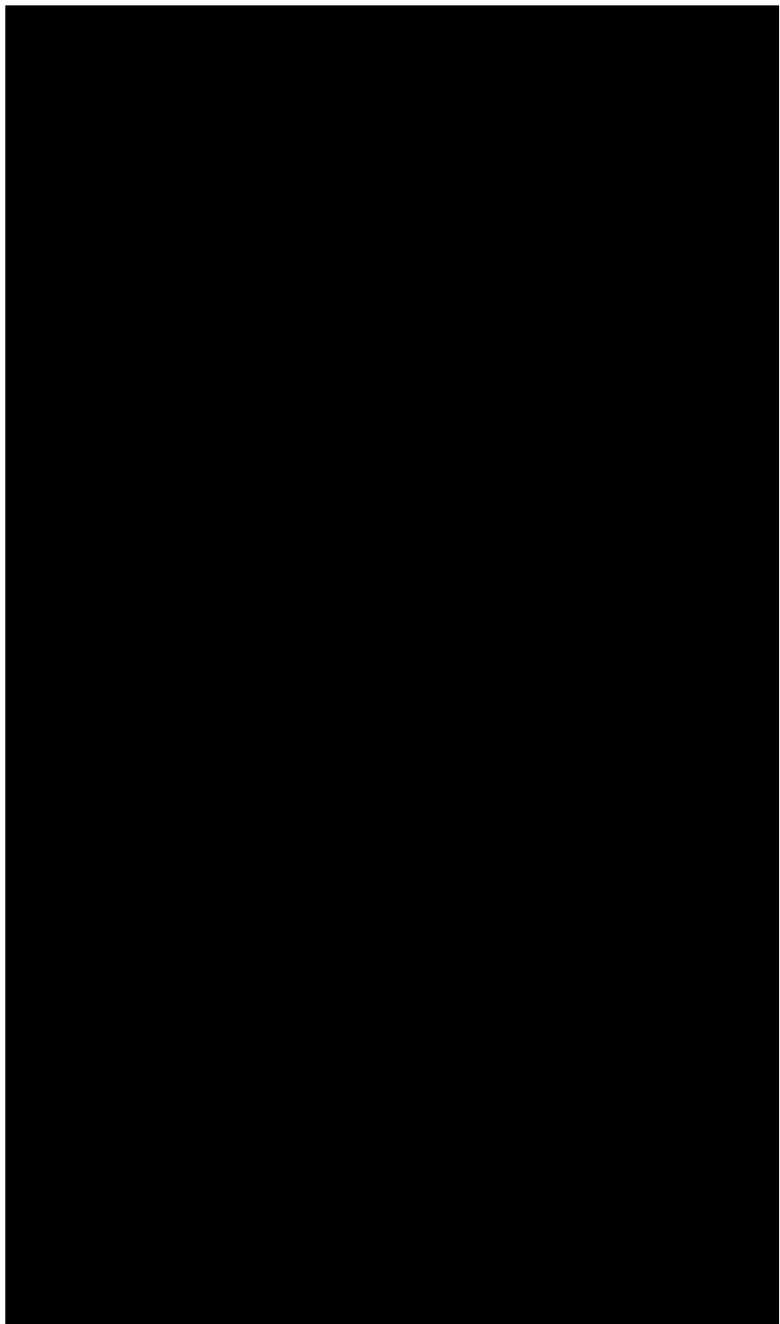




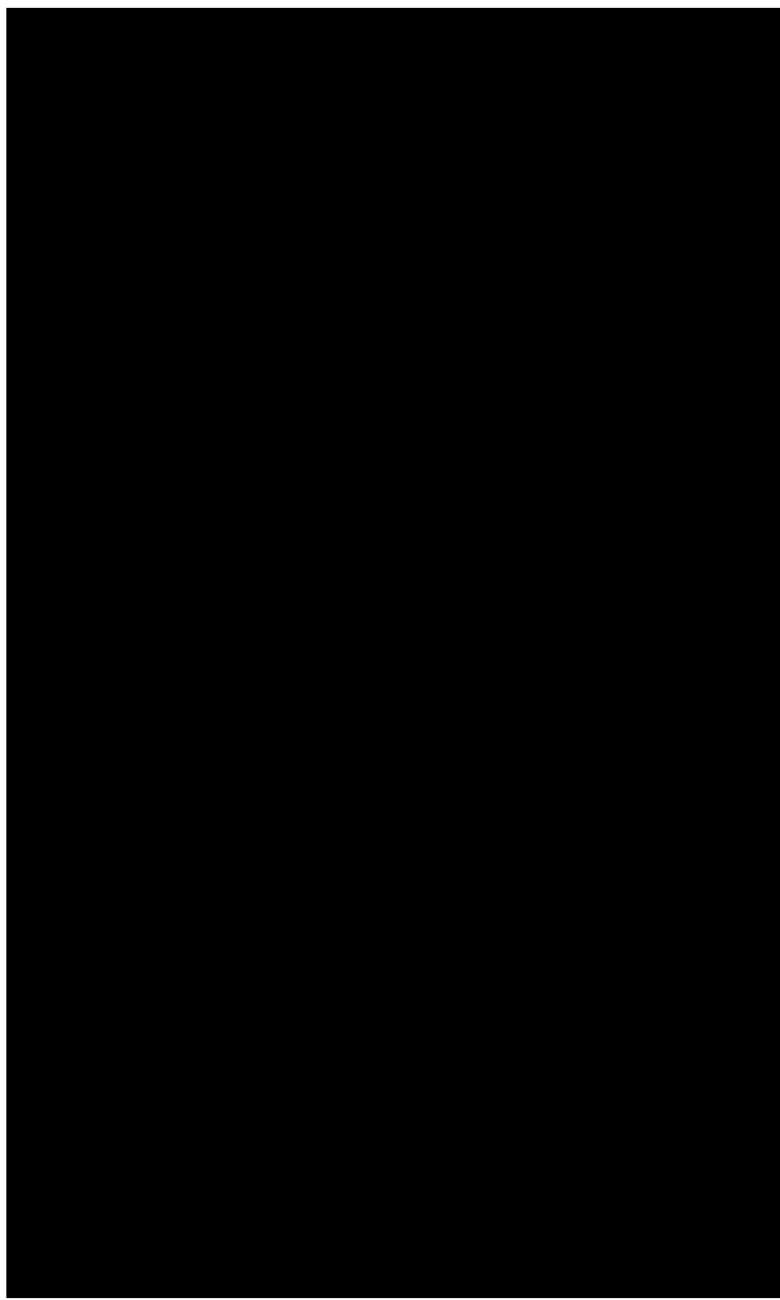


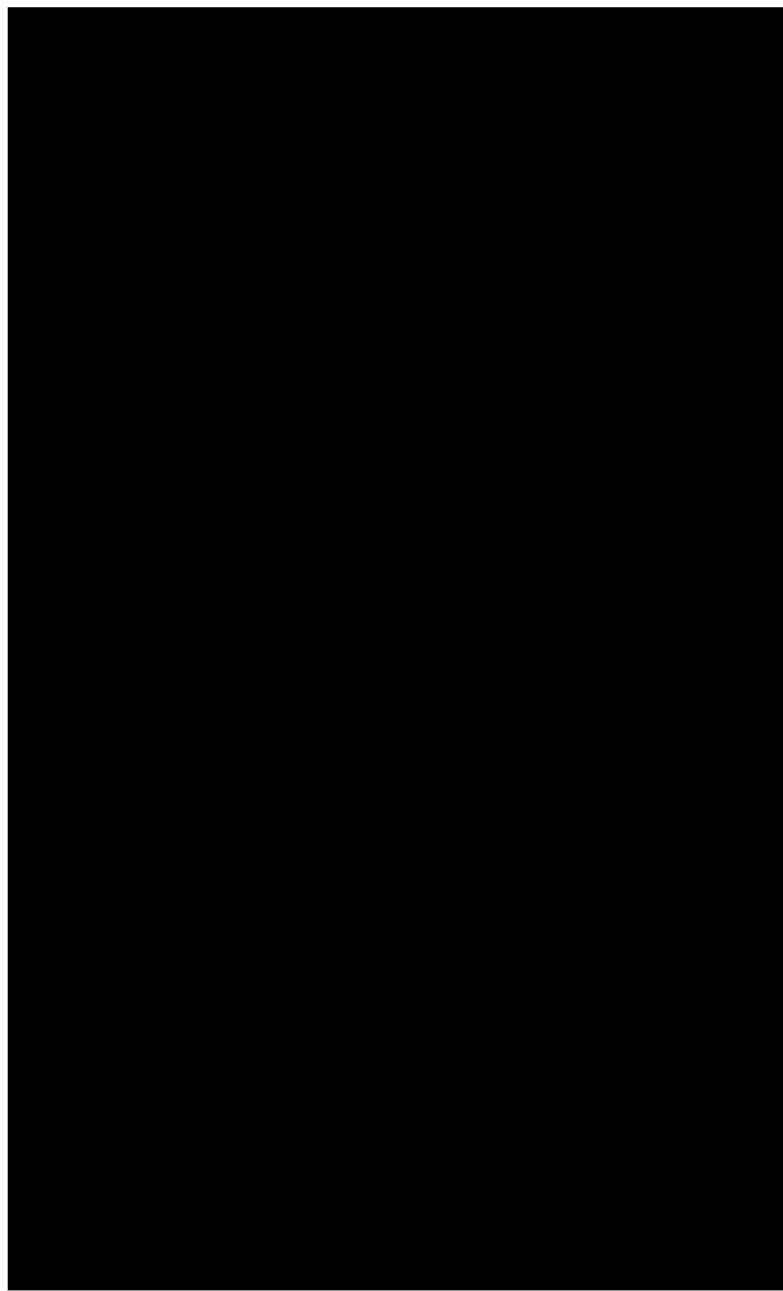


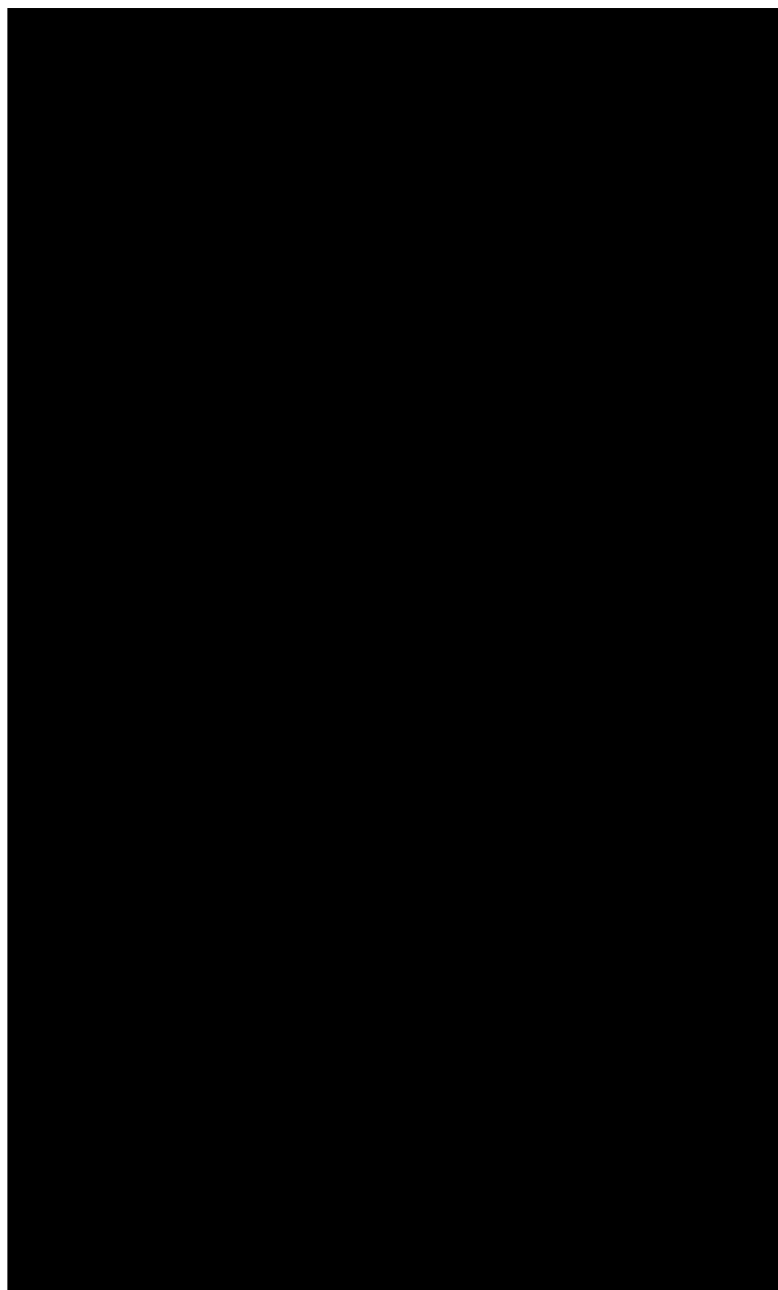


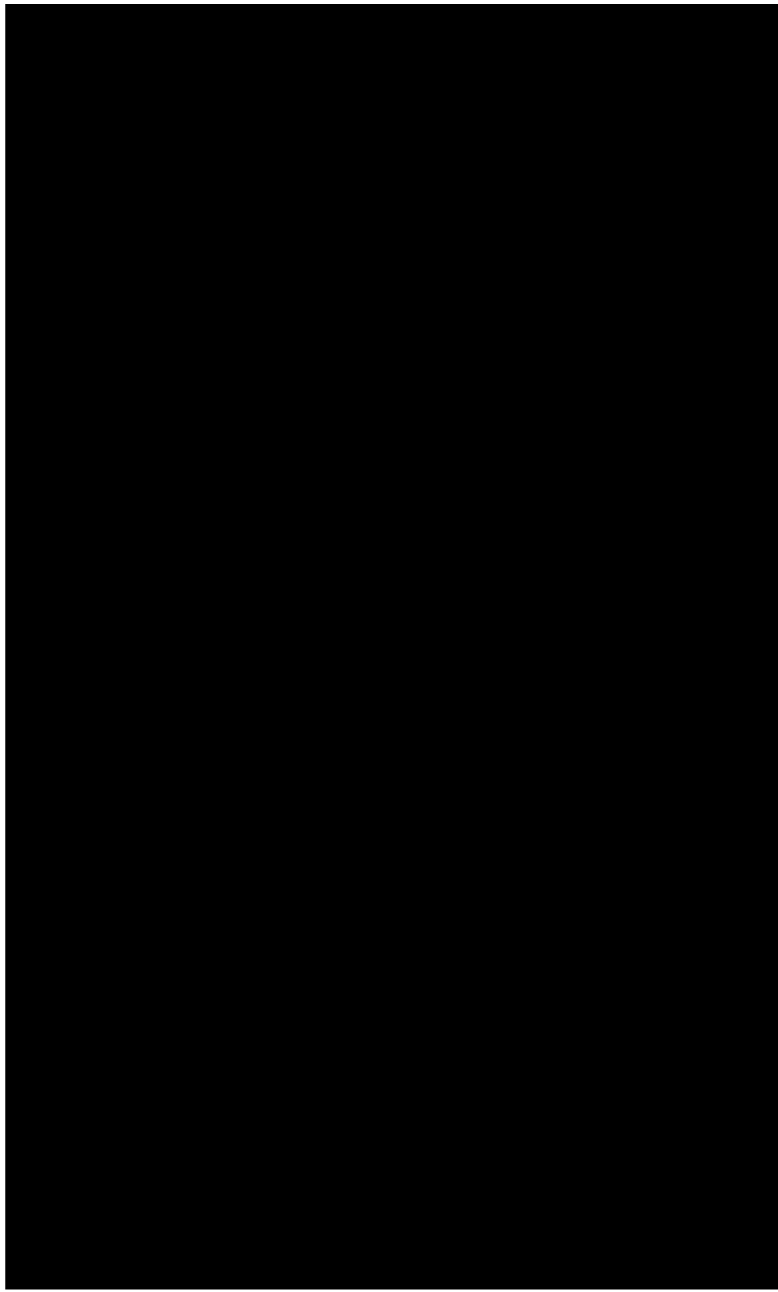


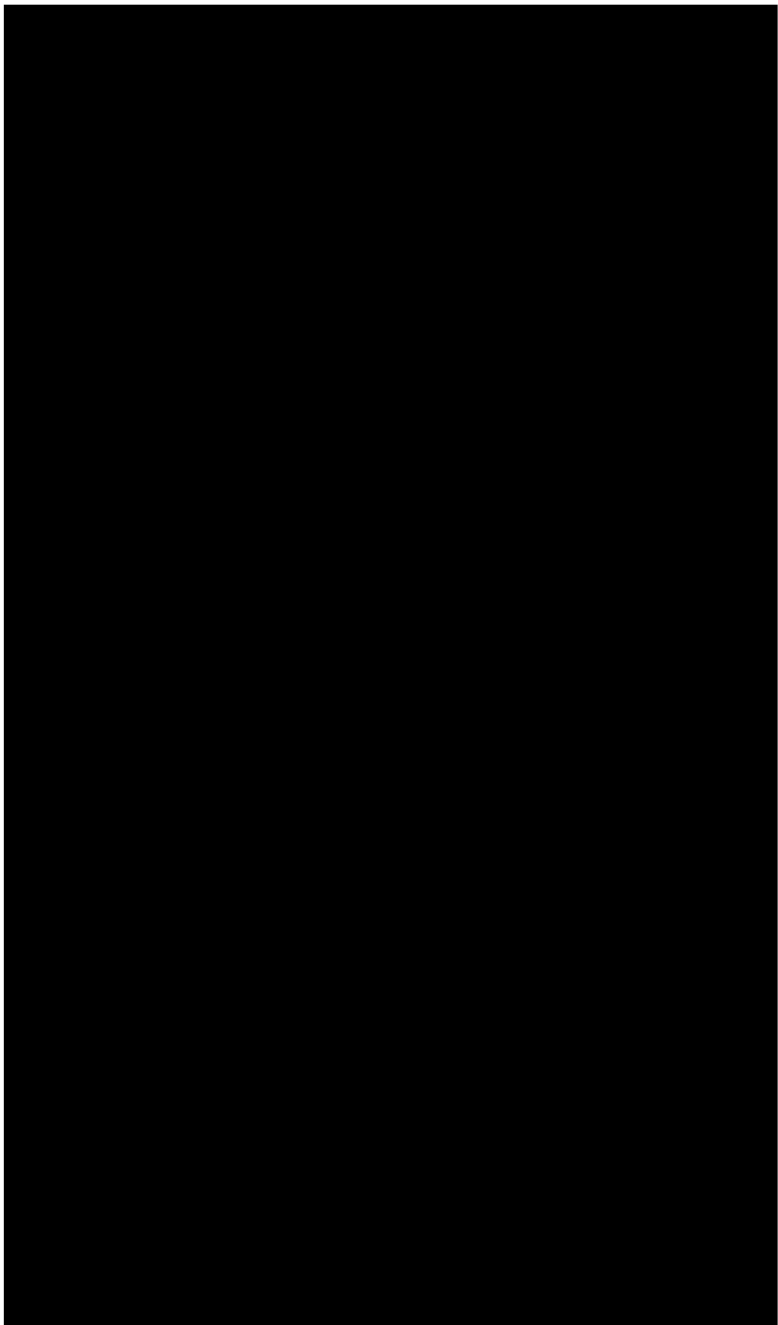


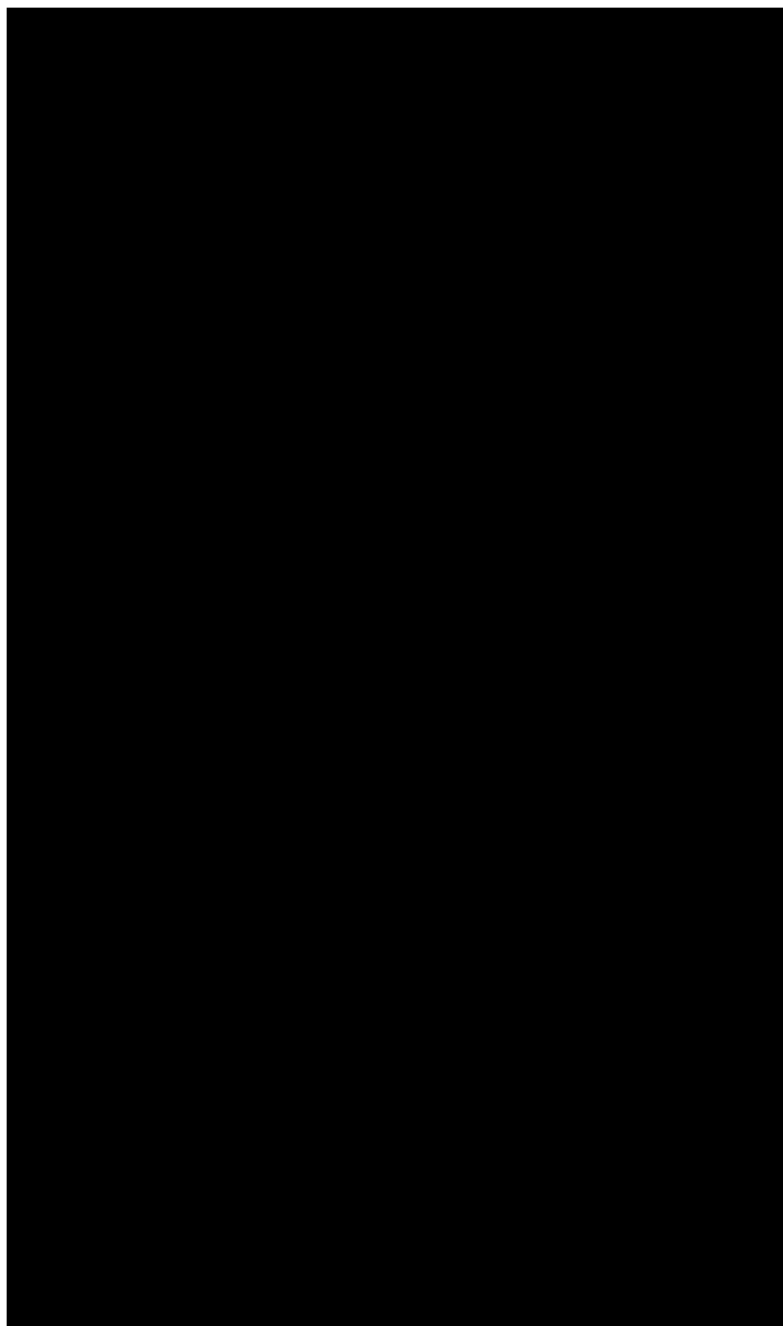


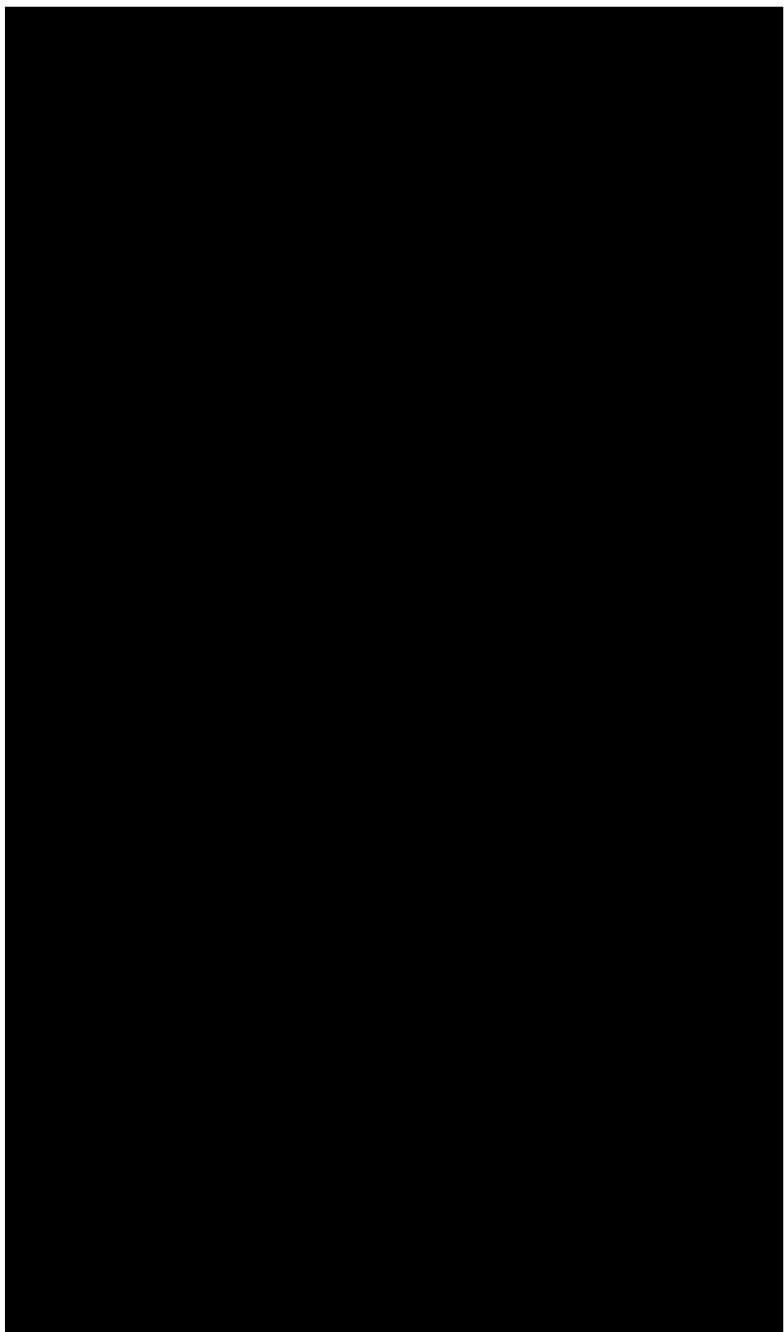


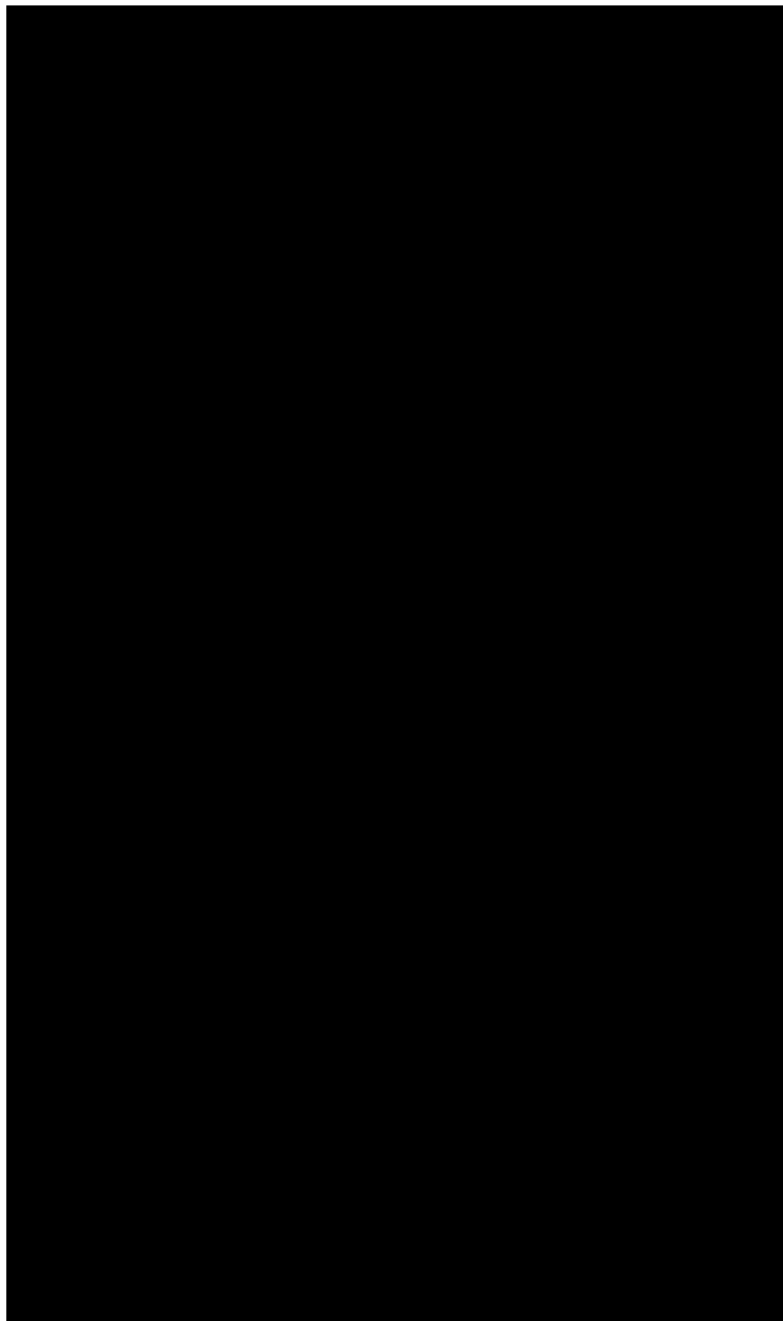


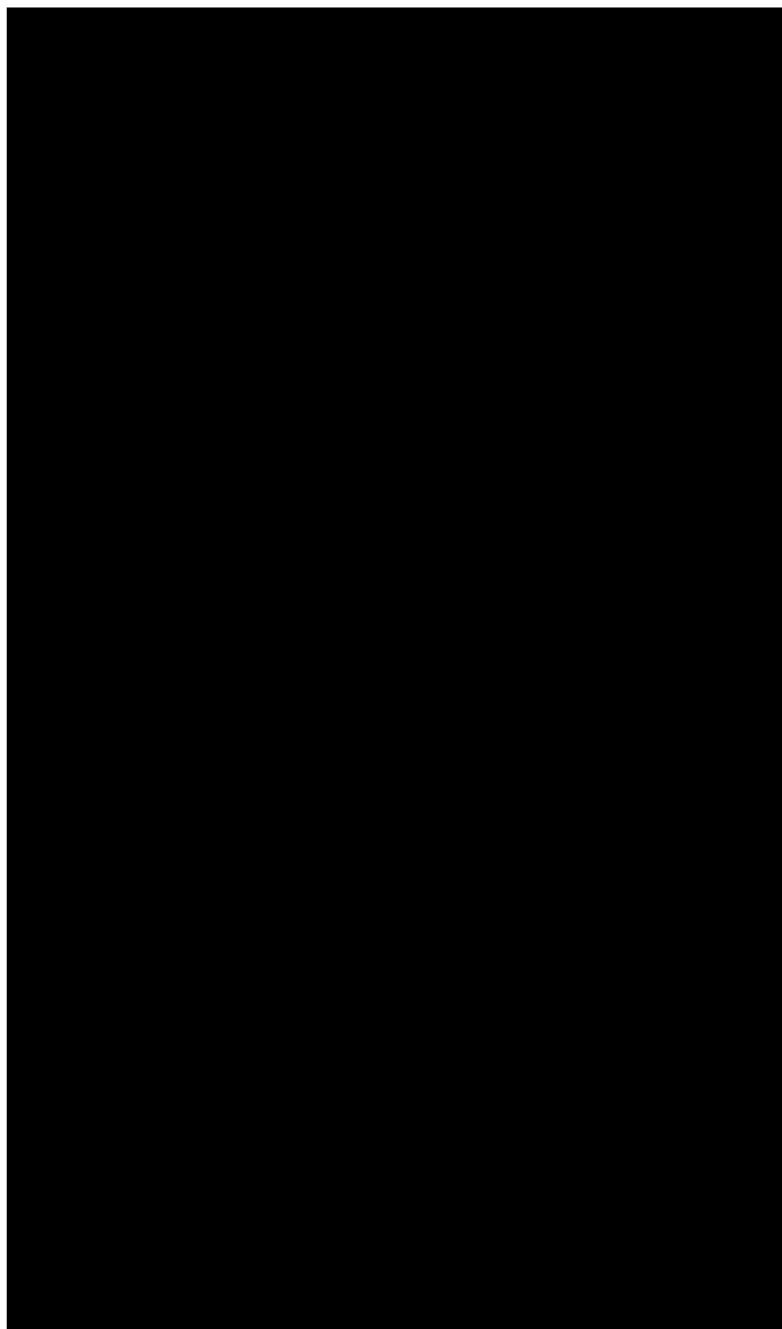


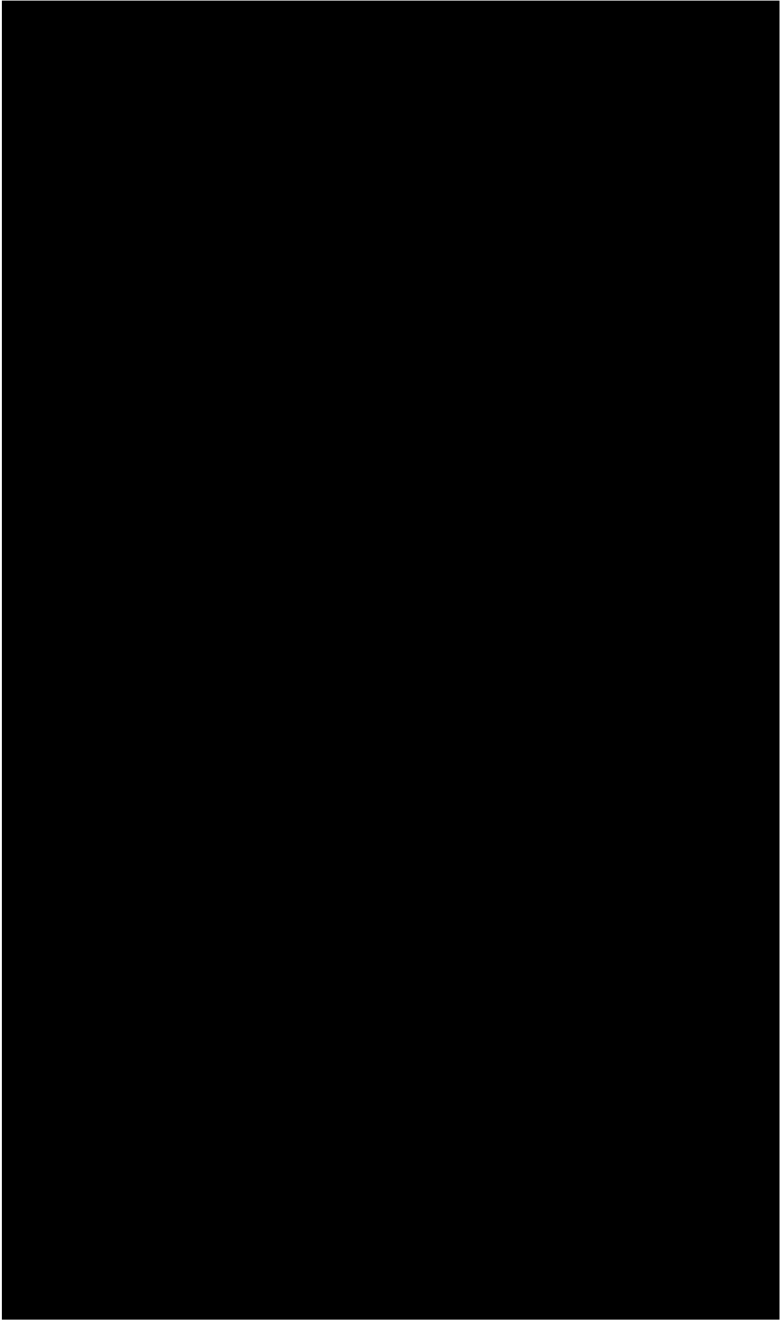


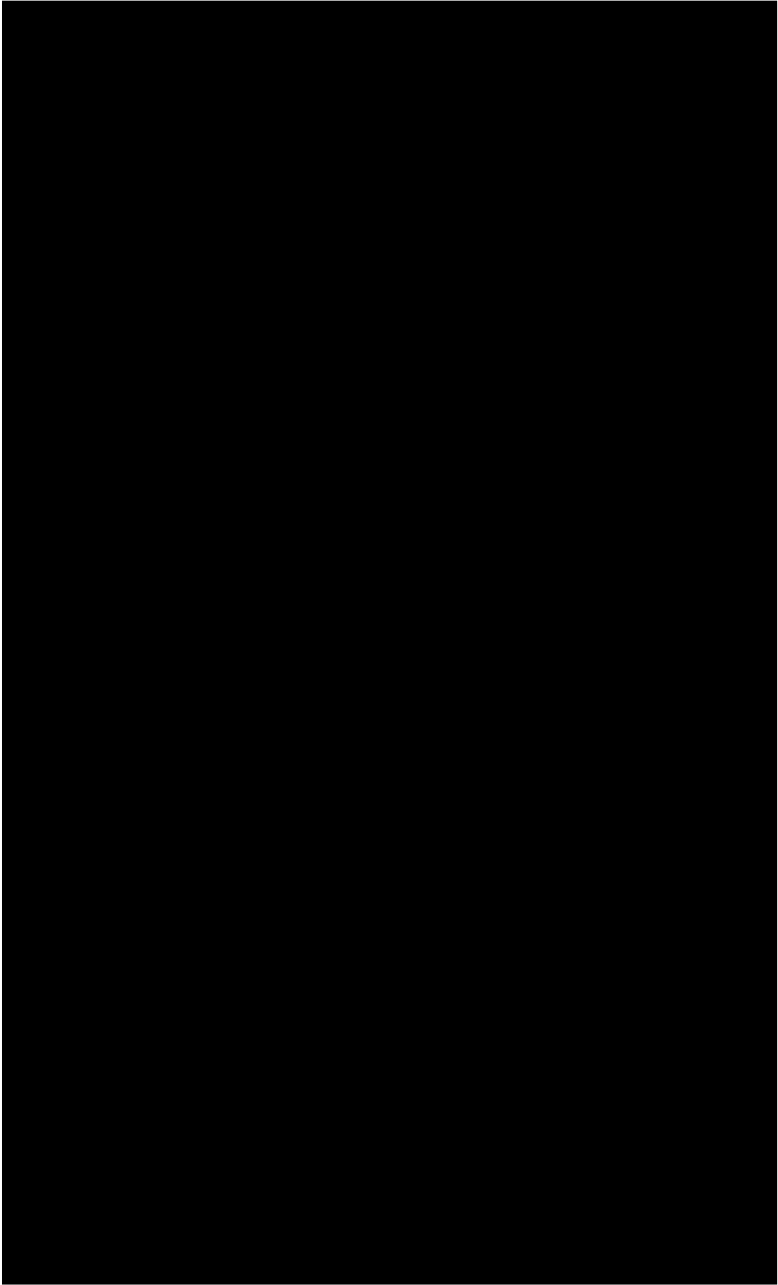


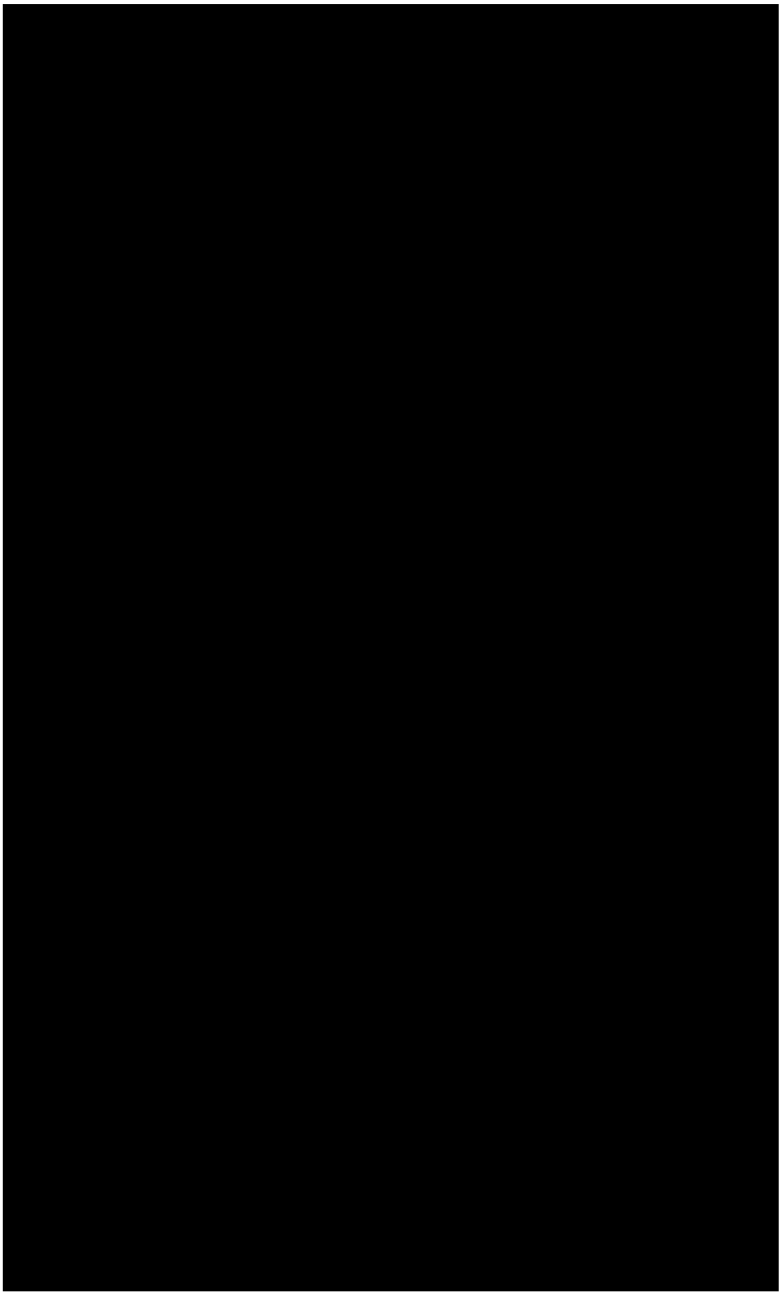


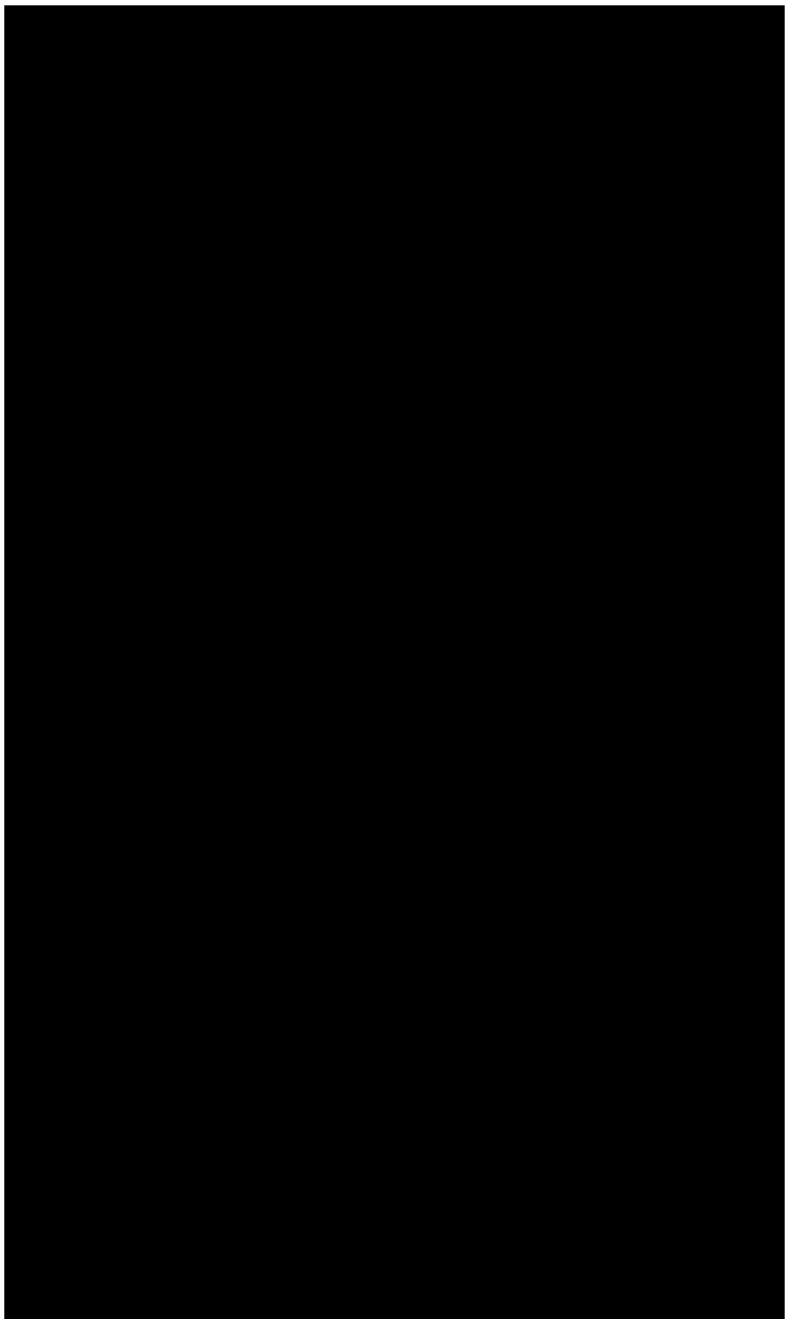




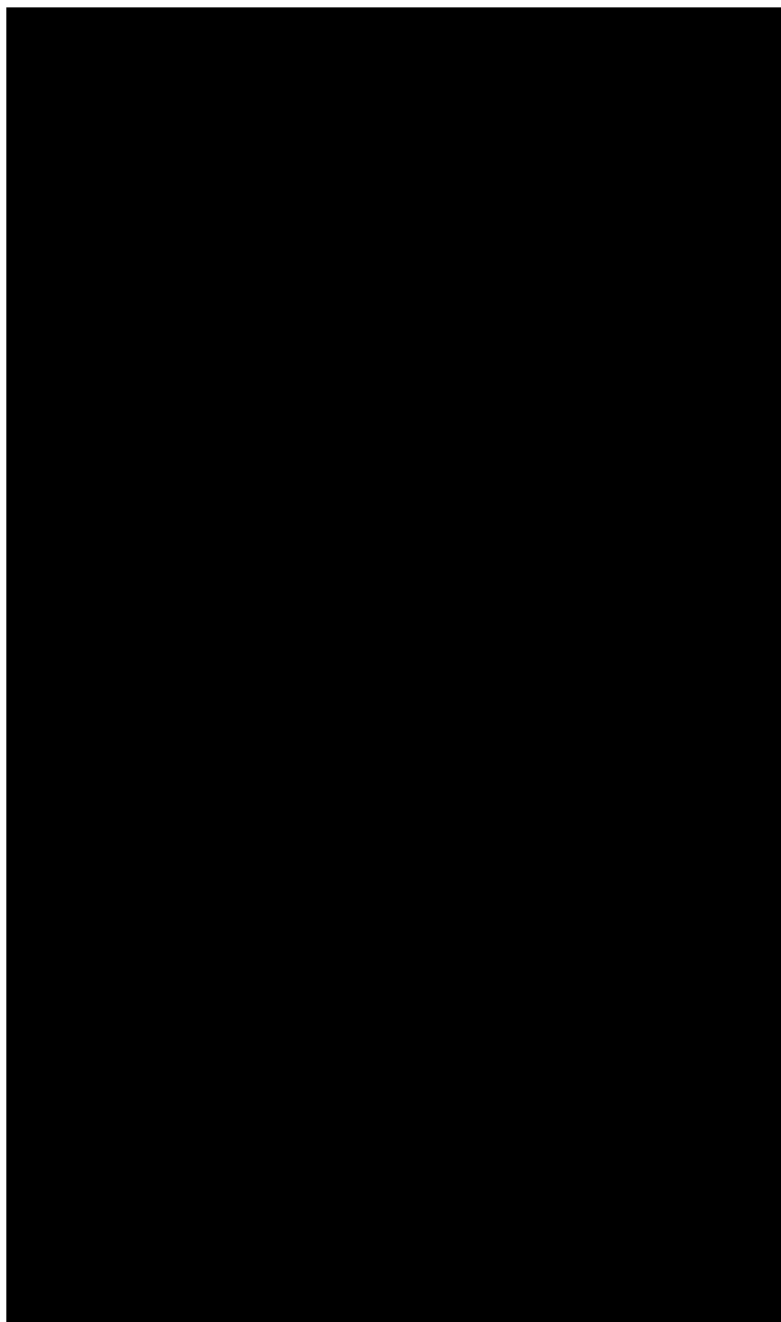


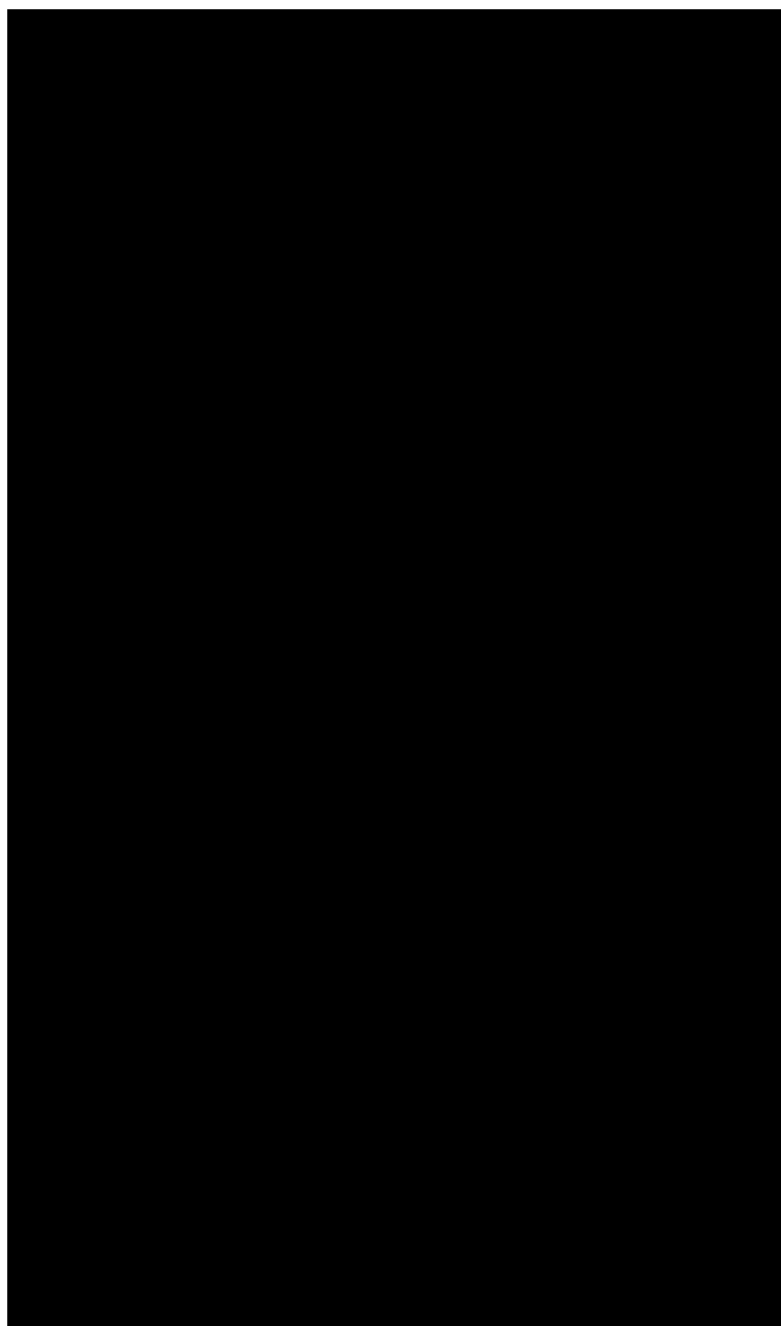


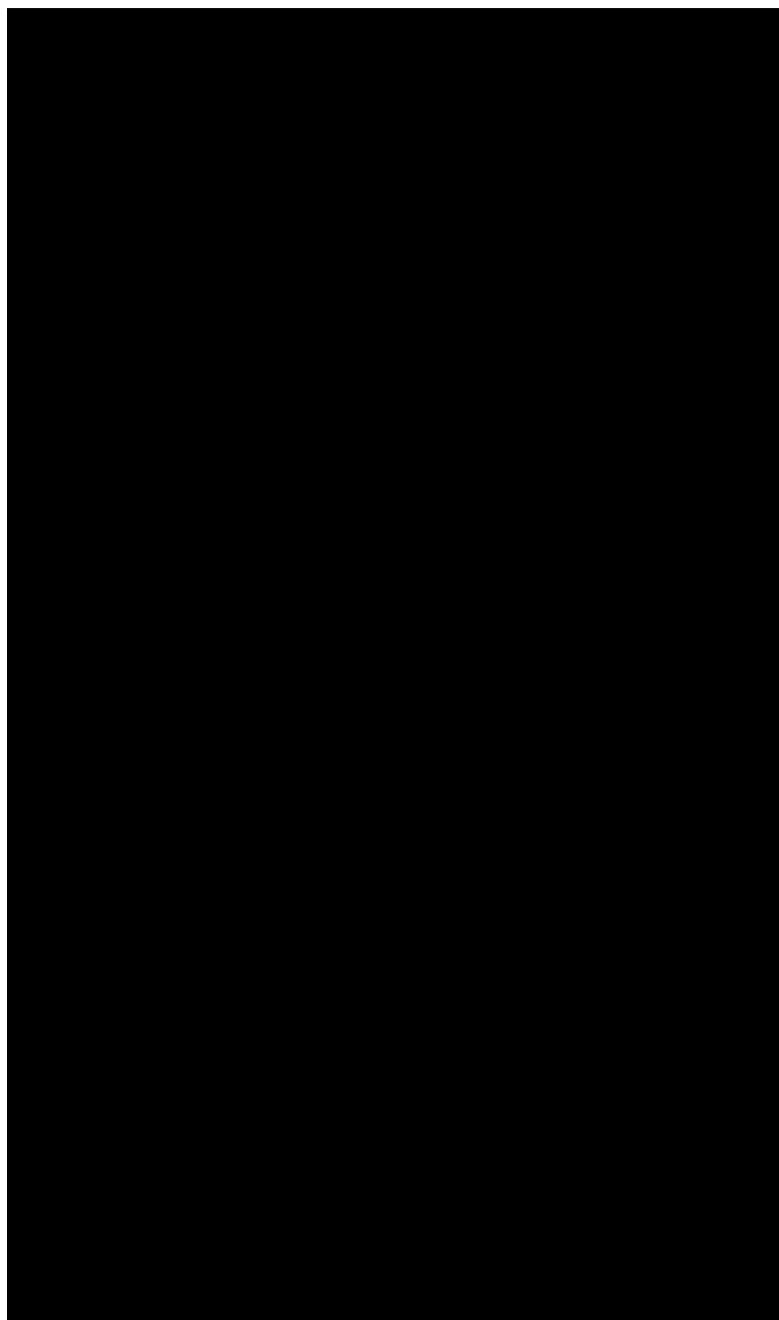


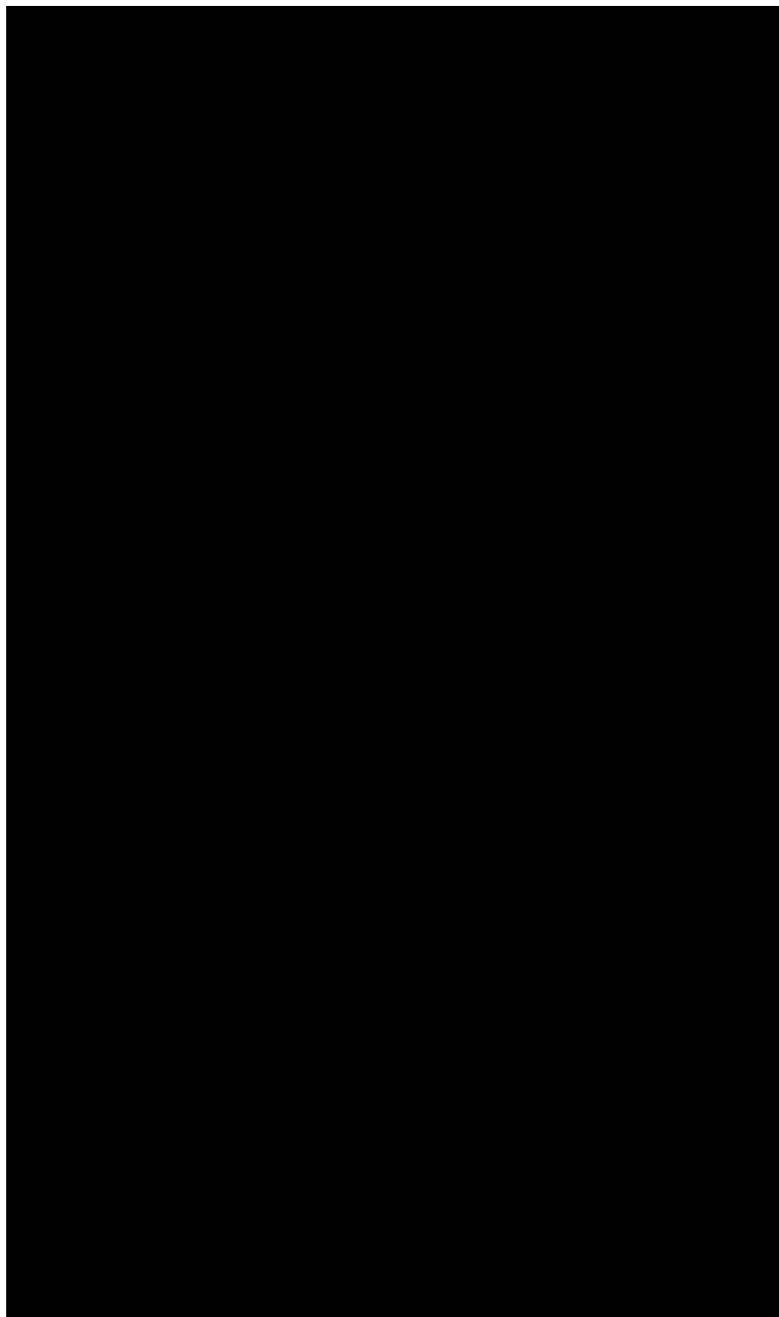


