



Claim No: HT-2018-000139

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES (QBD)
TECHNOLOGY & CONSTRUCTION COURT

BETWEEN:-

V LTD

Claimant

- and -

NHS COMMISSIONING BOARD

Defendant

REPLY

1. Save as otherwise indicated, in this Reply abbreviations and defined terms have the same meaning as in the Particulars of Claim or the Defence. Save where otherwise stated, references to paragraph numbers and letters are to numbers and letters used in the Defence.
2. Subject to any admission expressly stated below, the Claimant joins issue with the Defendant on the matters pleaded in the Defence.
3. The Claimant denies that any of the matters referred to in the Defence establish, or are capable of establishing, that the breaches of equal treatment and other breaches of duty identified in the Particulars of Claim are objectively justified. Without prejudice to the generality of the foregoing, the



Claimant will rely on the contents of the Defence as admitting and acknowledging that the purported justification for the breaches of duty is reducing the cost to the Defendant of the supplies sought pursuant to the procurement. It is averred that this is not capable of constituting a lawful, and/or proportionate, objective justification for breach of the Regulations and/or EU general Treaty principles.

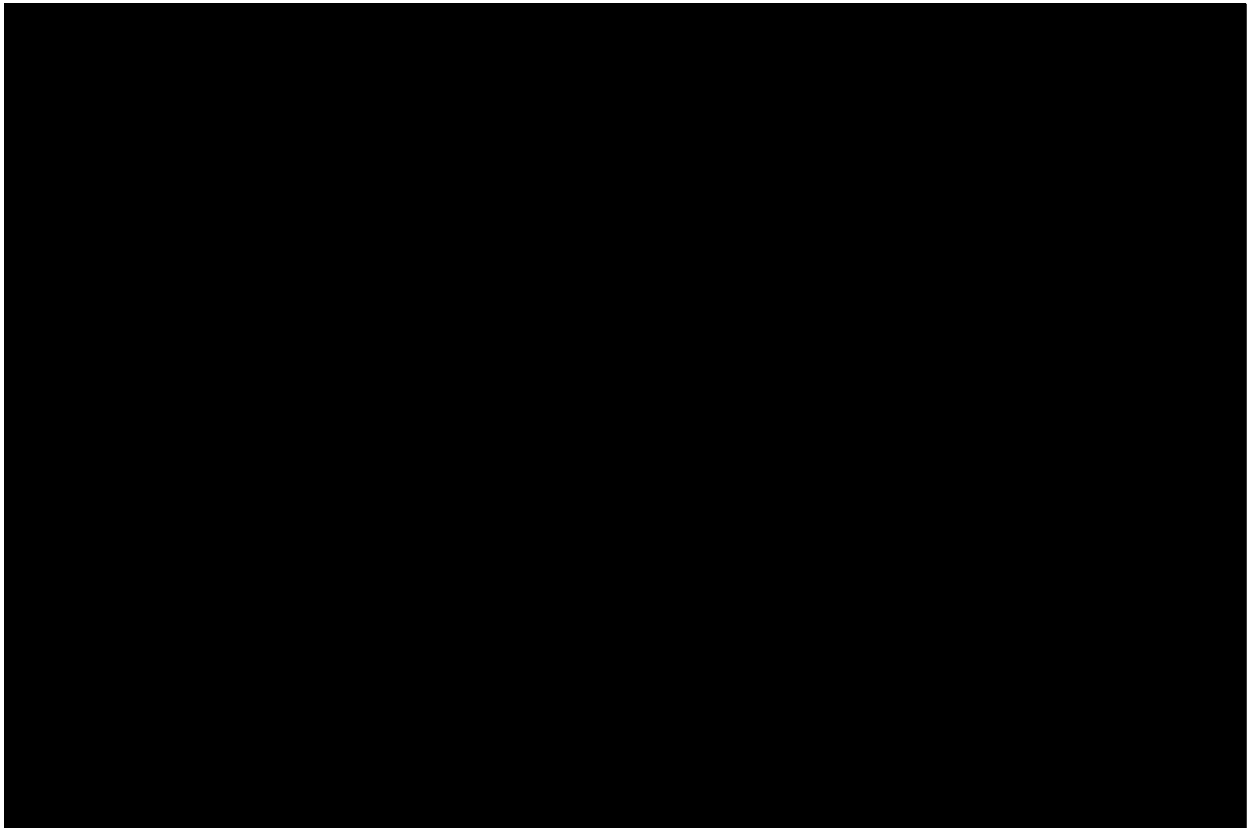
4. Paragraph 2 is denied. Without prejudice to the generality of that denial, the Claimant will say as follows:

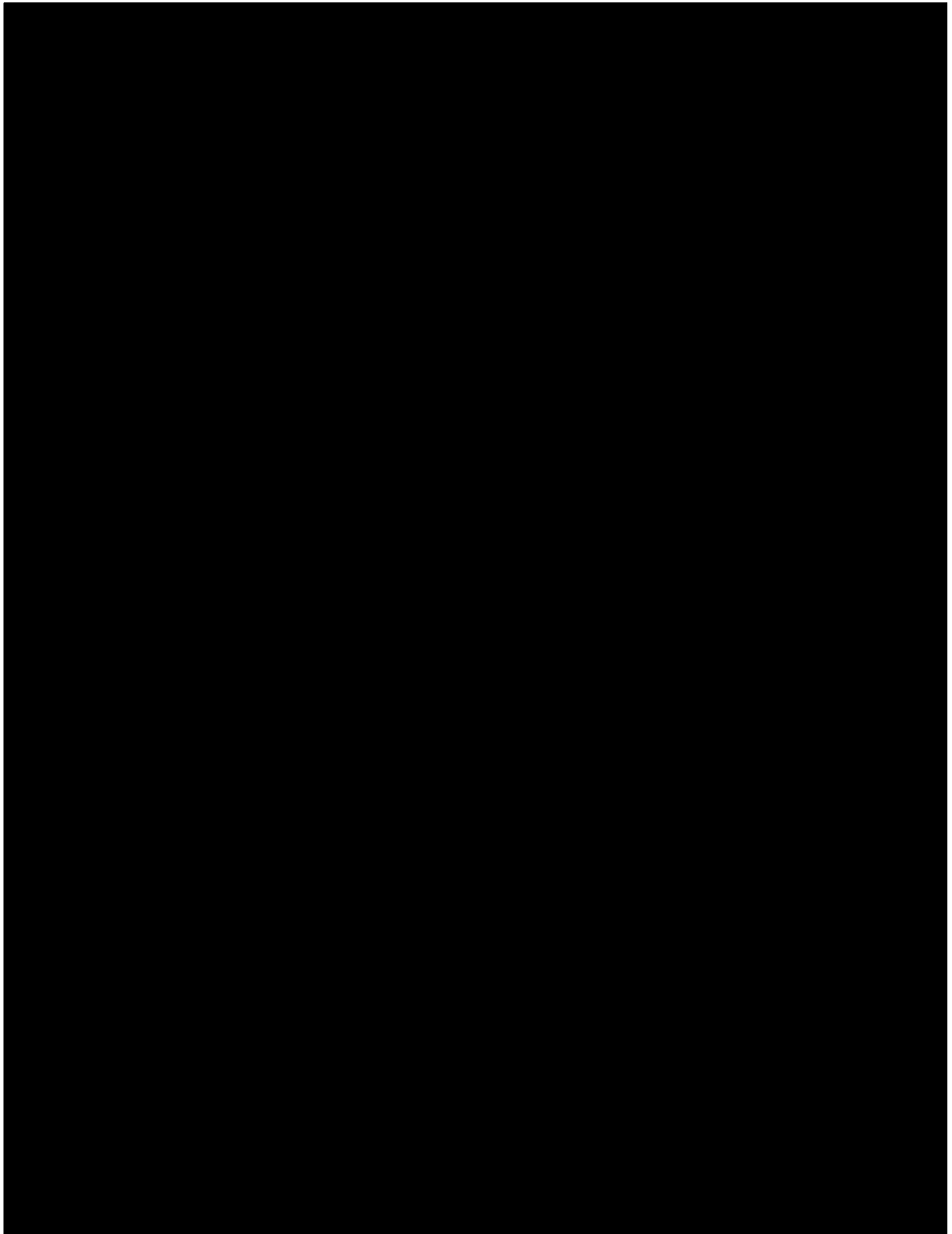
- (i) The Claim Form did provide brief details of the claim. In particular, the Claim Form stated on its face that the claim challenged the legality of the terms of the tender documents used in the procurement under the Regulations.
- (ii) Prior to issuing and serving the Claim Form, the Claimant provided the Defendant with a detailed pre-action letter setting out the grounds of its claim. The Defendant was aware at all material times of the grounds of claim being pursued.
- (iii) Following service of the Claim Form, the Defendant entered into an extension of time for service of Particulars of Claim, in order to prepare a substantive response to the grounds of claim and to seek to resolve the concerns raised by the Claimant. The Defendant's conduct in this regard is inconsistent with the contentions that it now apparently seeks to advance in paragraph 2.