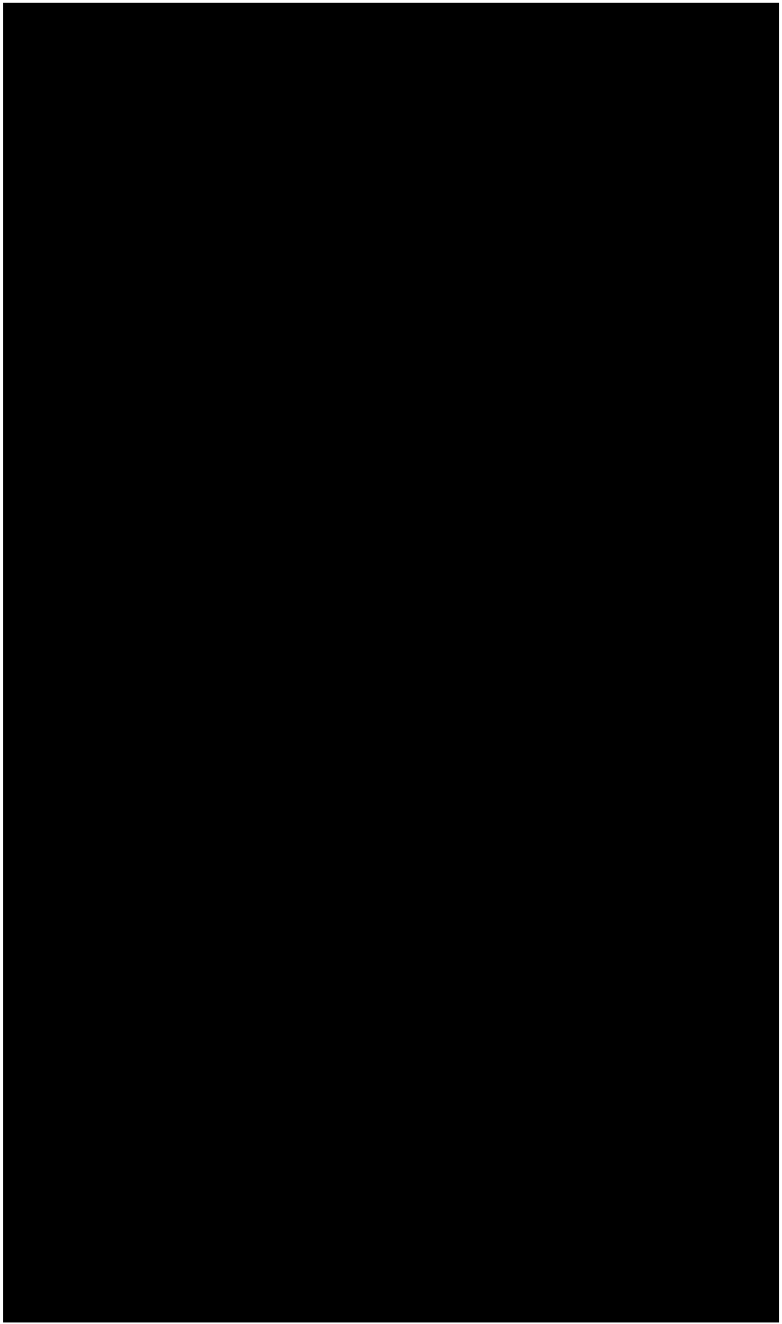


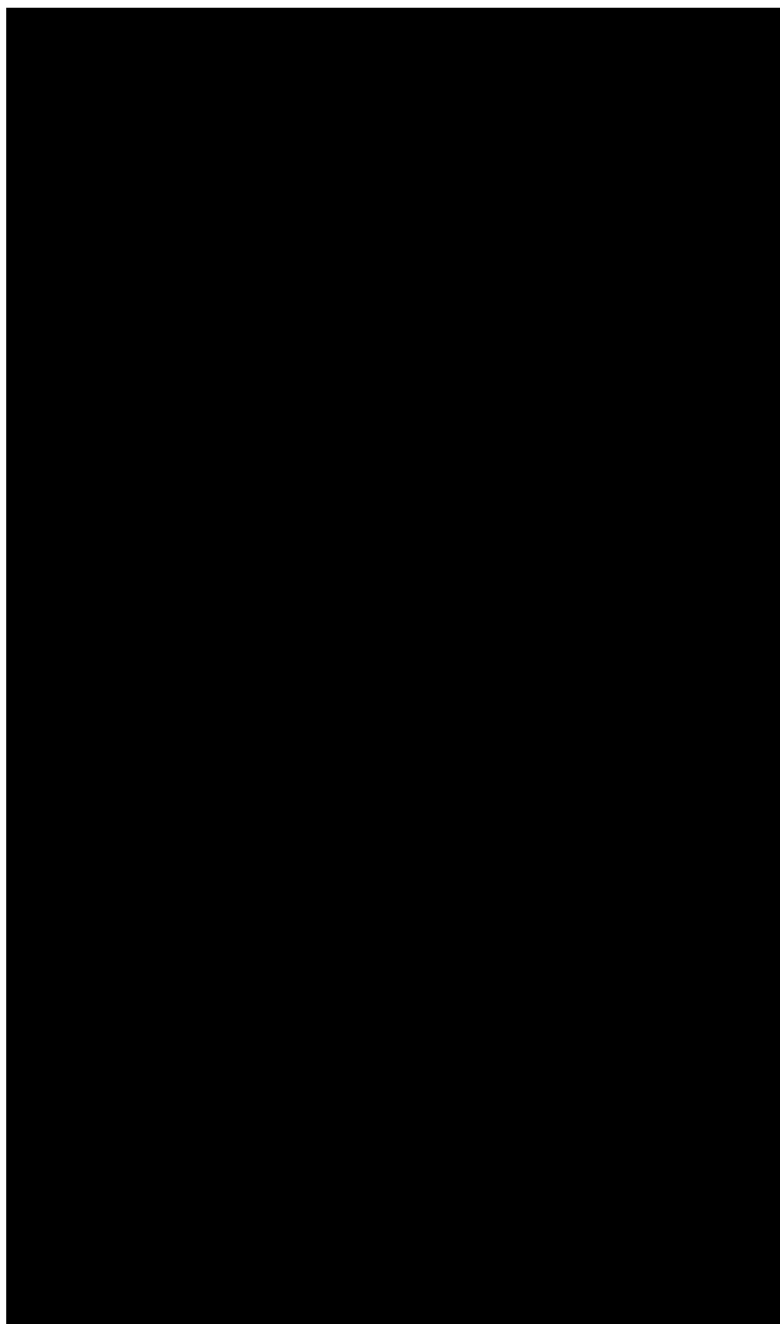


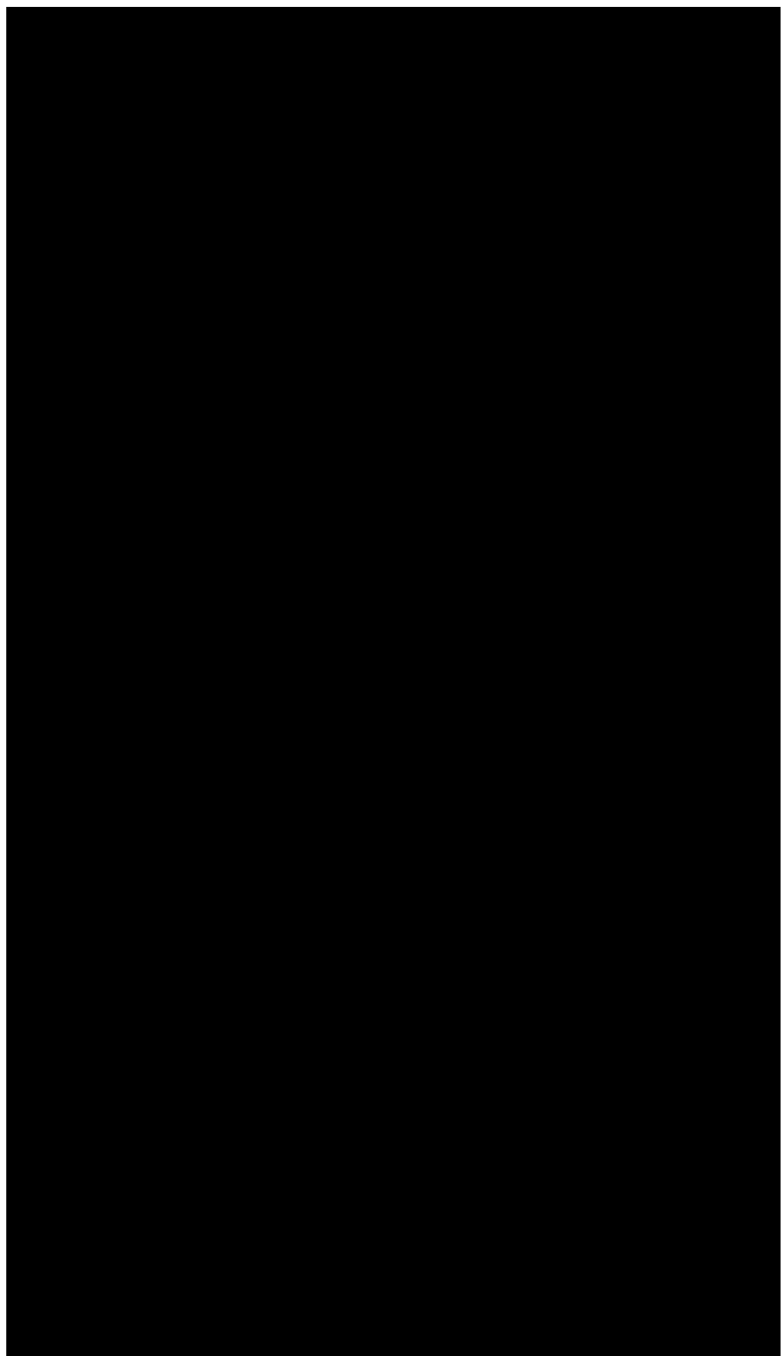


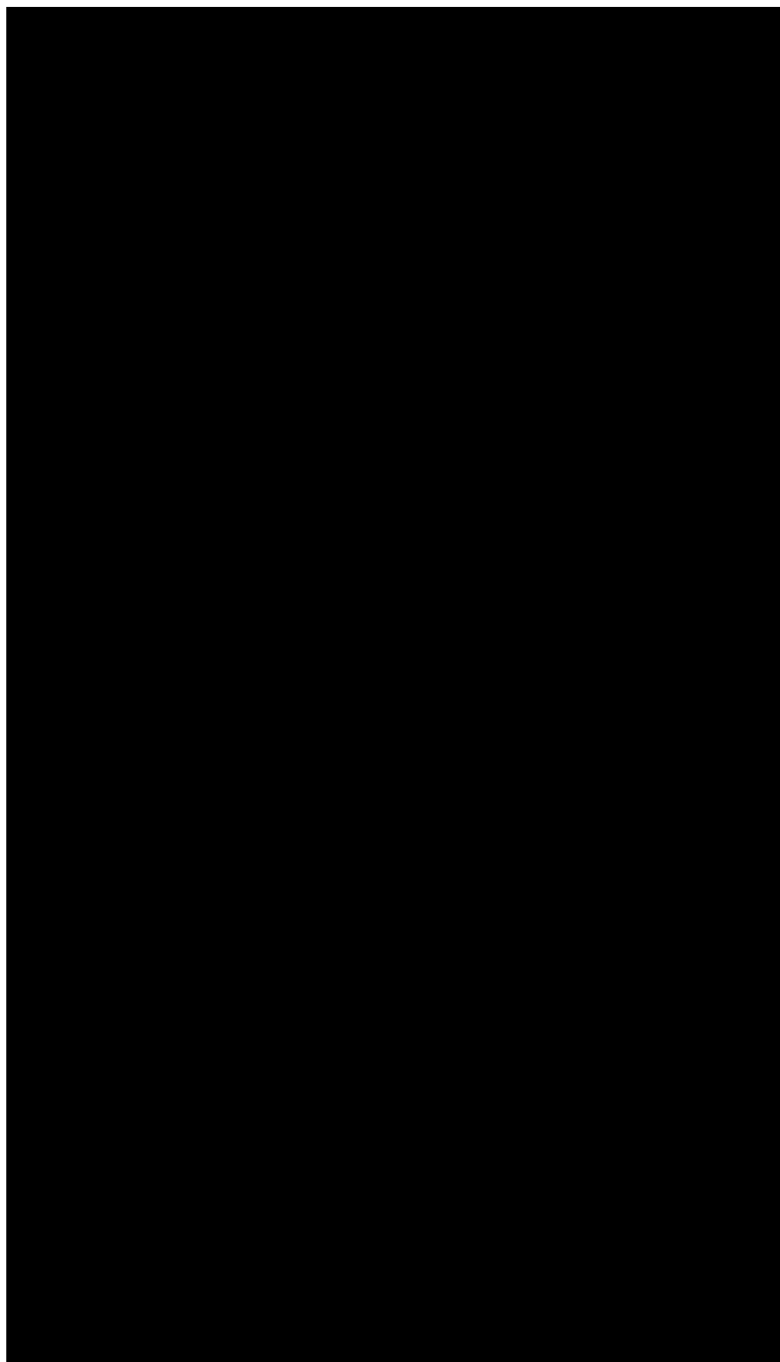


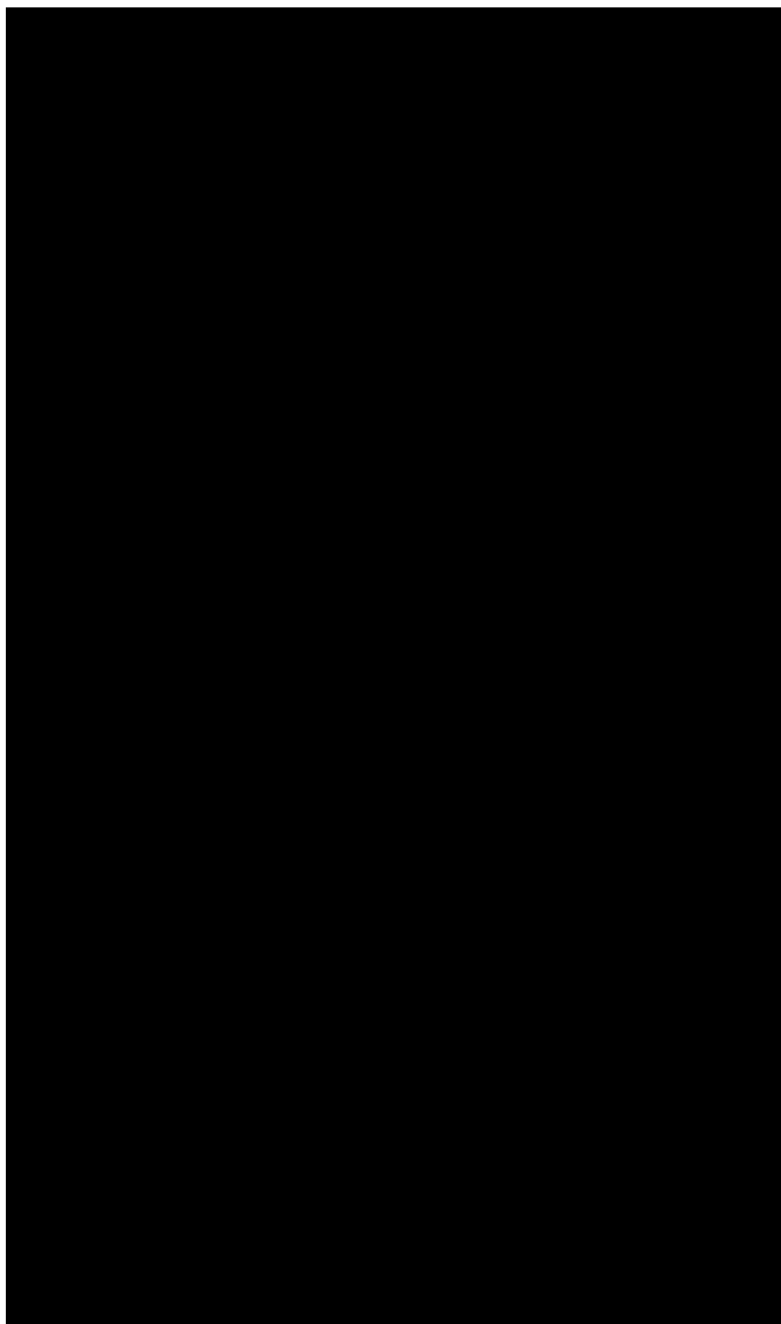


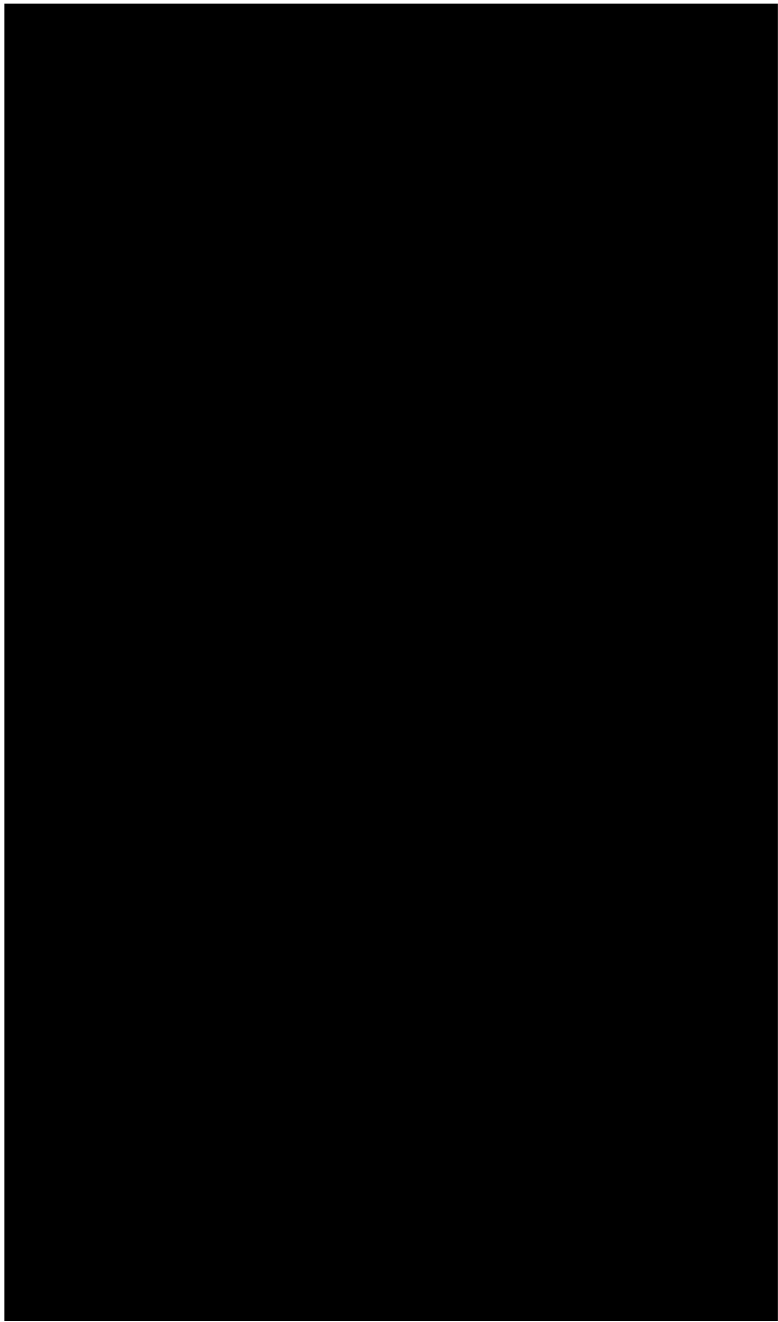


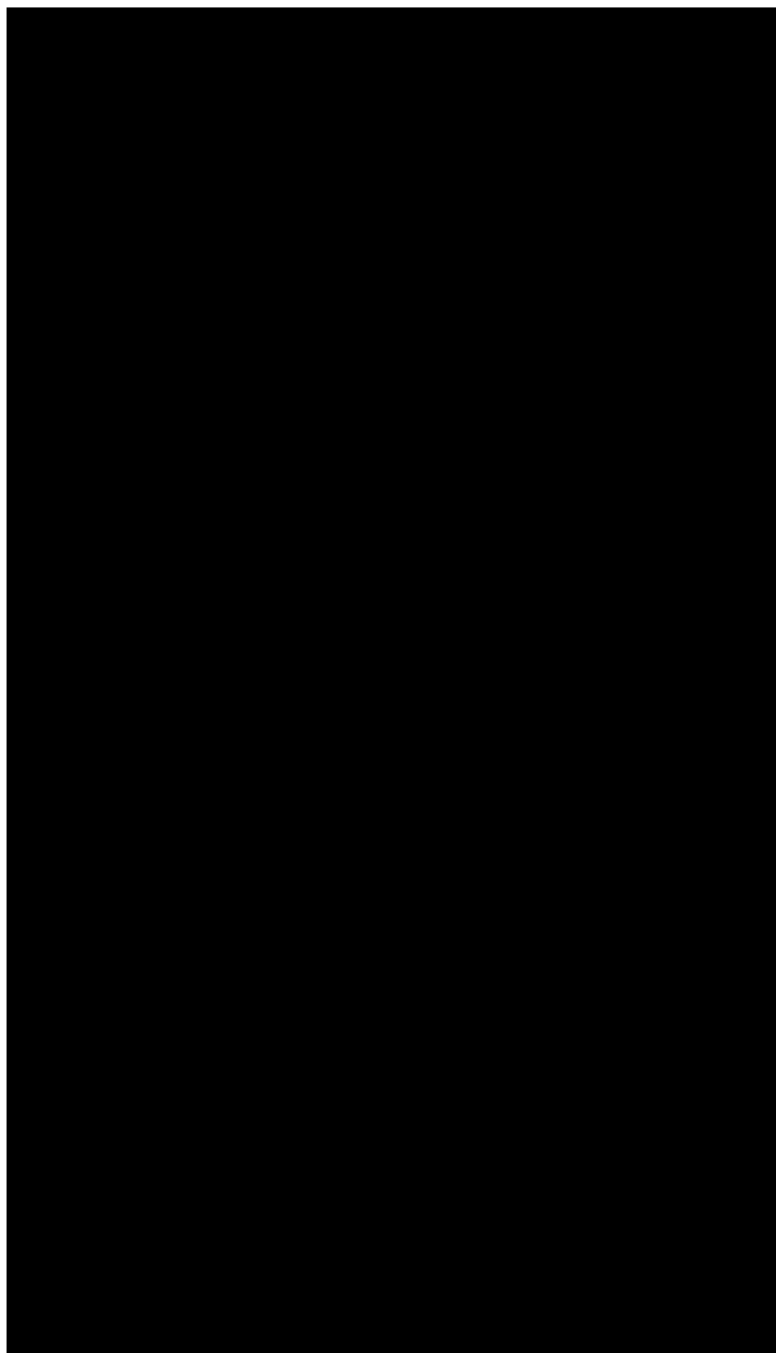




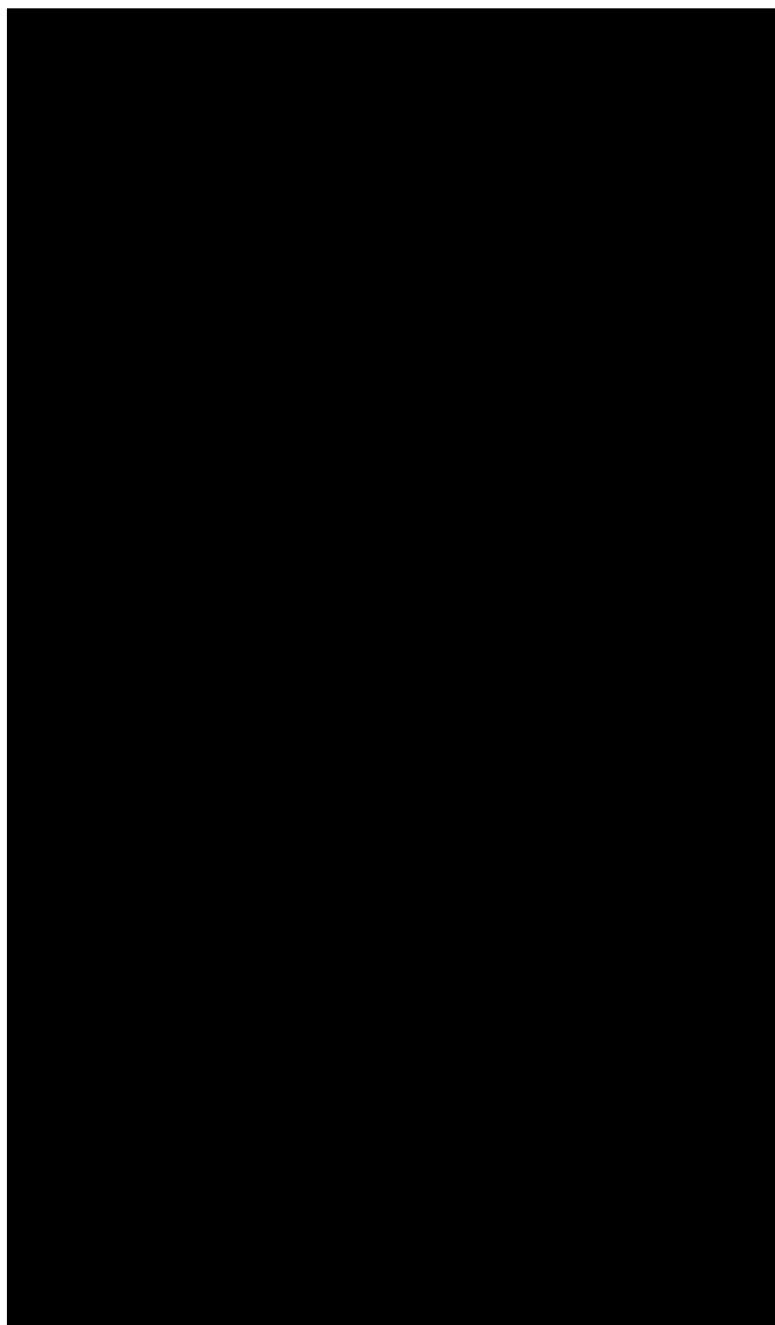


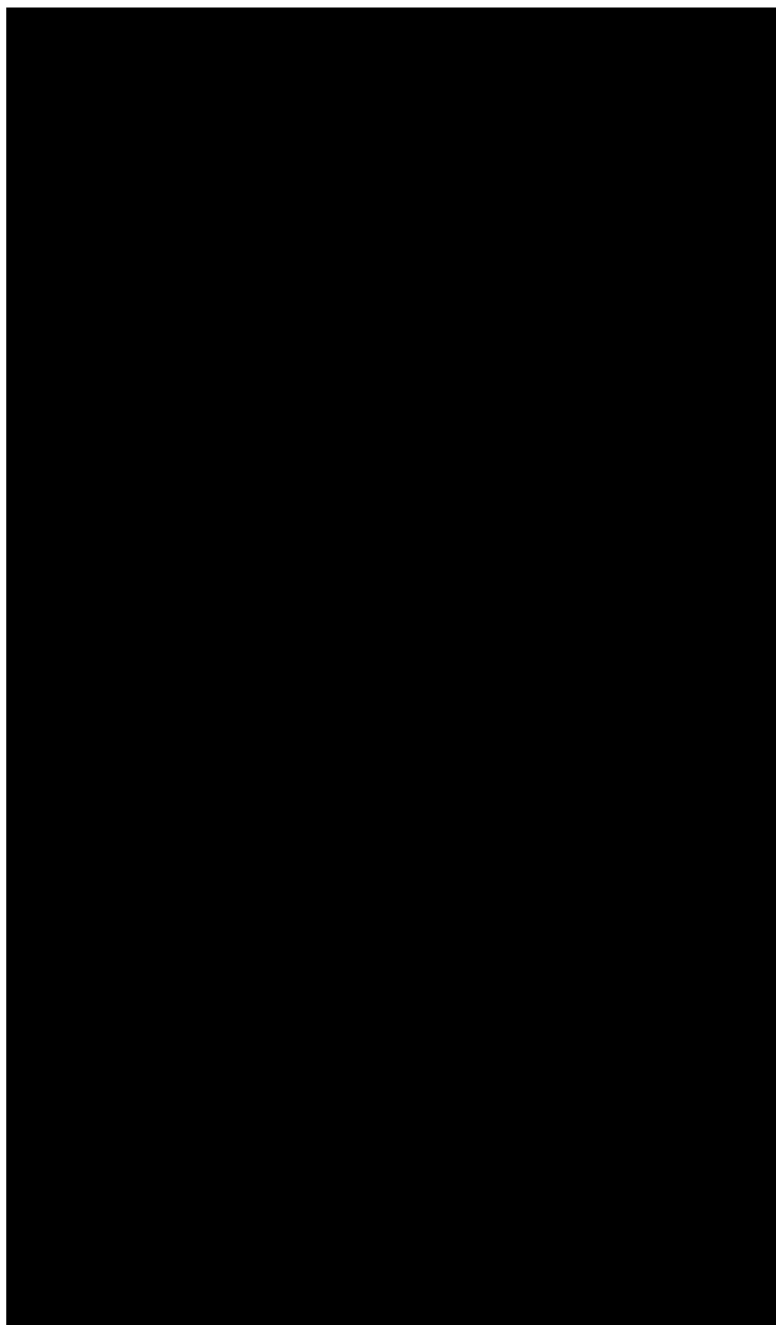


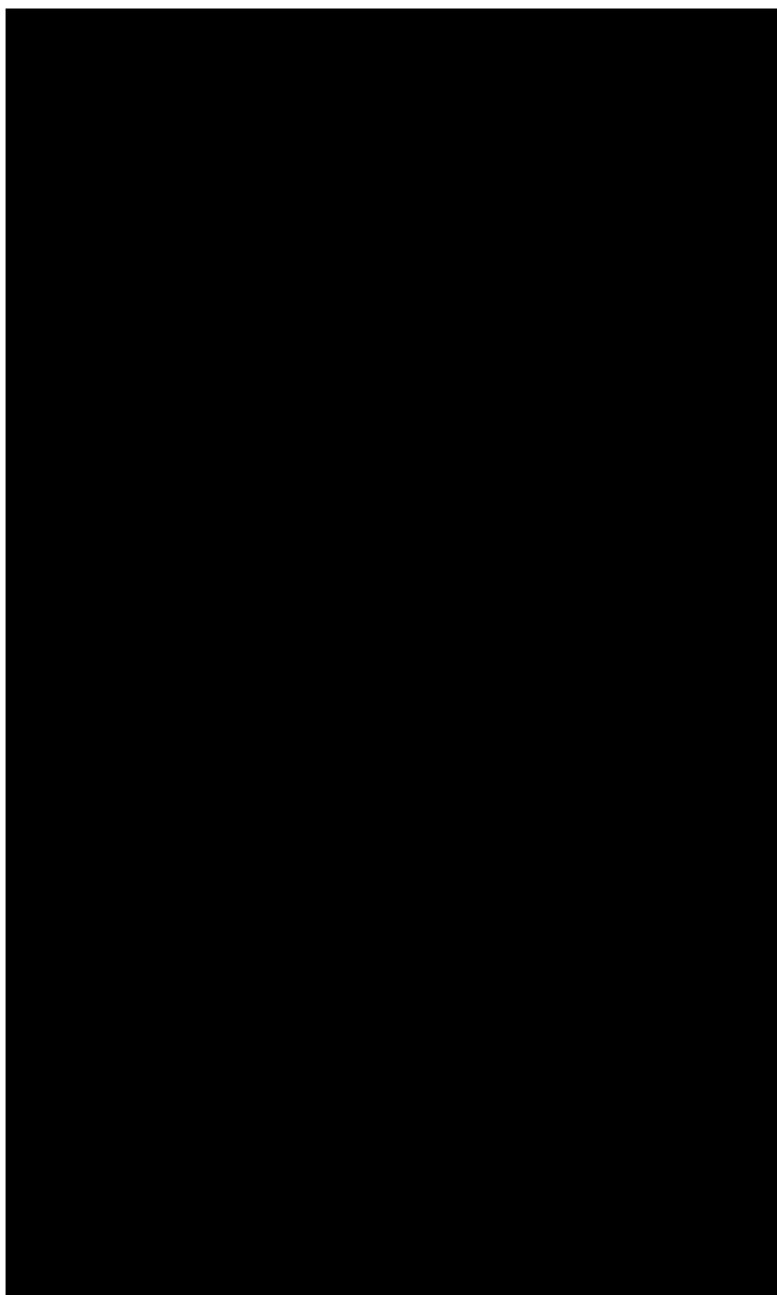


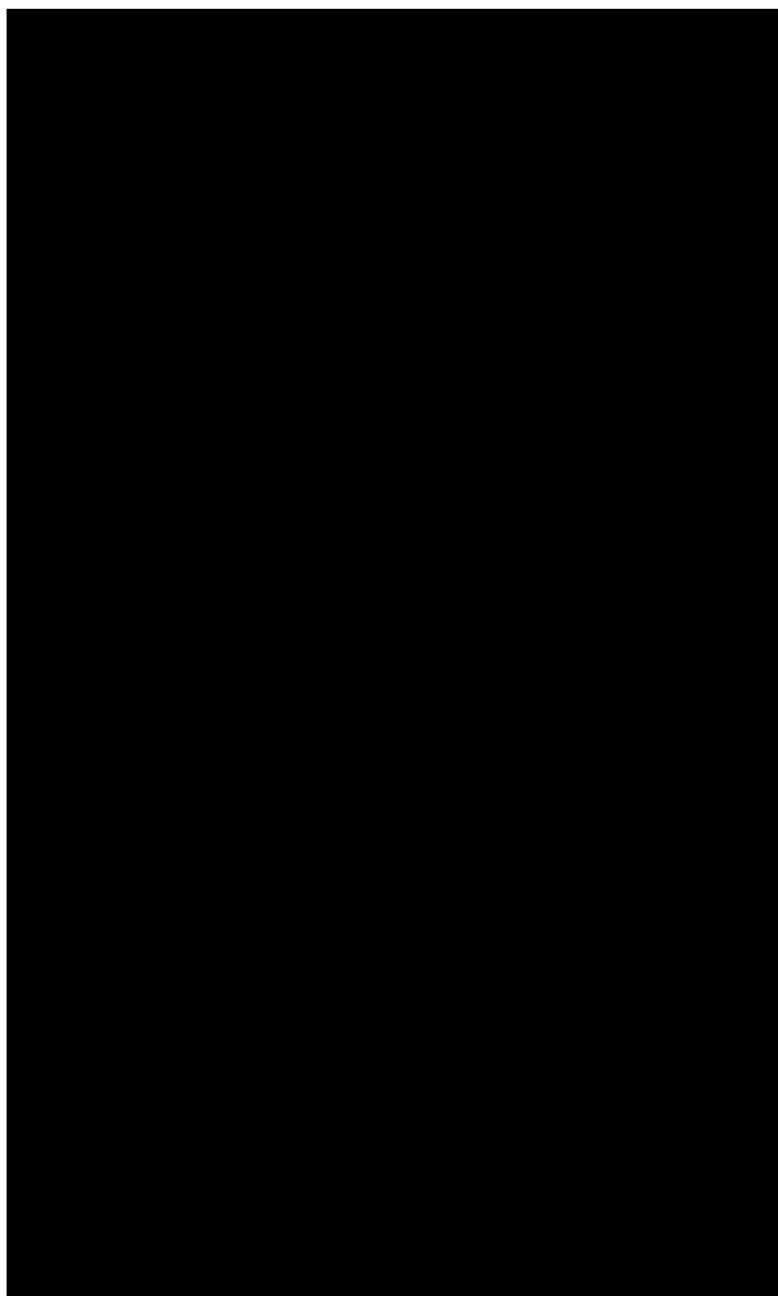


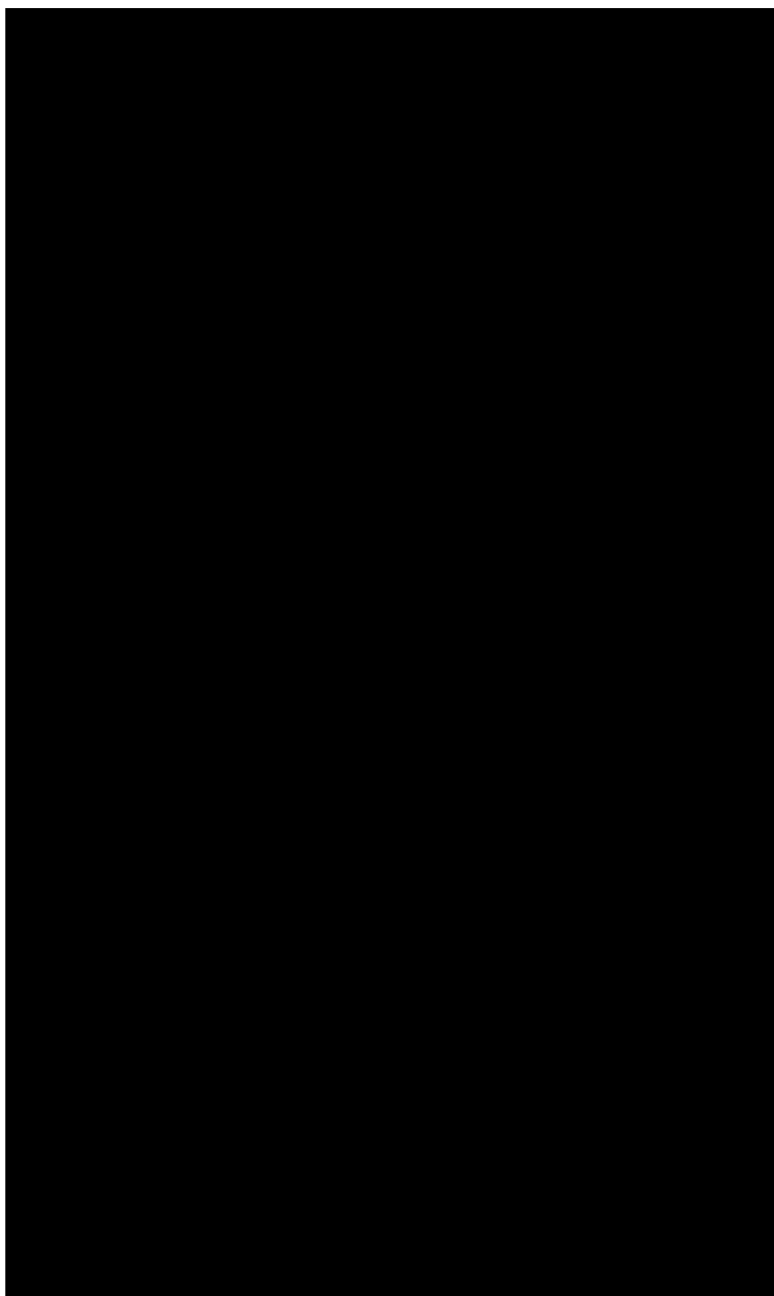


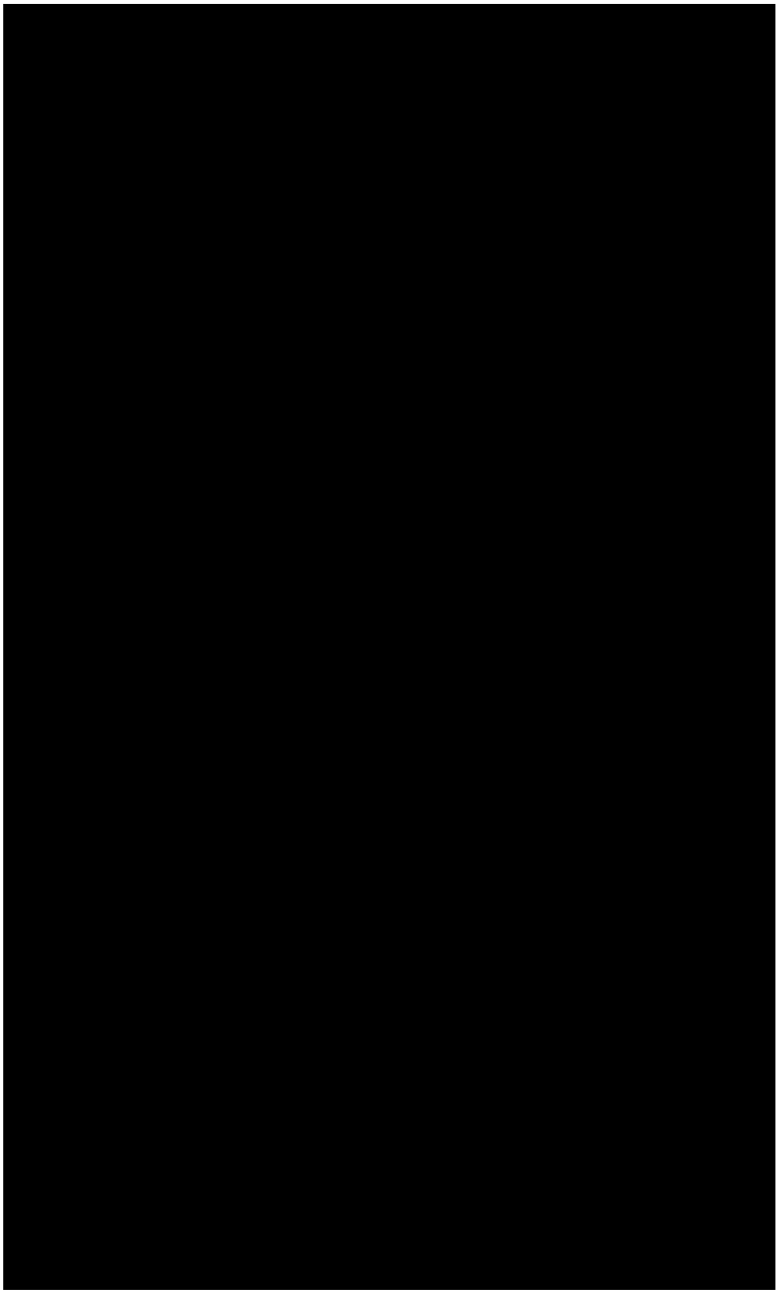




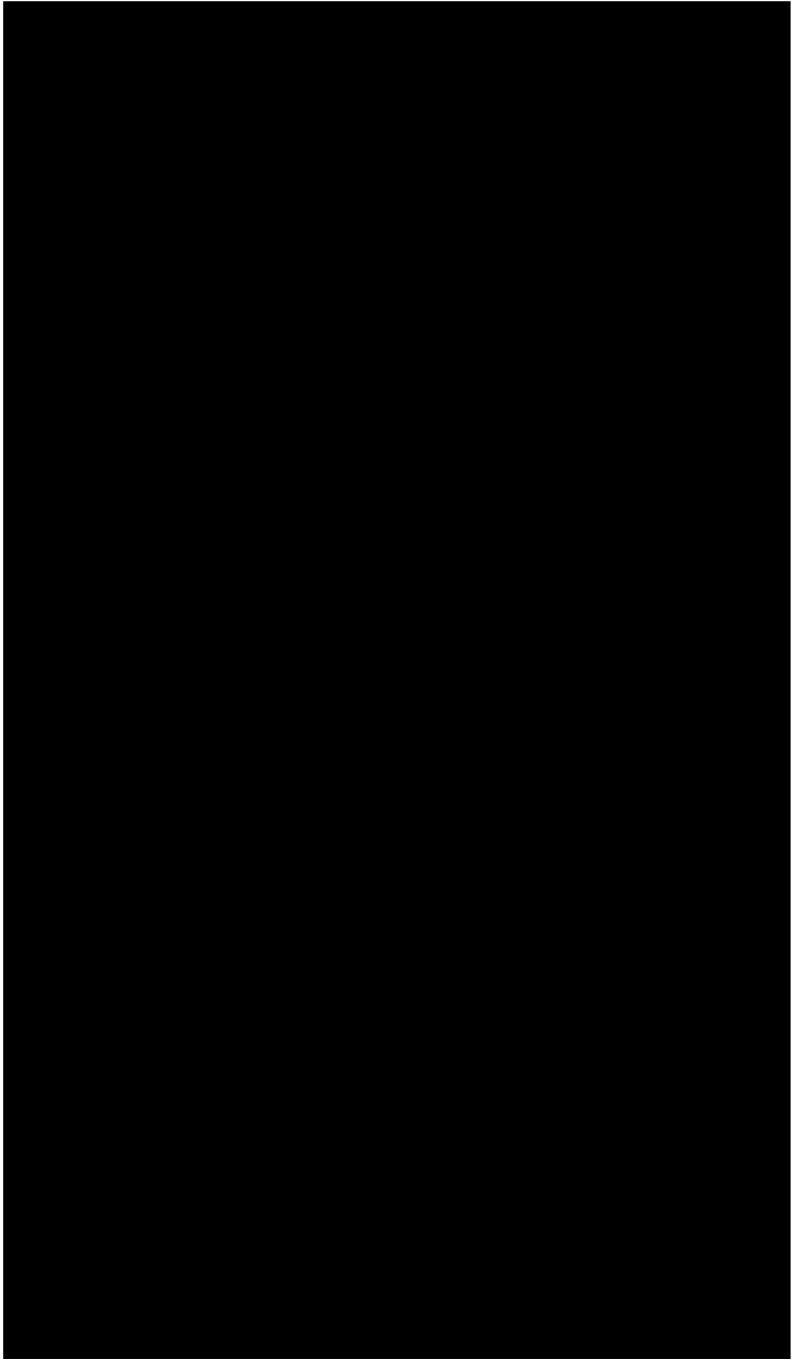


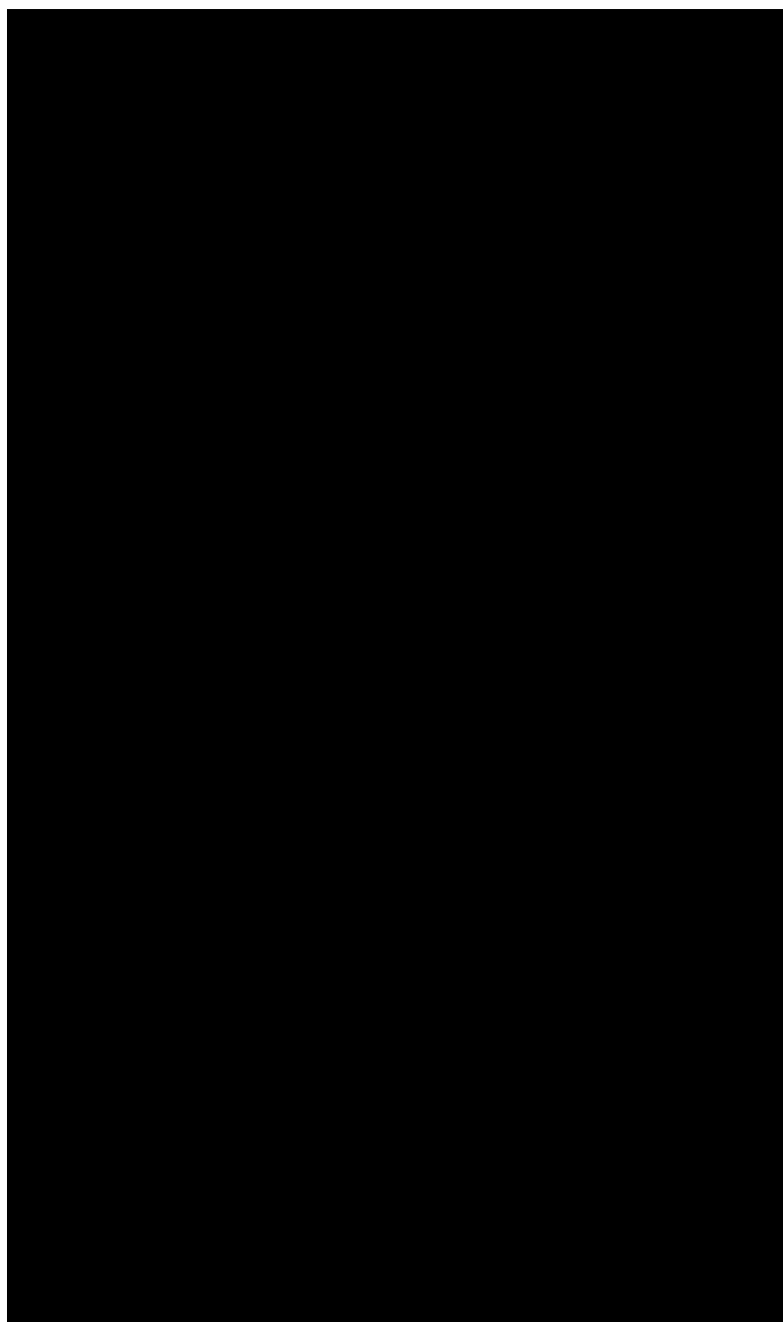












The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This includes not only sales and purchases but also expenses, transfers, and adjustments.

The second part of the document provides a detailed breakdown of the accounting cycle. It outlines the ten steps involved in the process, from identifying the accounting entity to preparing financial statements. Each step is explained in detail, with examples provided to illustrate the concepts.

The third part of the document focuses on the classification of accounts. It discusses the different types of accounts, such as assets, liabilities, equity, revenues, and expenses, and how they are used to record and summarize business transactions.

The fourth part of the document covers the process of journalizing and posting. It explains how transactions are recorded in the journal and then transferred to the ledger accounts. This process is essential for maintaining the double-entry system and ensuring that the books are balanced.

The fifth part of the document discusses the preparation of financial statements. It outlines the steps involved in calculating the net income, preparing the income statement, and determining the ending balances for the balance sheet and equity account.

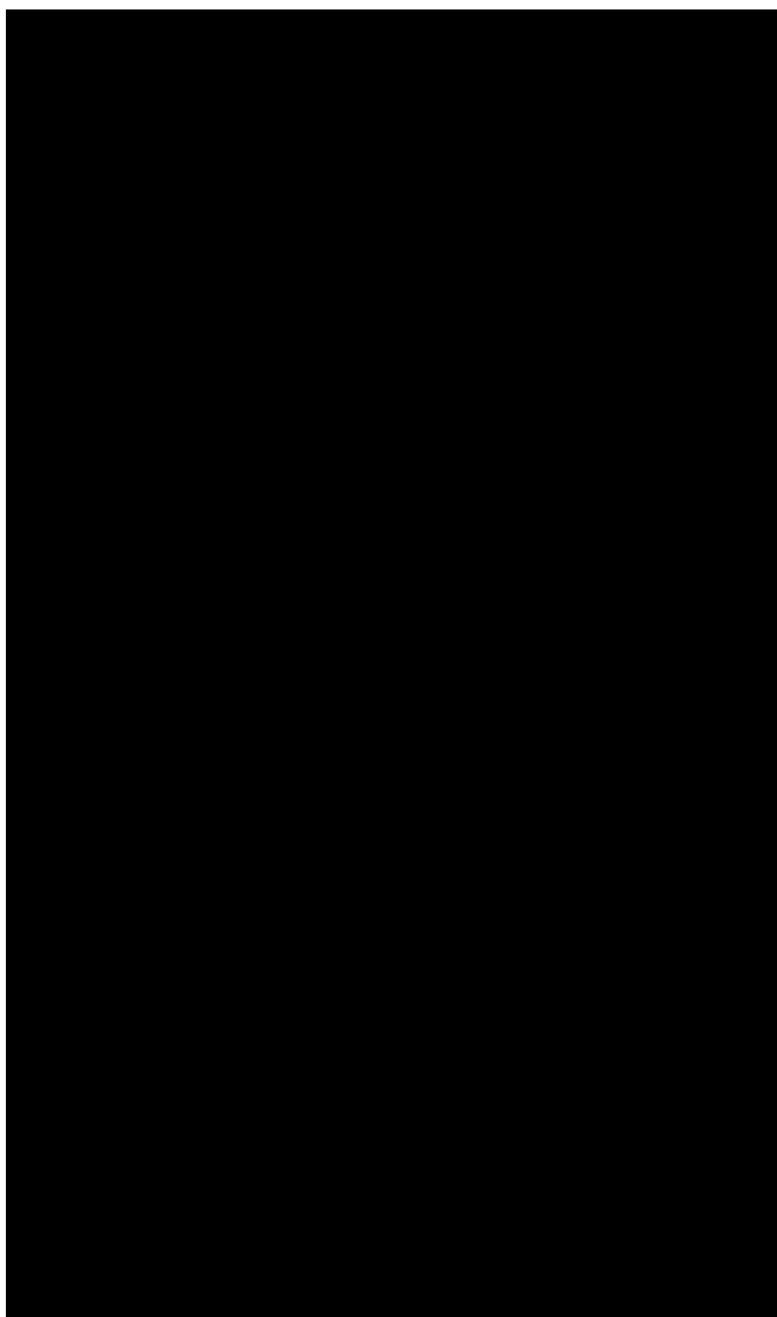
The sixth part of the document covers the process of closing the books. It explains how the temporary accounts (revenues, expenses, and dividends) are closed to the permanent accounts (assets, liabilities, and equity) at the end of the accounting period.

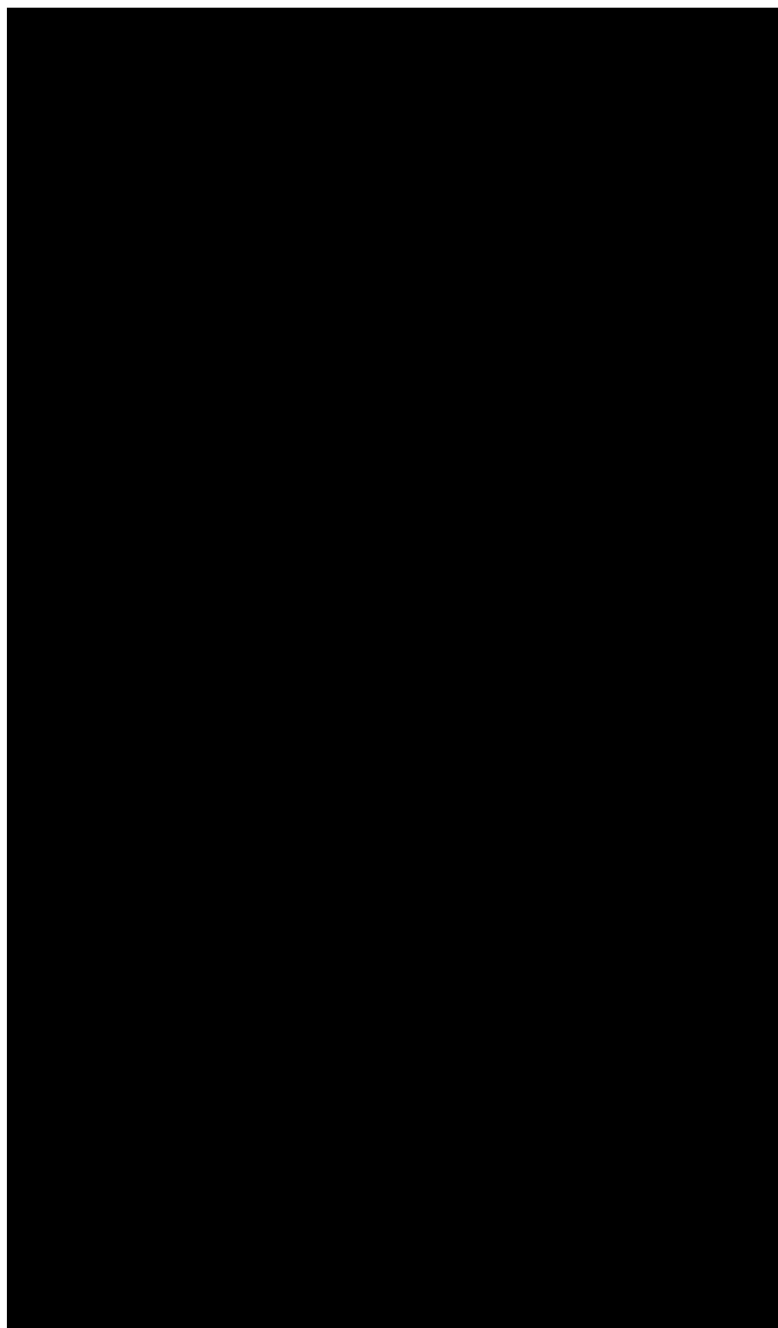
The seventh part of the document discusses the importance of reconciling the books. It explains how the ending balances of the ledger accounts should be compared to the bank statements and other external records to ensure that they agree.

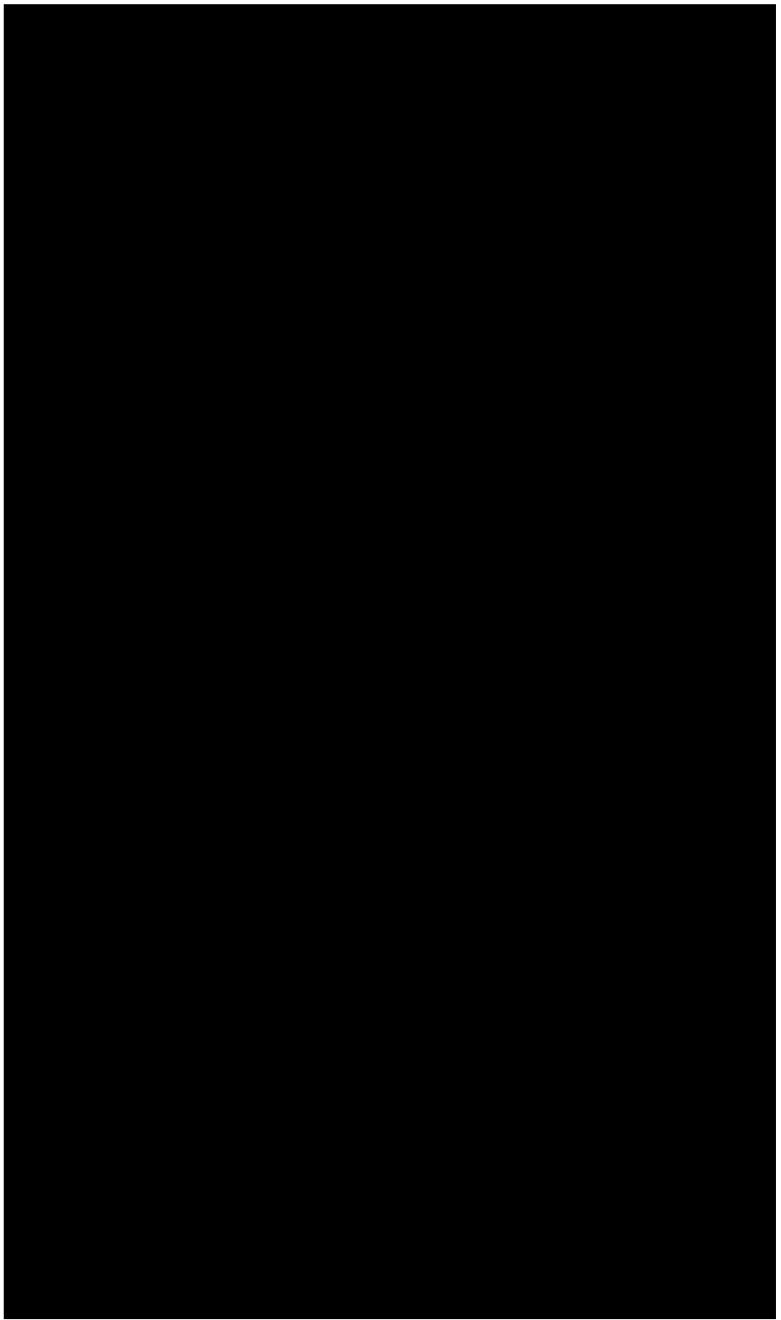
The eighth part of the document covers the process of correcting errors. It outlines the steps involved in identifying and correcting mistakes in the accounting records, such as transposition errors, omission errors, and commission errors.

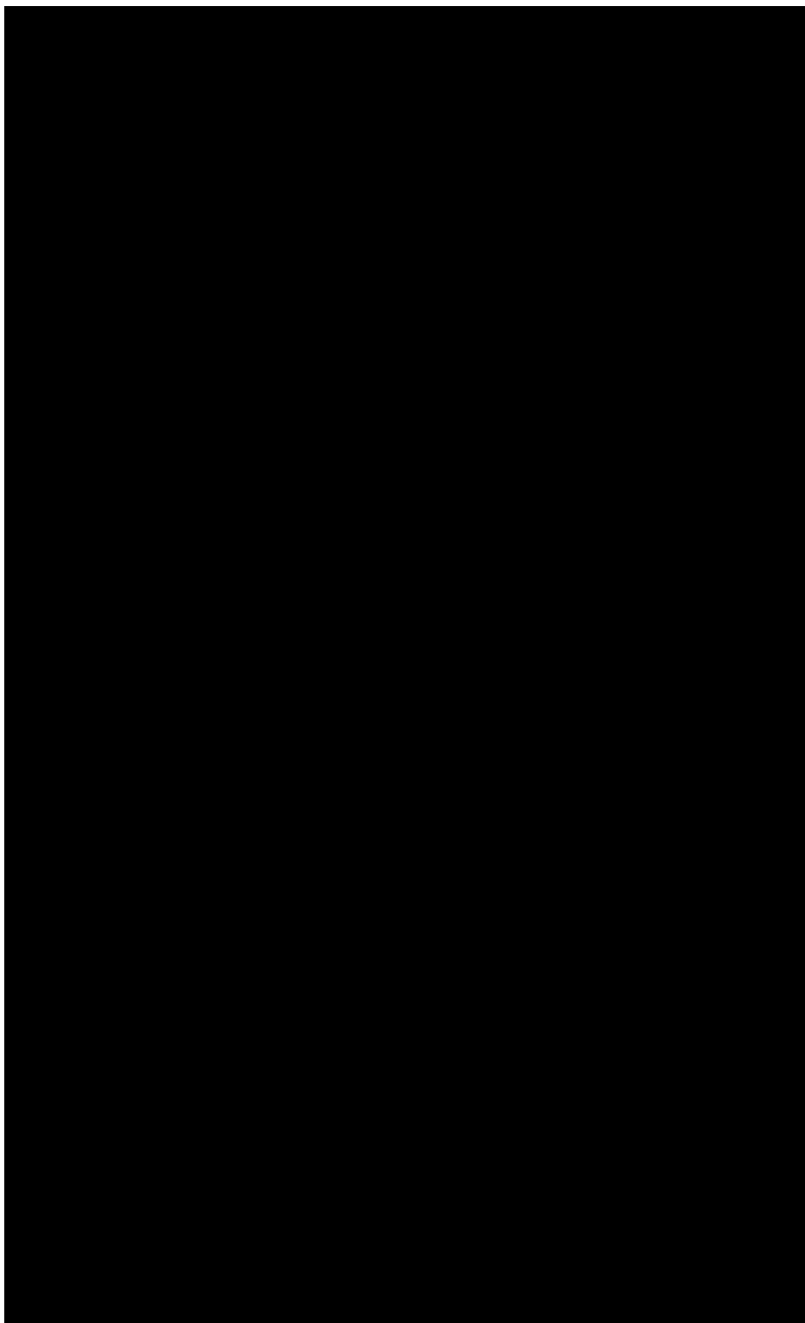
The ninth part of the document discusses the use of T-accounts. It explains how T-accounts are used to record and summarize transactions, and how they are used to calculate the ending balances for each account.

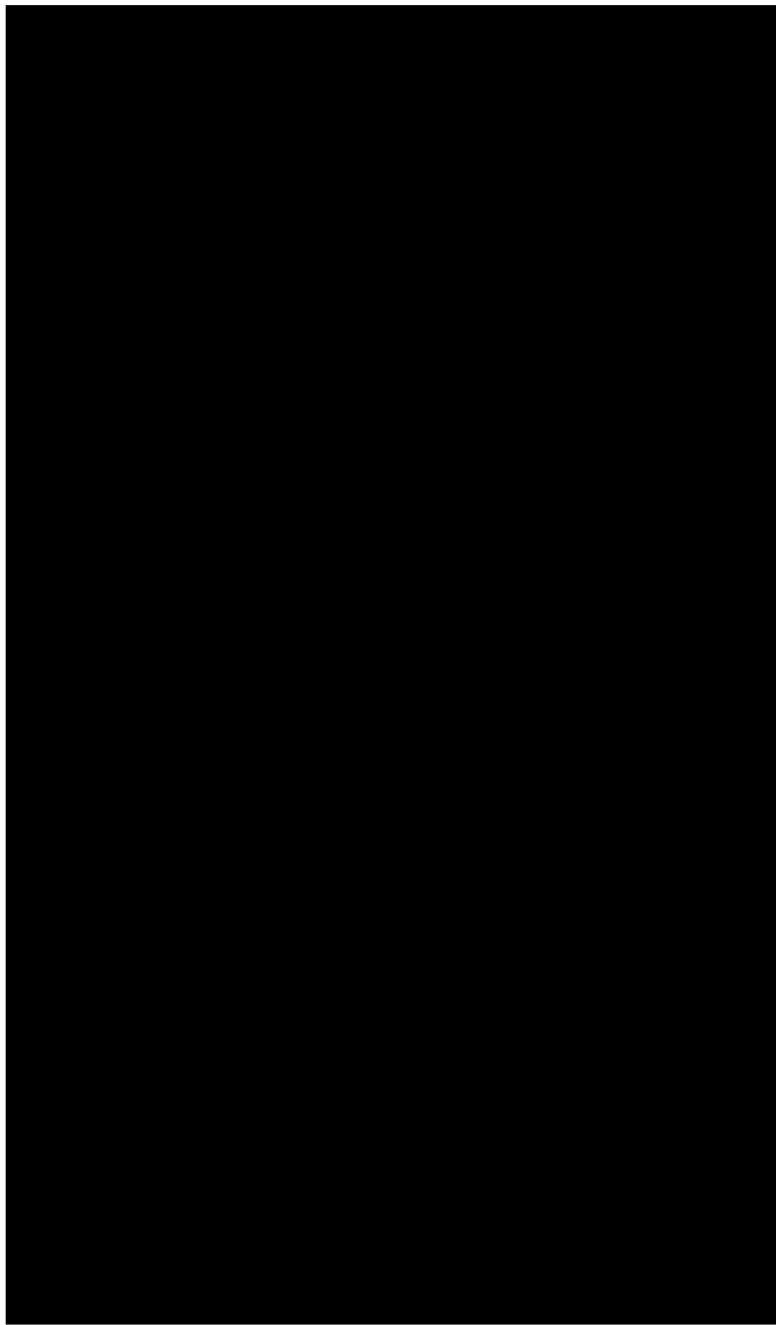
The tenth part of the document covers the process of preparing a trial balance. It explains how the ending balances of all the ledger accounts are listed in a single statement to verify that the total debits equal the total credits.