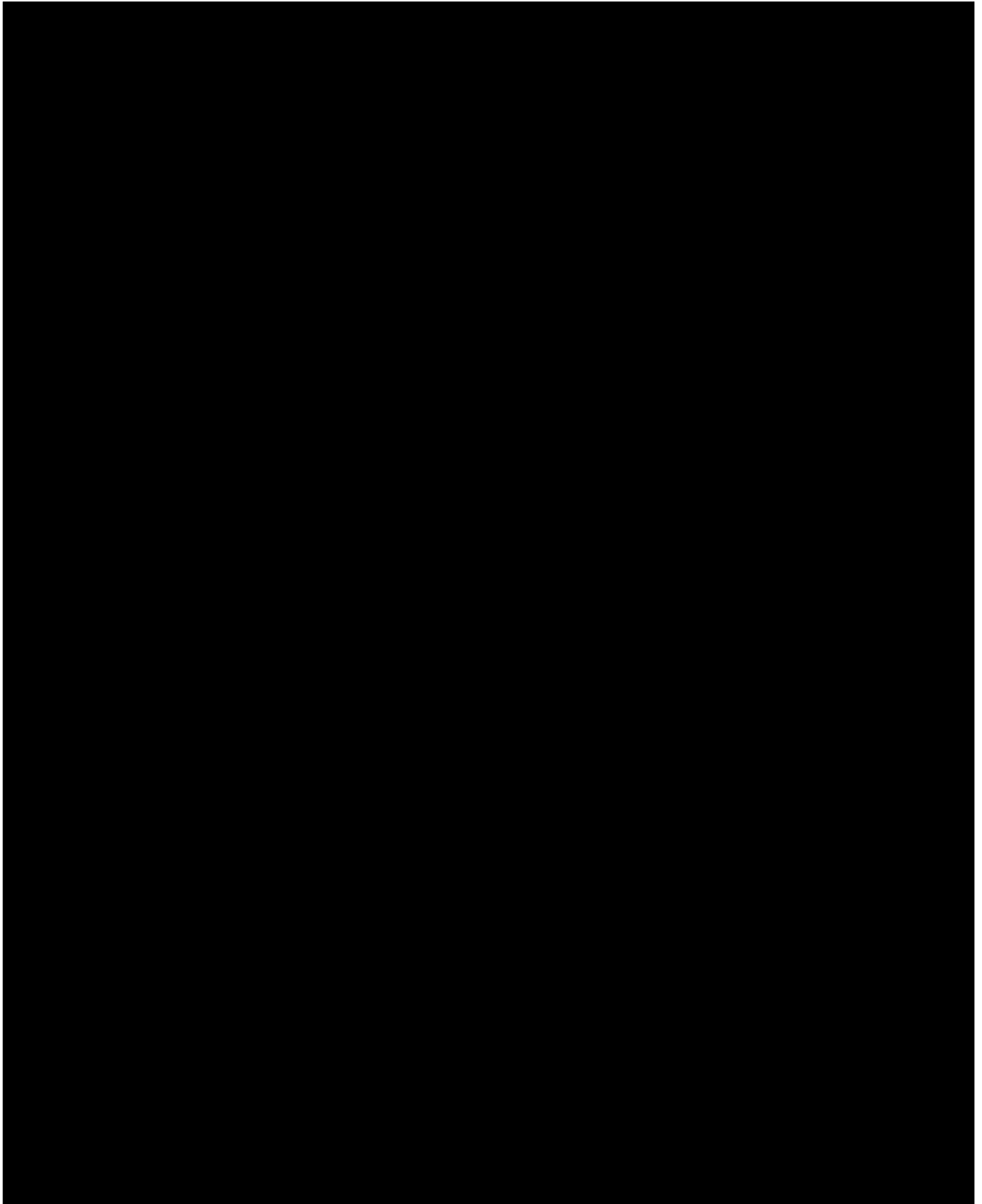


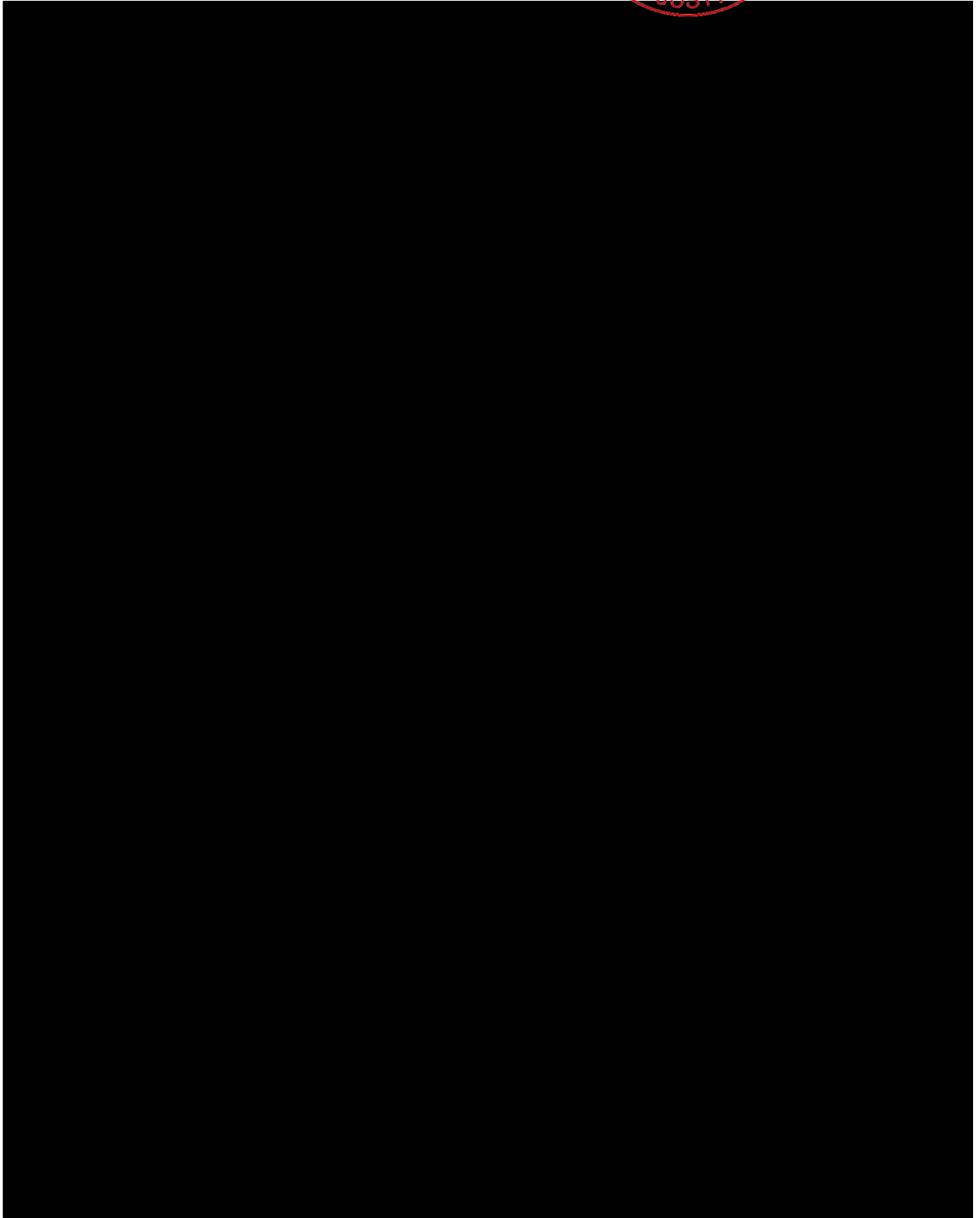
(iv) The Claim Form is to be read in context, which includes the pre-action letter and/or the Particulars of Claim. The contention that the Claim Form constitutes an abuse of process and/or should be struck out on some other (unspecified) basis is incorrect and unarguable.

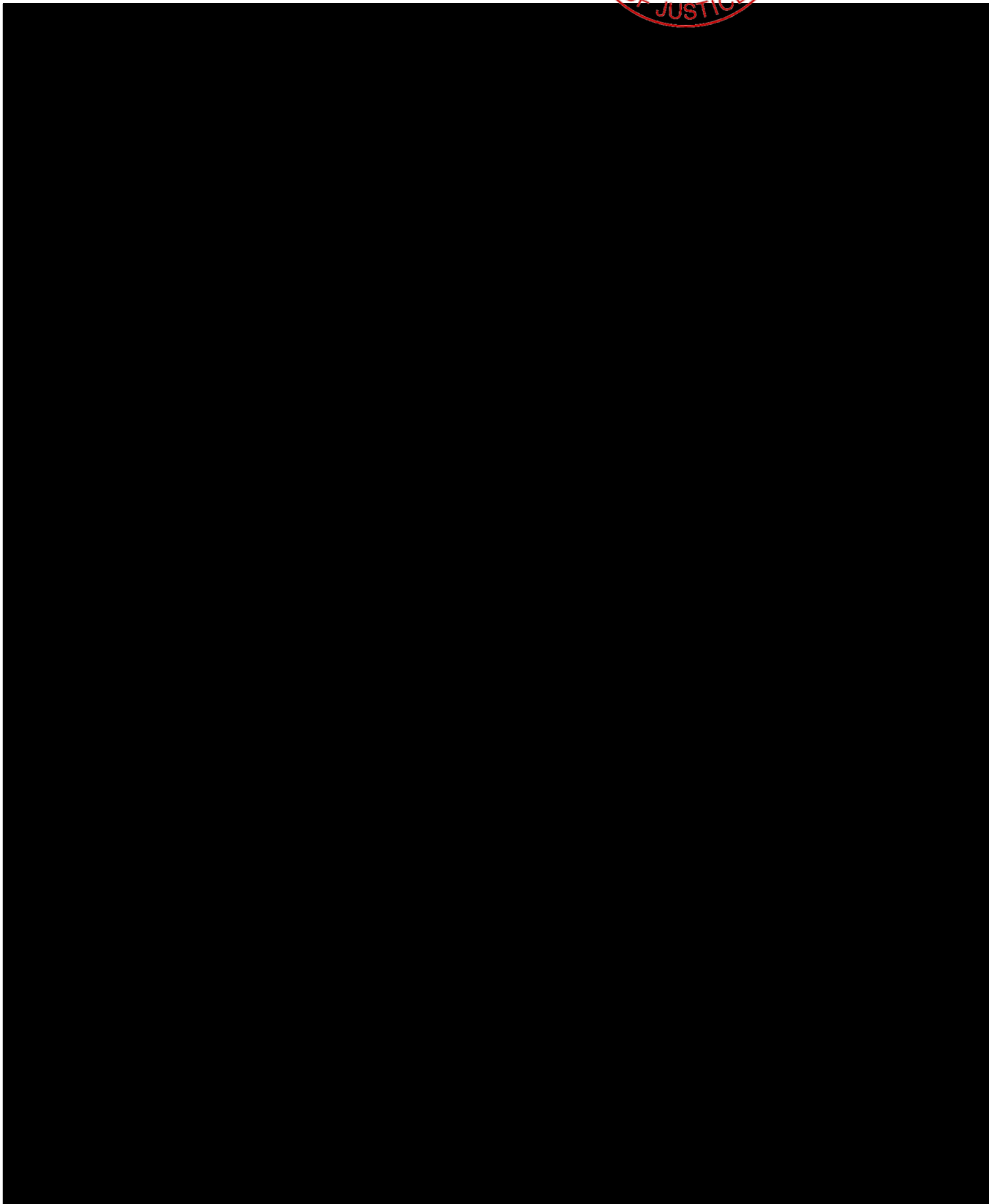
5. As to paragraphs 3-5, it appears that these are intended to summarise the substantive content of the Defence. Accordingly, the Claimant does not plead to these paragraphs and responds to the substantive content of the Defence where appropriate. For the avoidance of any doubt, it is denied that any of the matters referred to in the said paragraphs establish that the Defendant's conduct is lawful.
6. Paragraph 8, 10 and 11 are admitted.