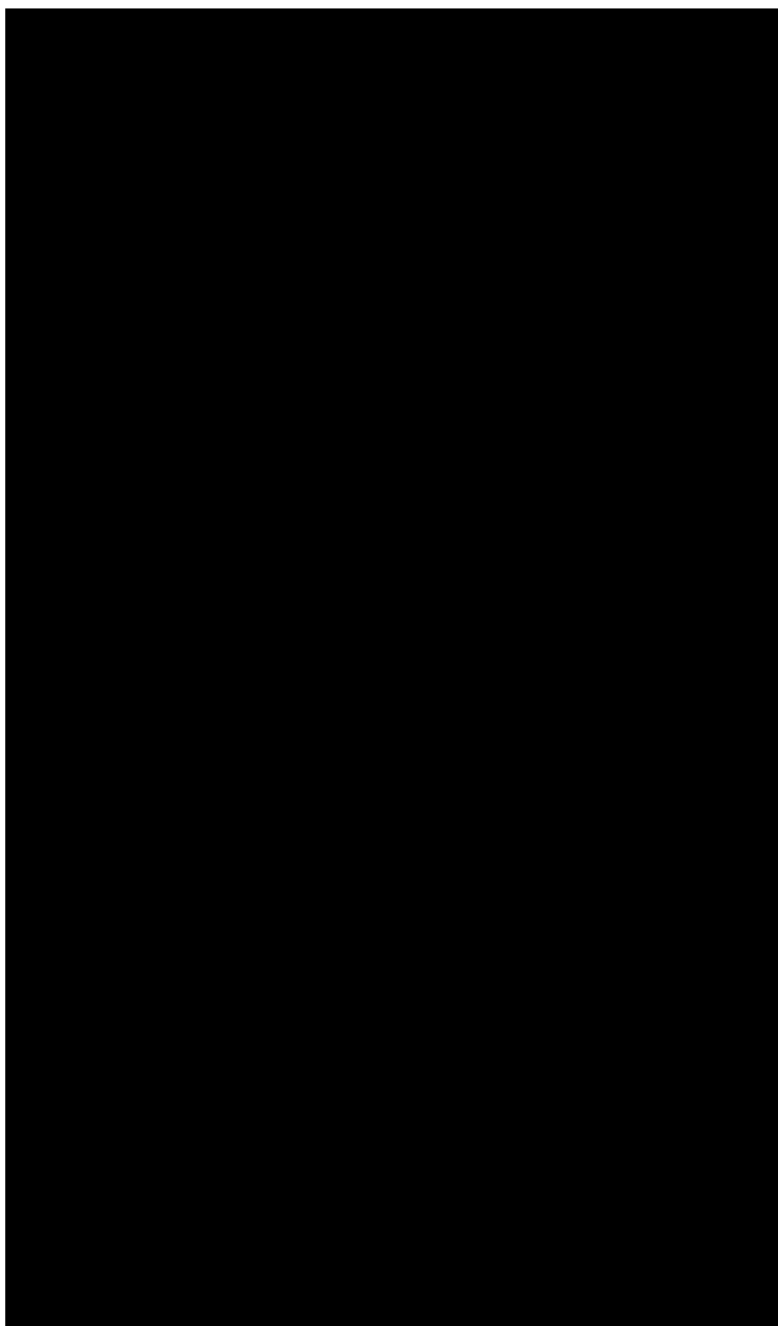


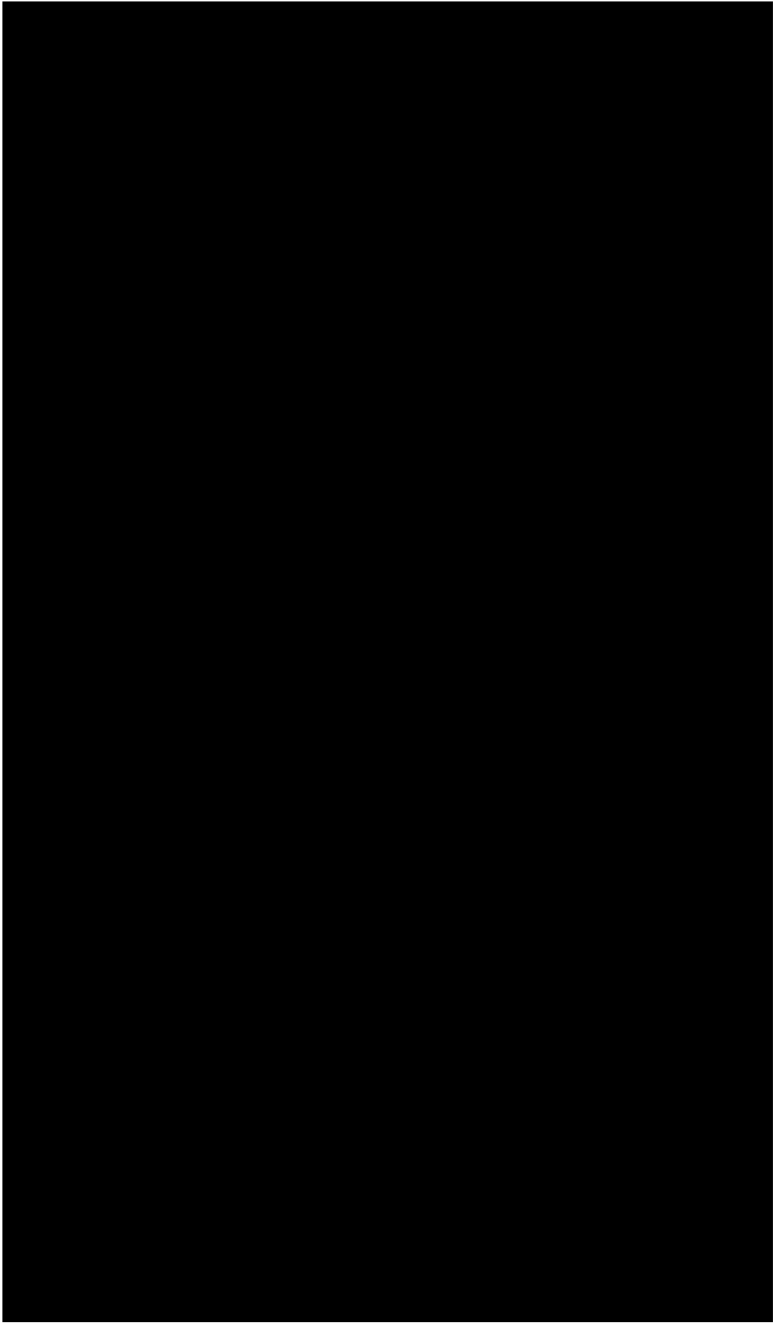




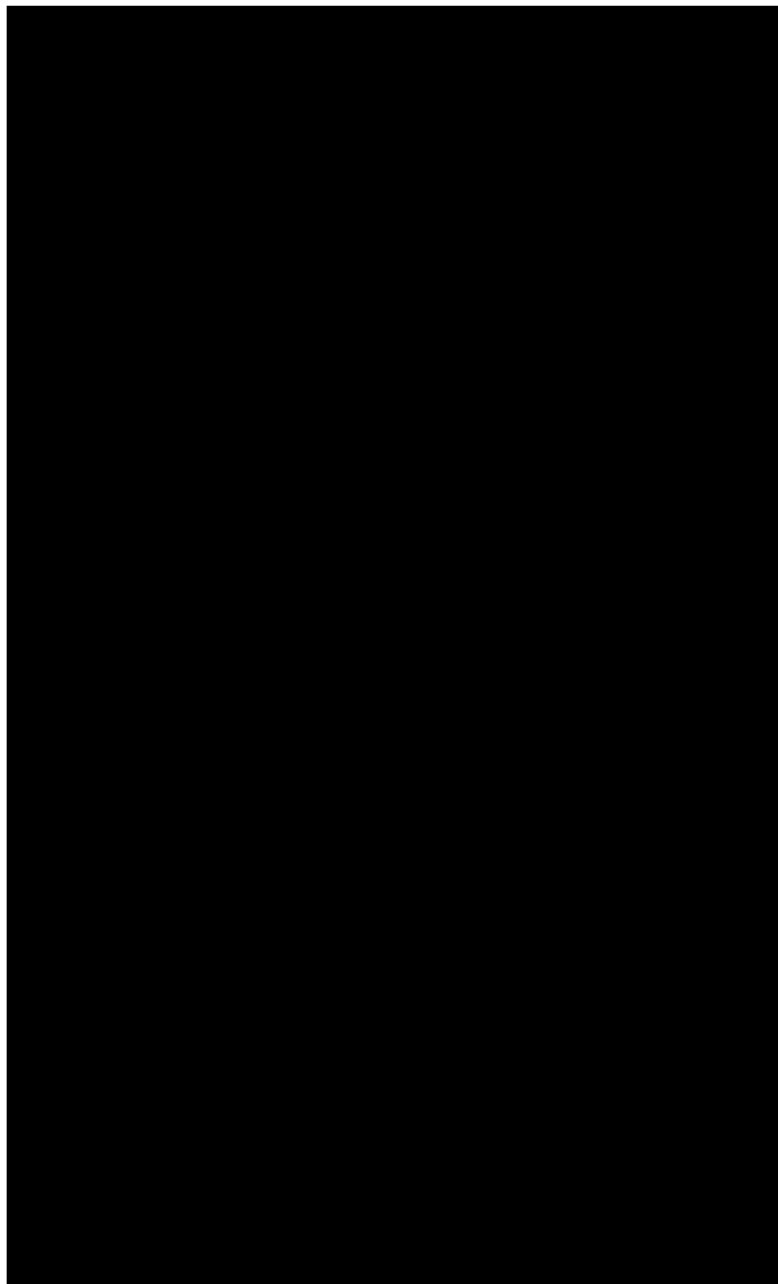


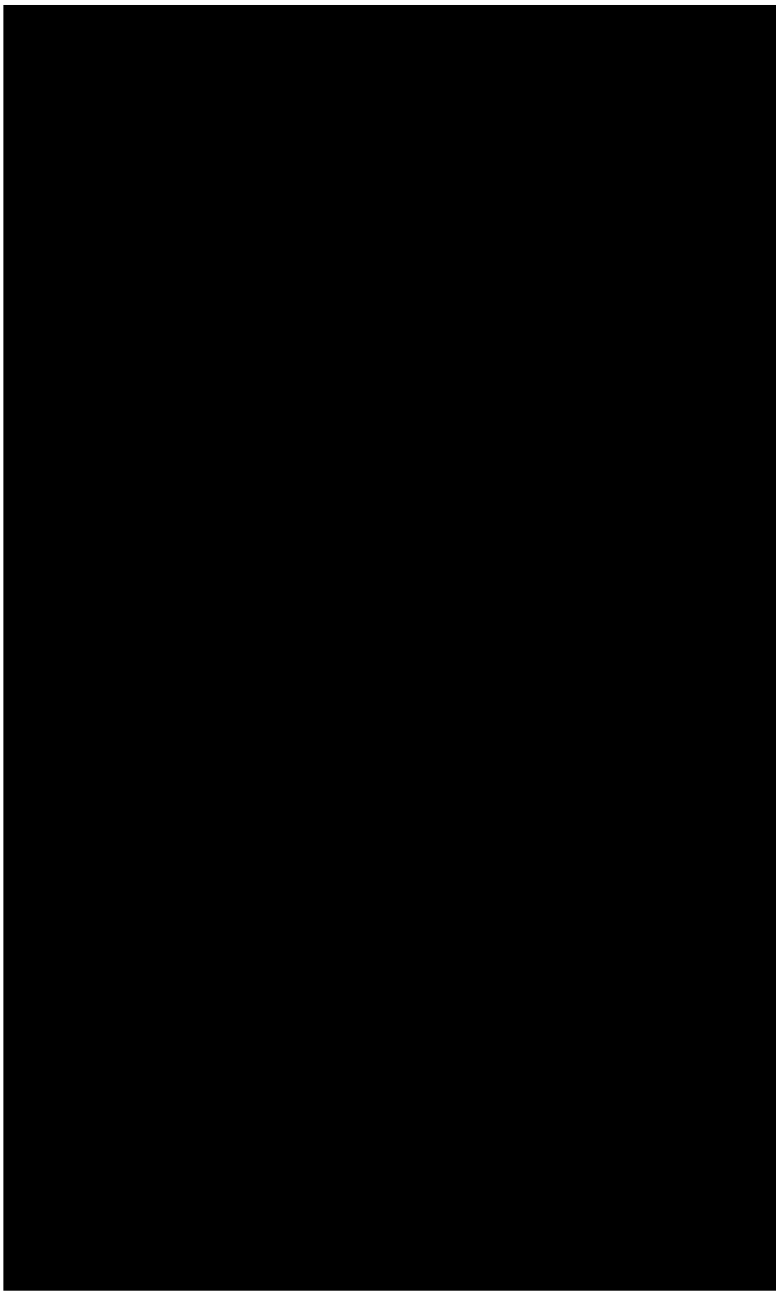


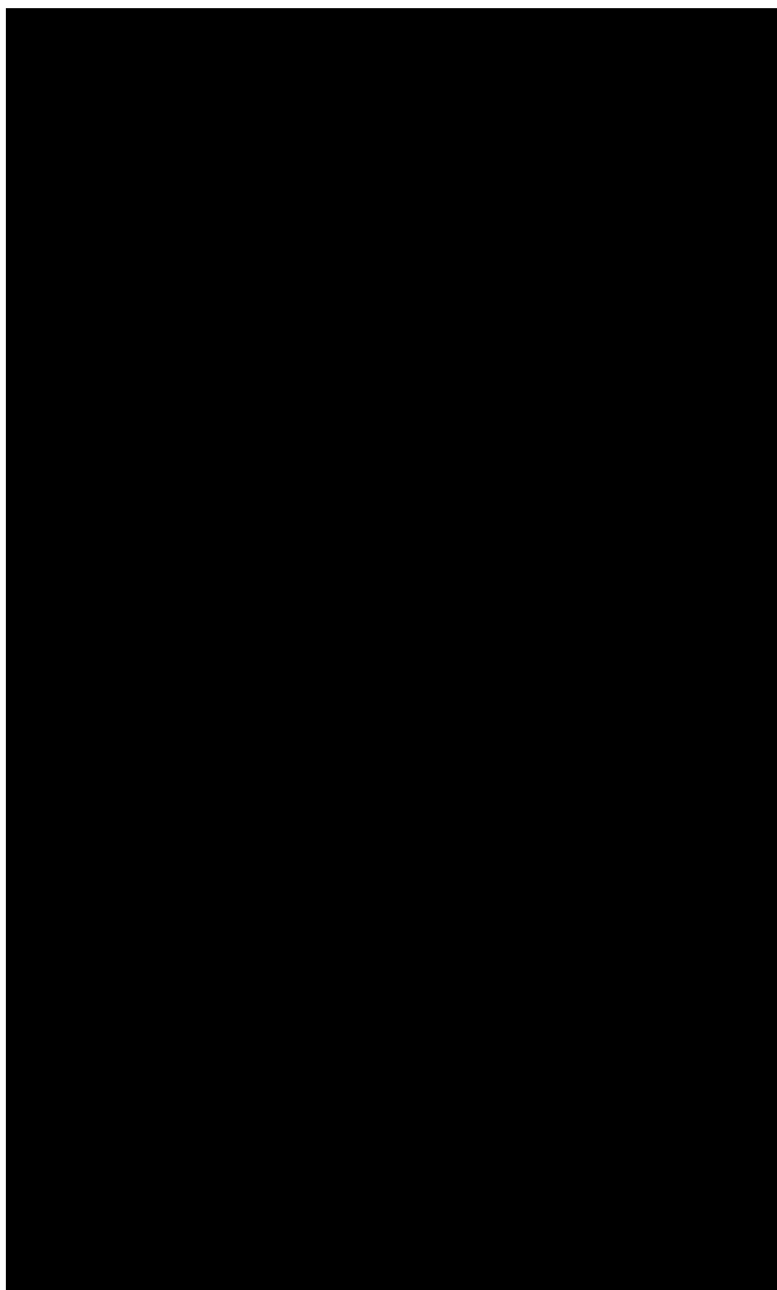


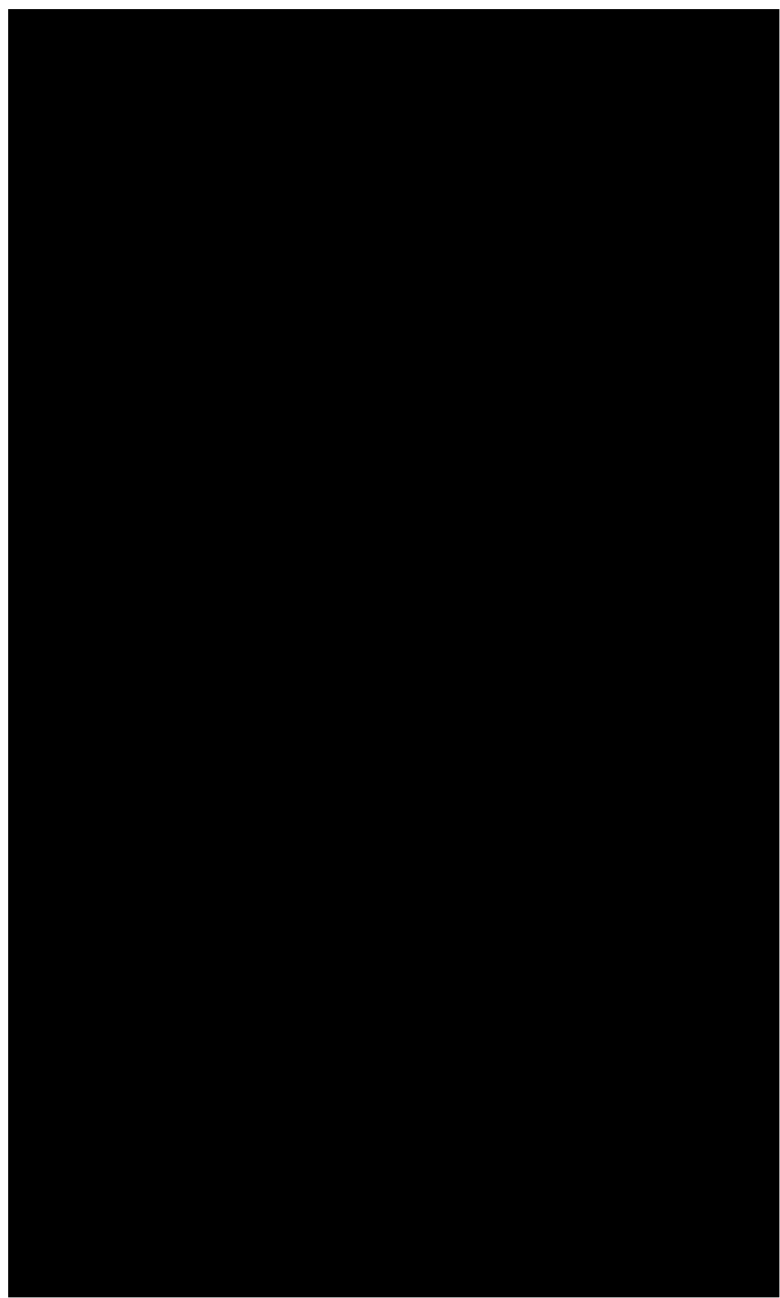


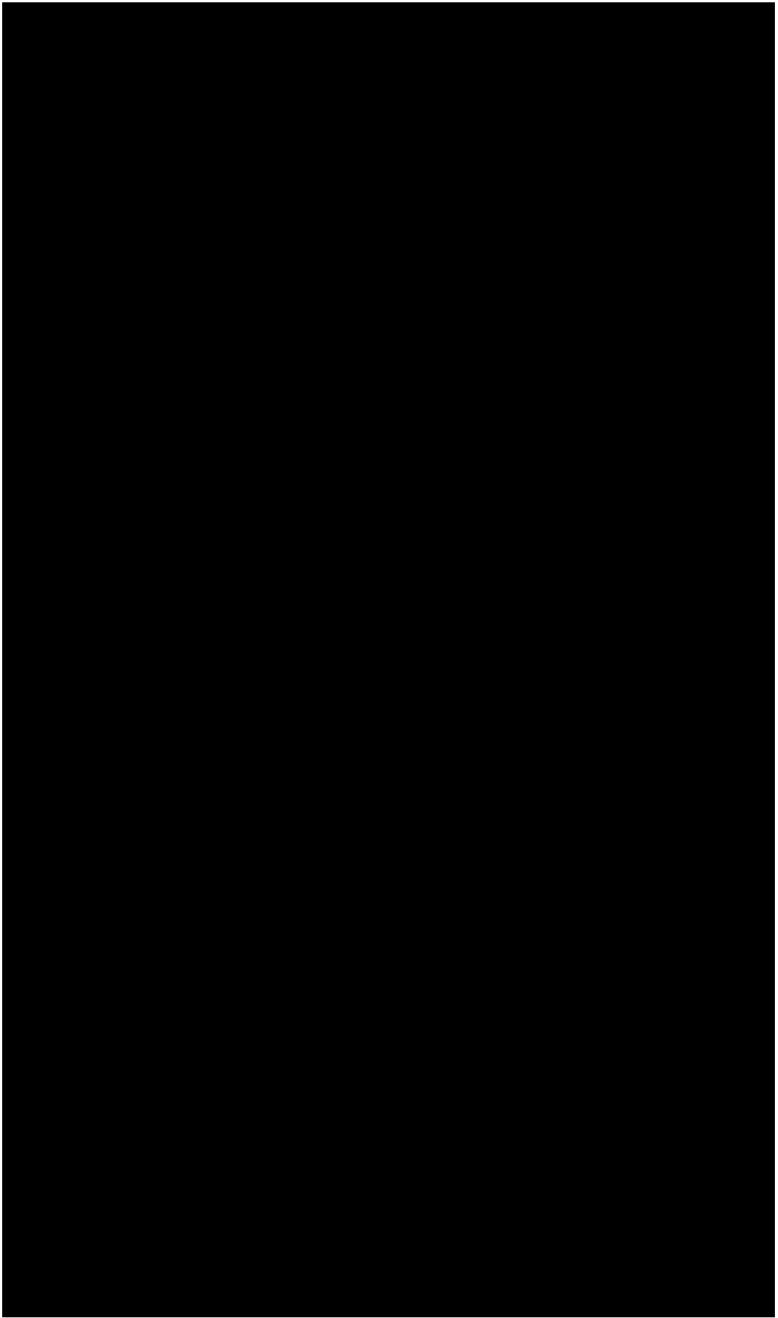


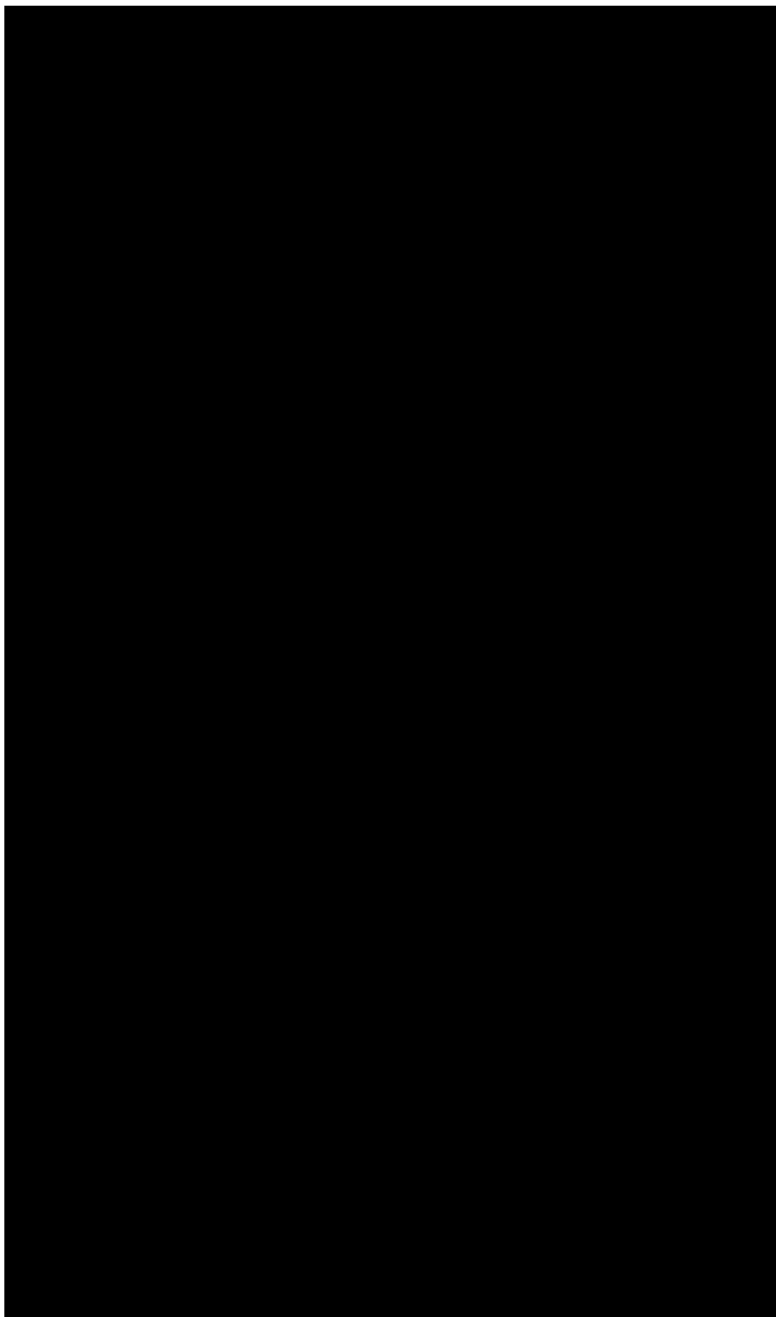


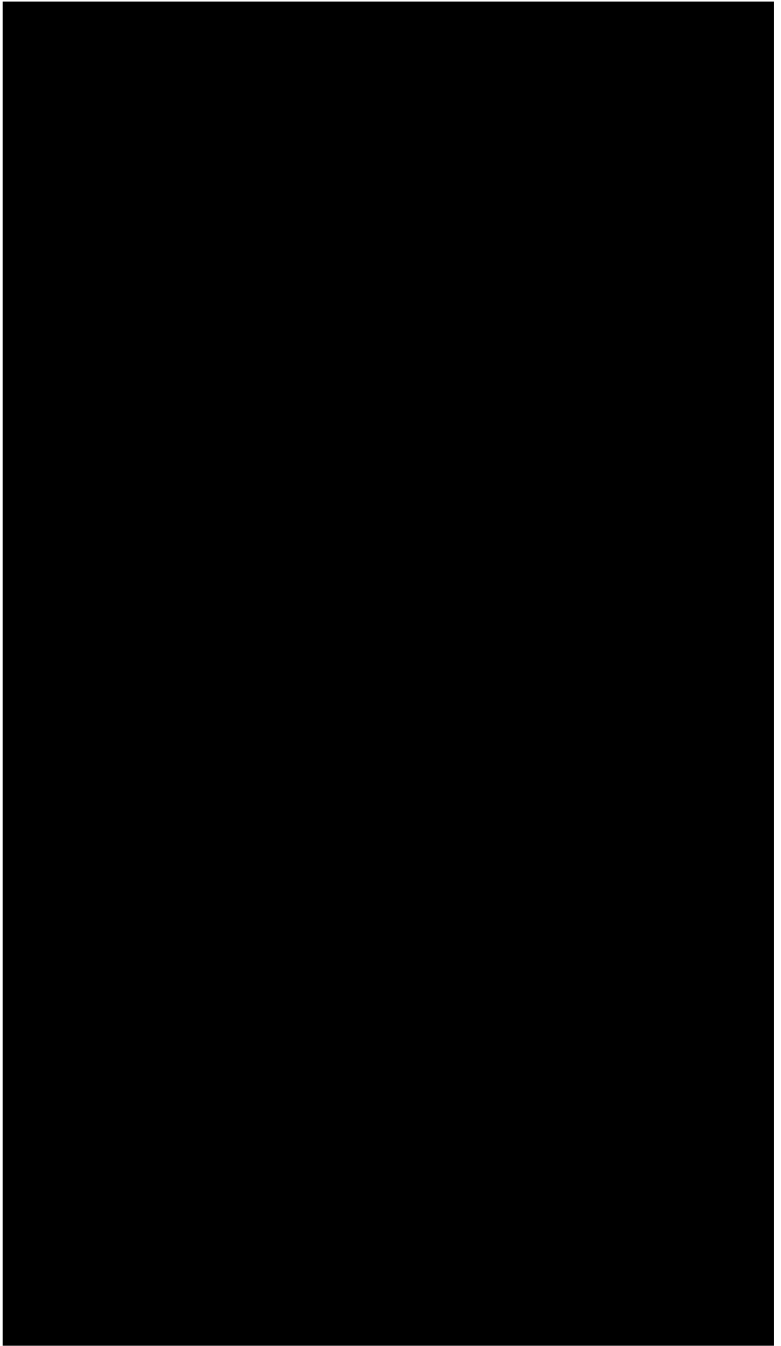


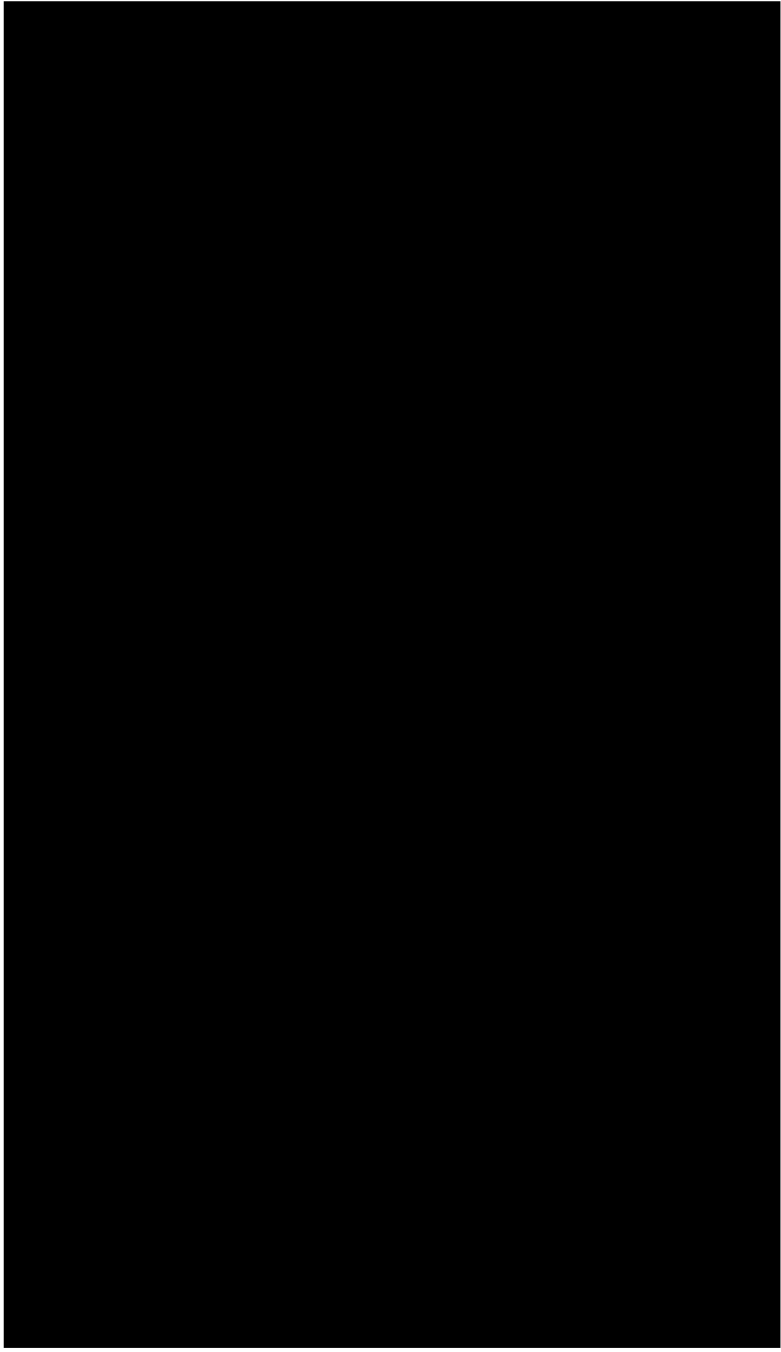


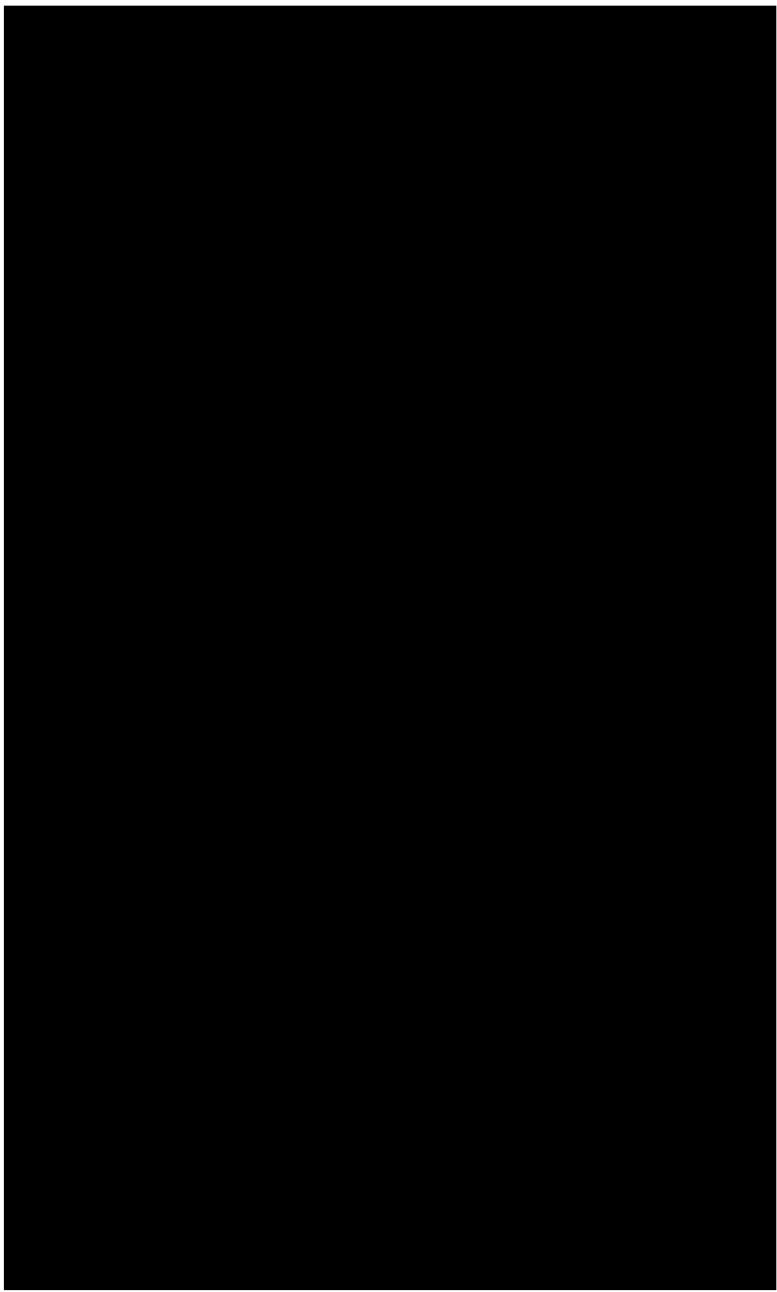


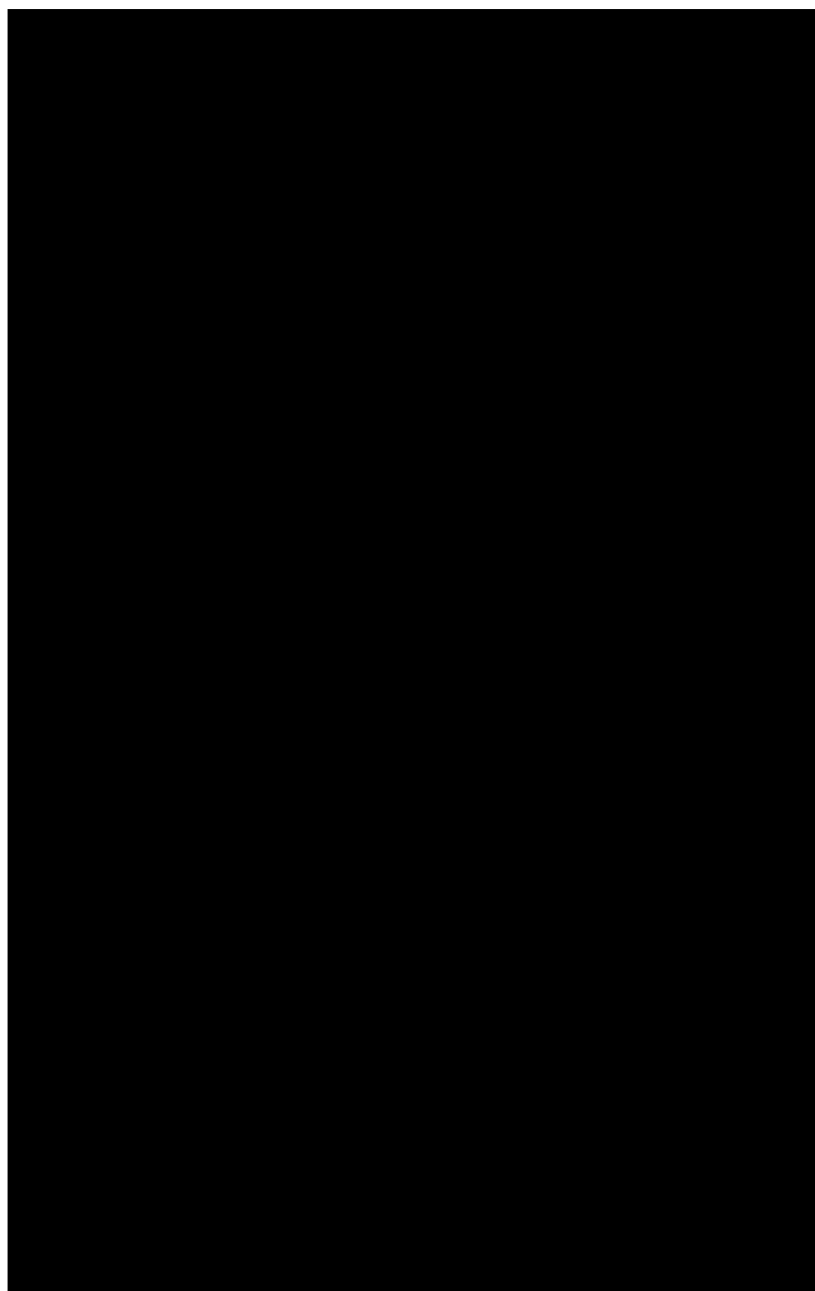


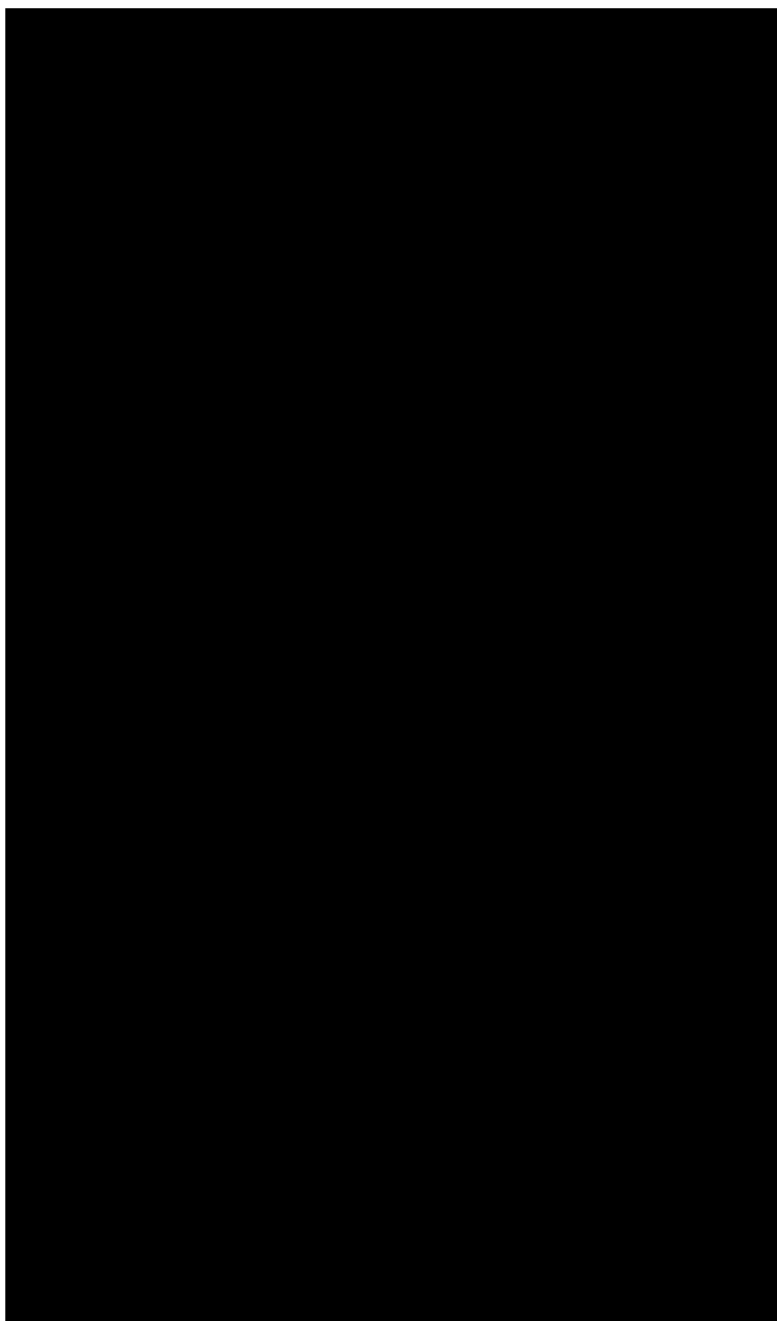


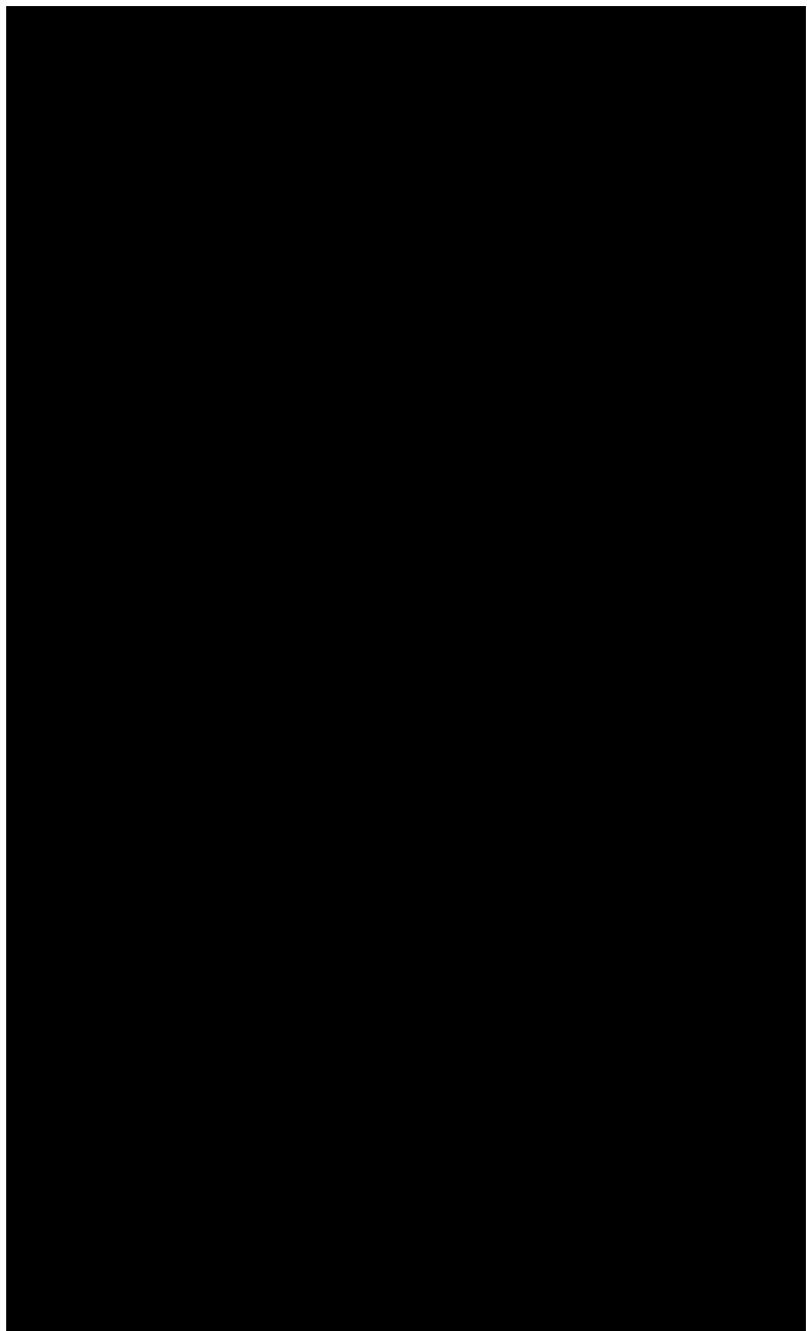


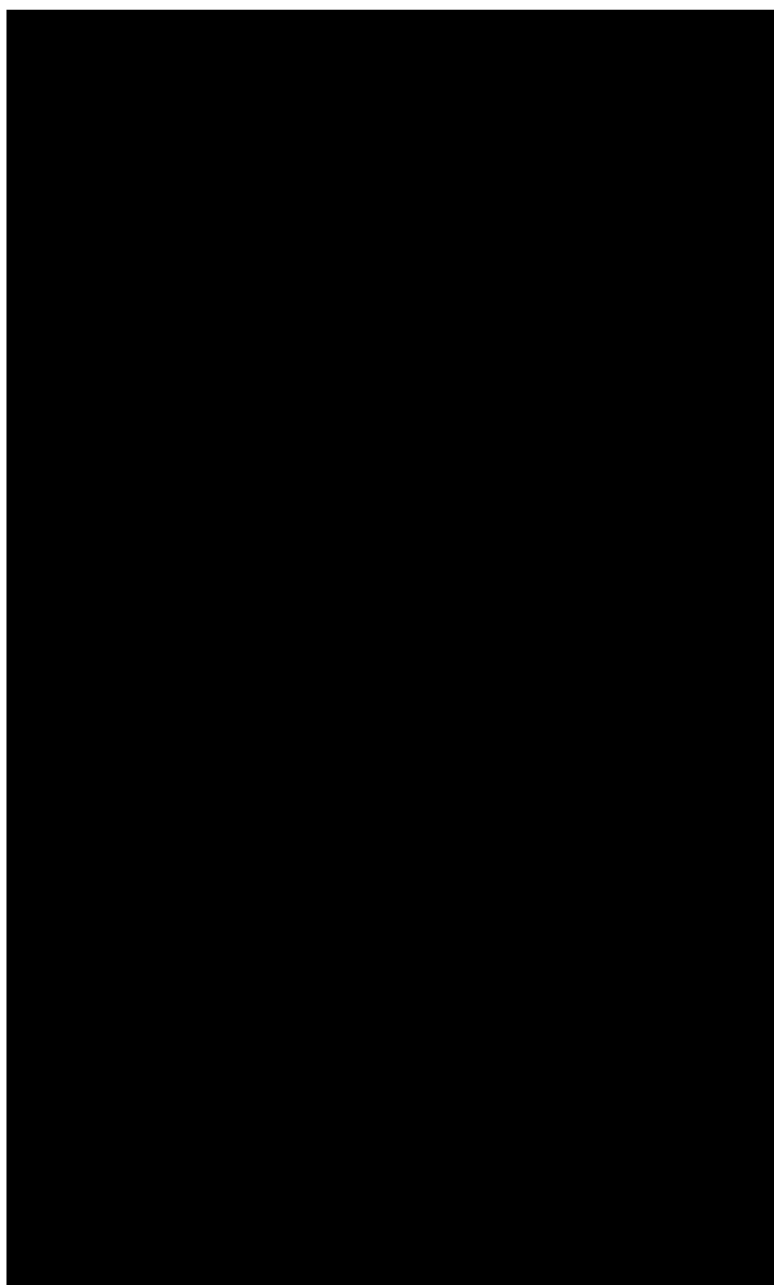


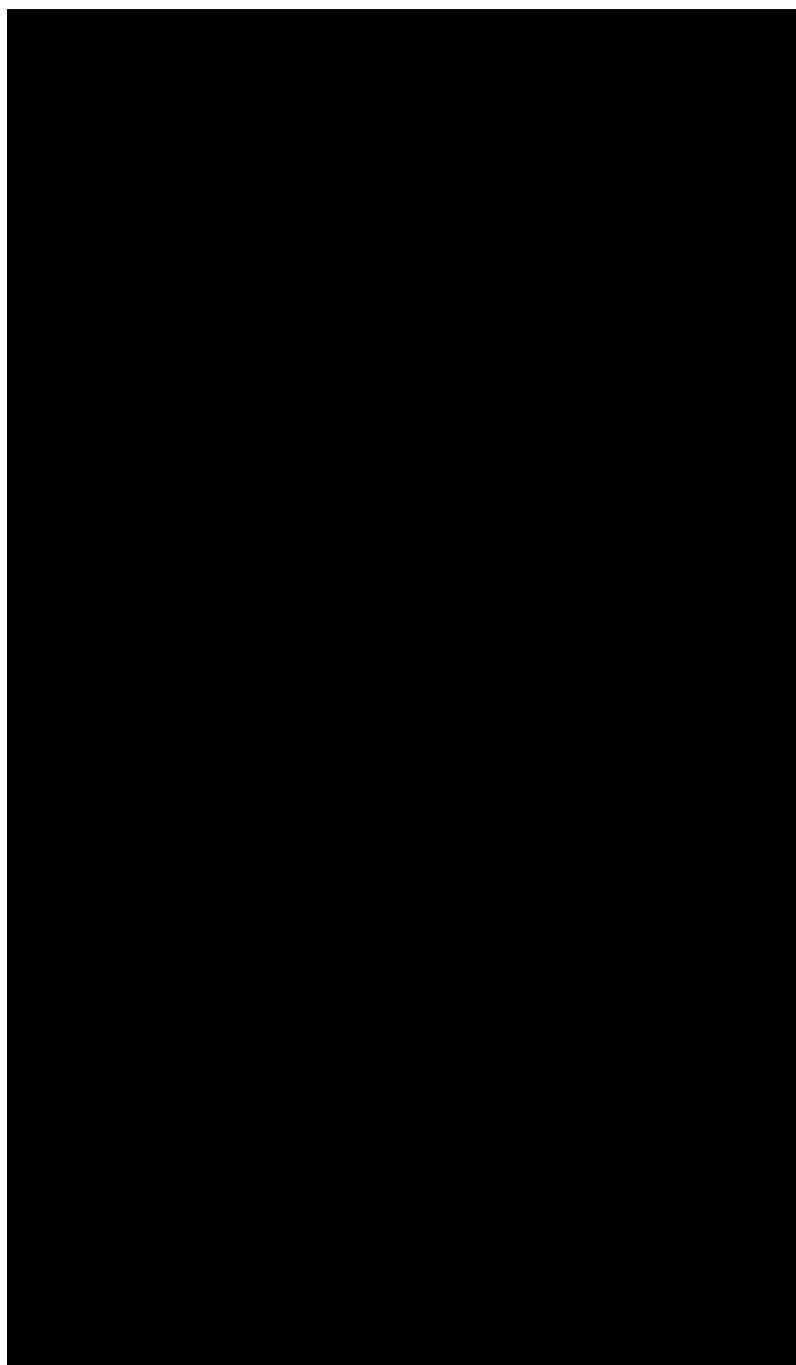


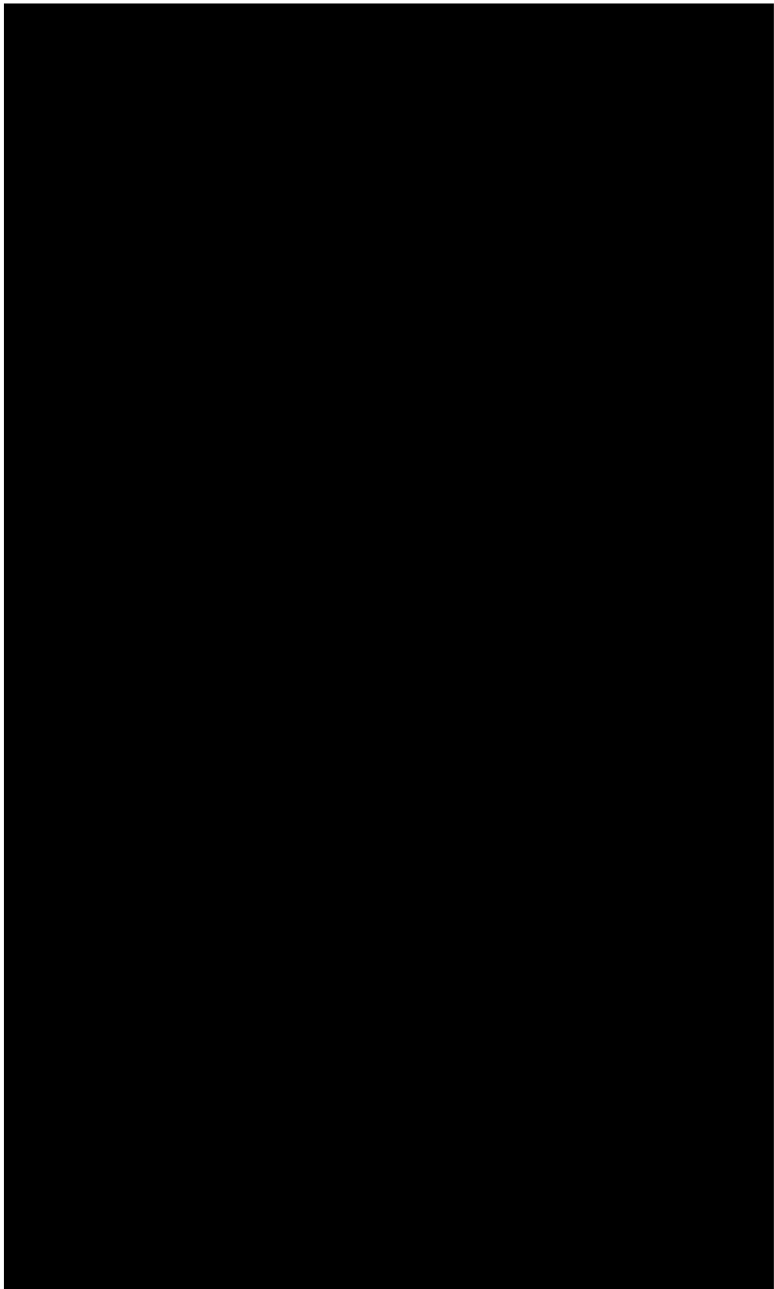


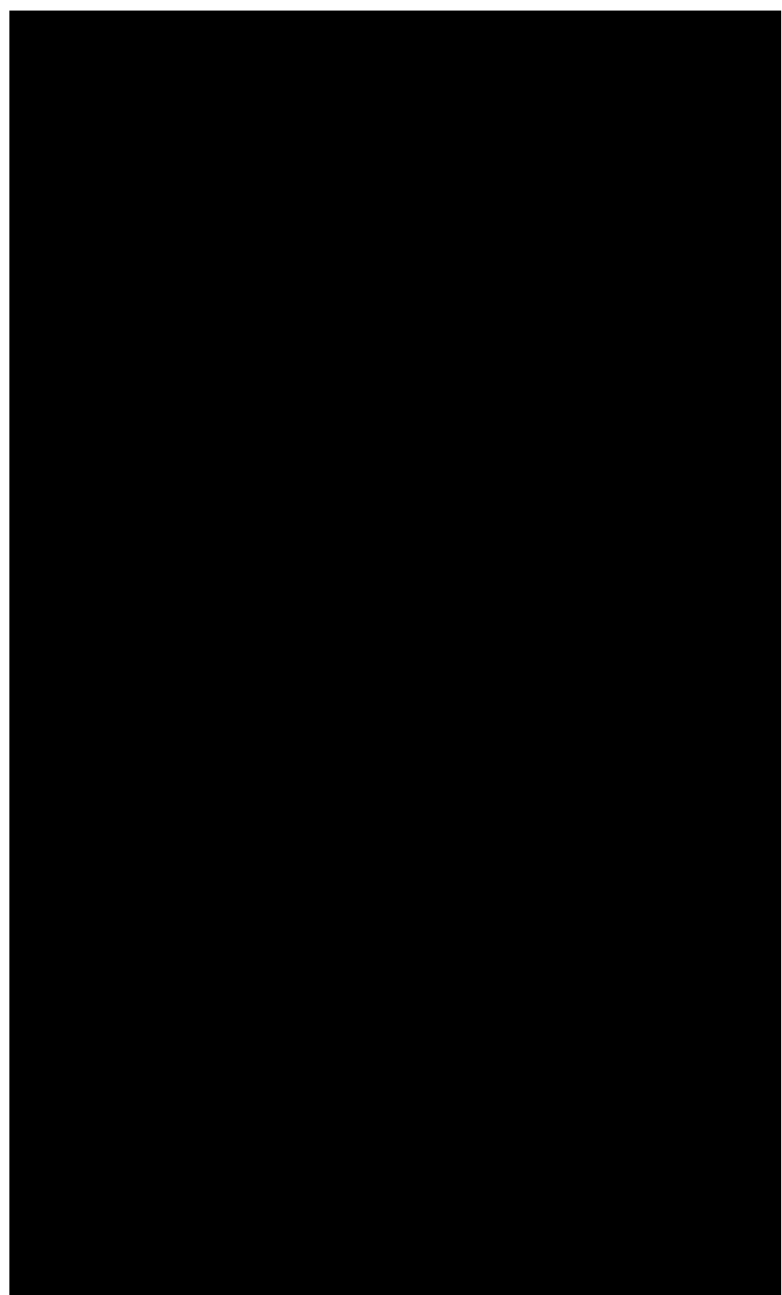


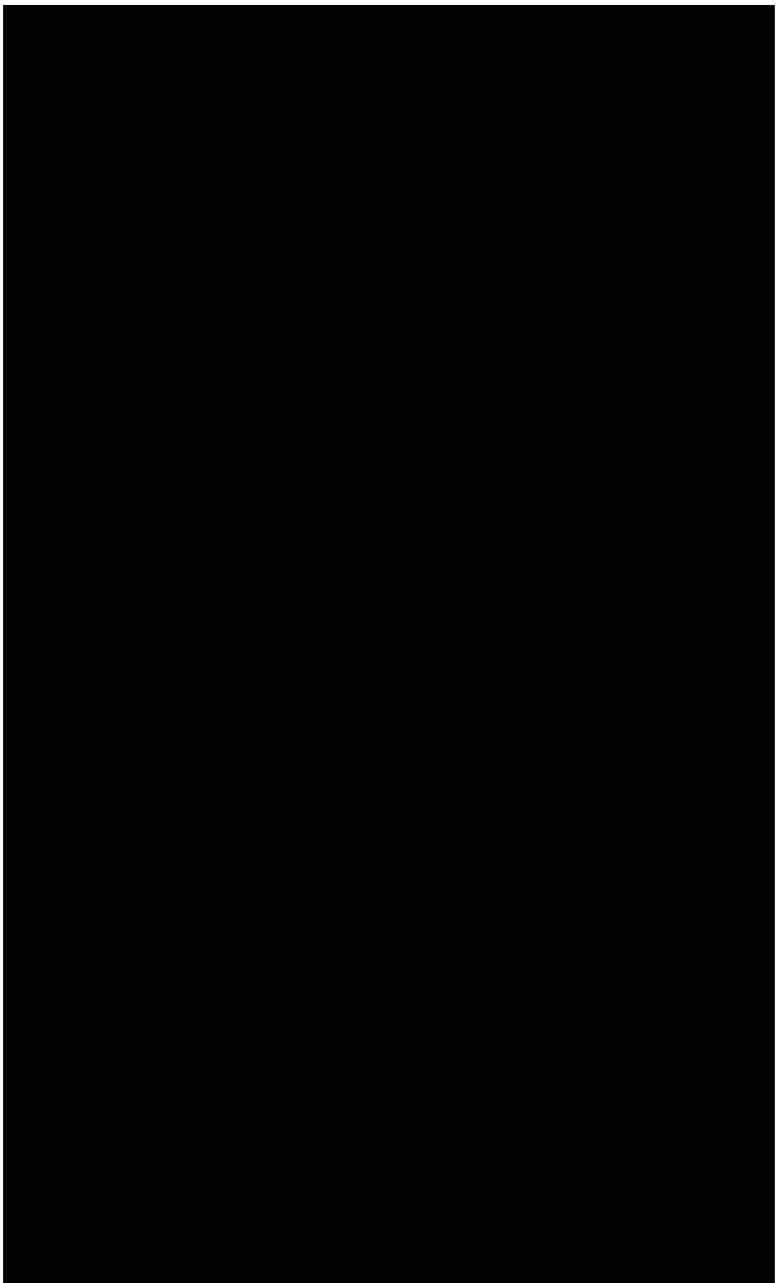