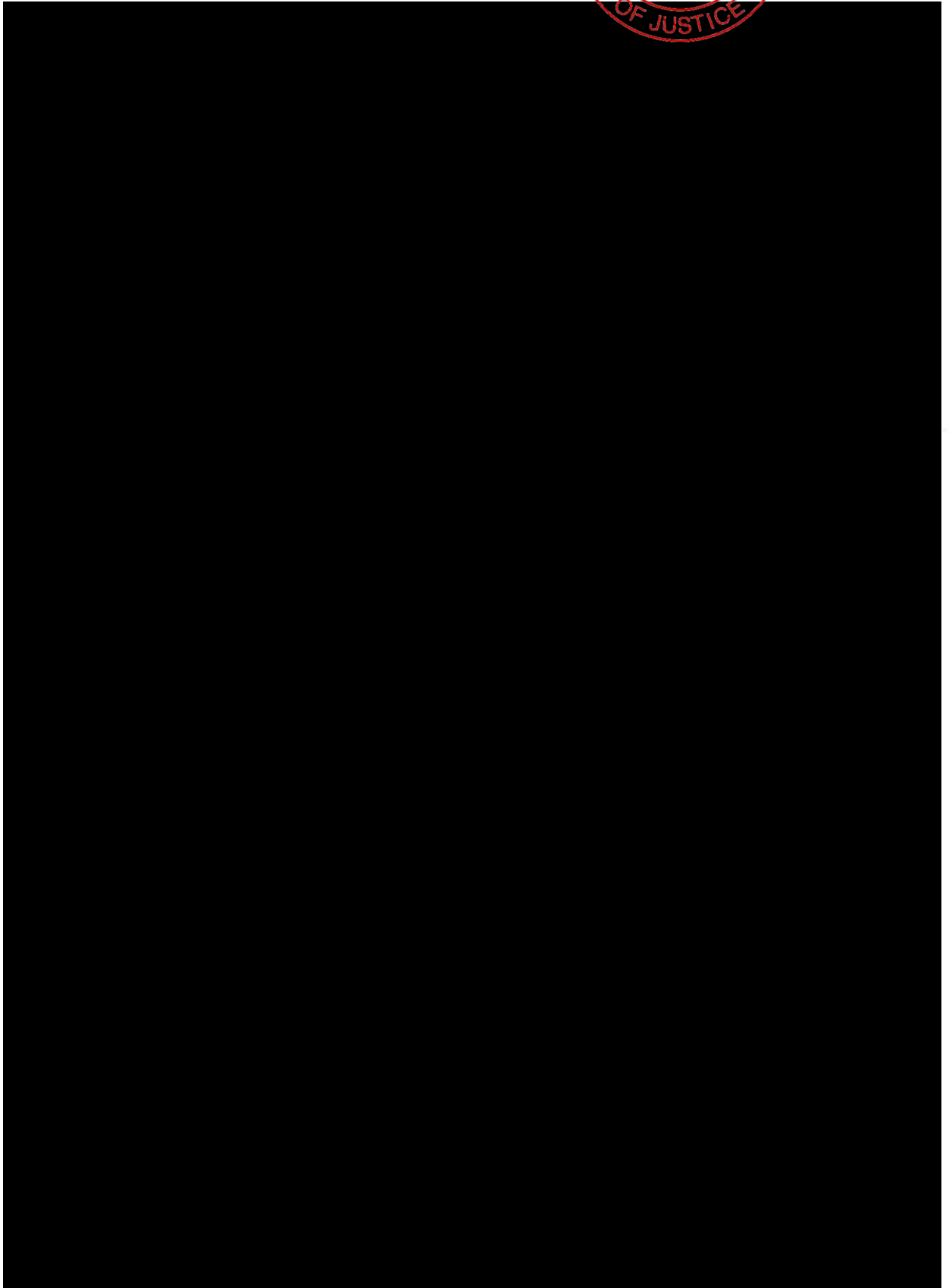


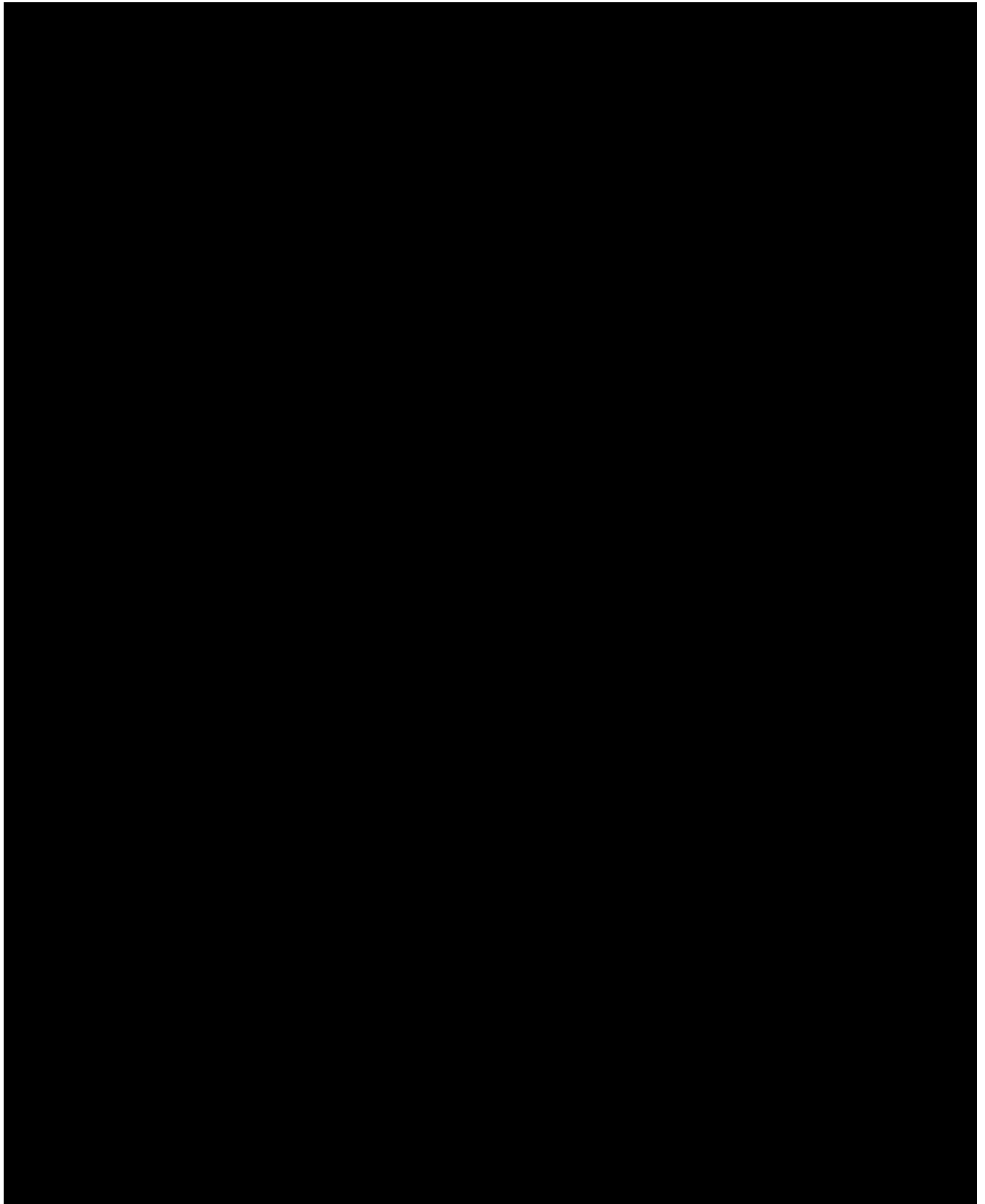


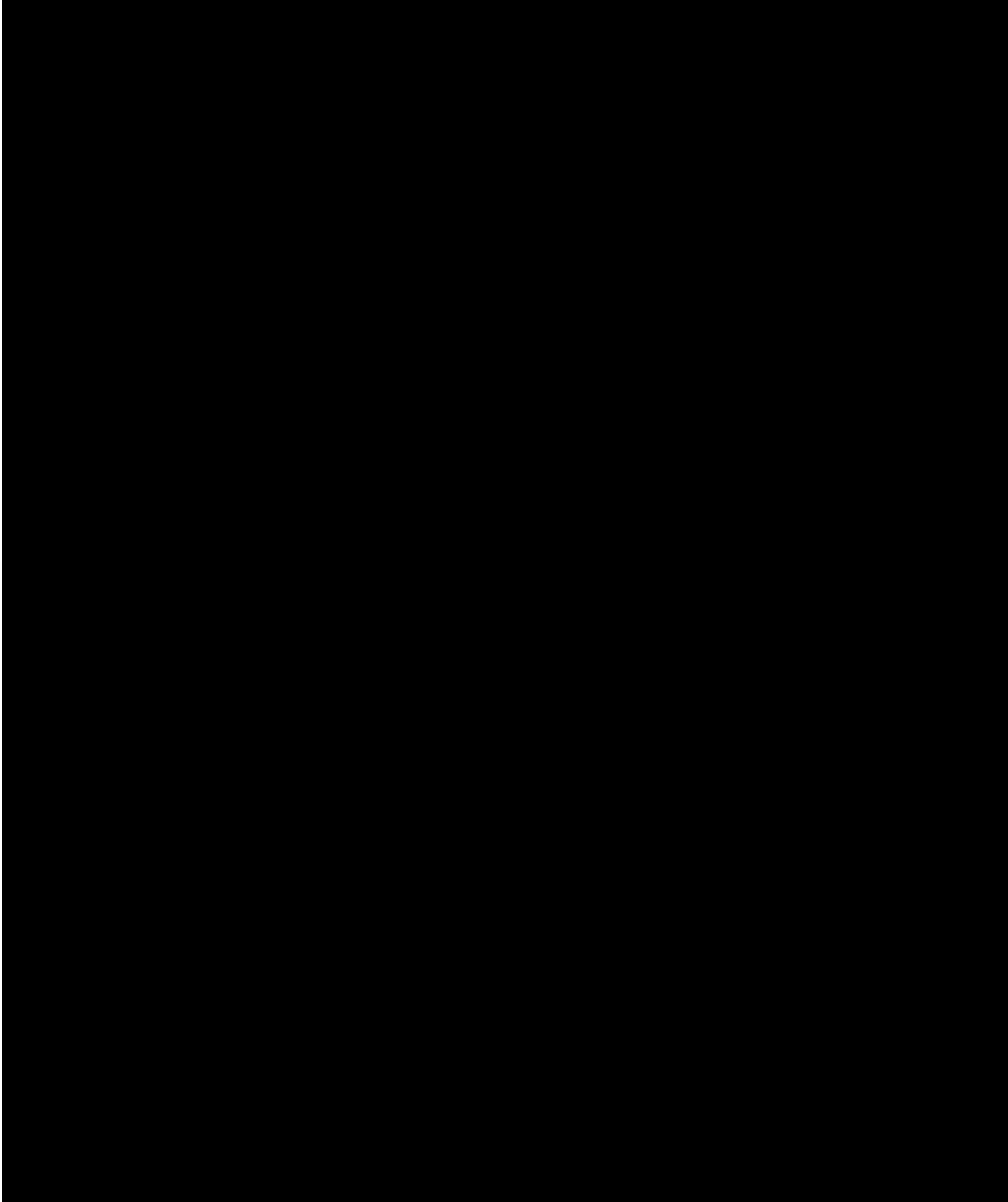


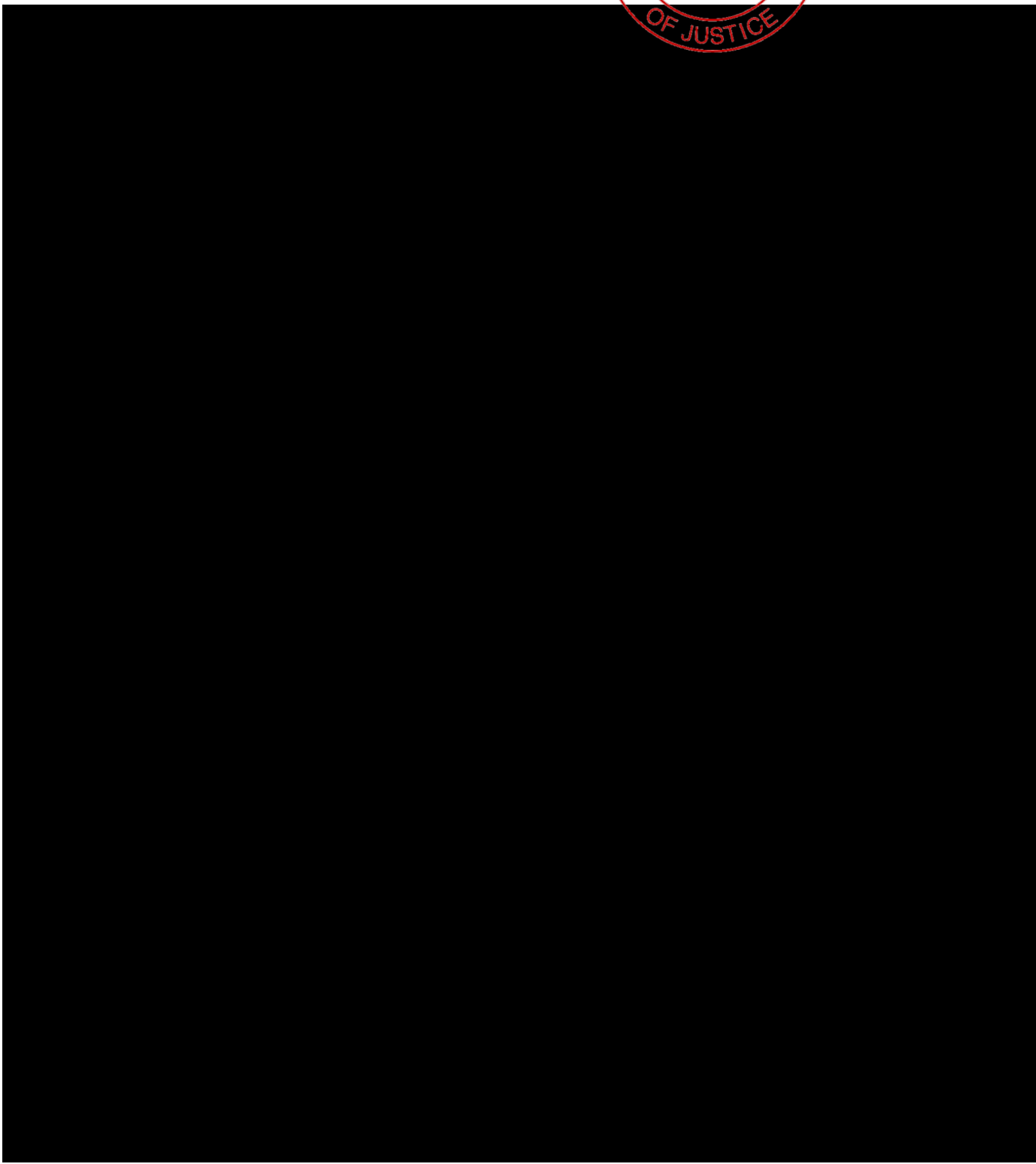


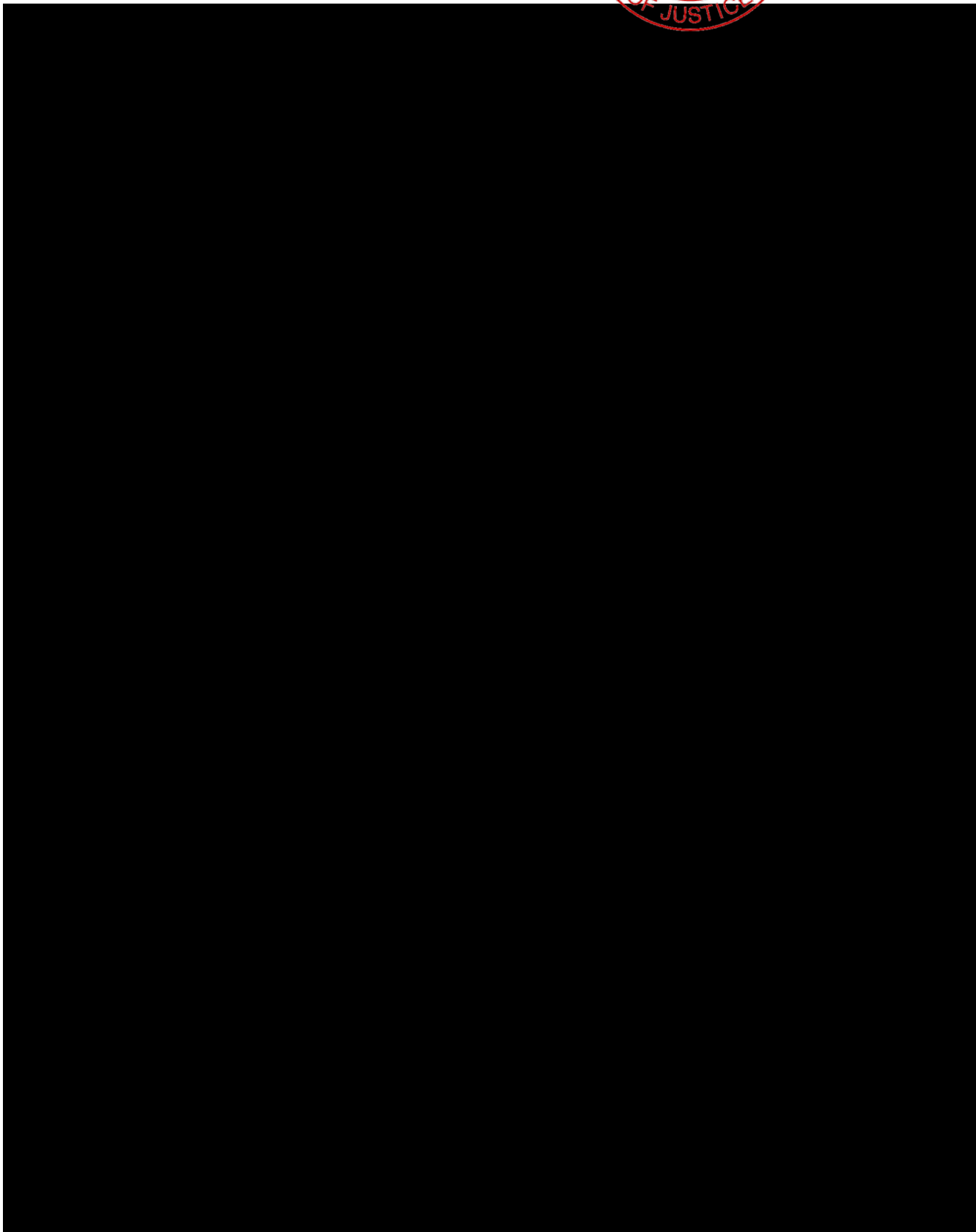