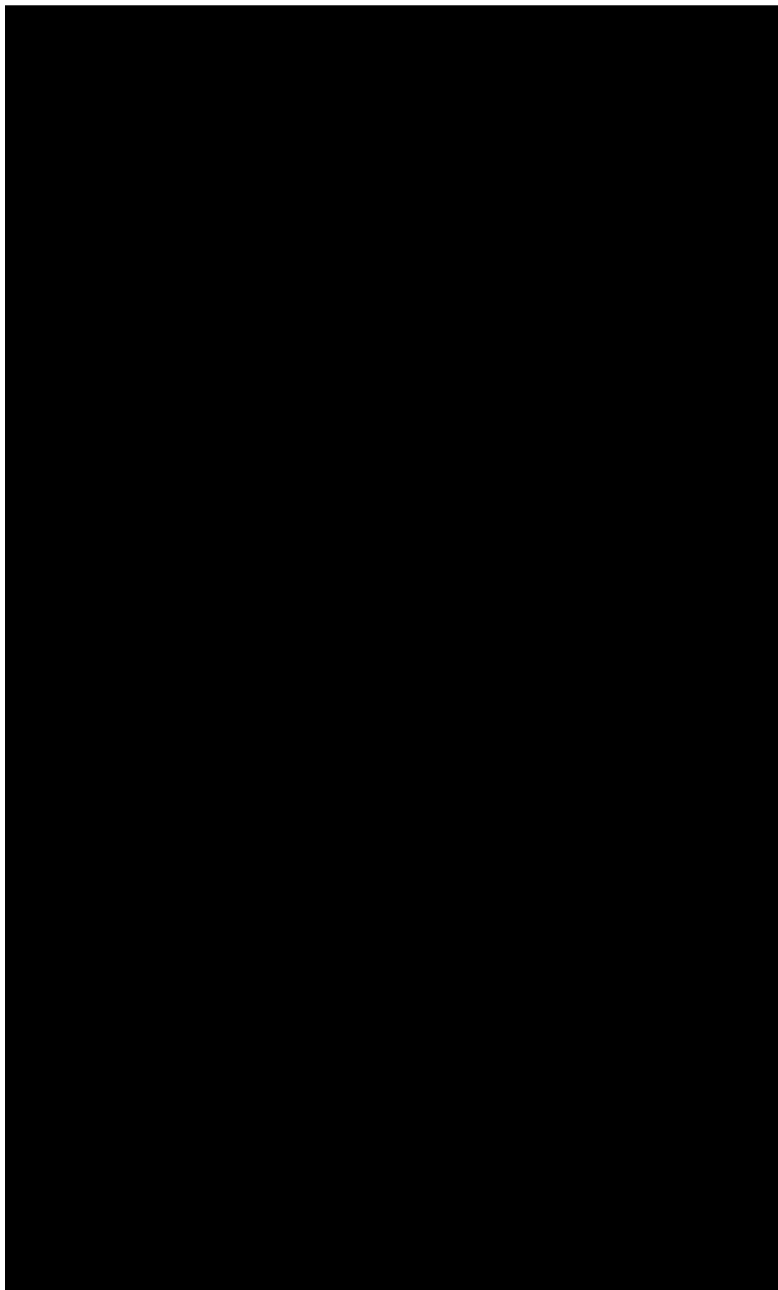


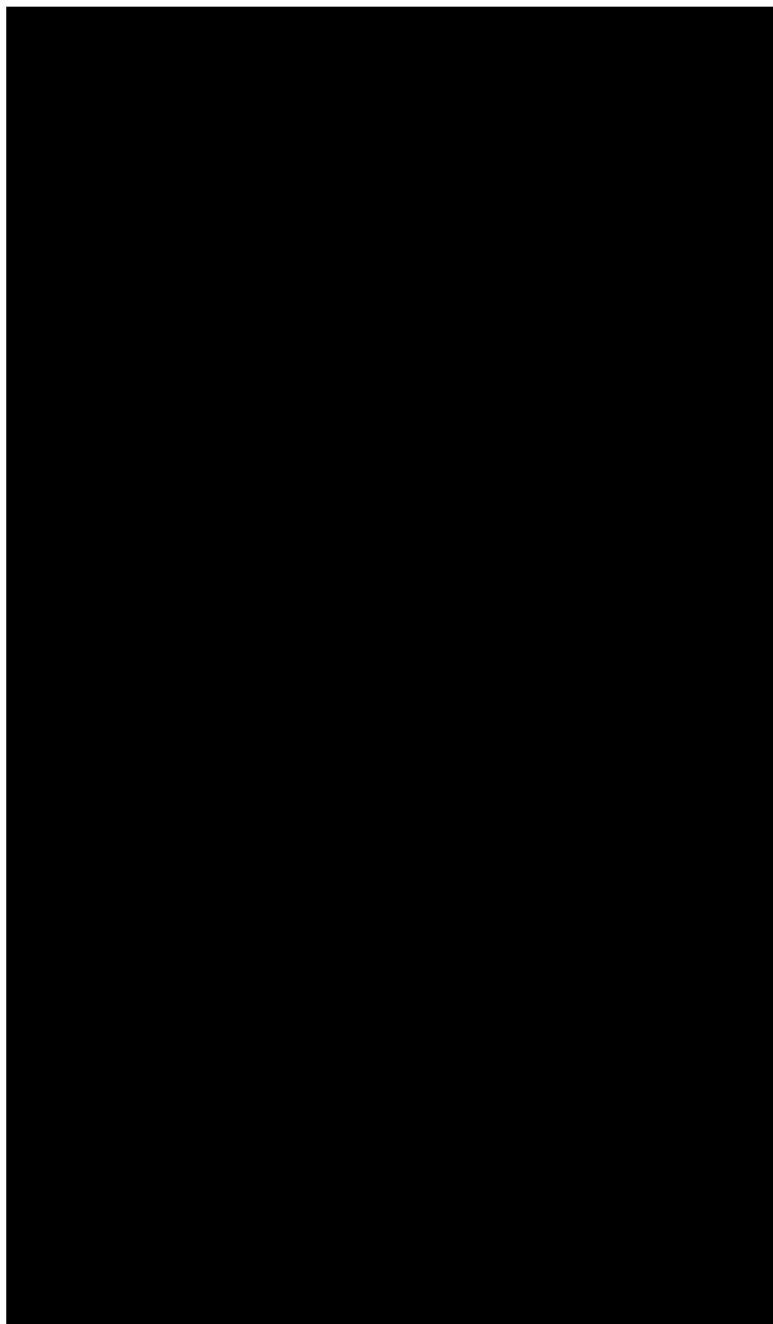


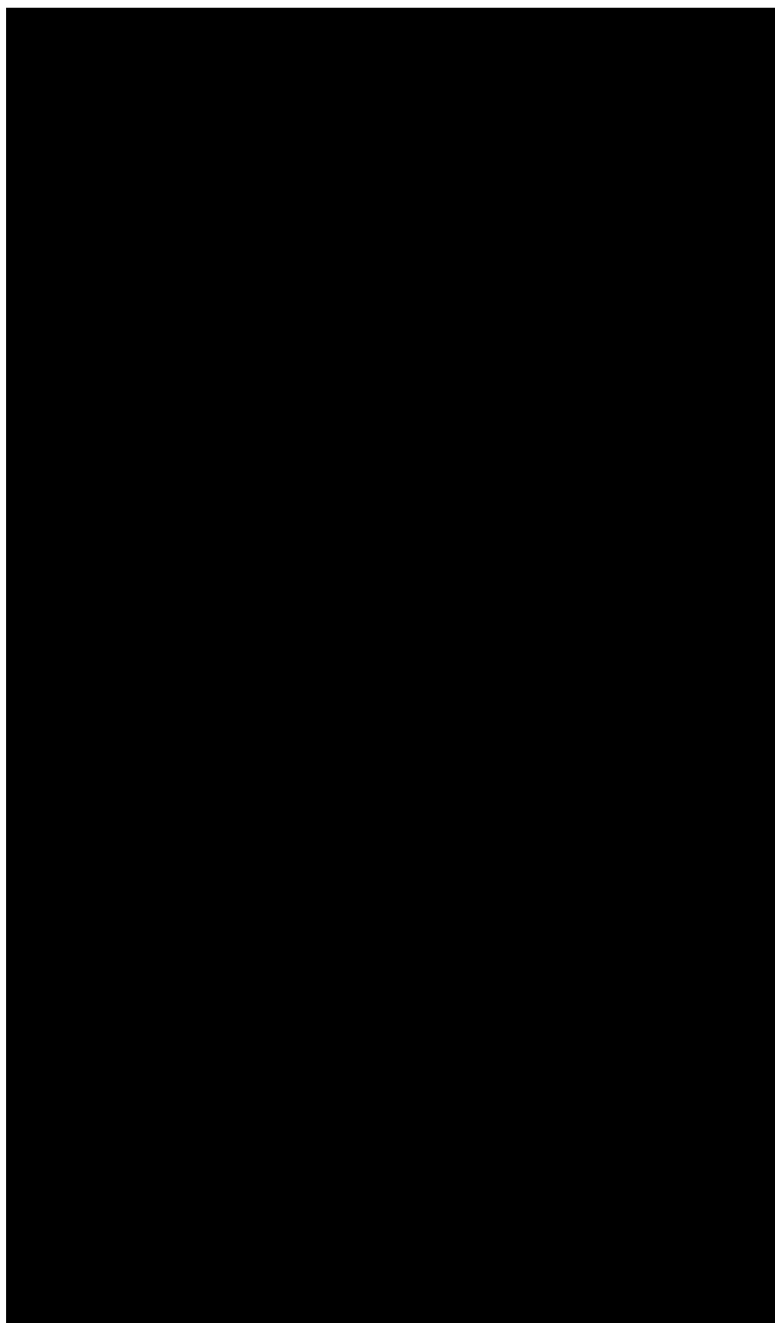






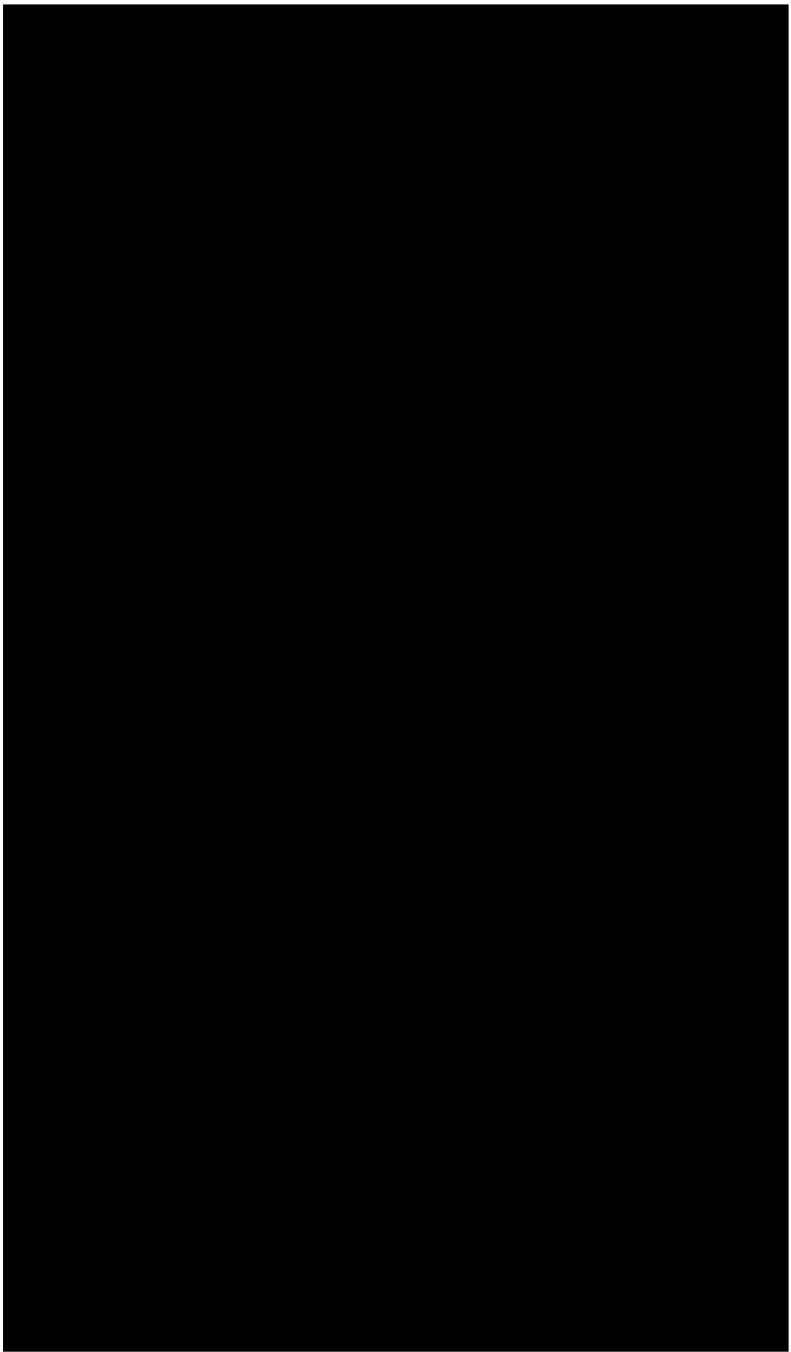


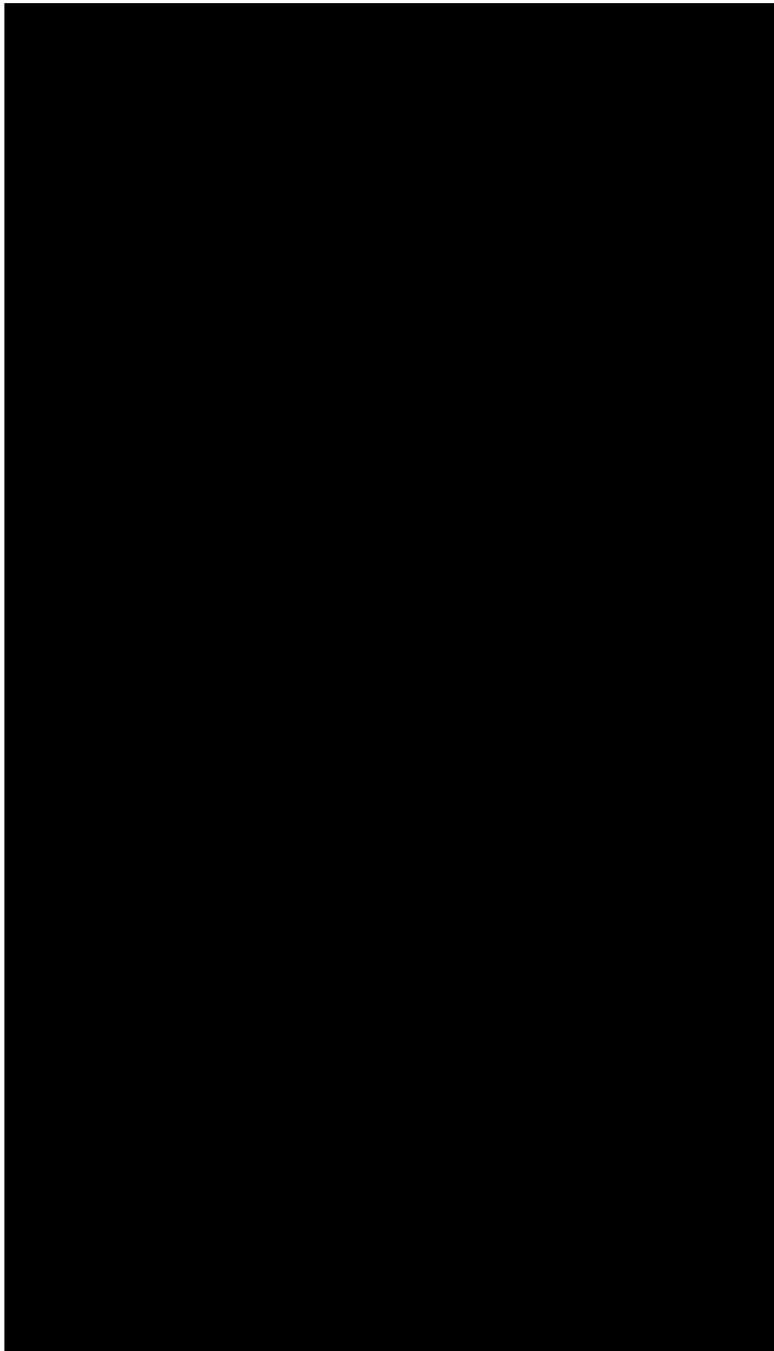


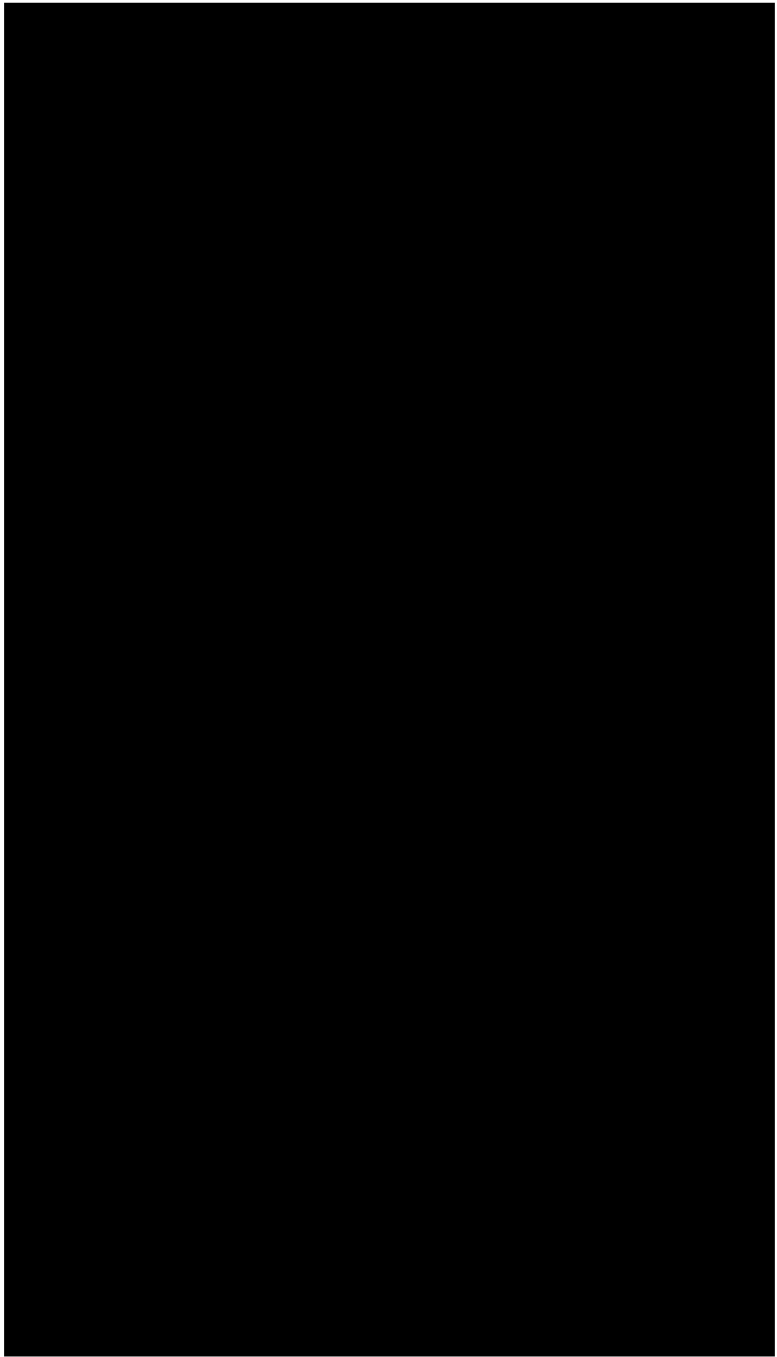


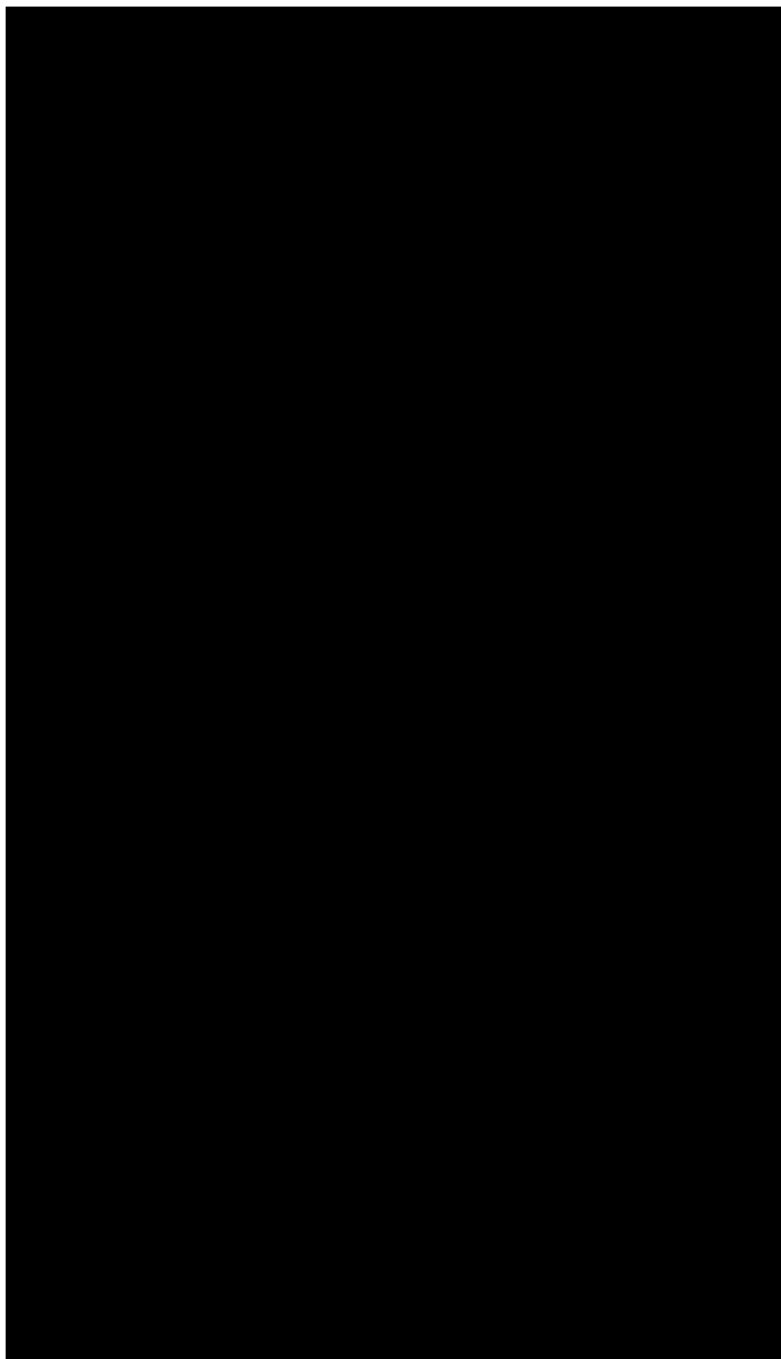


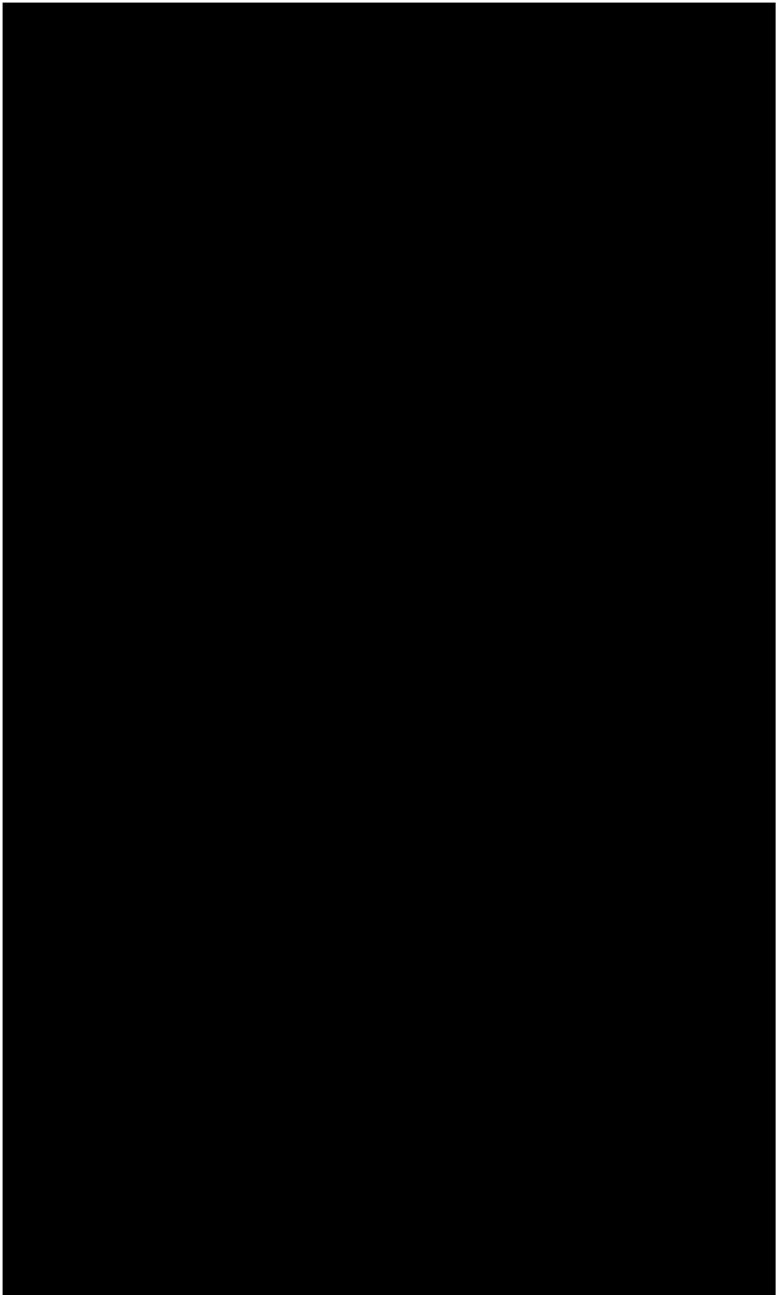


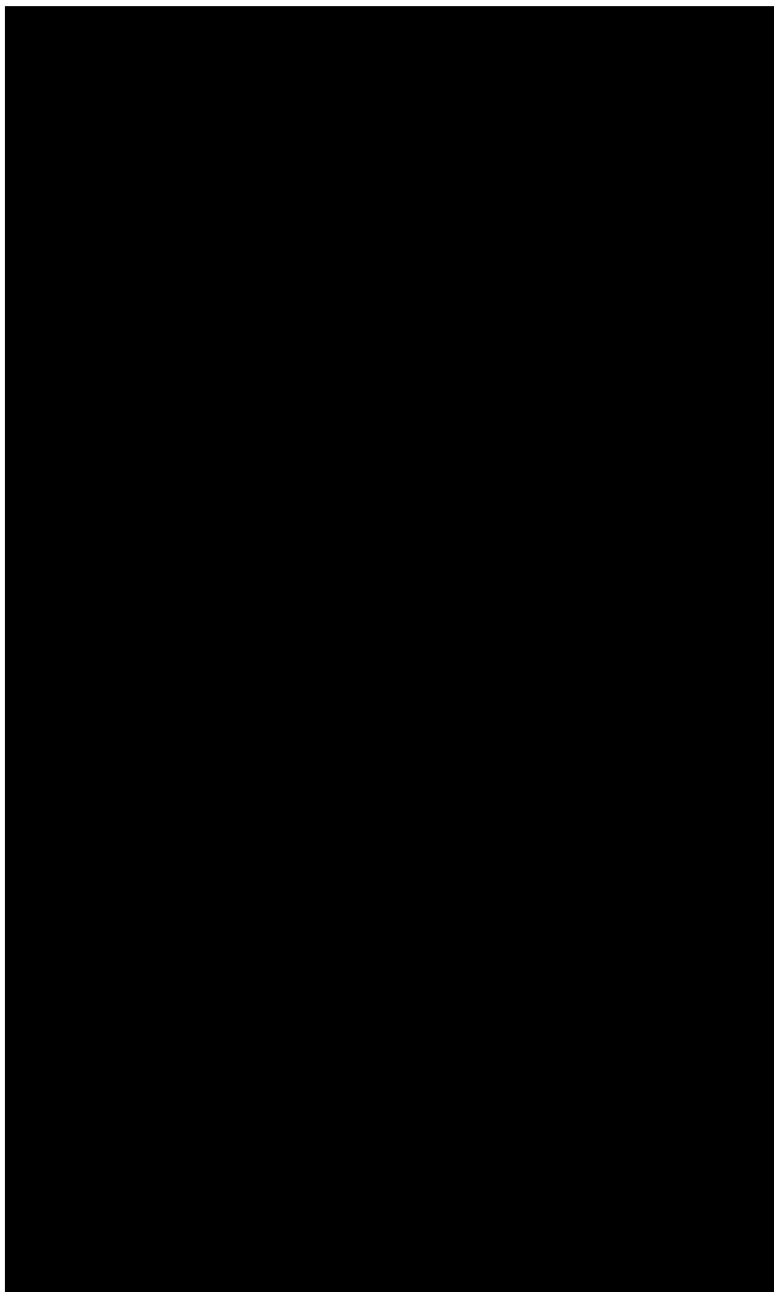


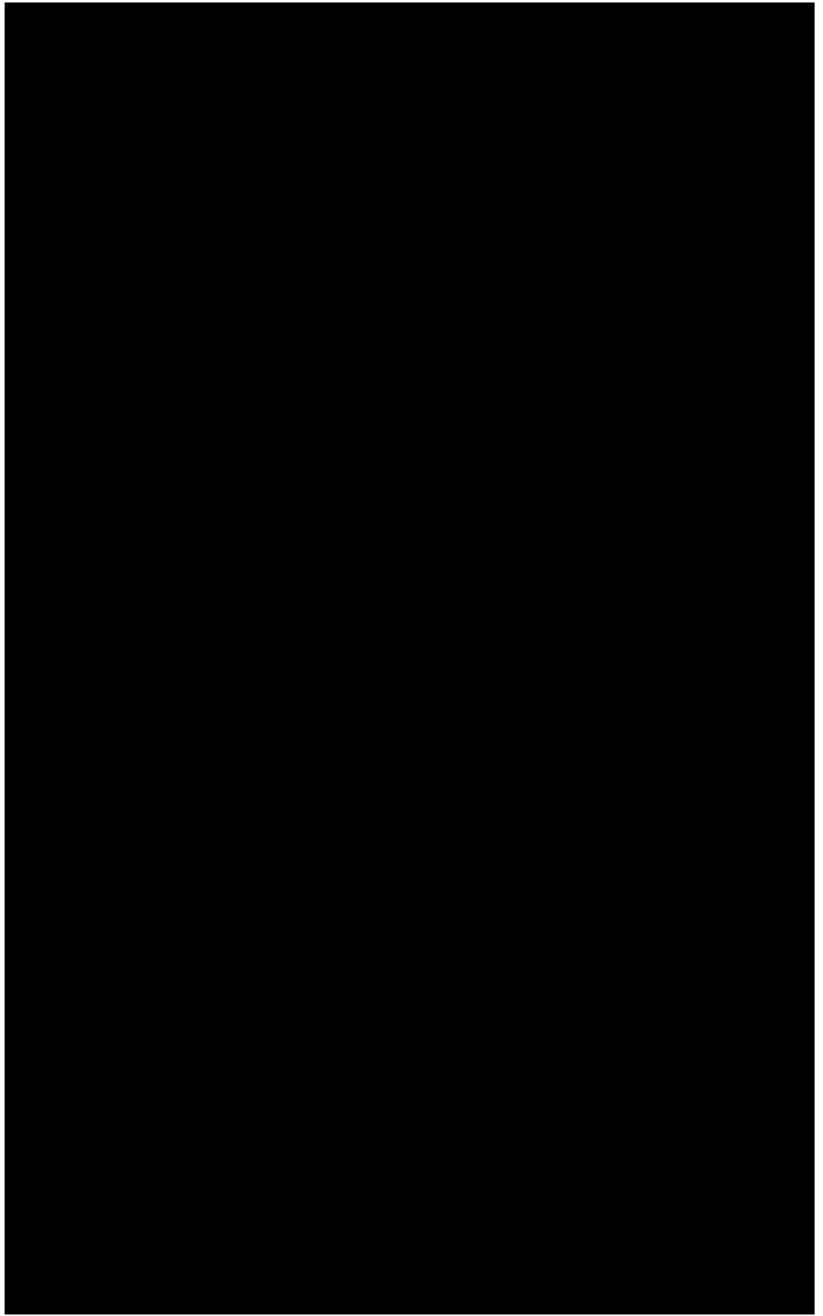




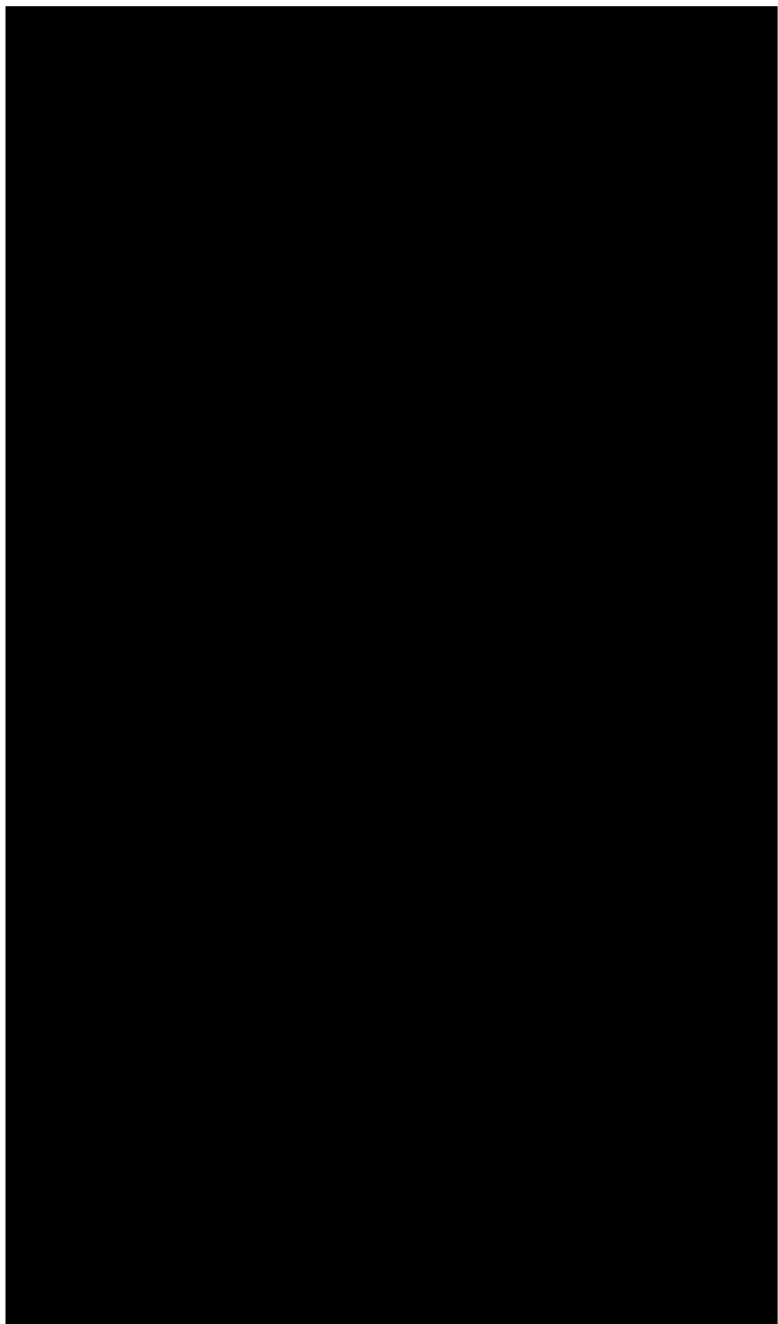


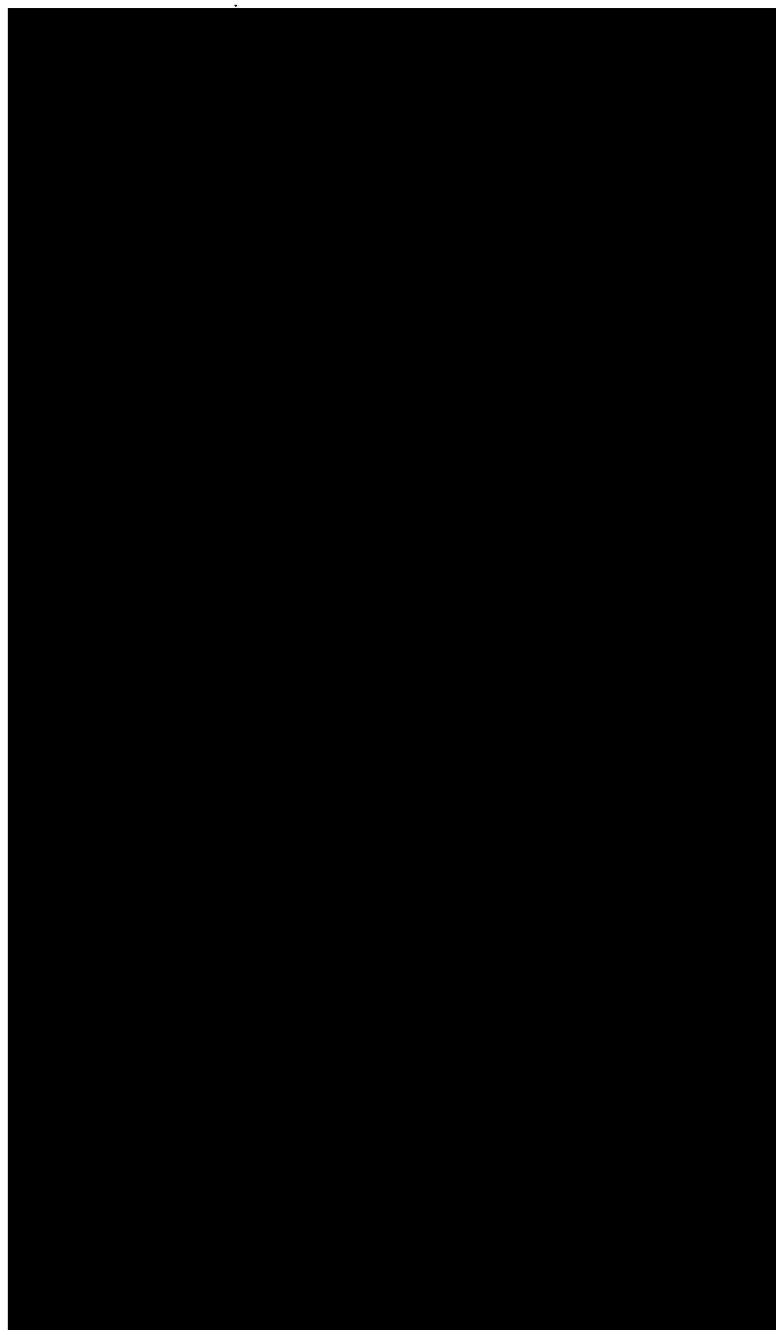


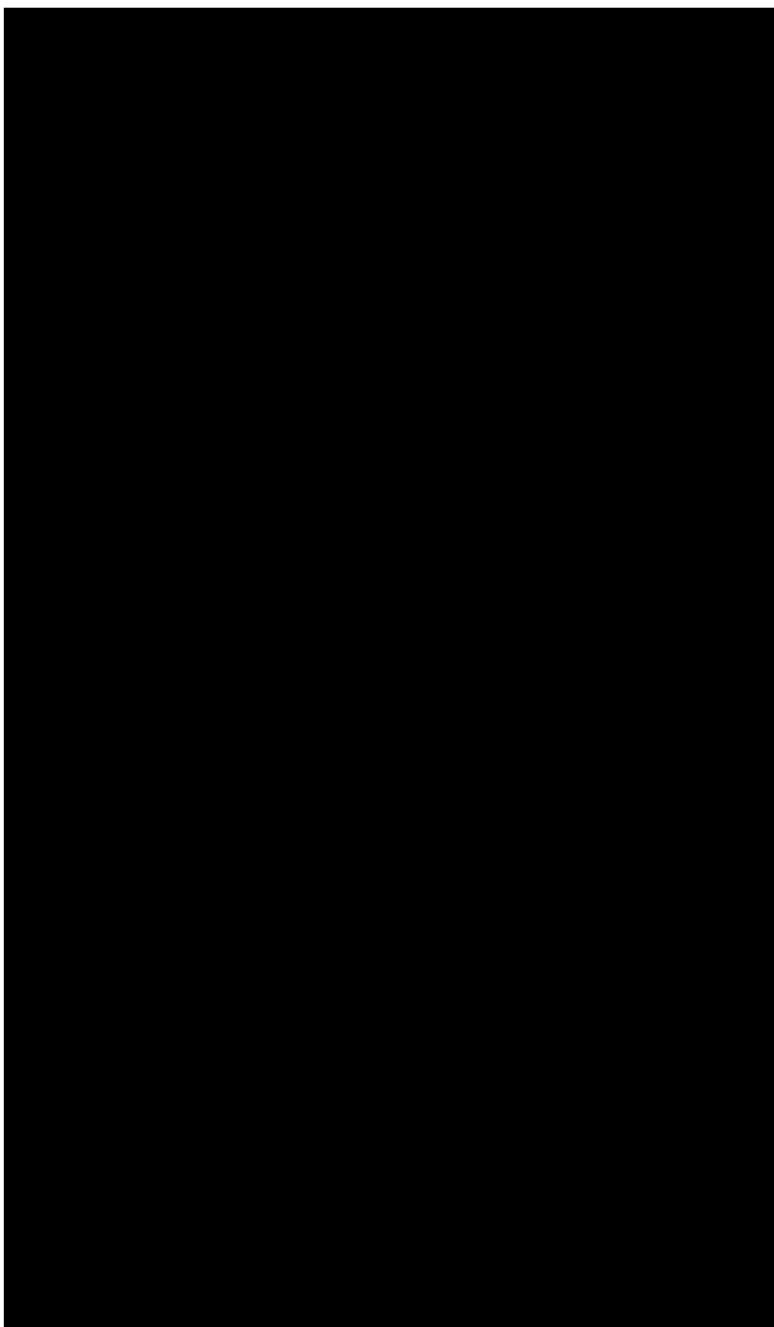






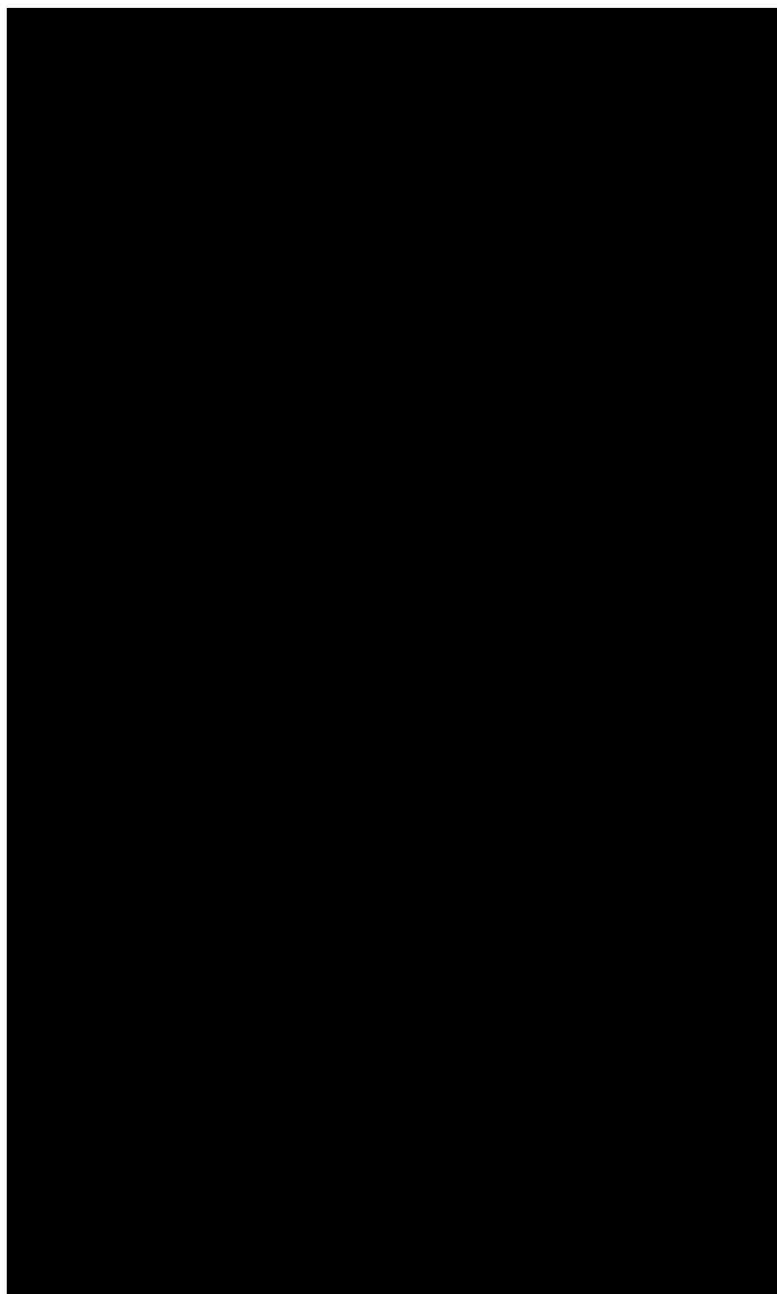


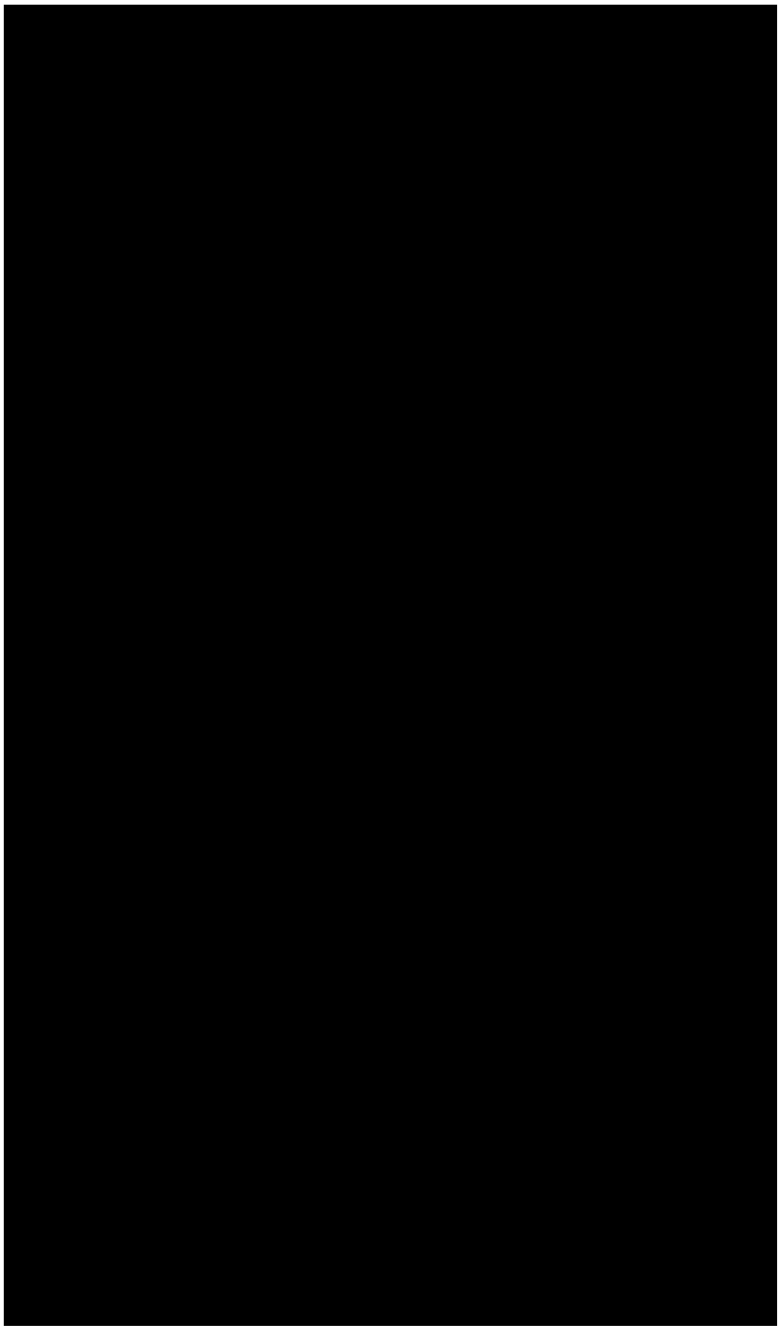




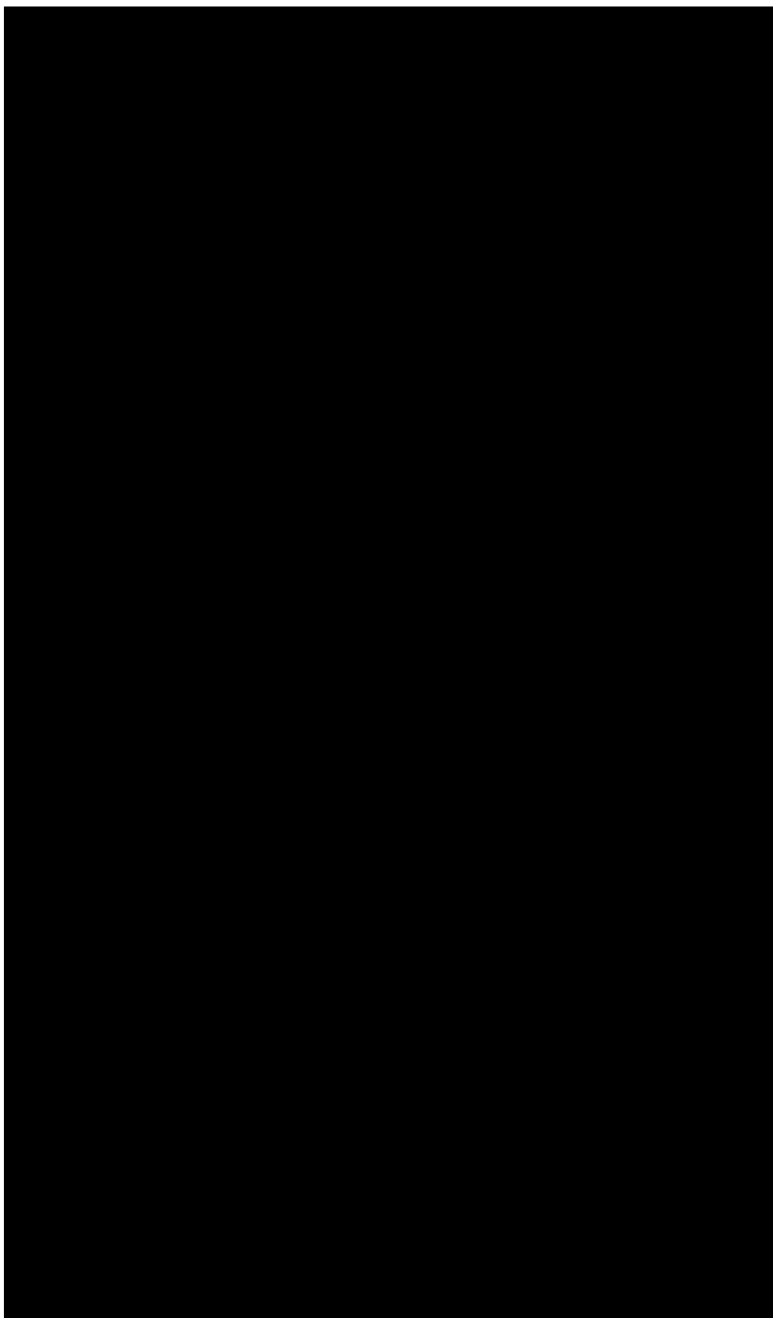
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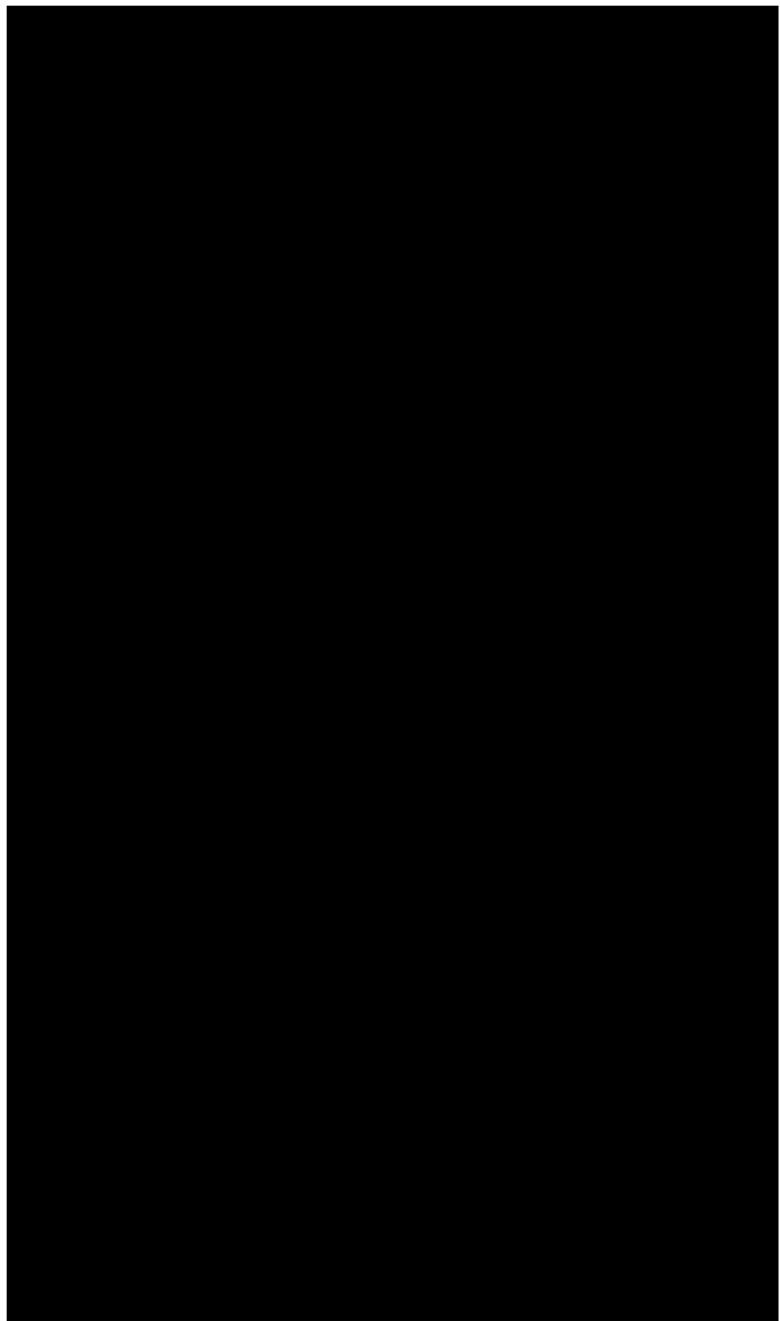


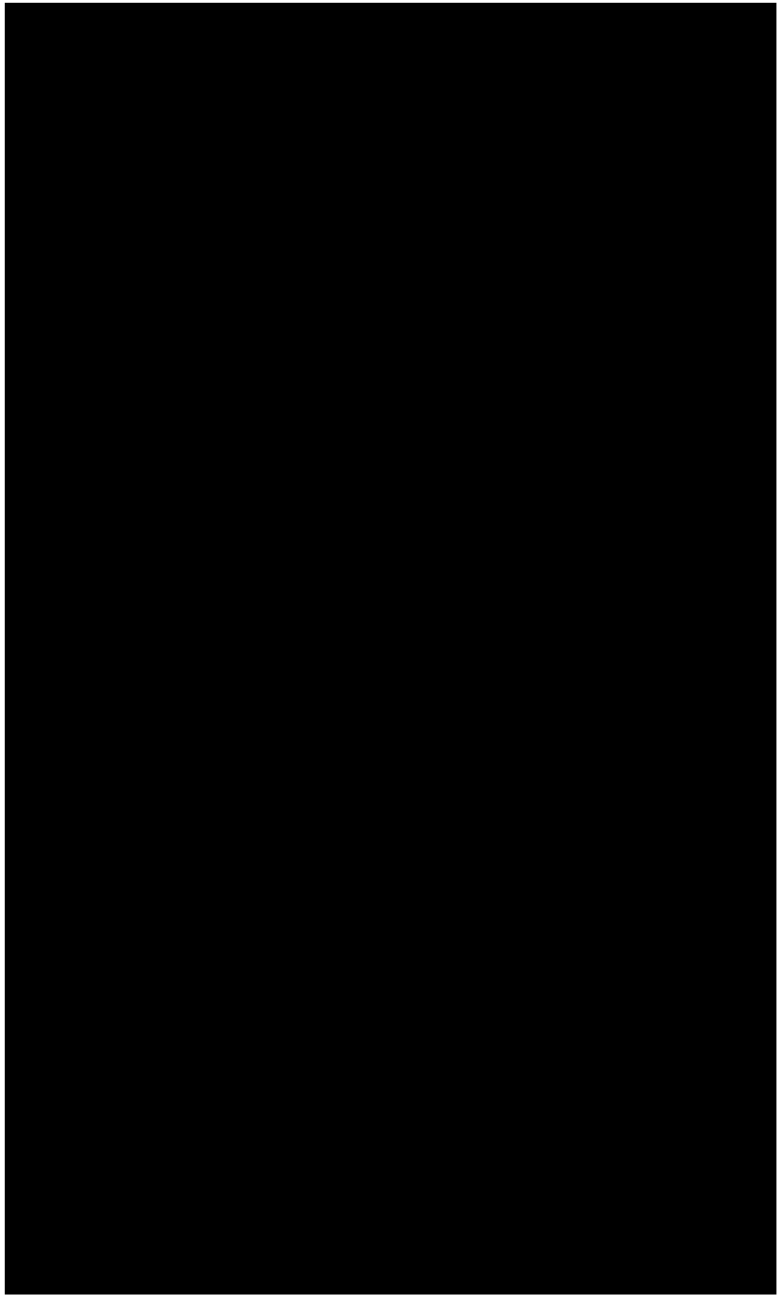


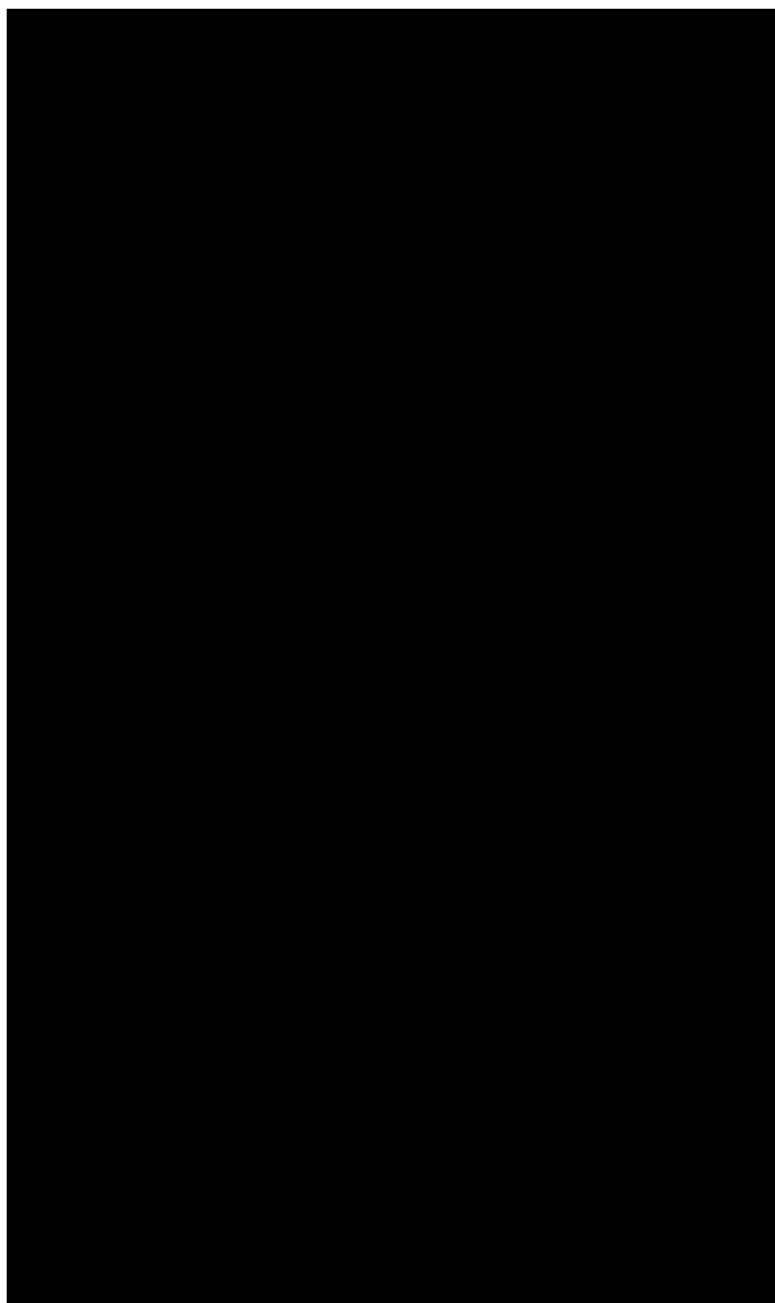


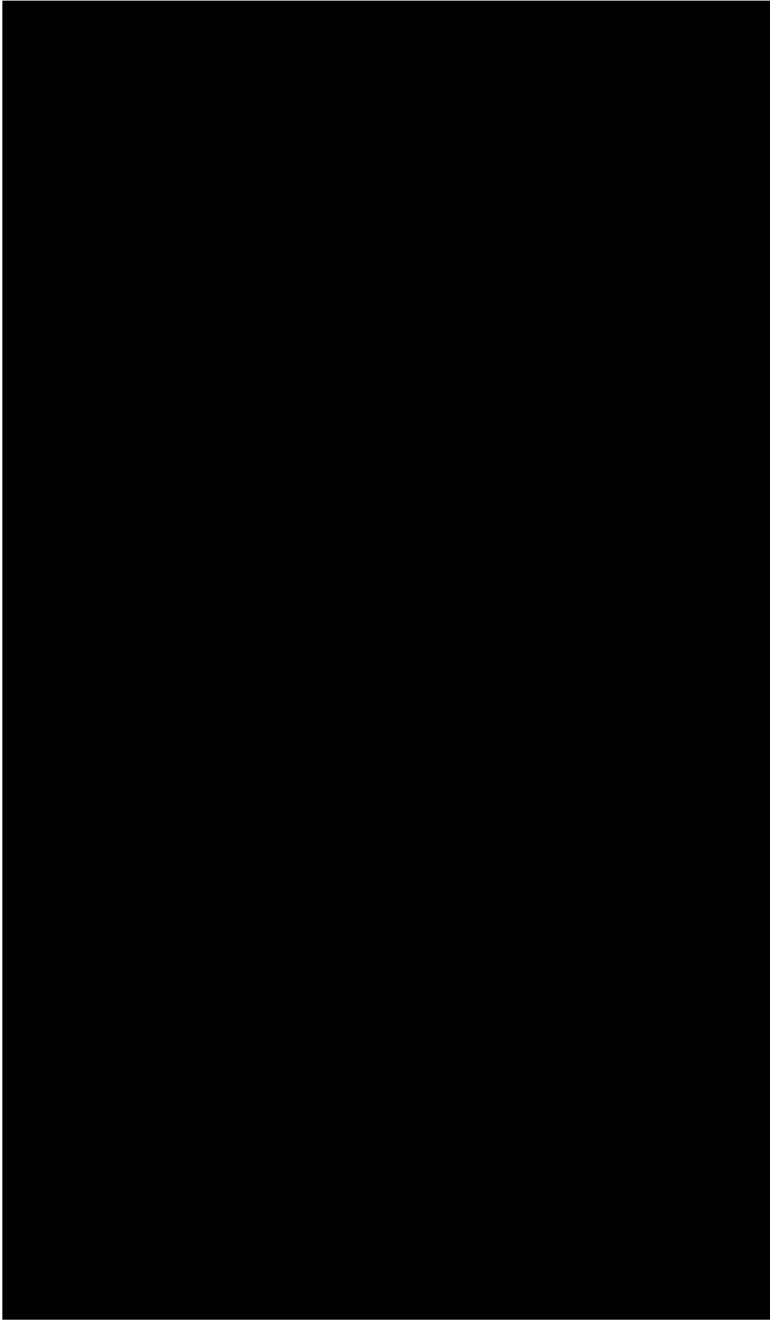


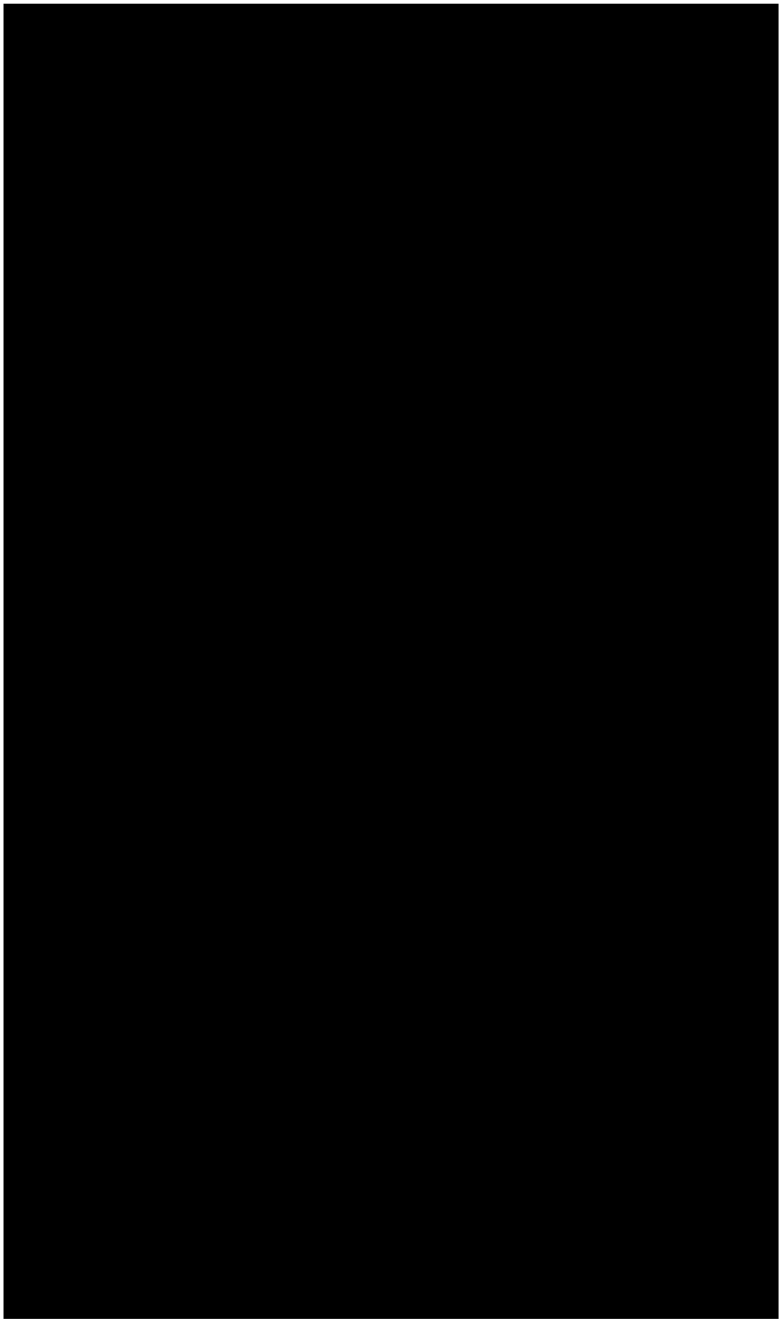




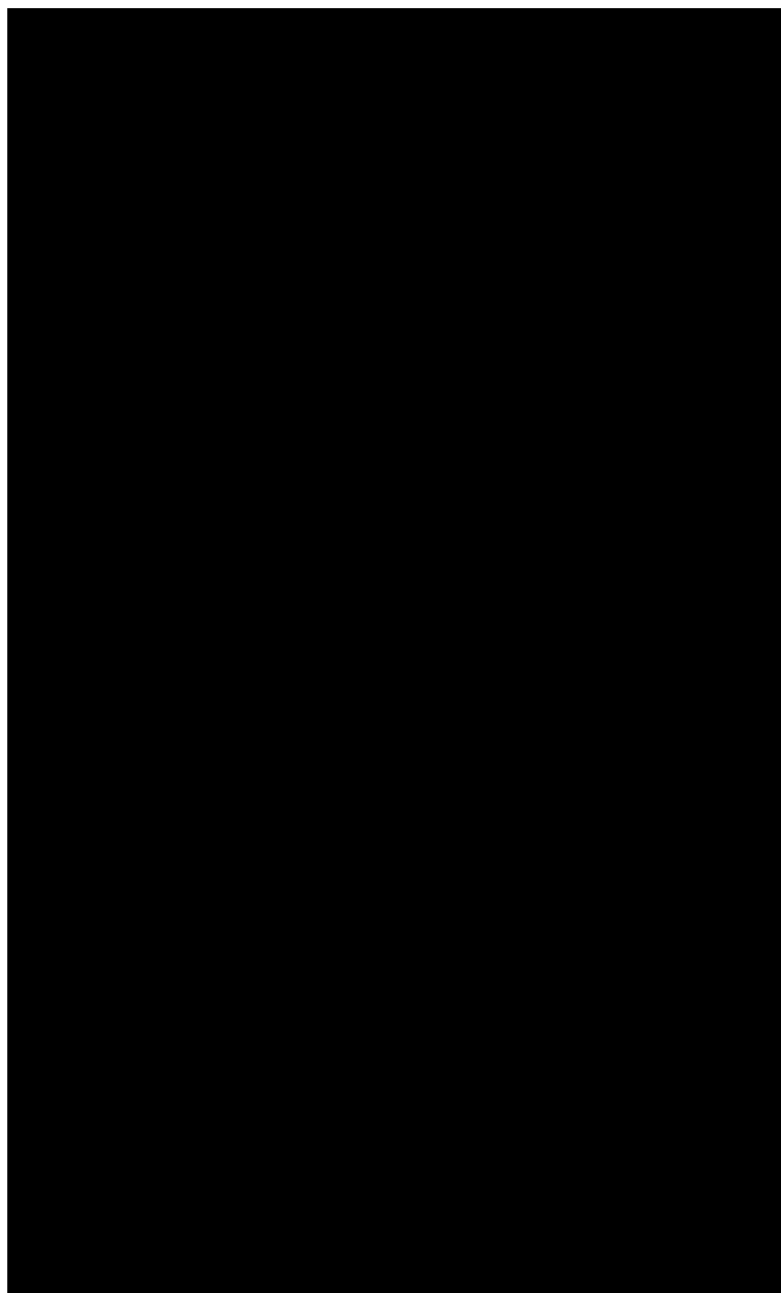


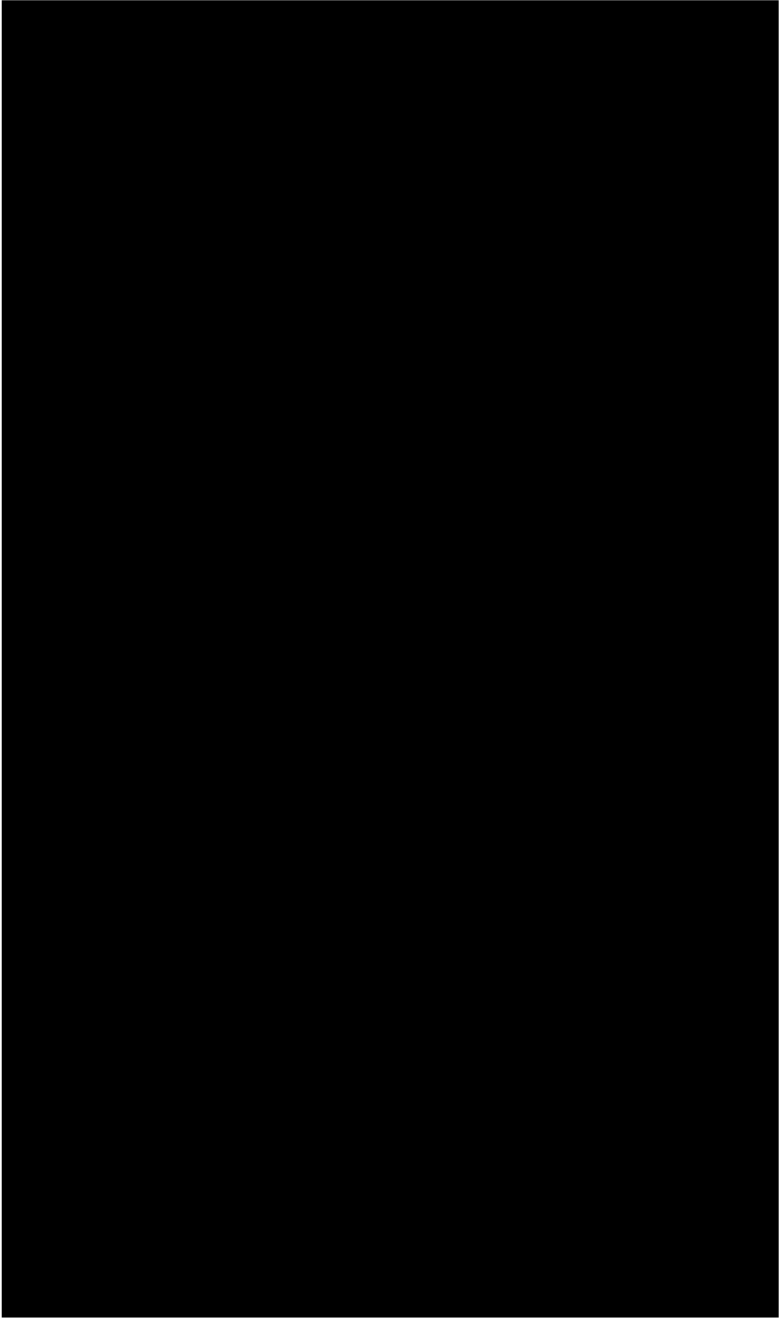


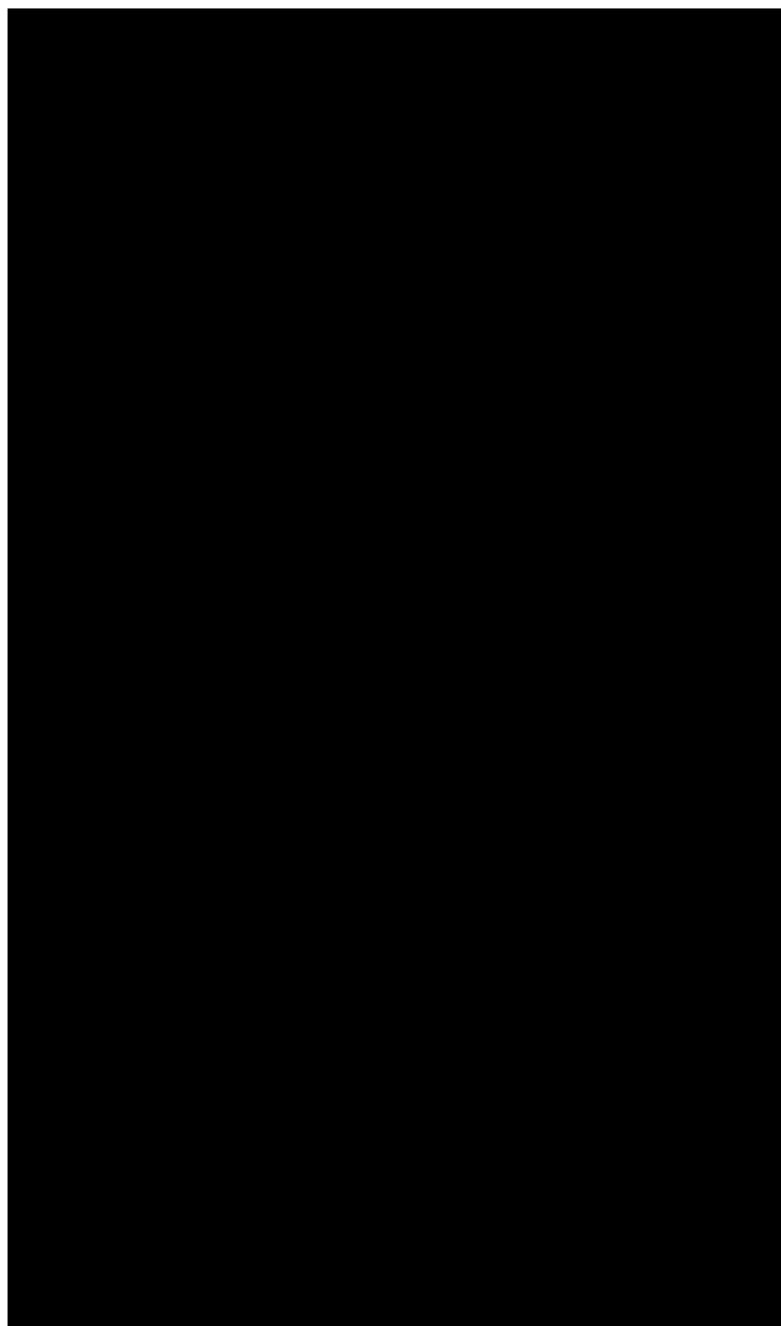




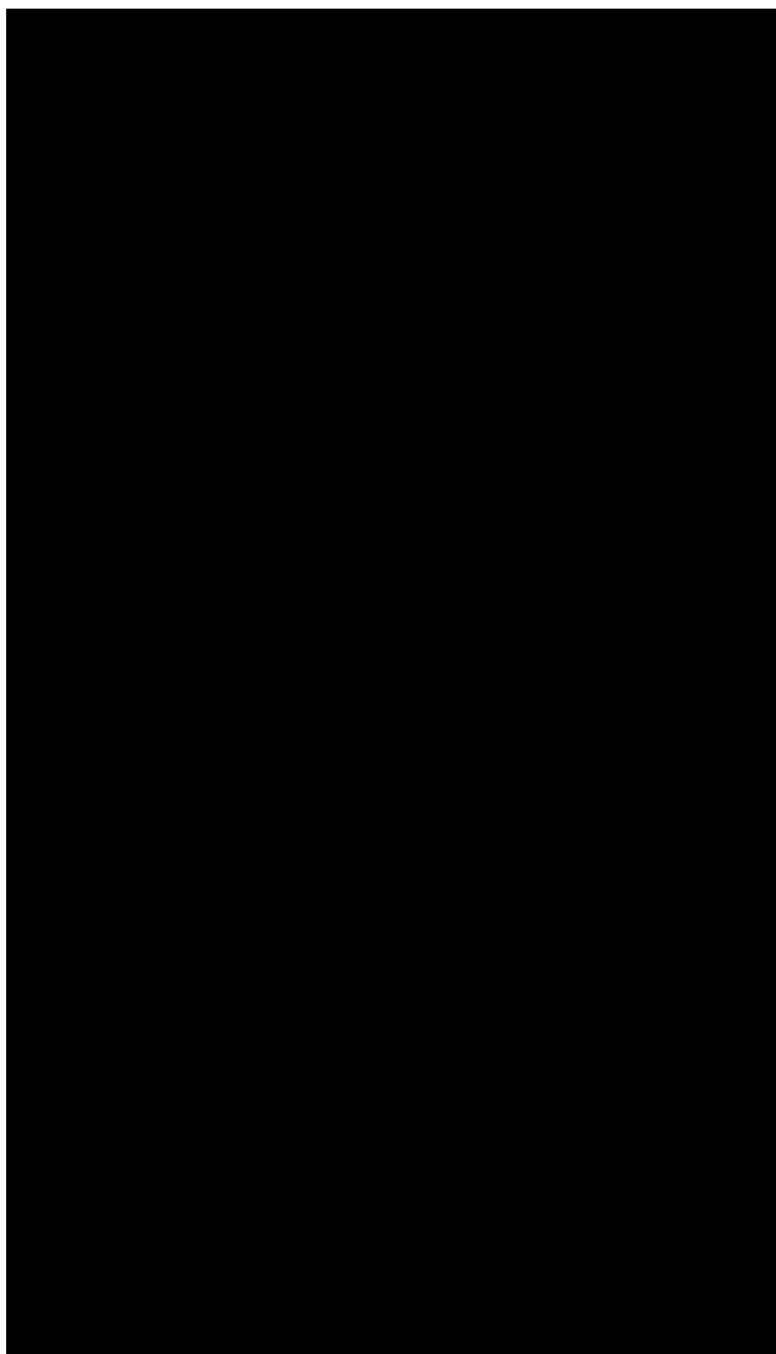


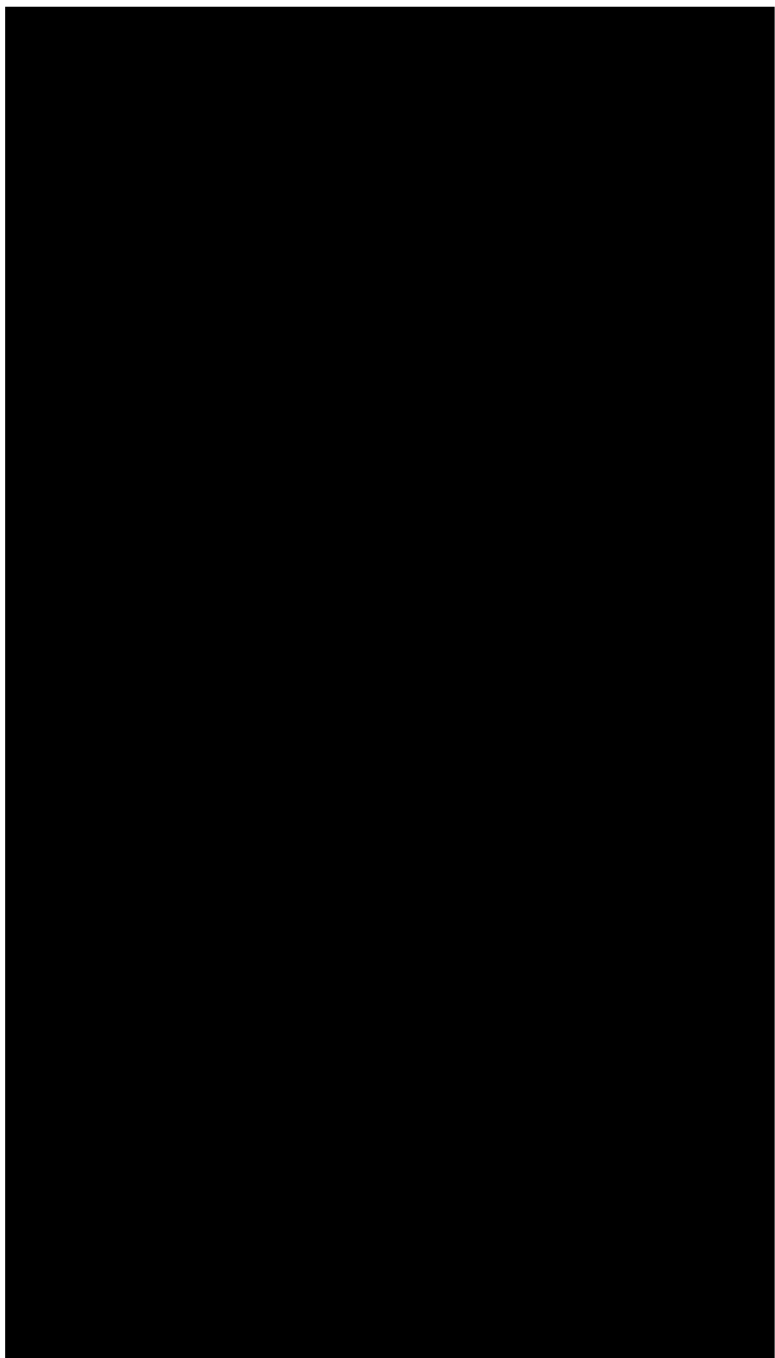


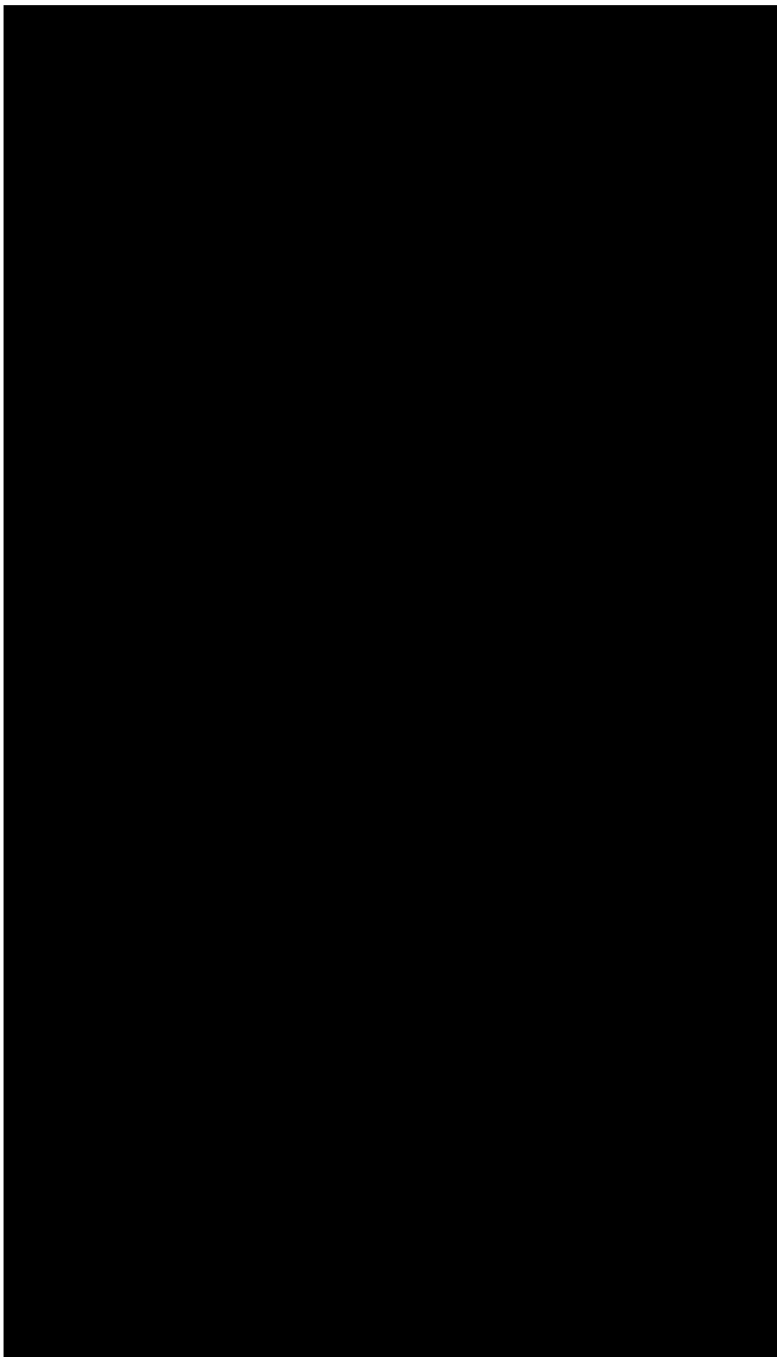


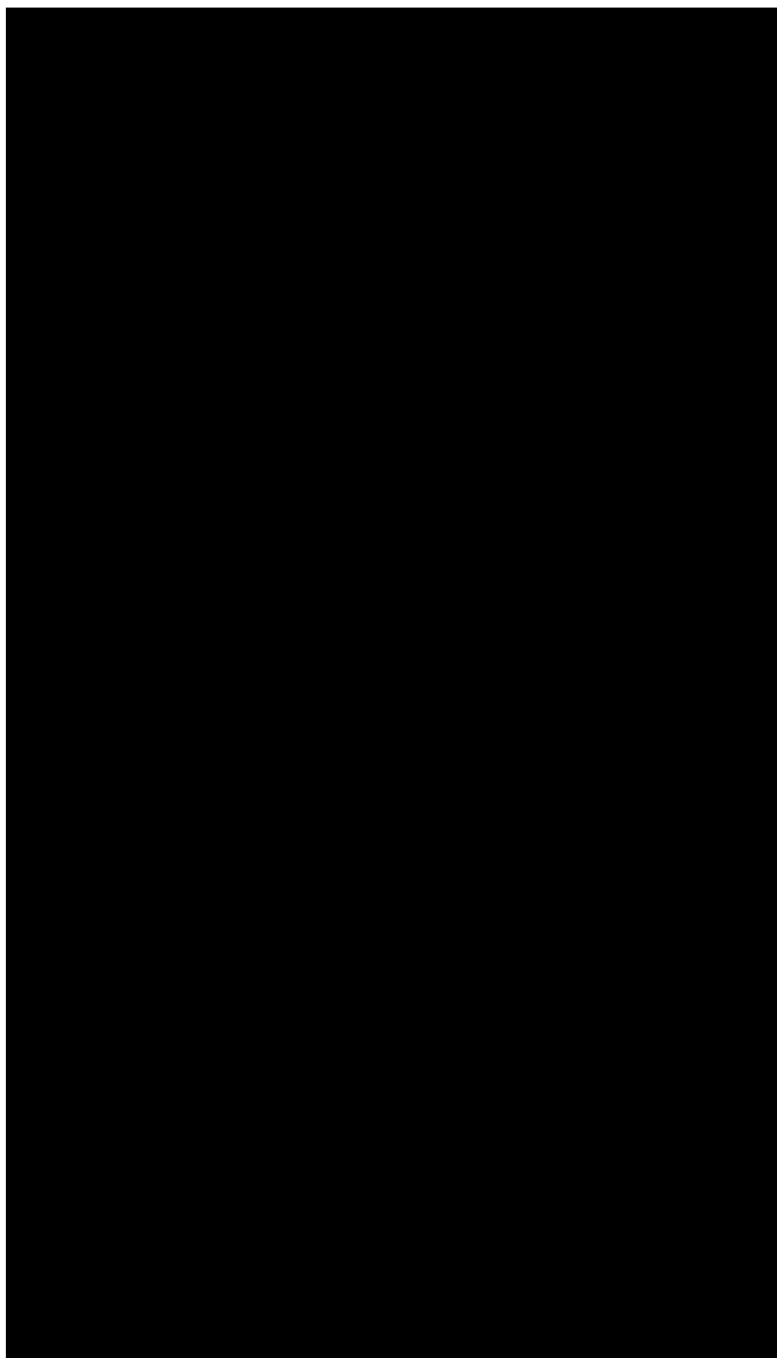


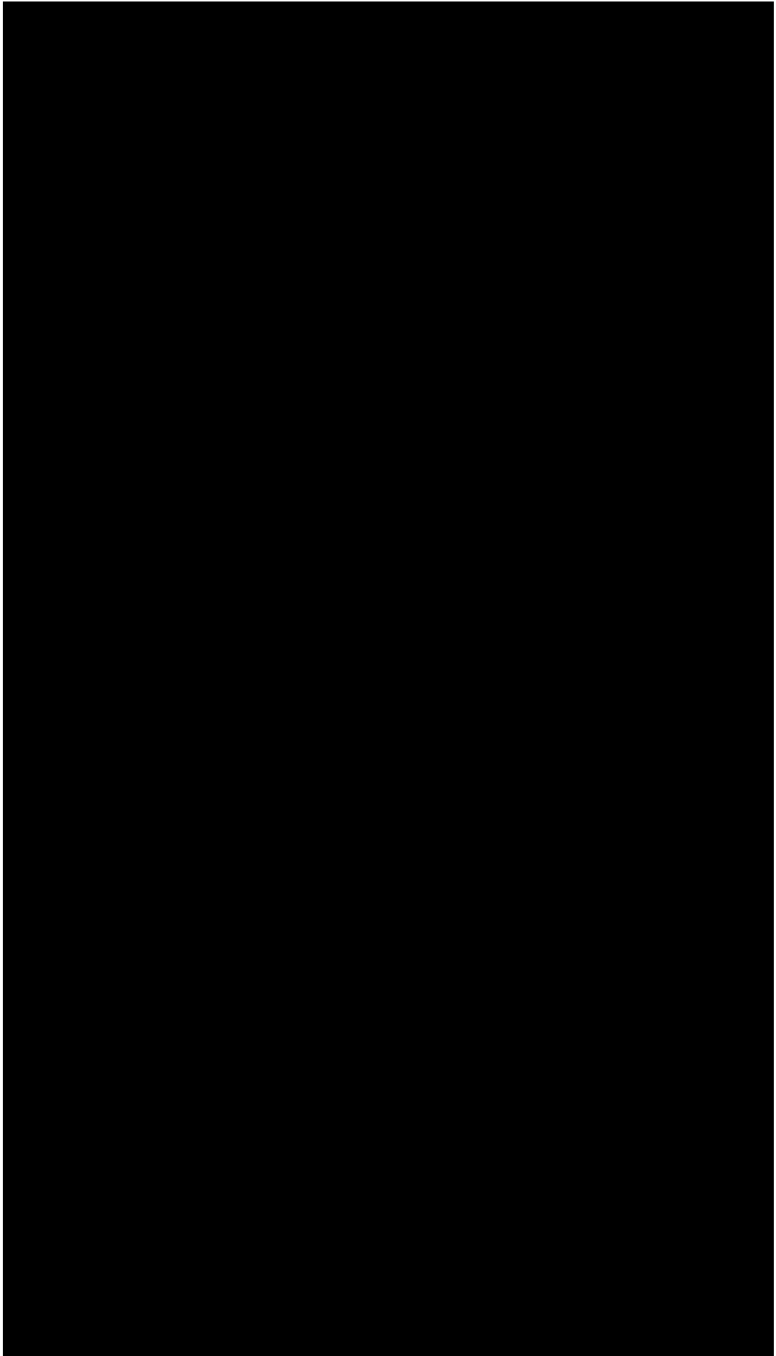


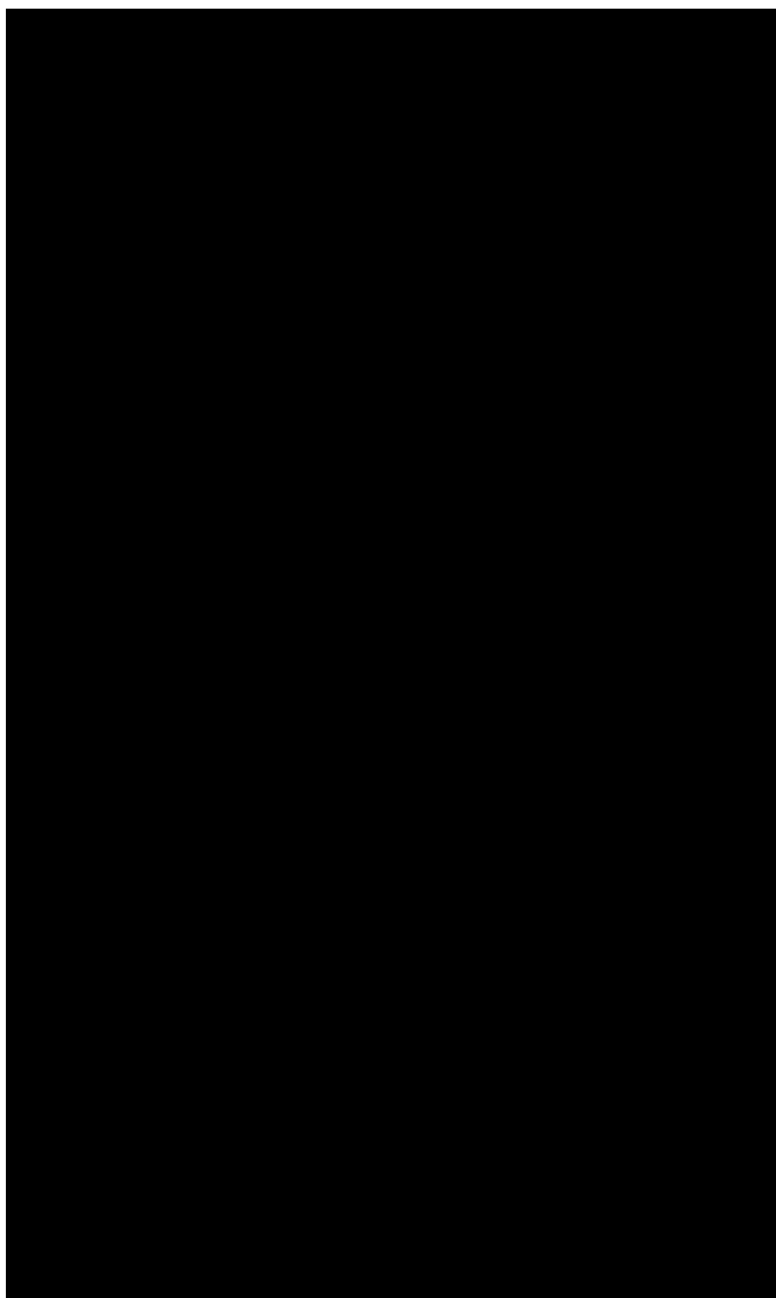


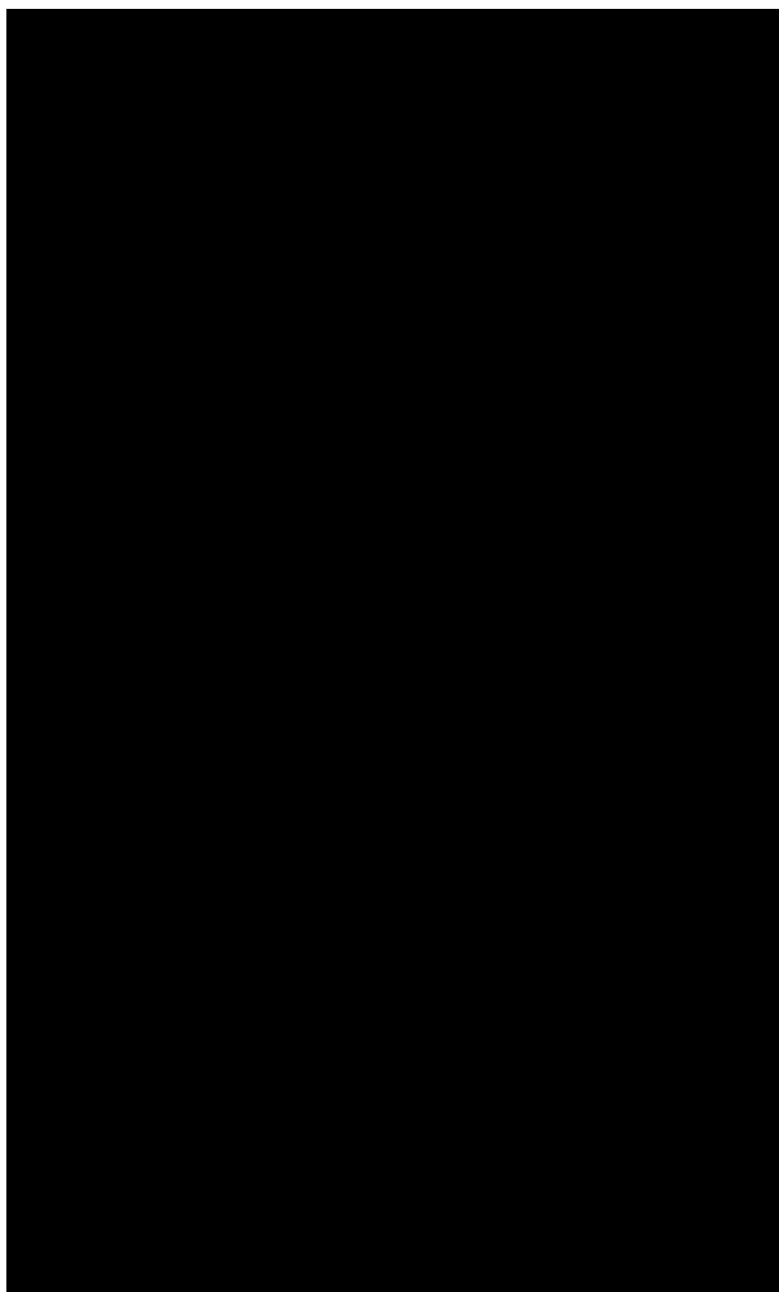


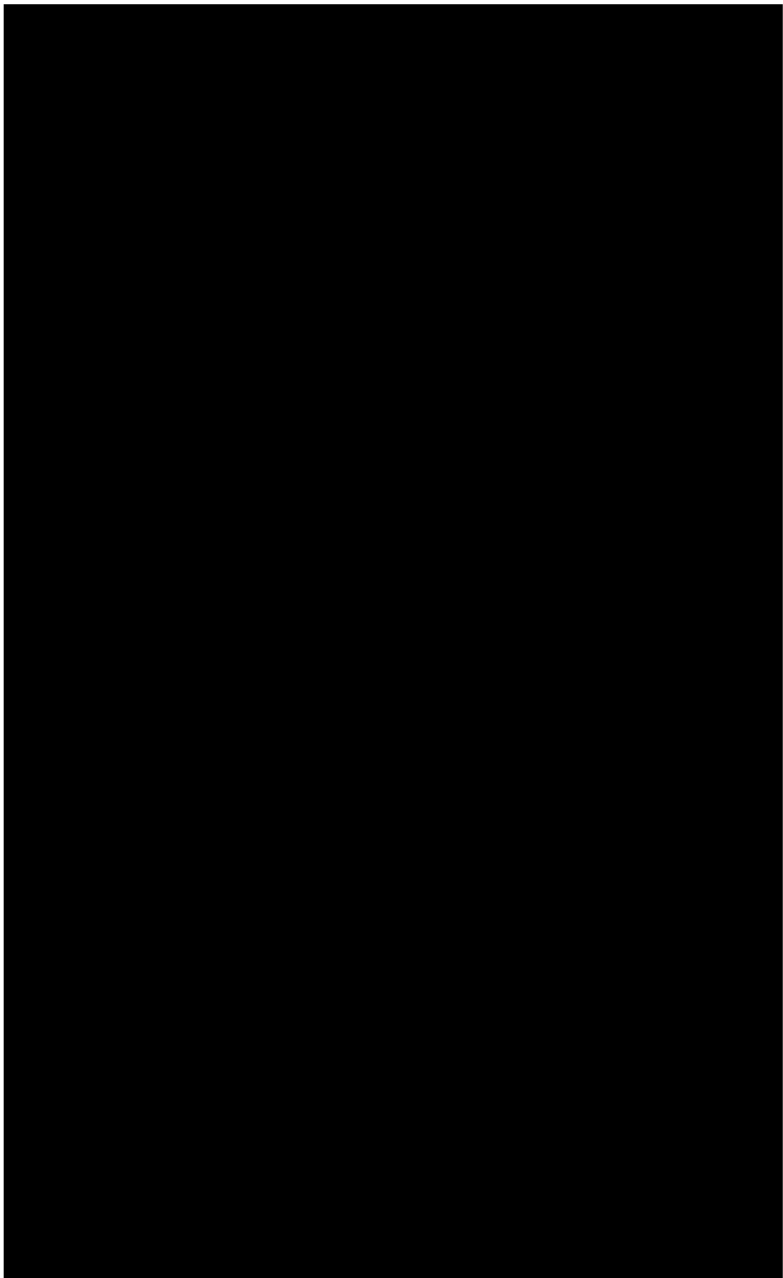


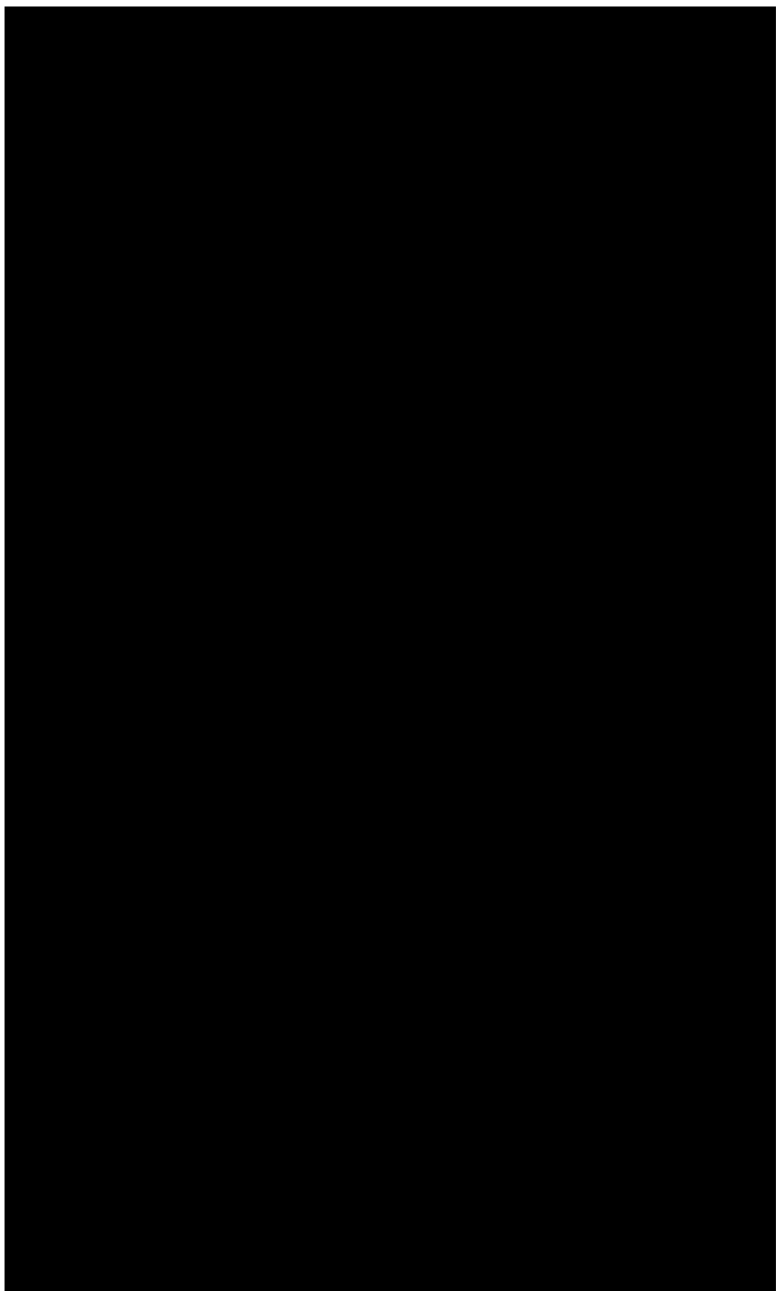


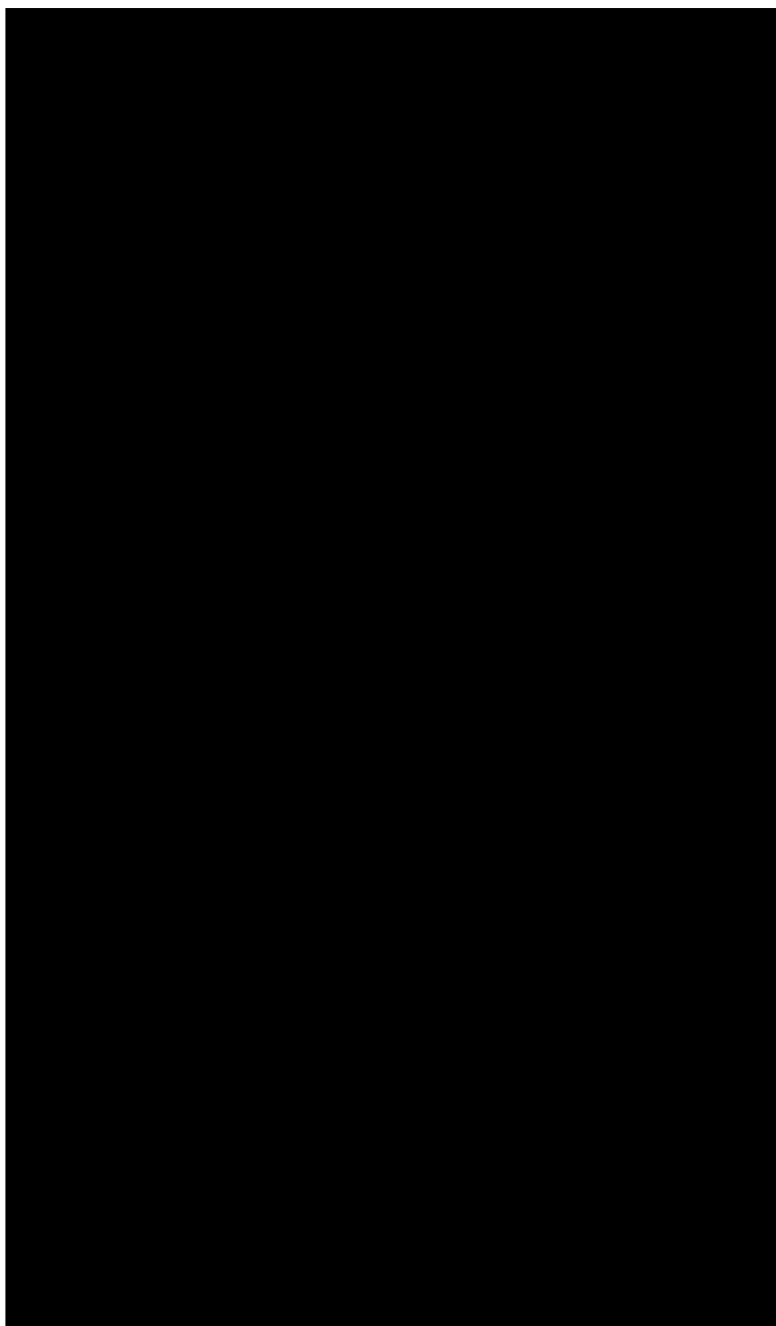


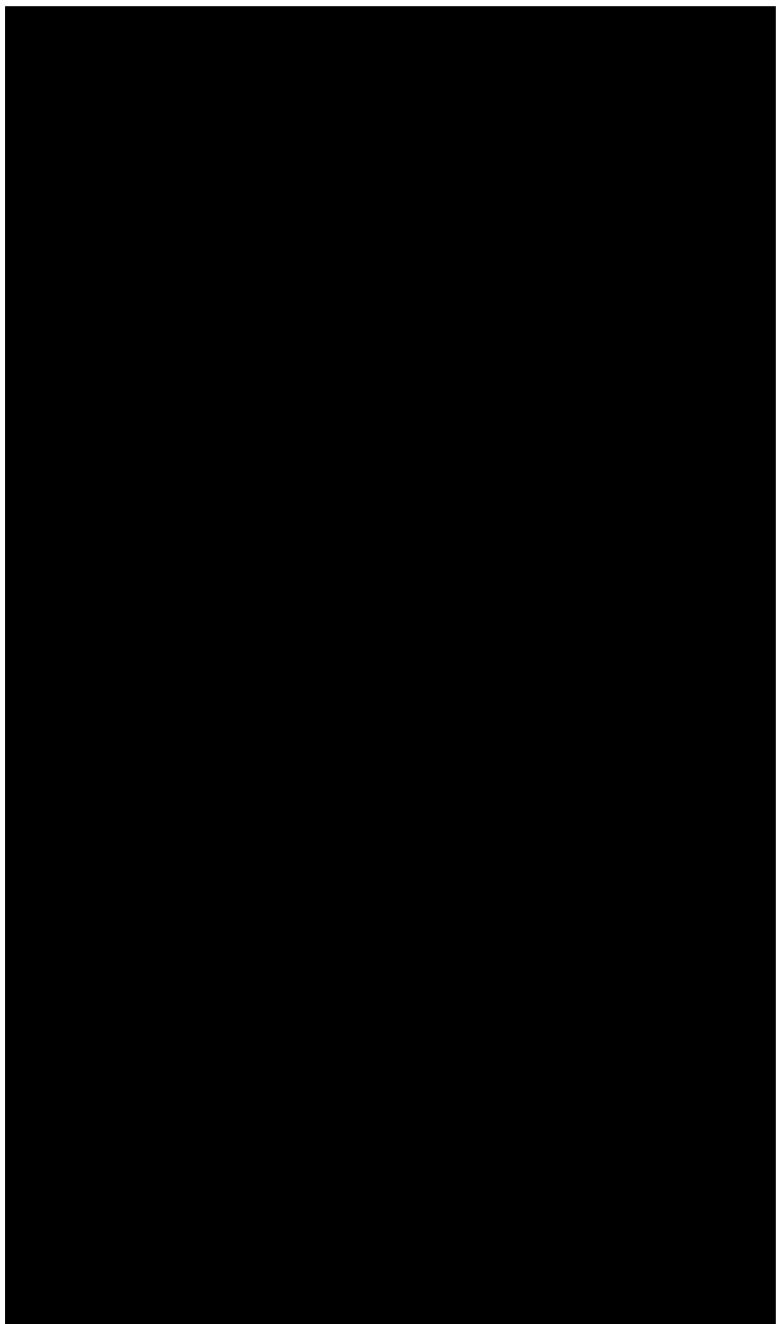


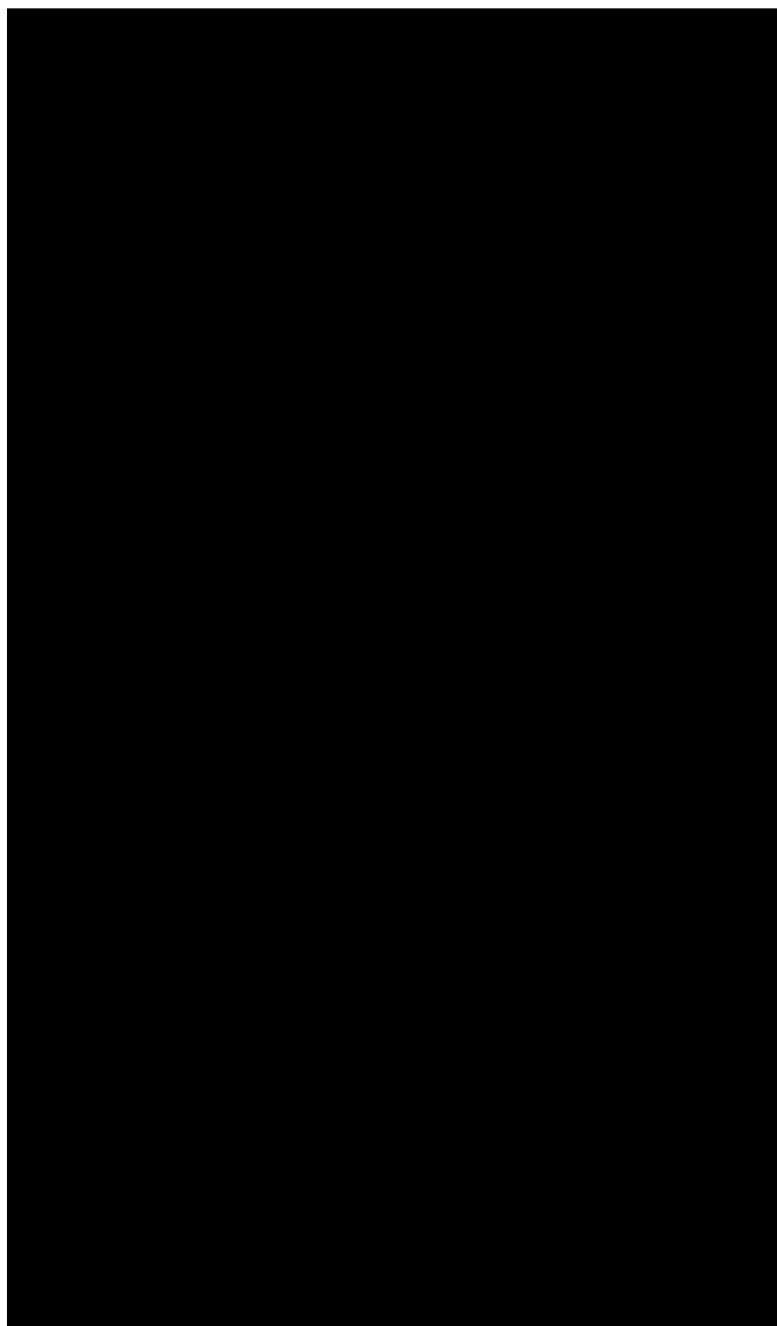


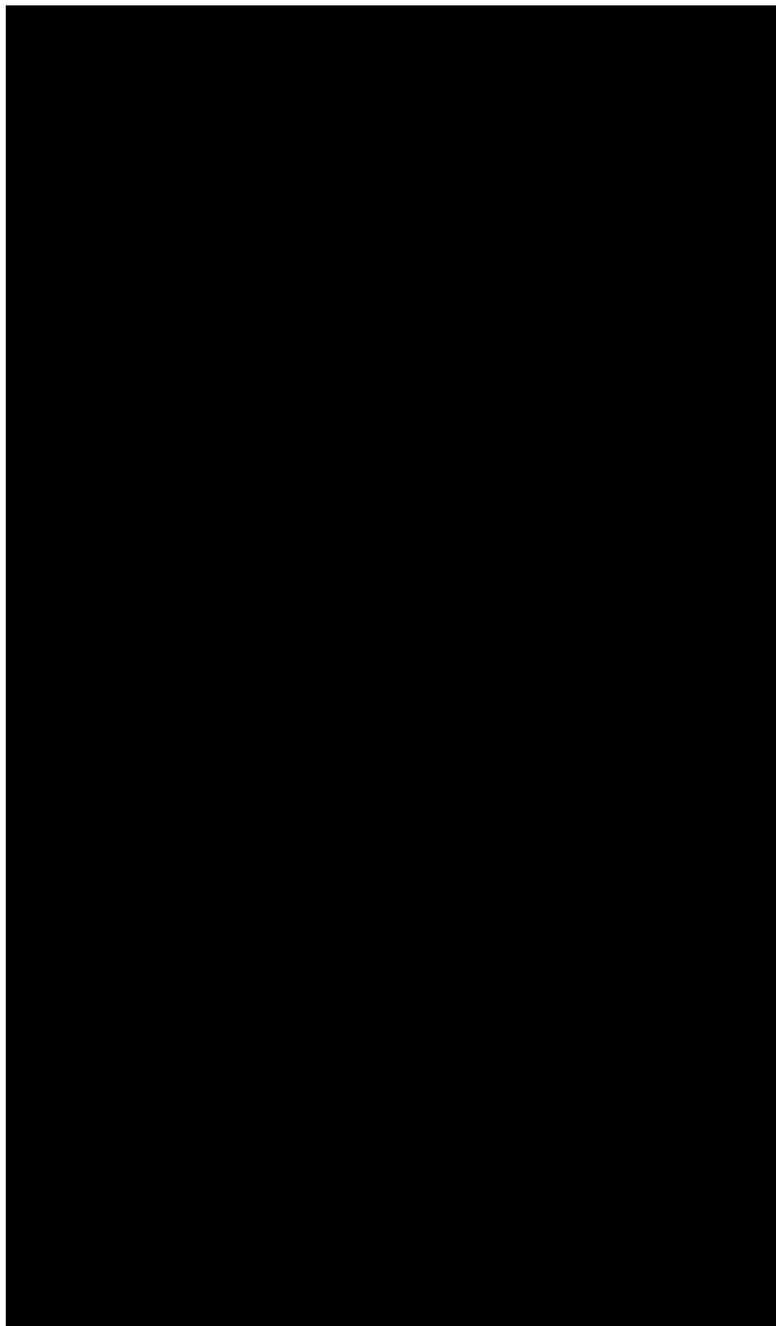


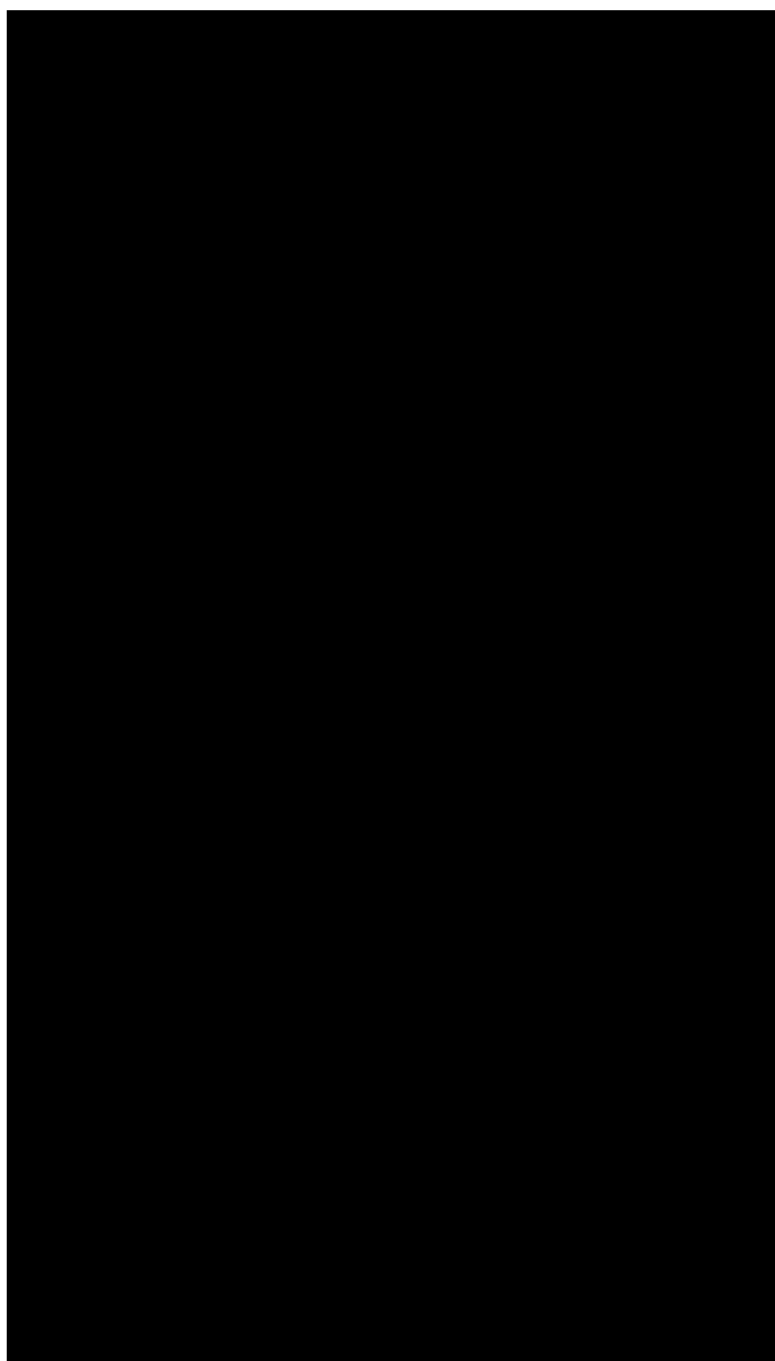


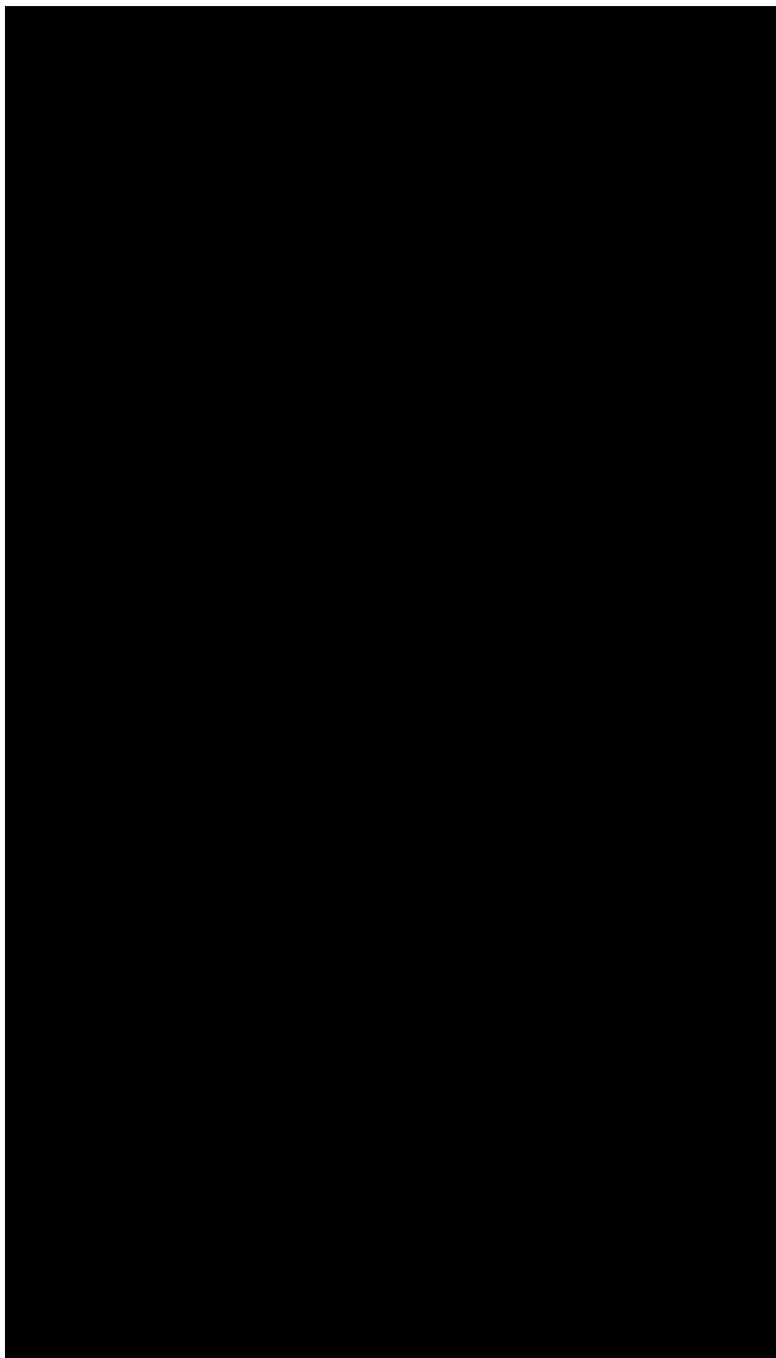


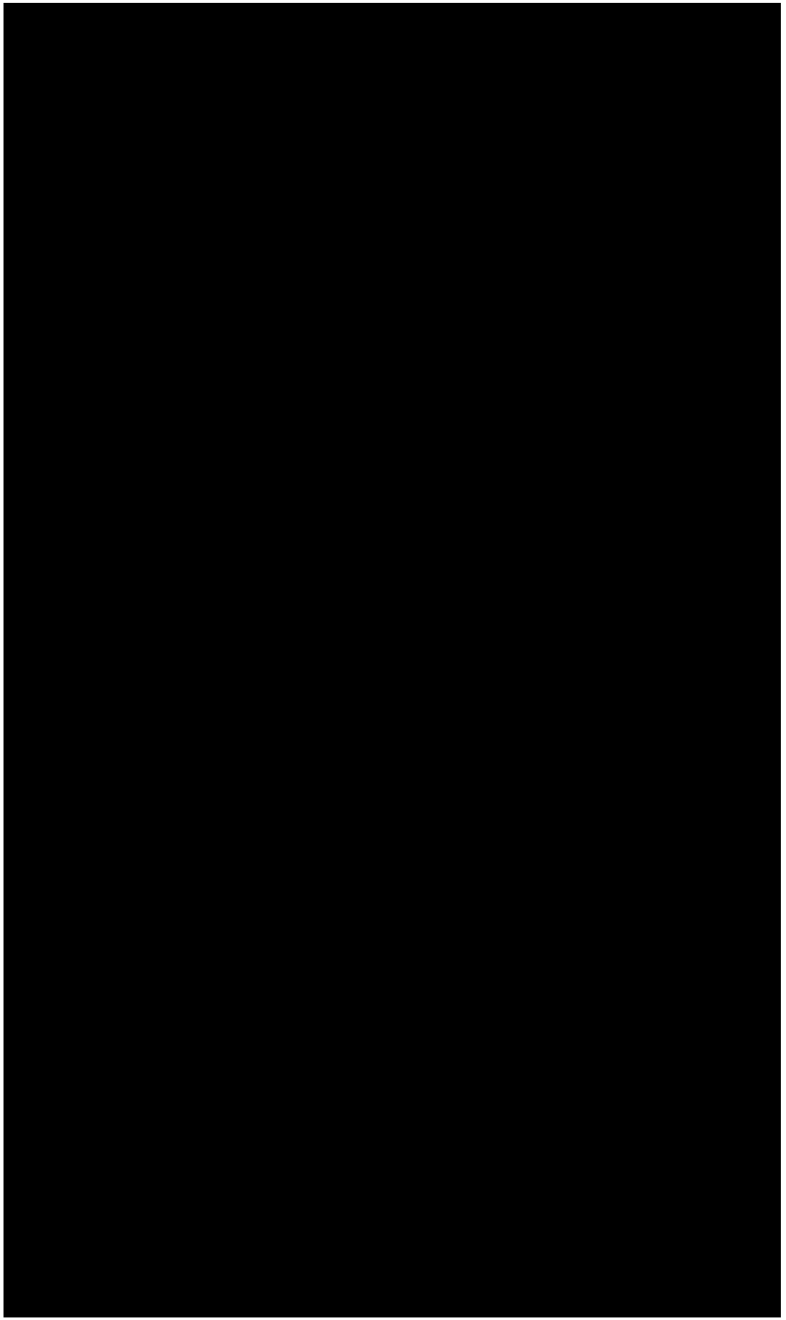


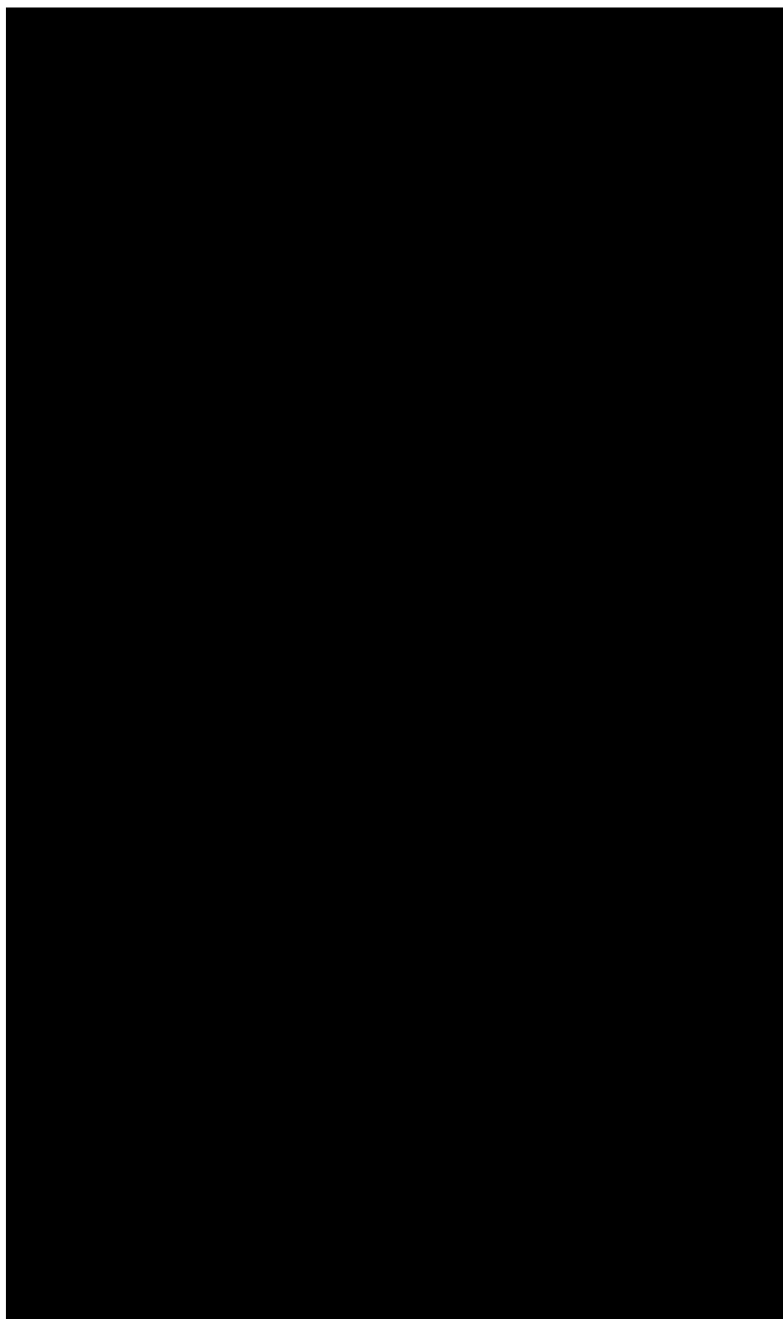


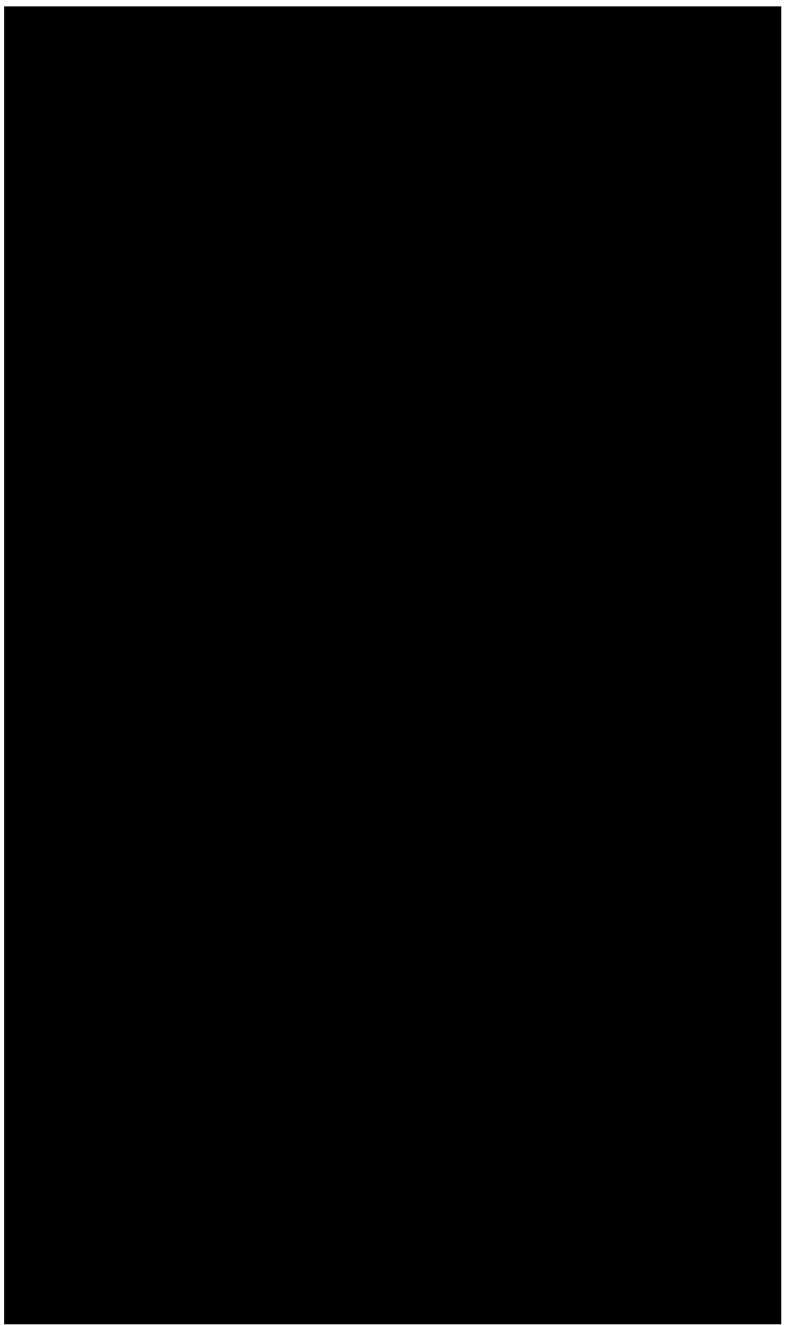


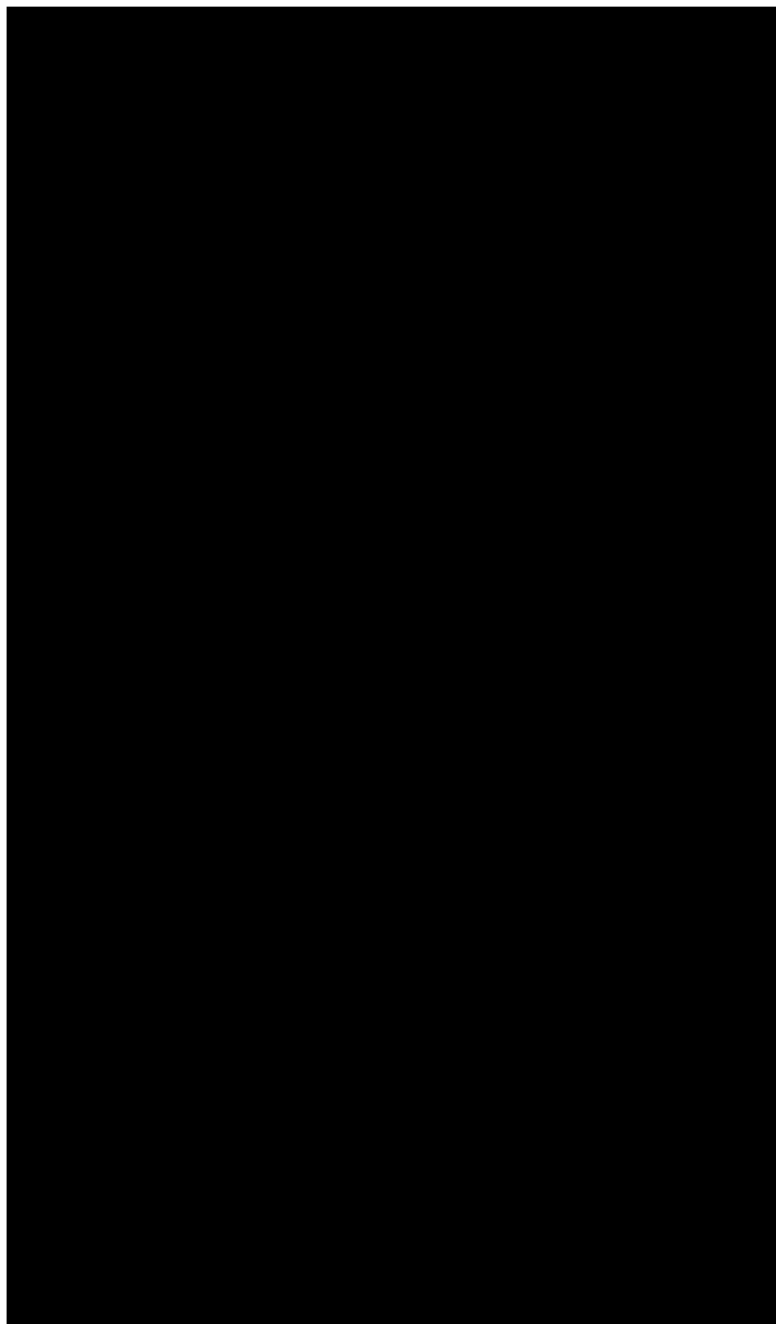


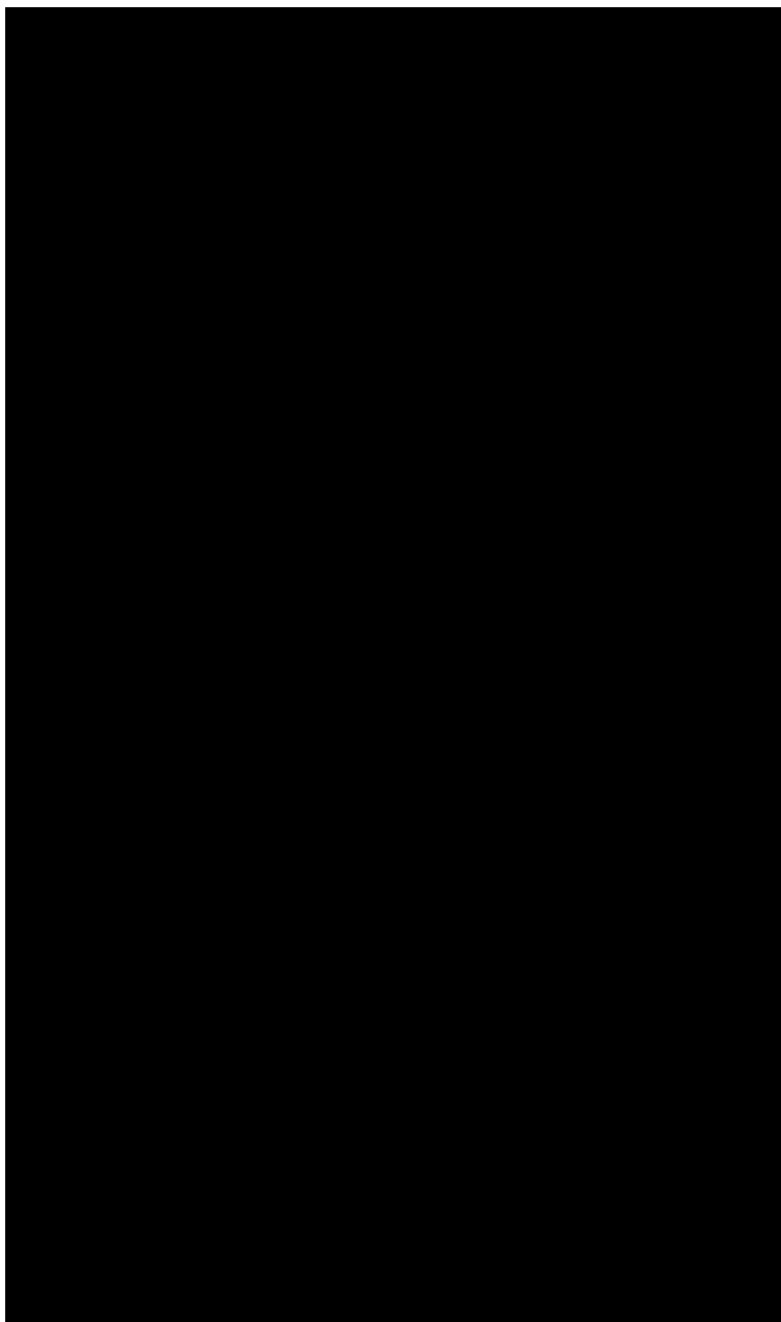


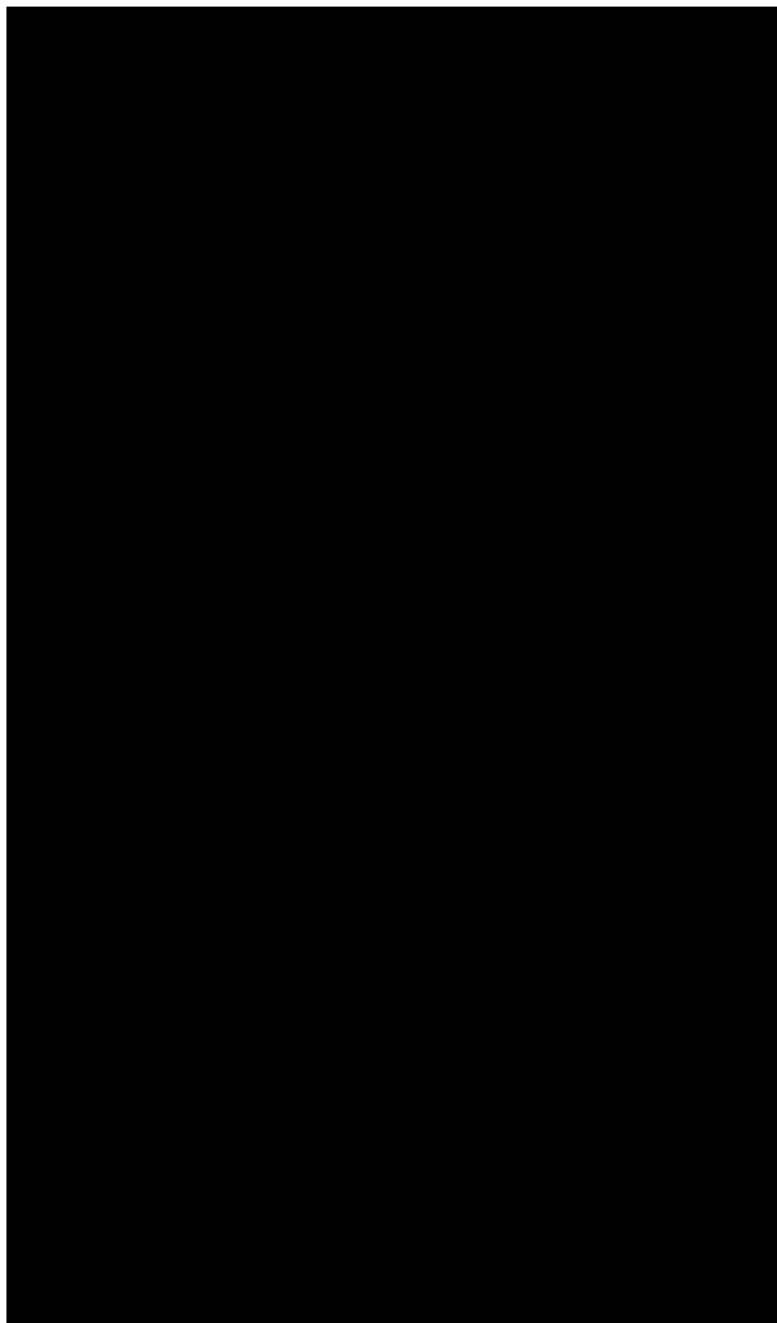


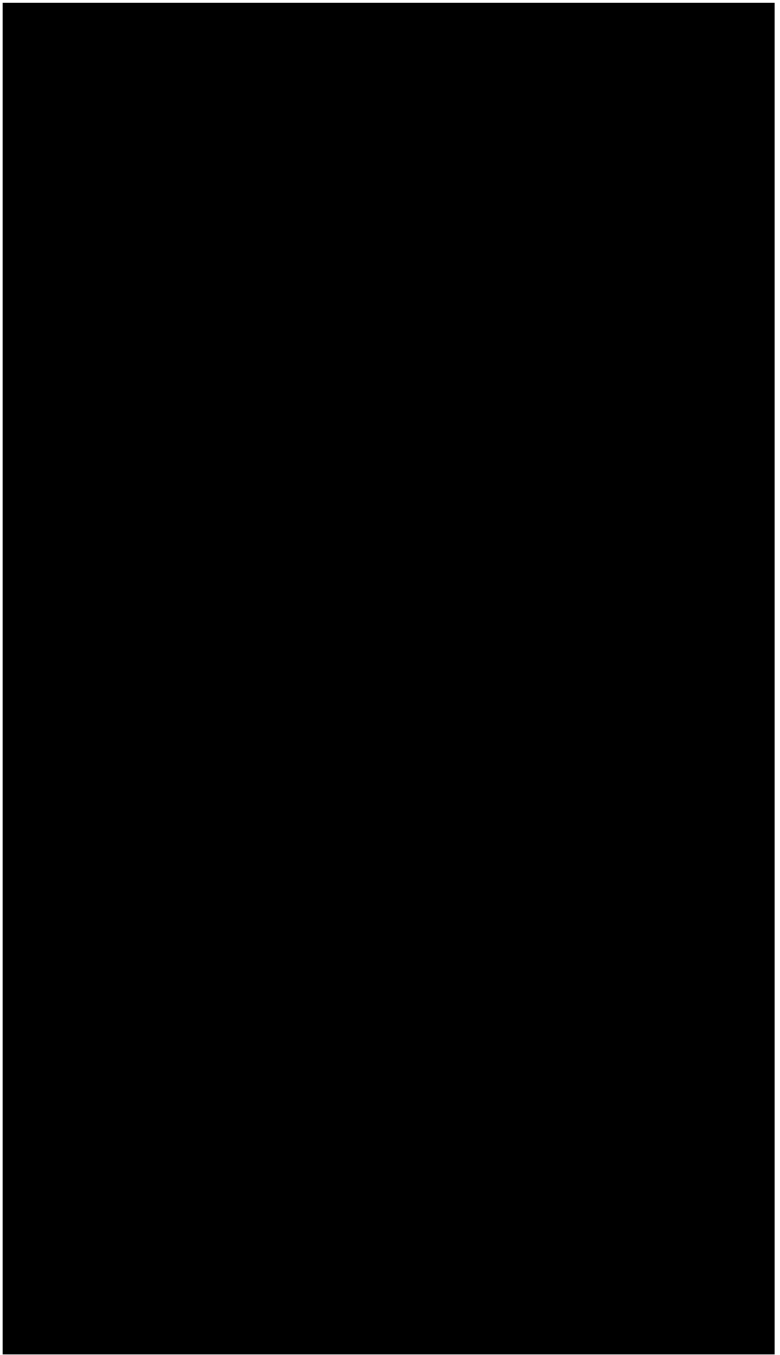


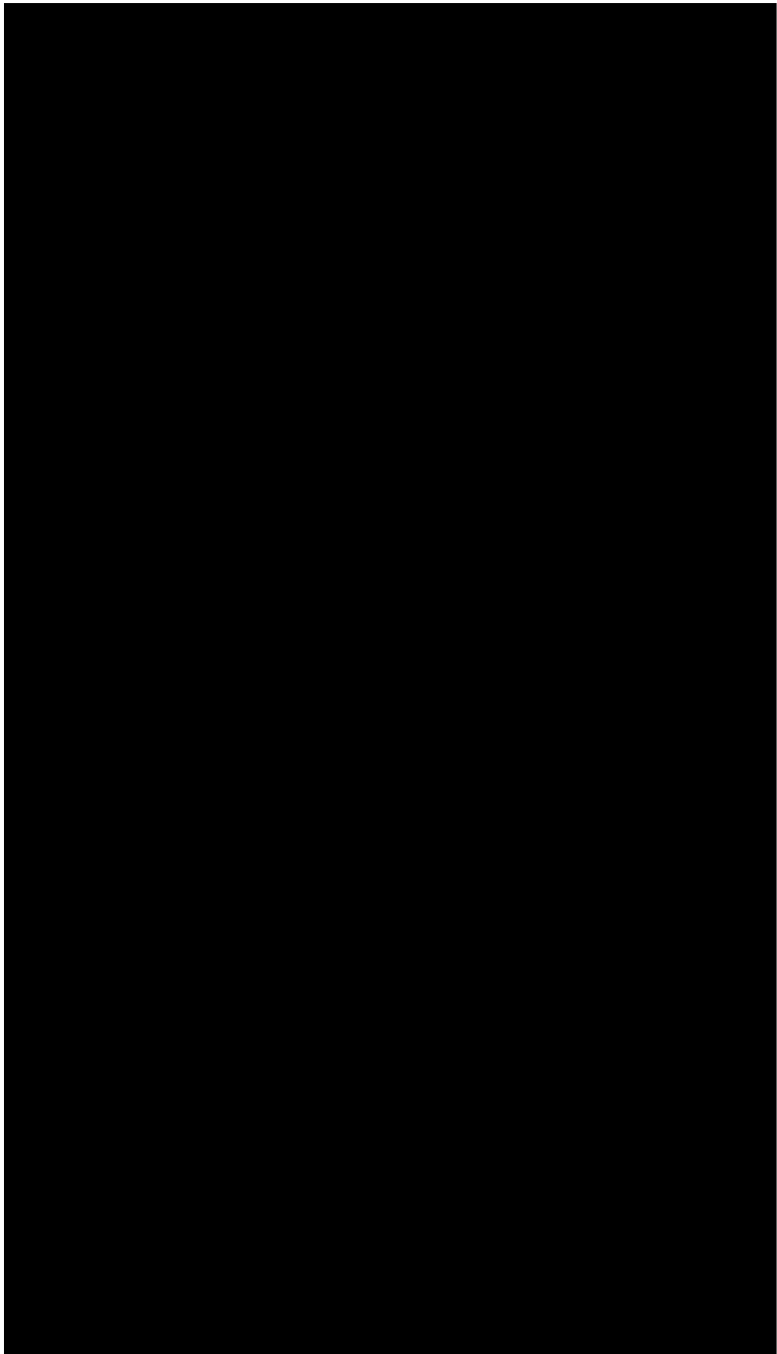


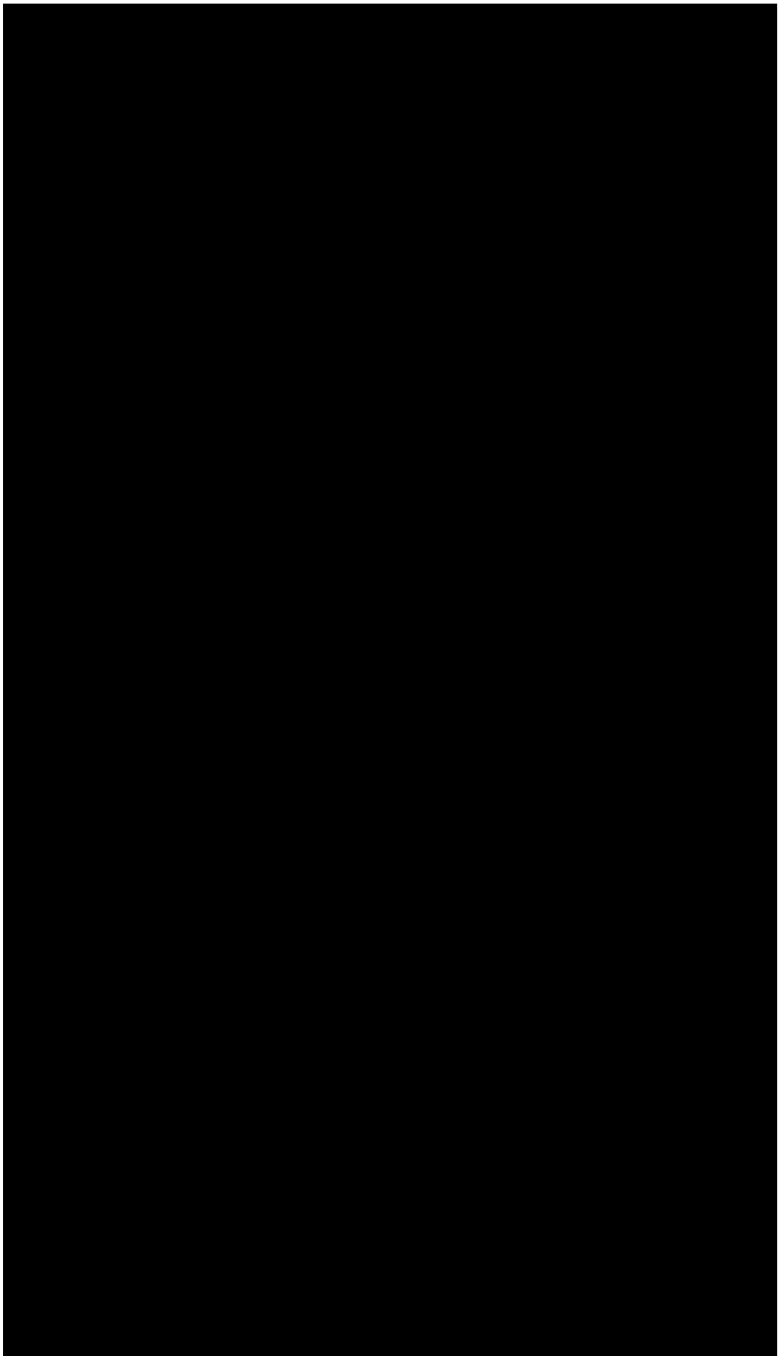


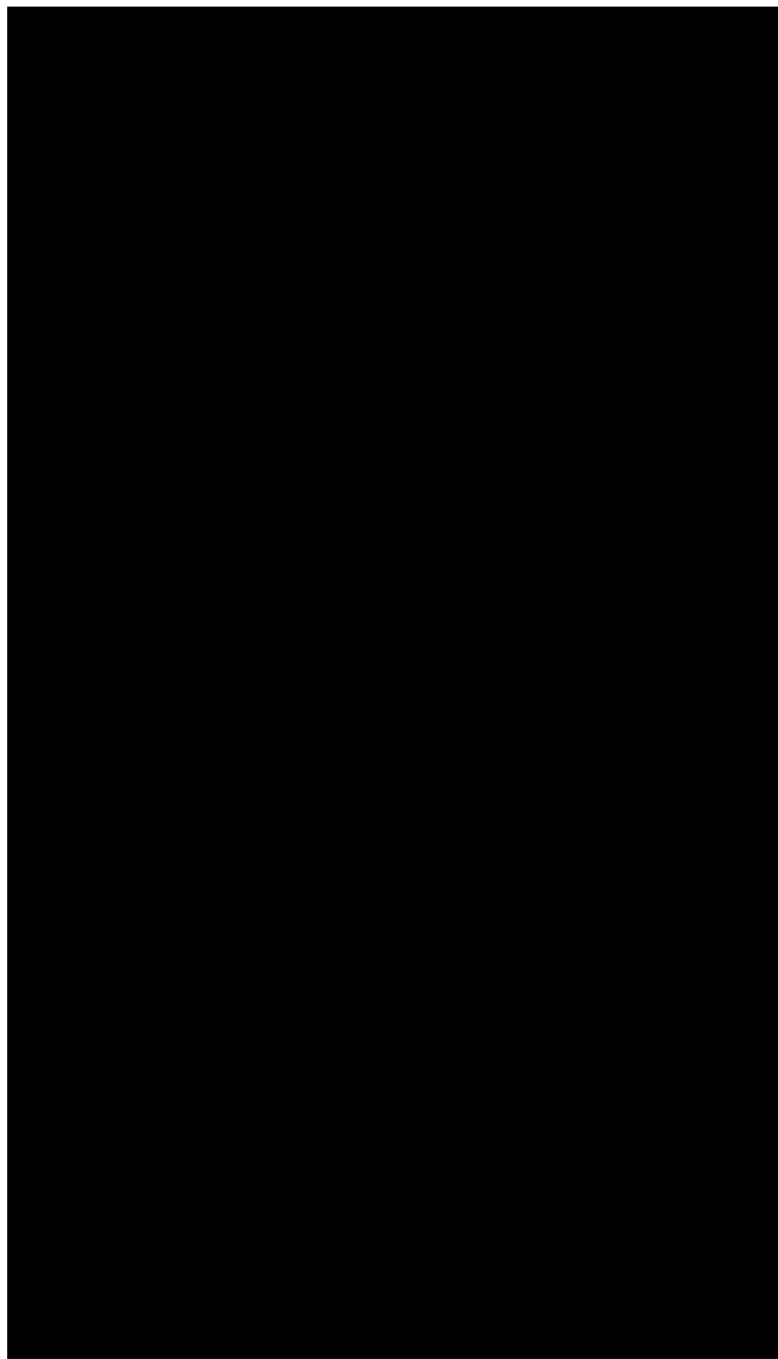


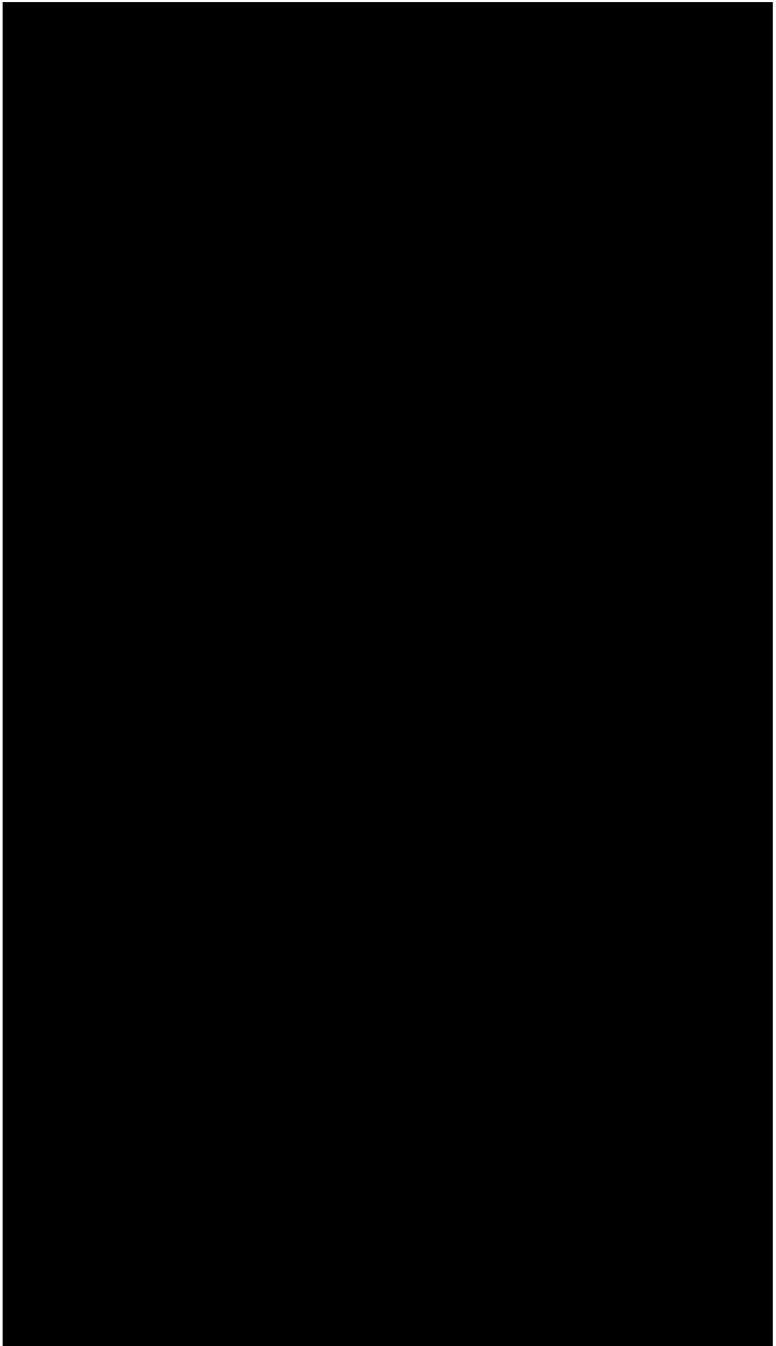


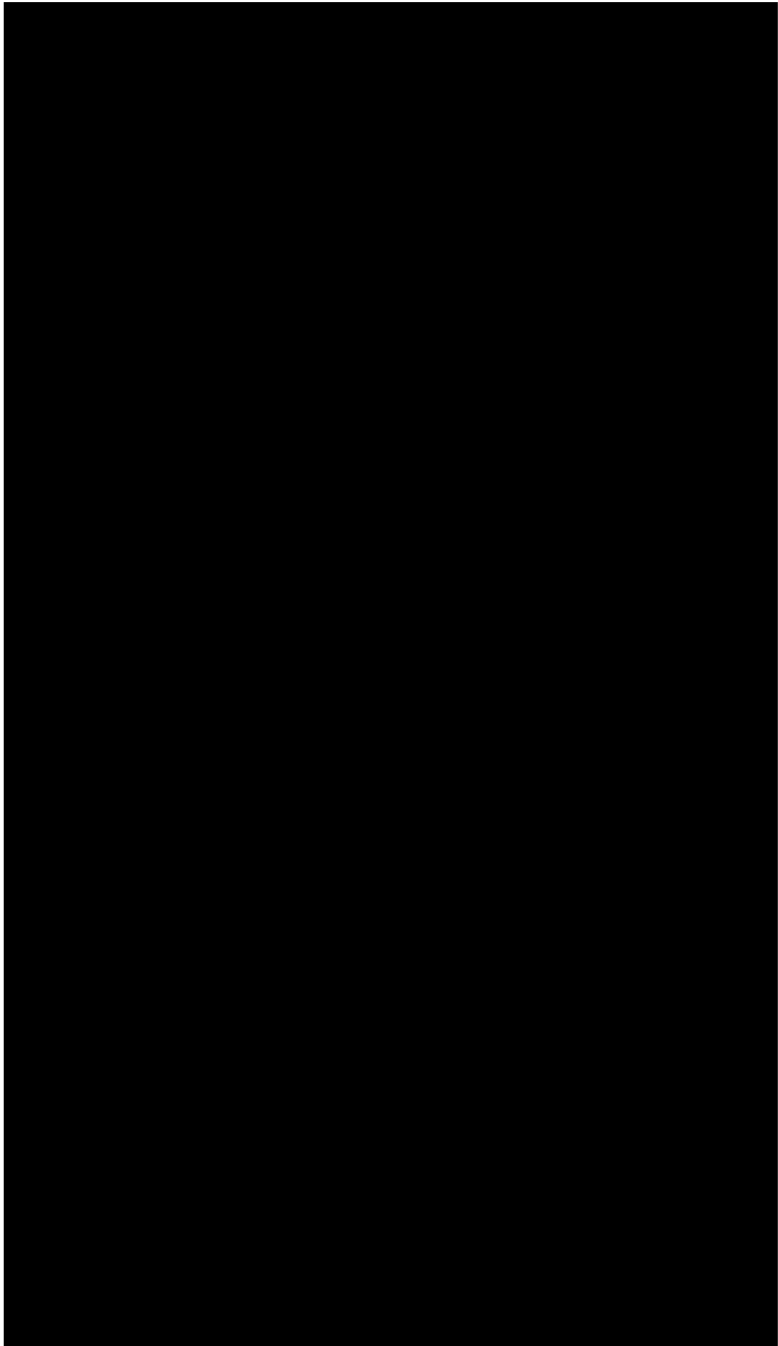