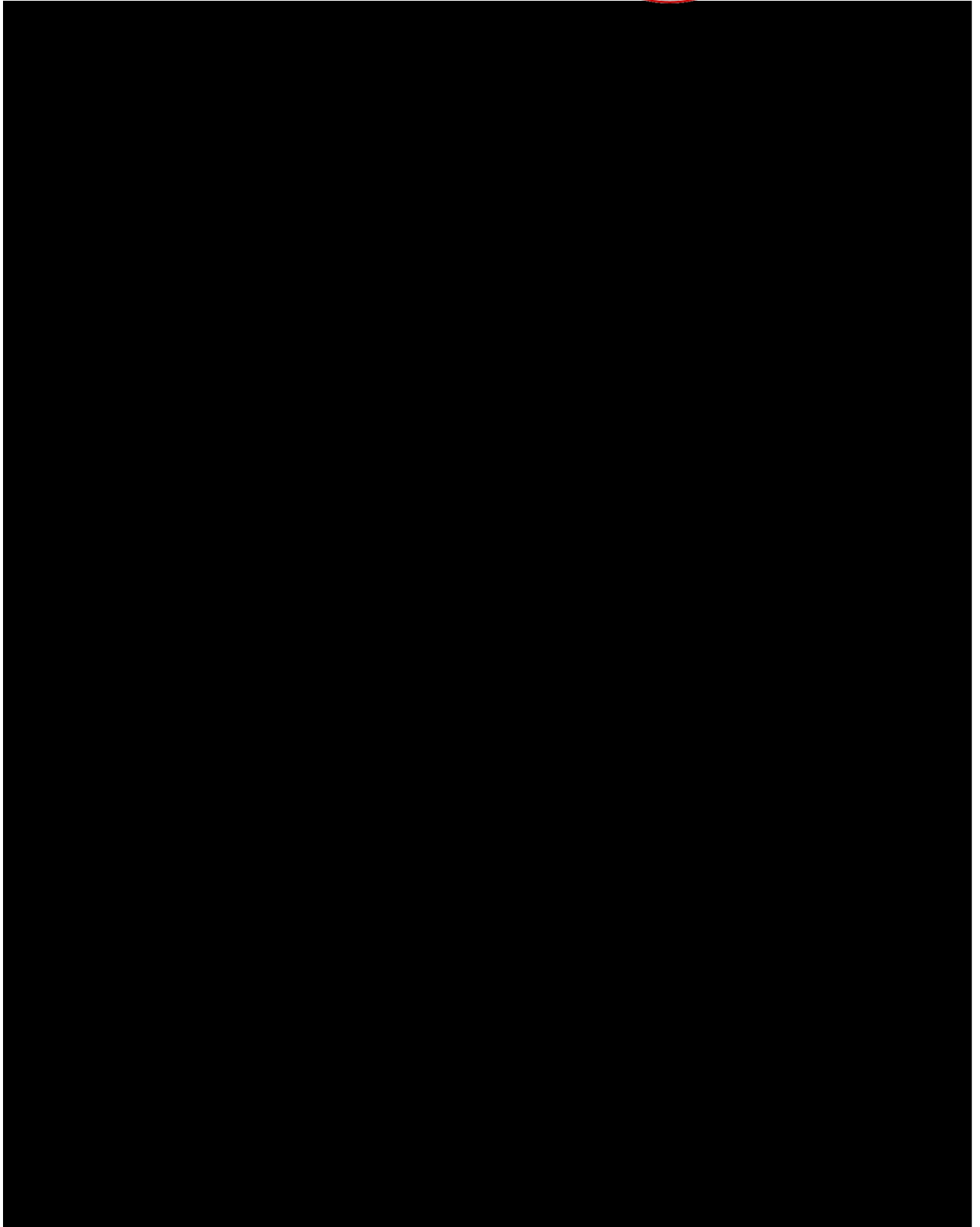






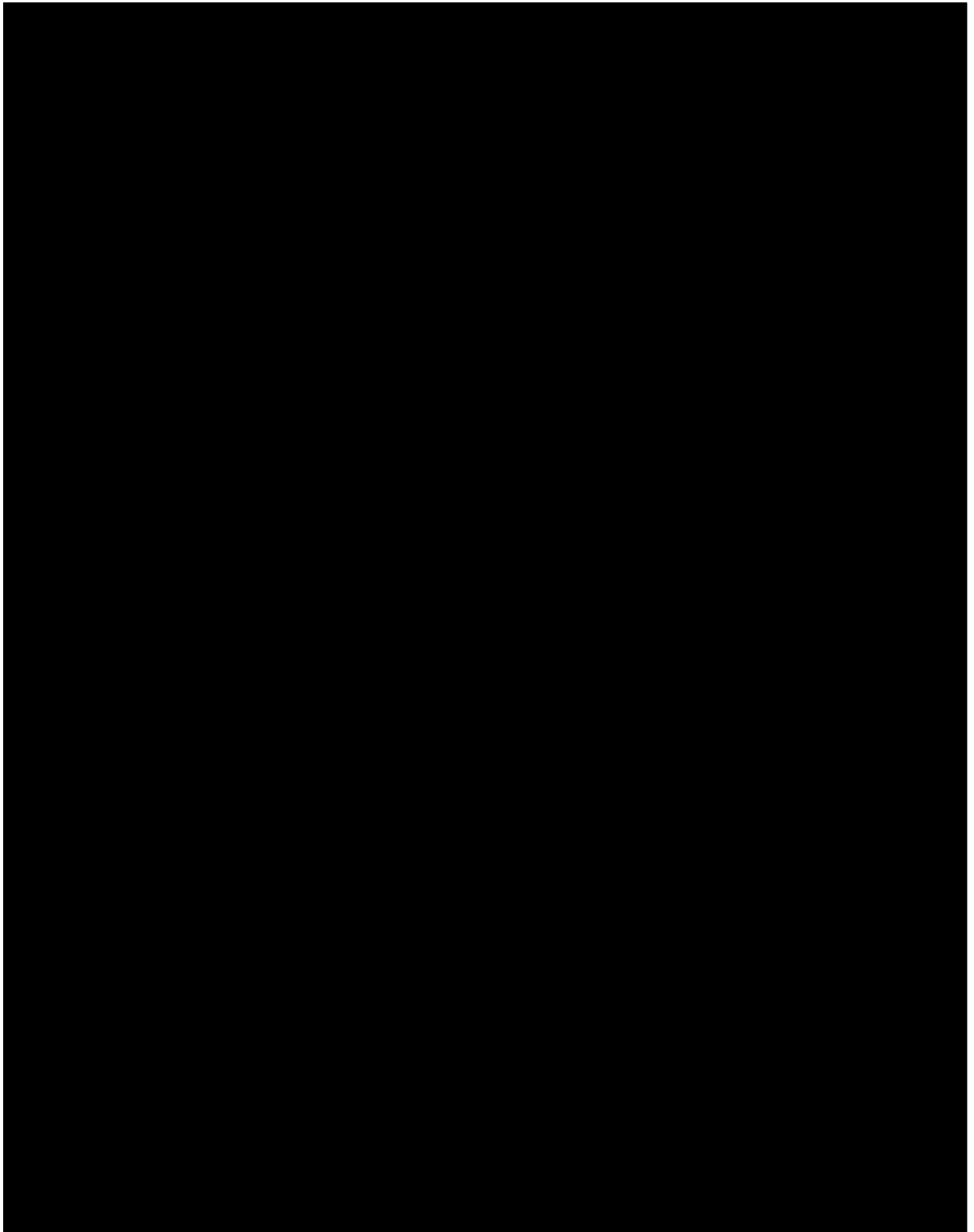


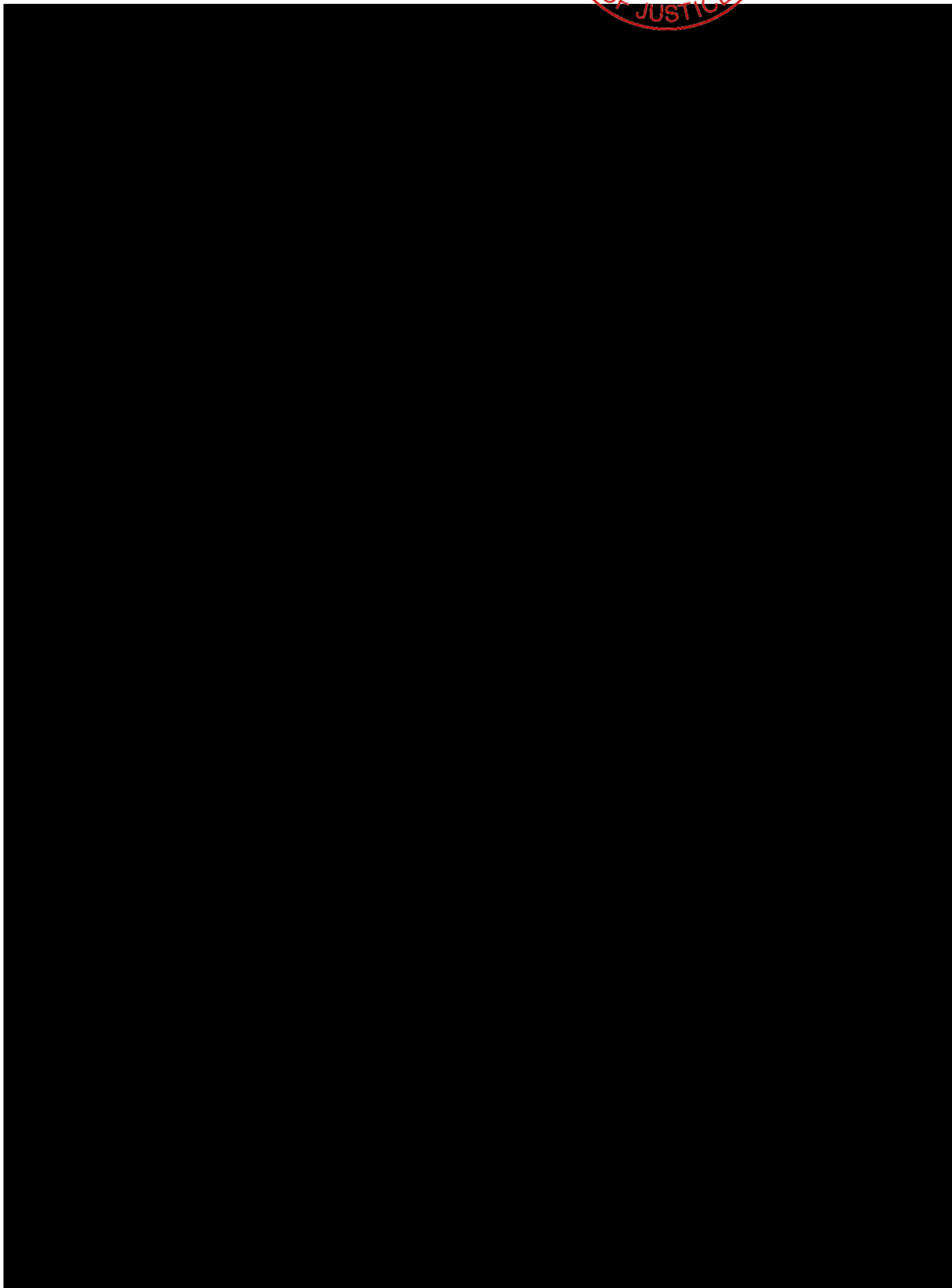


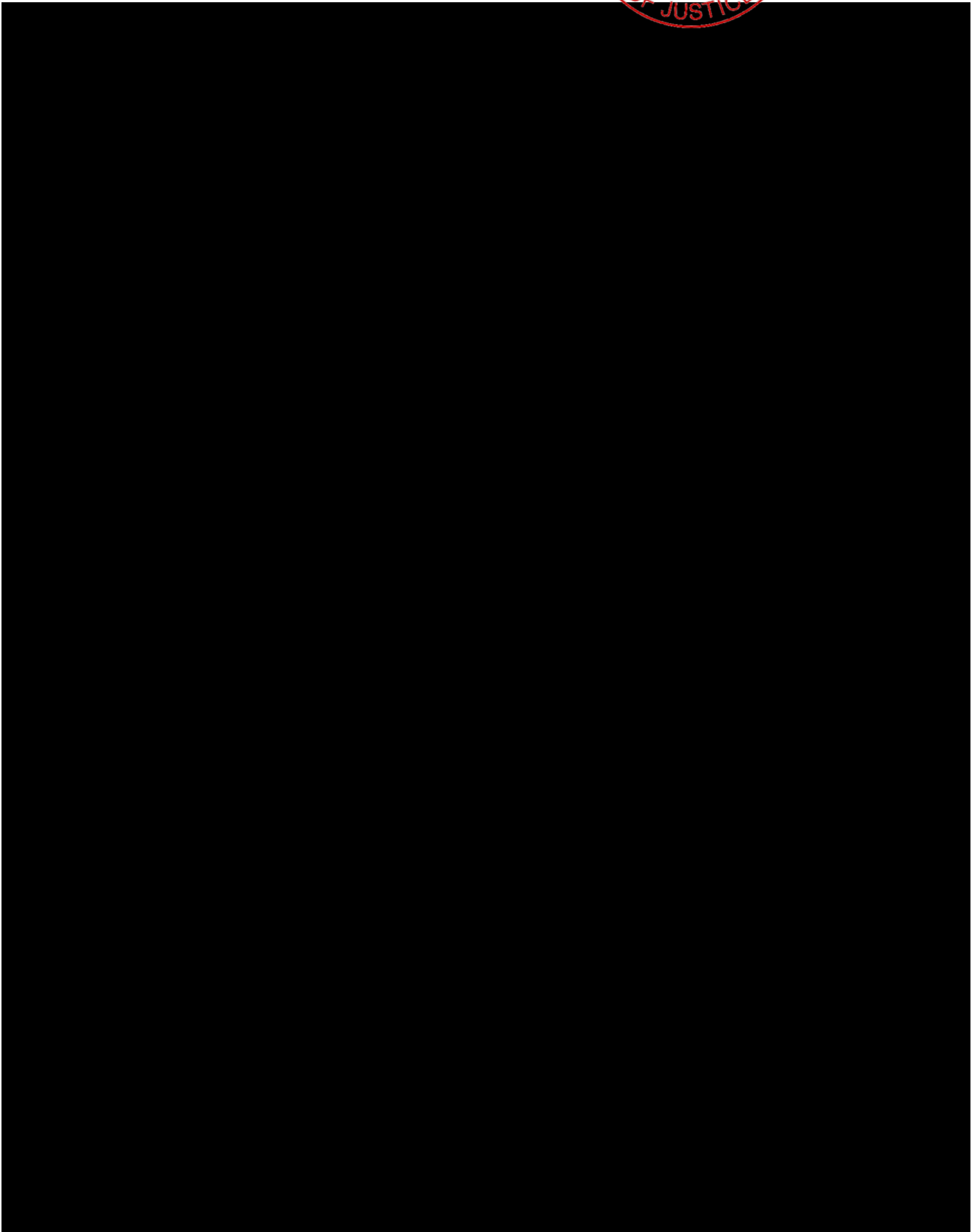


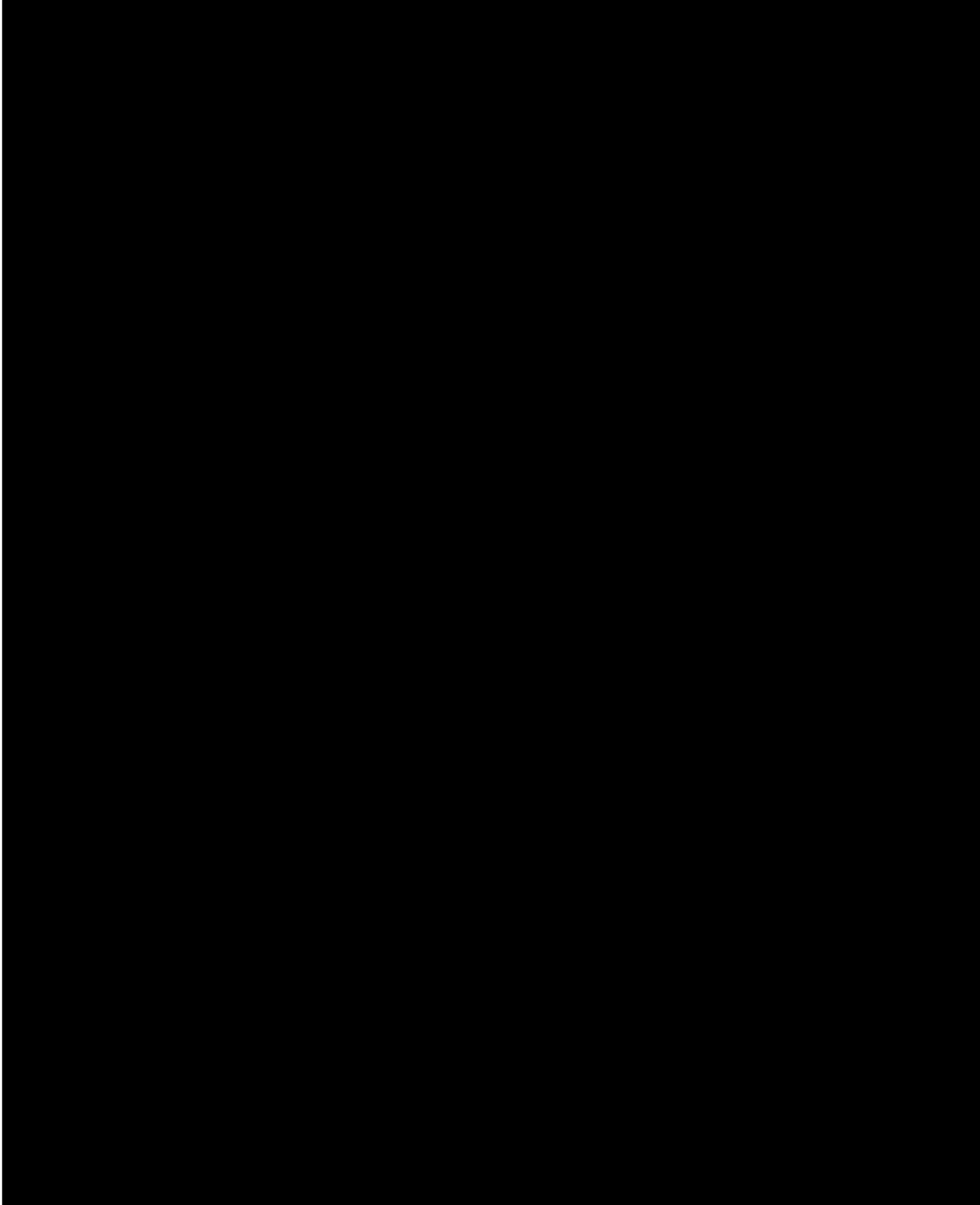


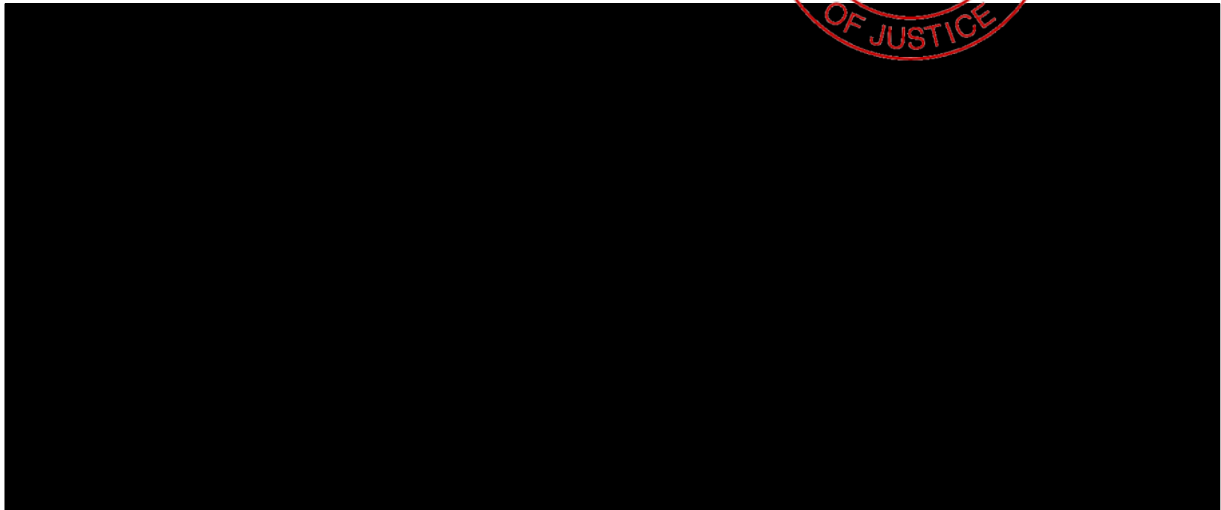
- [REDACTED]
23. As to paragraphs 41 to 48, the Claimant notes that it is now confirmed that an electronic auction is not to be used.
24. Paragraph 49 is noted as a bare denial. The Claimant will rely on that bare denial at trial.
25. Paragraph 50 is noted as a purported summary of other paragraphs of the Defence. The Claimant does not plead to it.
- [REDACTED]











JOSEPH BARRETT

STATEMENT OF TRUTH

The Claimant believes that the facts stated in this Statement of Case are true and I am duly authorised to sign this statement of truth on its behalf.

Signed:

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Full name: Michael John Markham

Job title: Of counsel

Dated: 17 August 2018