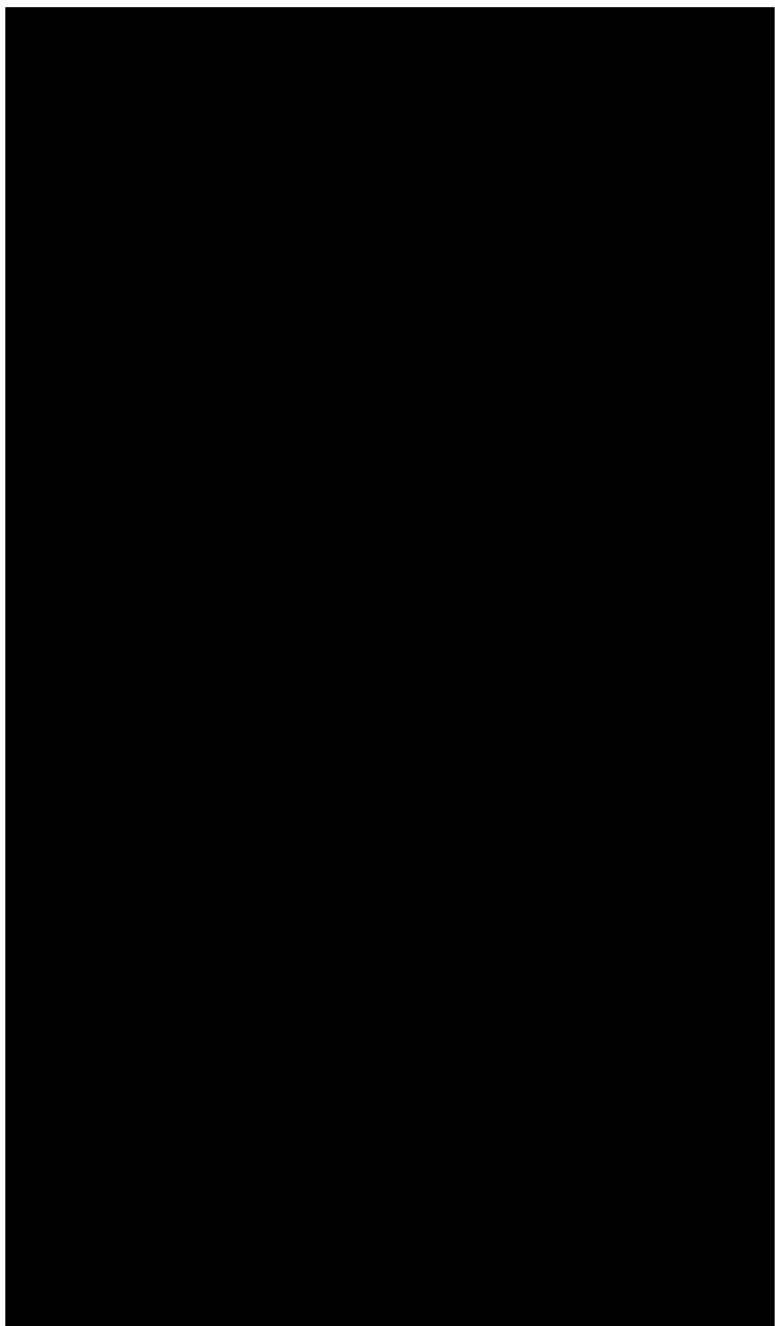


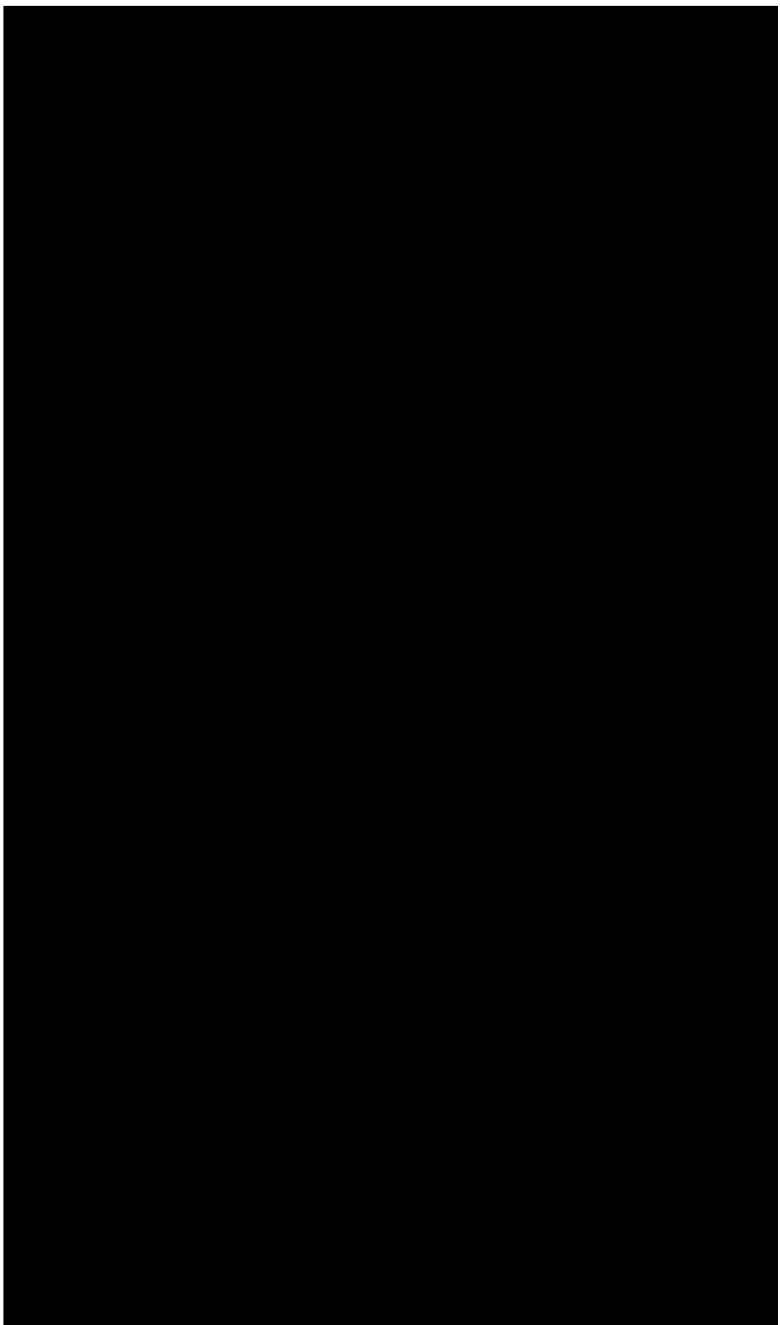


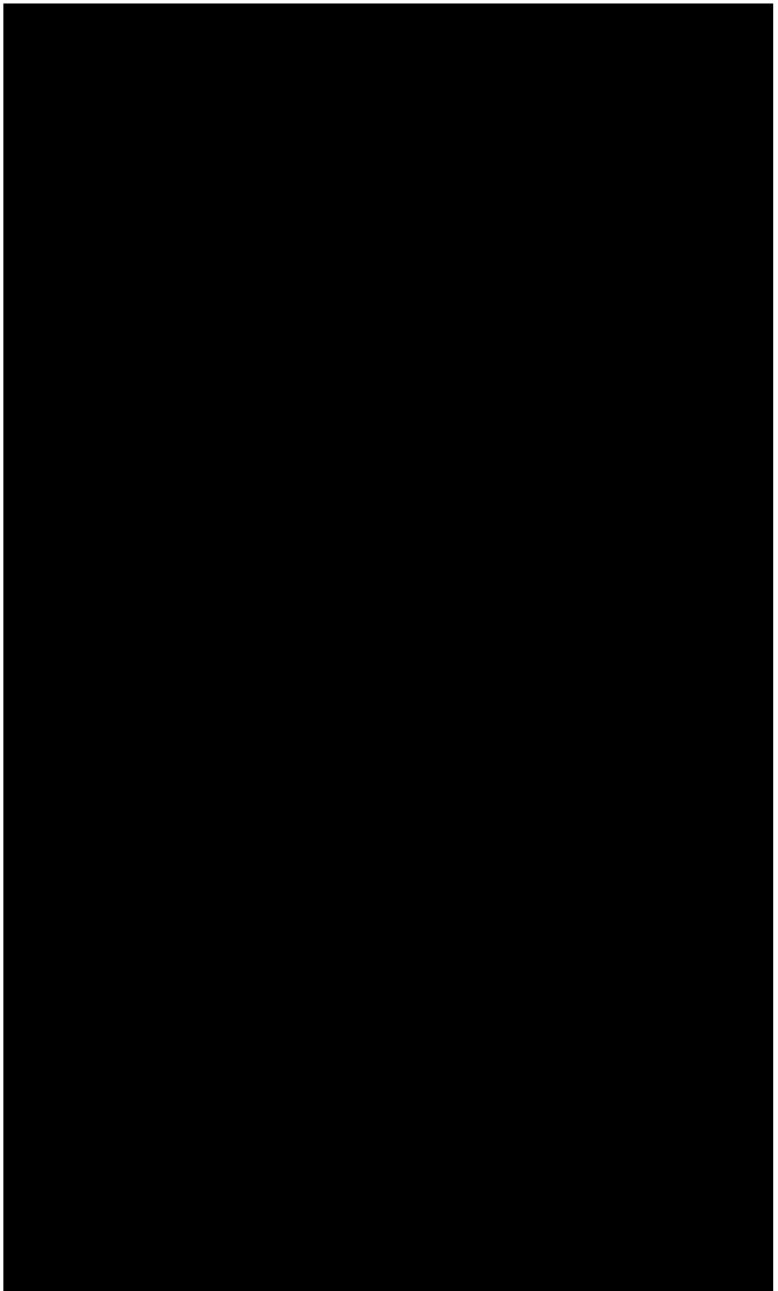


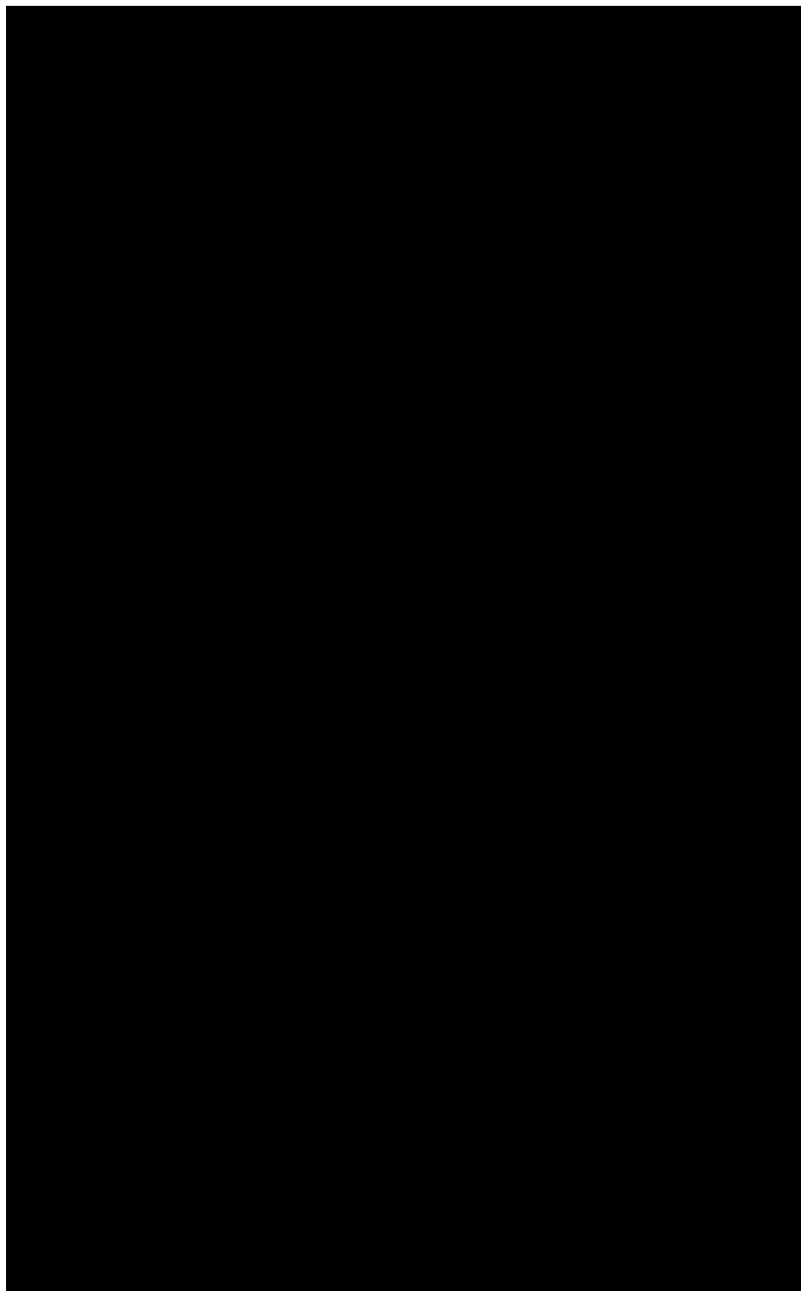


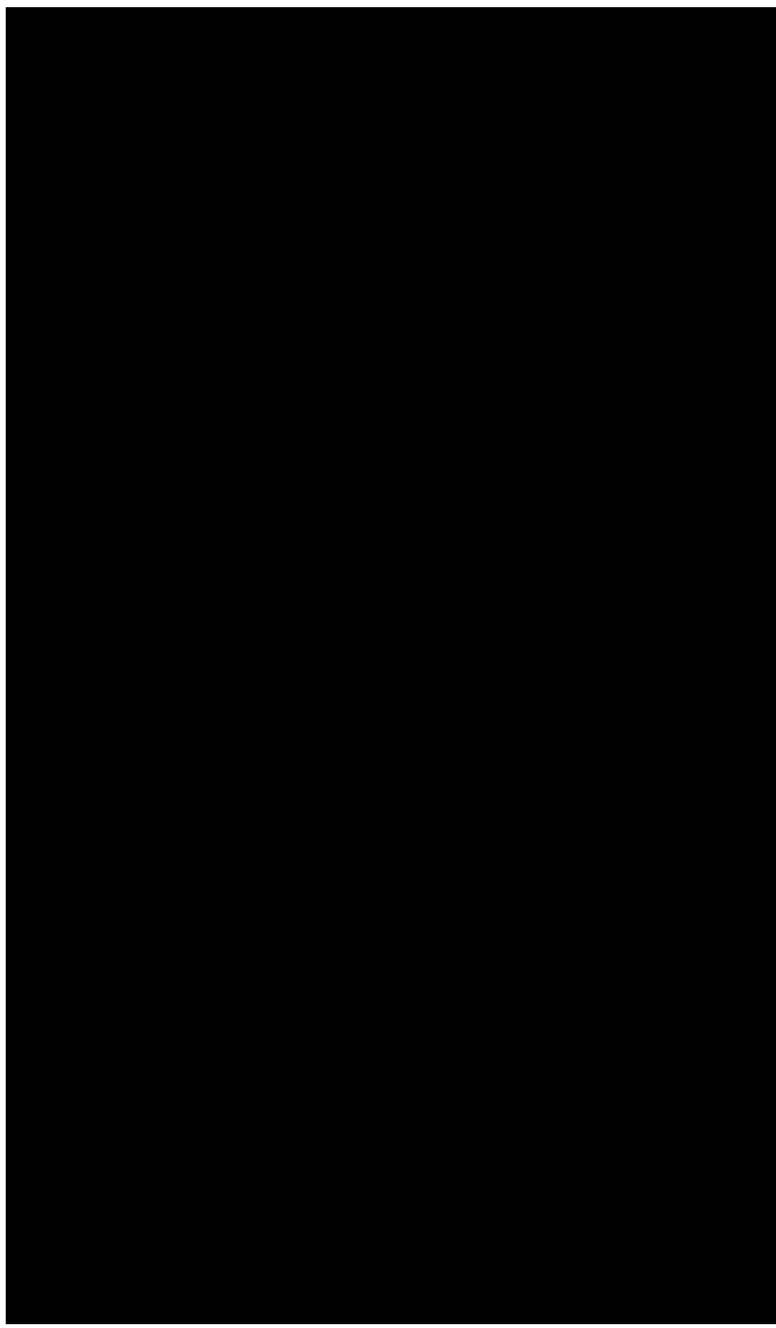


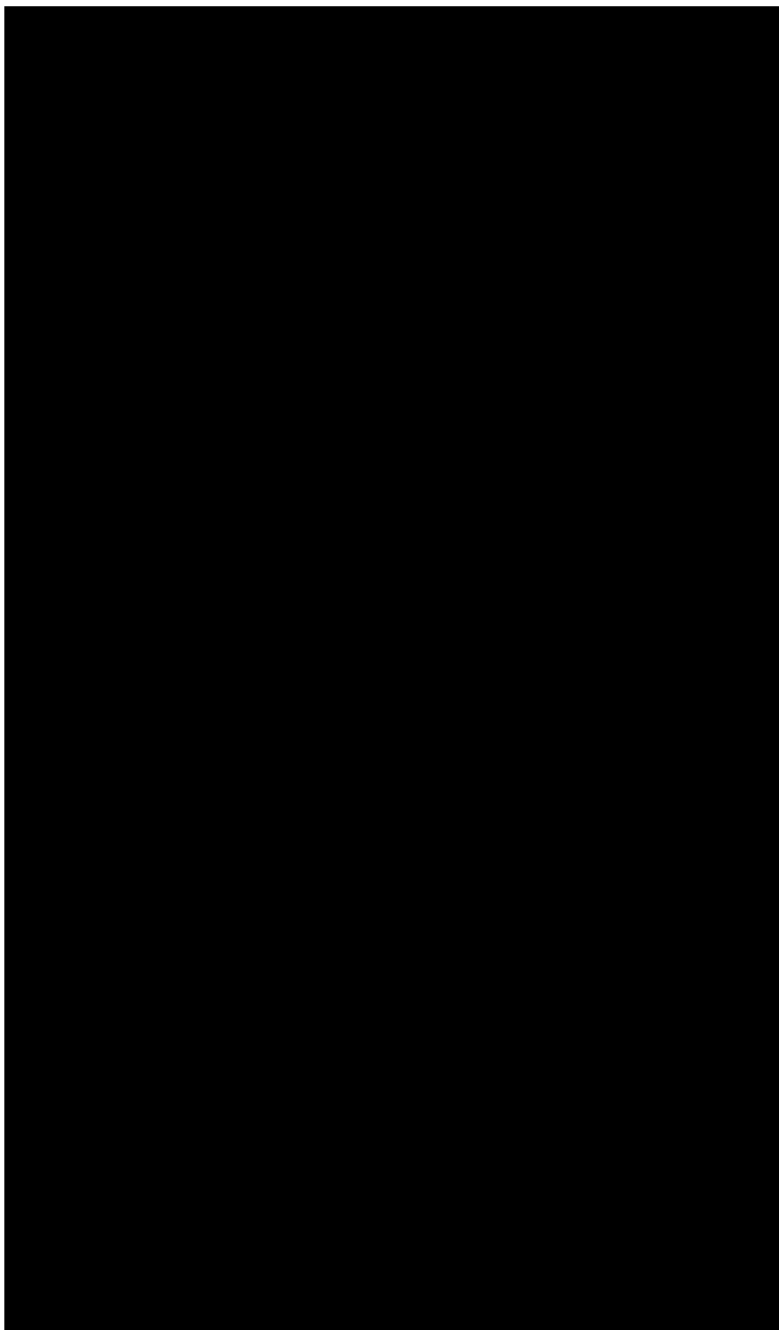


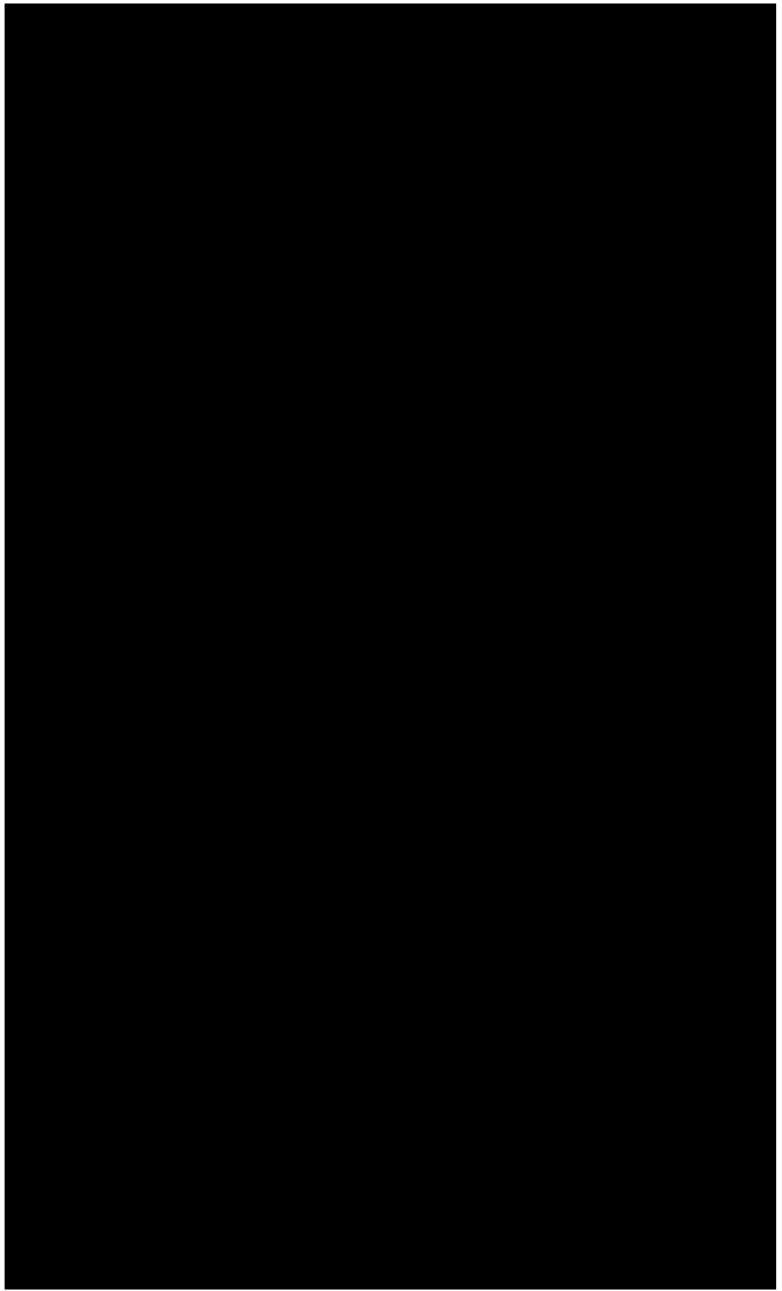


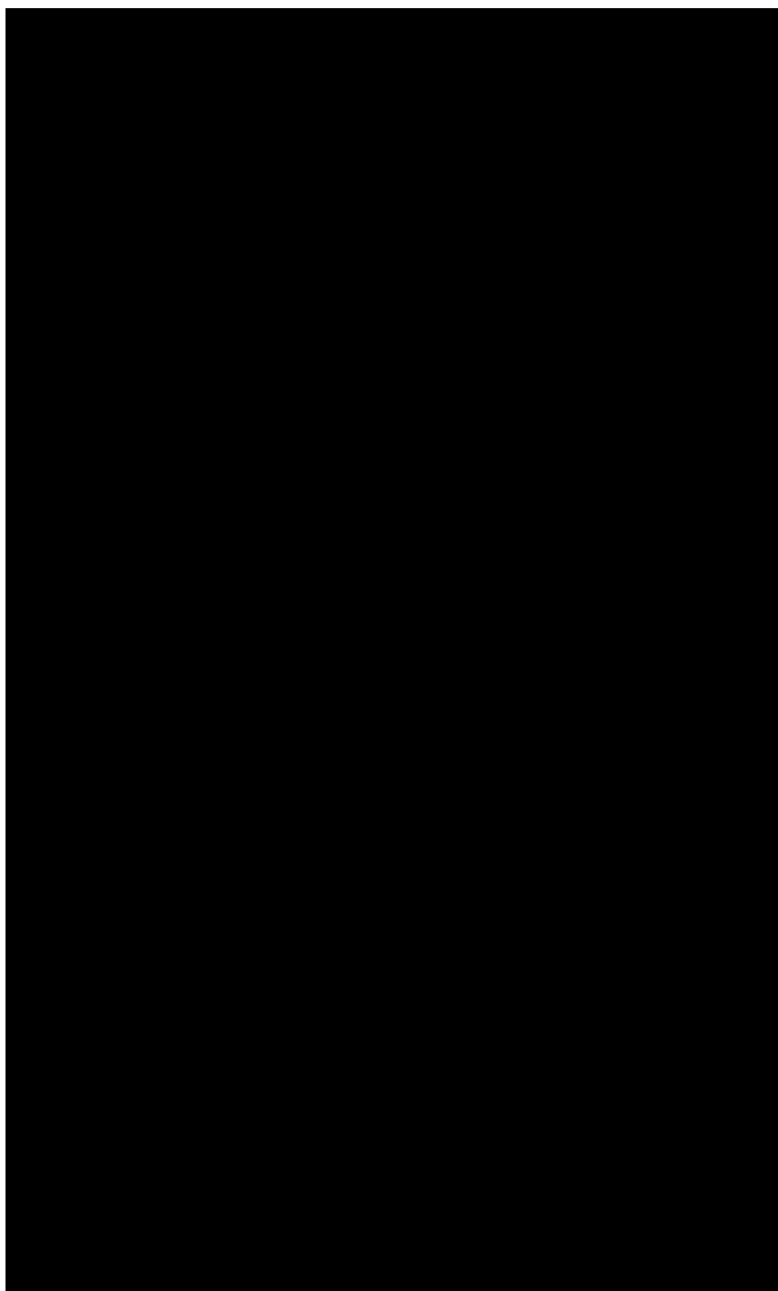


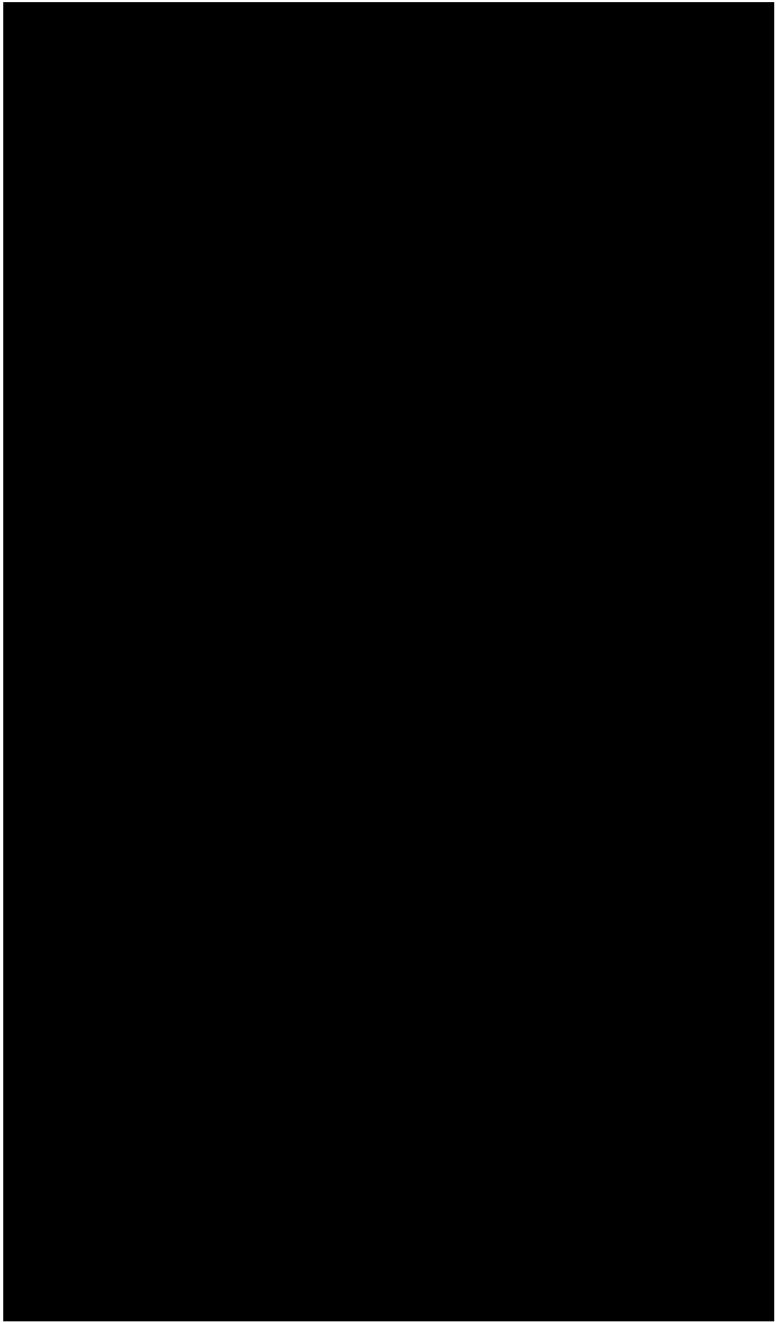


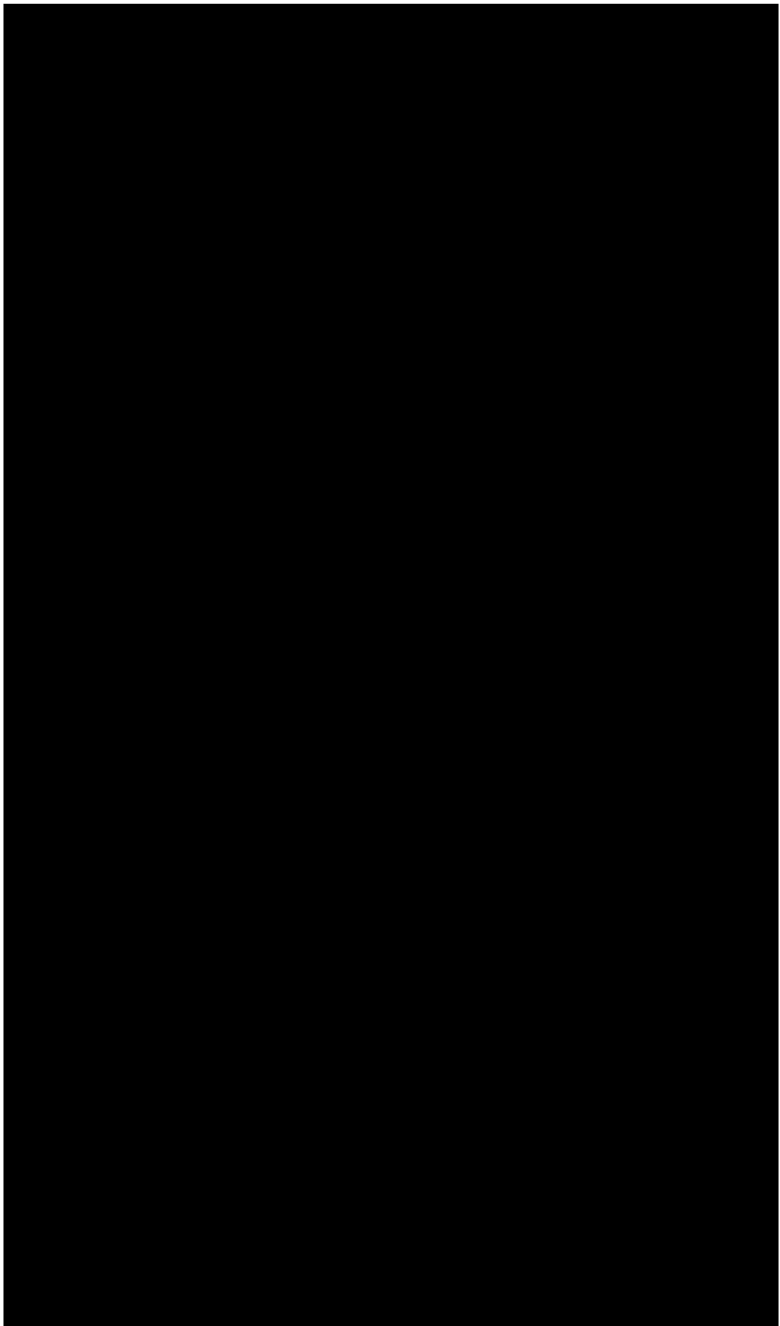


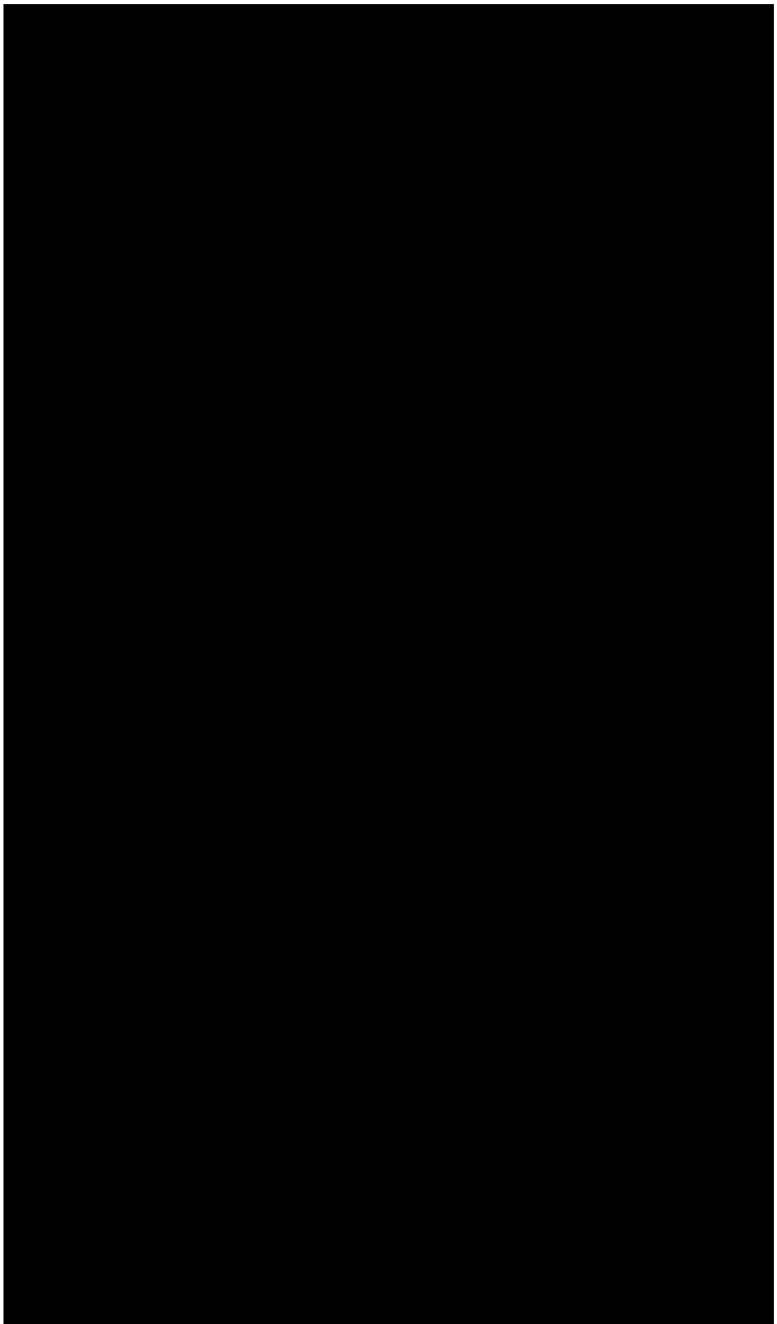


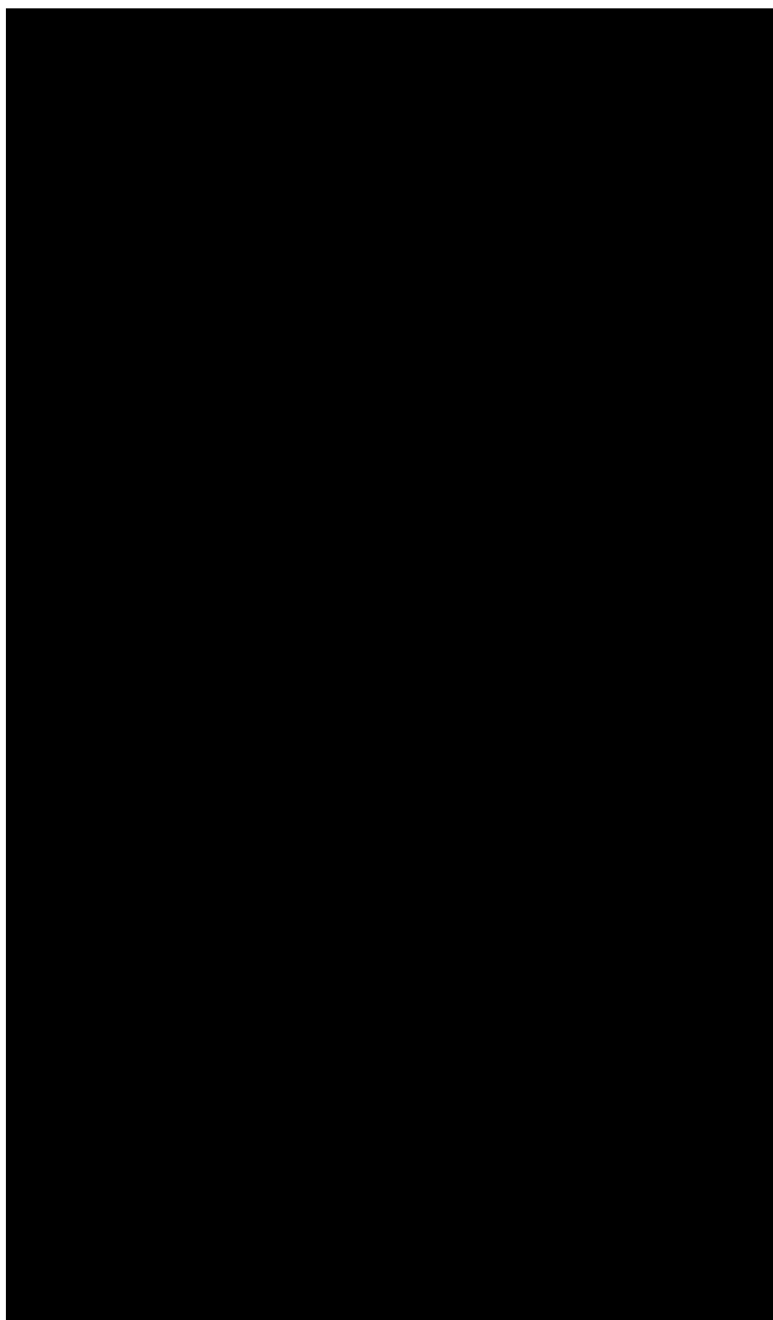


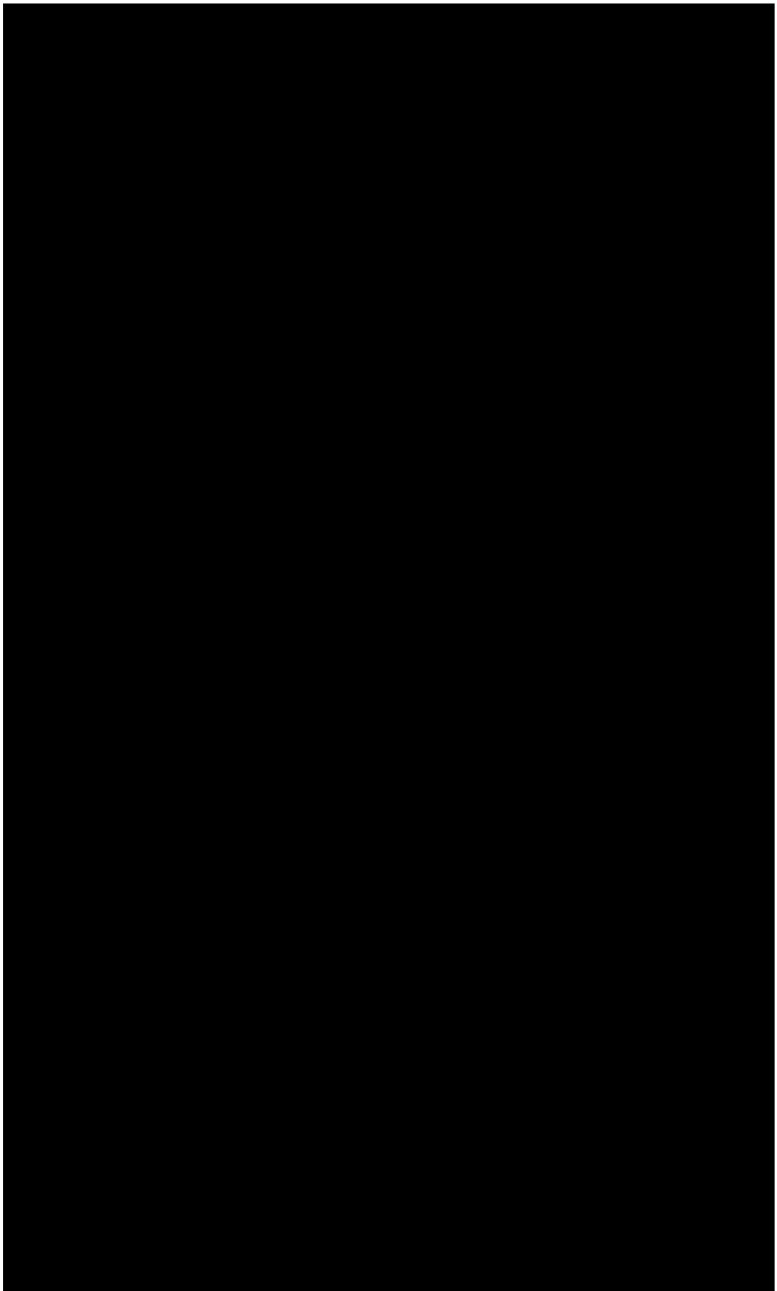


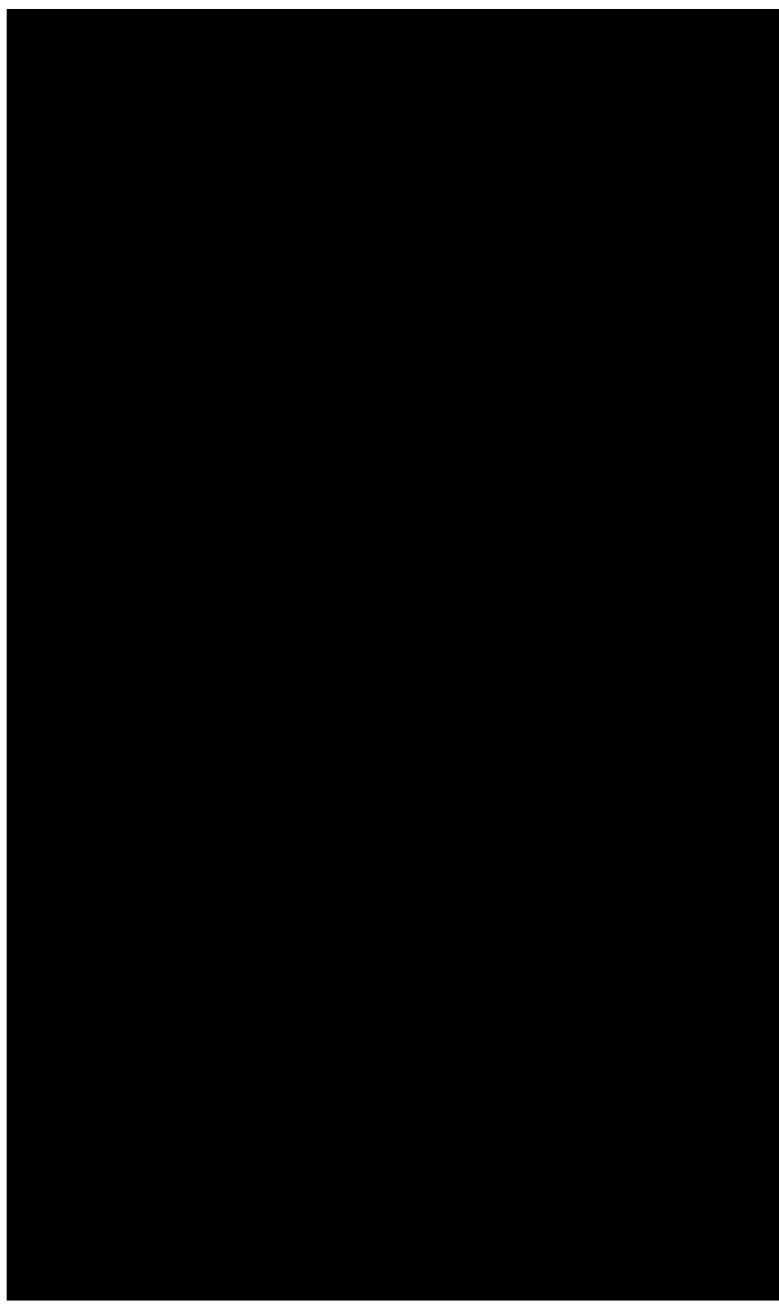


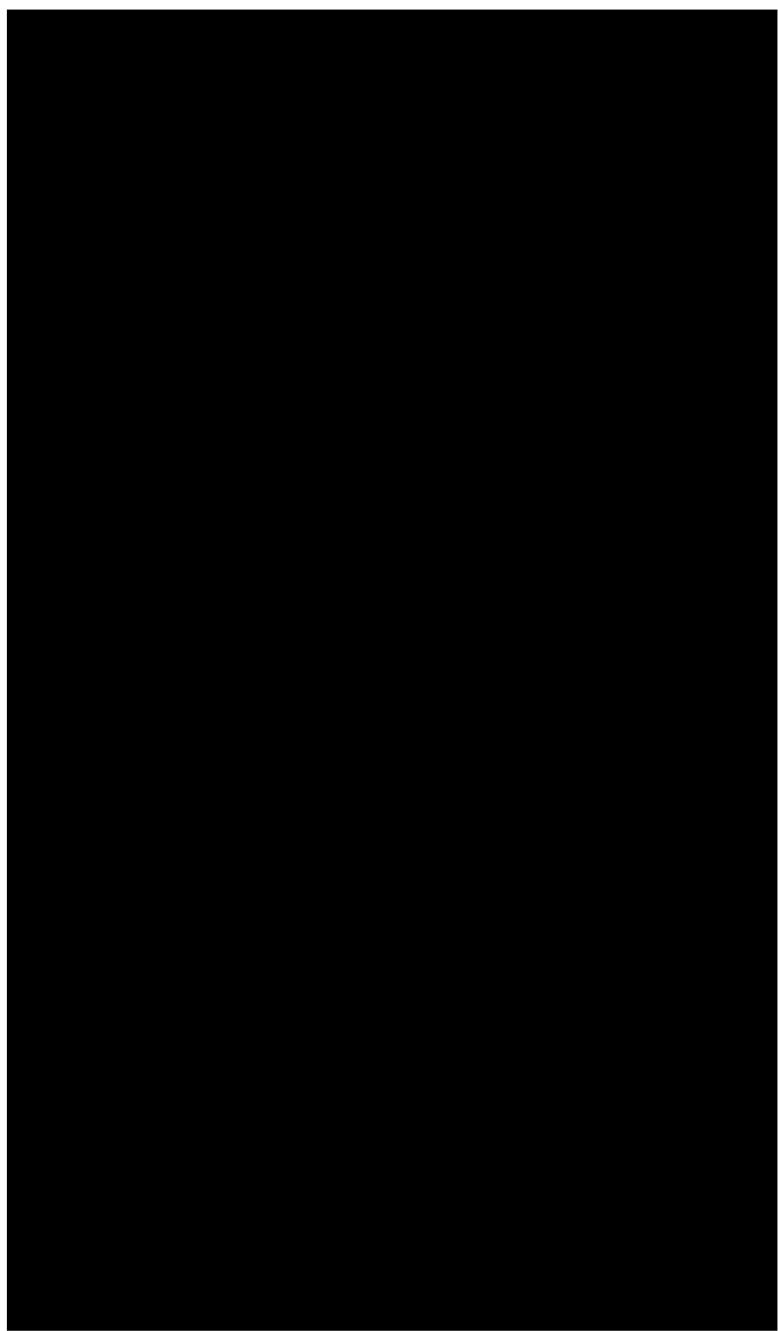


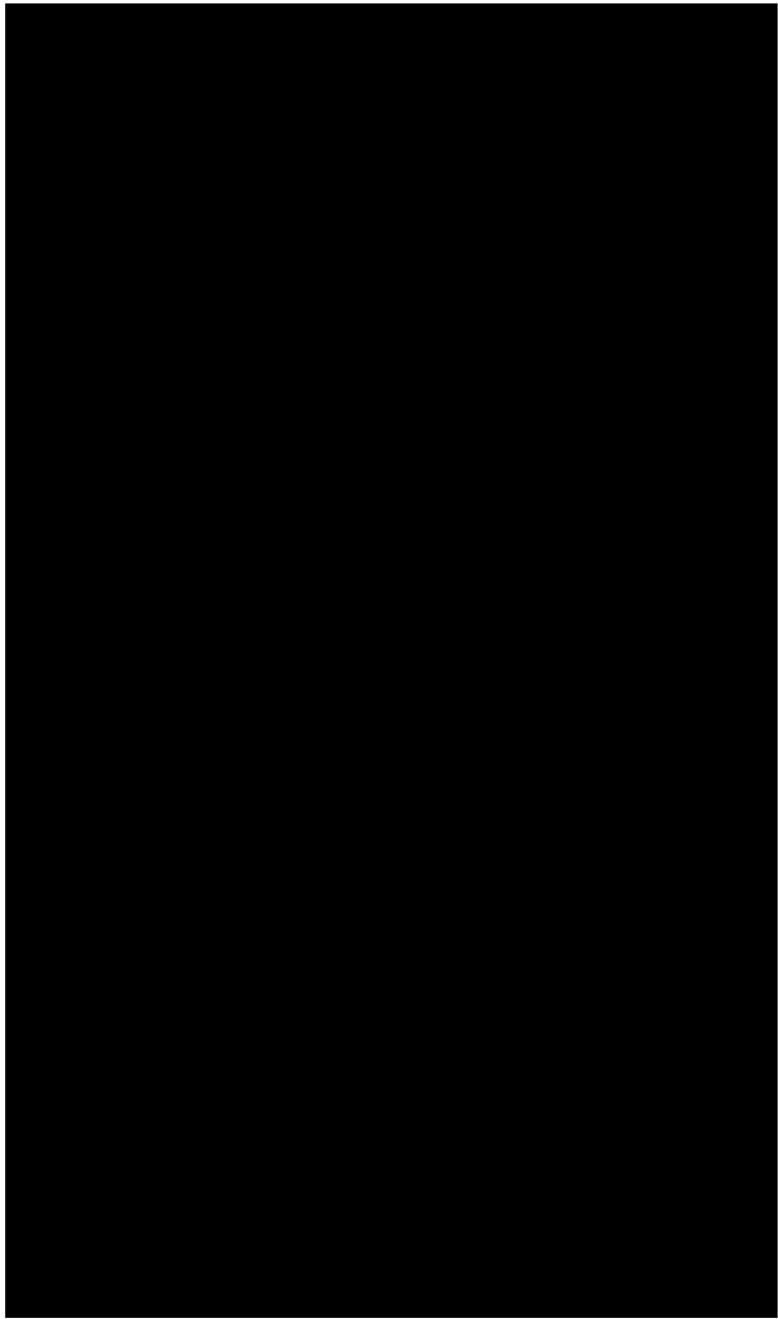


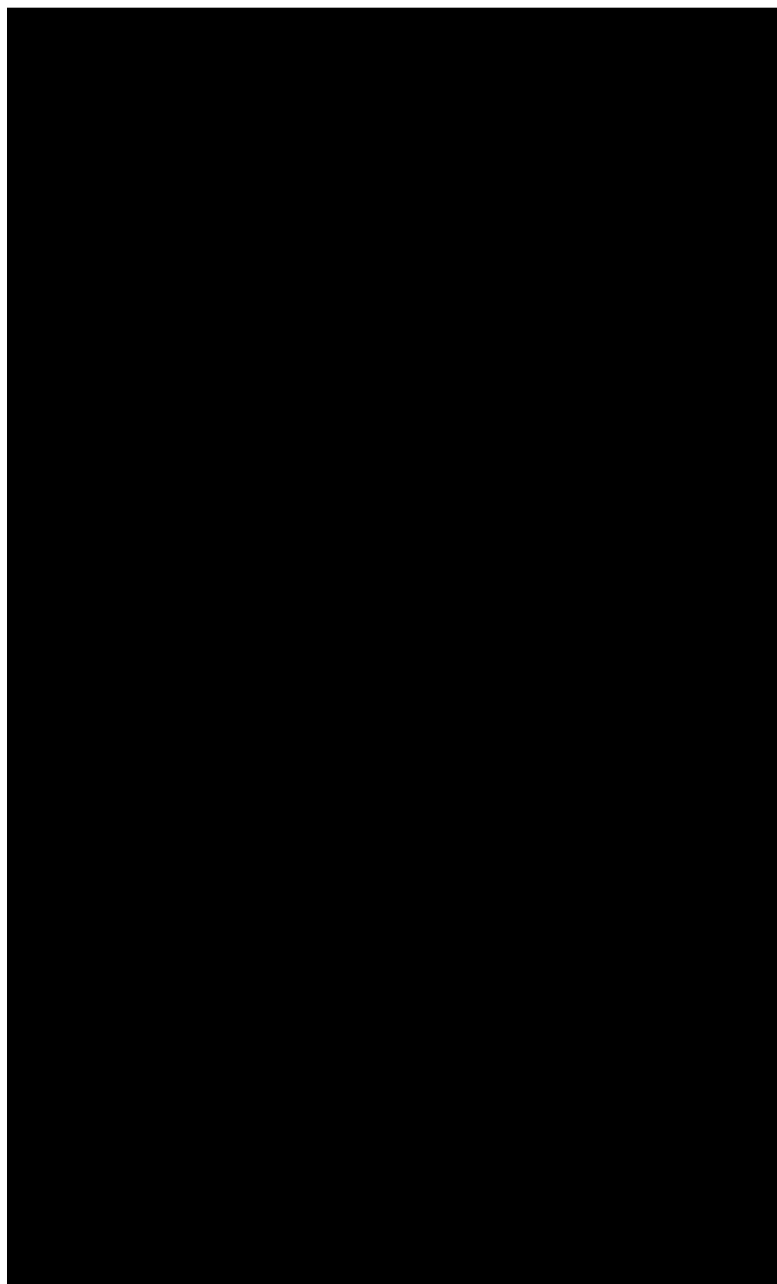












the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 1999).

There are a number of reasons for this increase. One of the main reasons is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and cancer. This has led to an increase in the number of people who are admitted to hospital and the length of their stay. In addition, there has been a growing emphasis on preventive care and health promotion, which has led to an increase in the number of people who are employed in health care.

Another reason for the increase in the number of people employed in health care is the increasing emphasis on patient care. In the 1990s, there was a growing emphasis on patient care and the role of the patient in their own health care. This has led to an increase in the number of people who are employed in health care, as there is a need for more people to provide patient care. In addition, there has been a growing emphasis on the role of the patient in their own health care, which has led to an increase in the number of people who are employed in health care.

There are a number of challenges facing the health care system in the UK. One of the main challenges is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and cancer. This has led to an increase in the number of people who are admitted to hospital and the length of their stay. In addition, there has been a growing emphasis on preventive care and health promotion, which has led to an increase in the number of people who are employed in health care.

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There are a number of ways in which the health care system can be improved. One of the main ways is to increase the number of people who are employed in health care. This can be done by increasing the number of people who are trained in health care, and by increasing the number of people who are employed in health care. In addition, there has been a growing emphasis on the role of the patient in their own health care, which has led to an increase in the number of people who are employed in health care.

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