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18 COUNTY OF SANTA CRUZ, et al

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF FRESNO

21 COUNTY OF SANTA CRUZ; CITY OF  
22 AGOURA HILLS; CITY OF ANGELS CAMP;  
23 CITY OF ARCADIA; CITY OF ATWATER;  
24 CITY OF BEVERLY HILLS; CITY OF CERES;  
25 CITY OF CLOVIS; CITY OF COVINA; CITY  
26 OF DIXON; CITY OF DOWNEY; CITY OF  
27 MCFARLAND; CITY OF NEWMAN; CITY OF  
28 OAKDALE; CITY OF PALMDALE; CITY OF  
PATTERSON; CITY OF RIVERBANK; CITY  
OF RIVERSIDE; CITY OF SAN PABLO; CITY  
OF SONORA; CITY OF TEHACHAPI; CITY  
OF TEMECULA; CITY OF TRACY; CITY OF  
TURLOCK; and CITY OF VACAVILLE,

Plaintiffs,

v.

BUREAU OF CANNABIS CONTROL; LORI  
AJAX, in her official capacity as Chief of the  
Bureau of Cannabis Control; and DOES 1  
through 10, inclusive,

Defendants.

Filing Fee Exempt  
(Gov. Code § 6103)

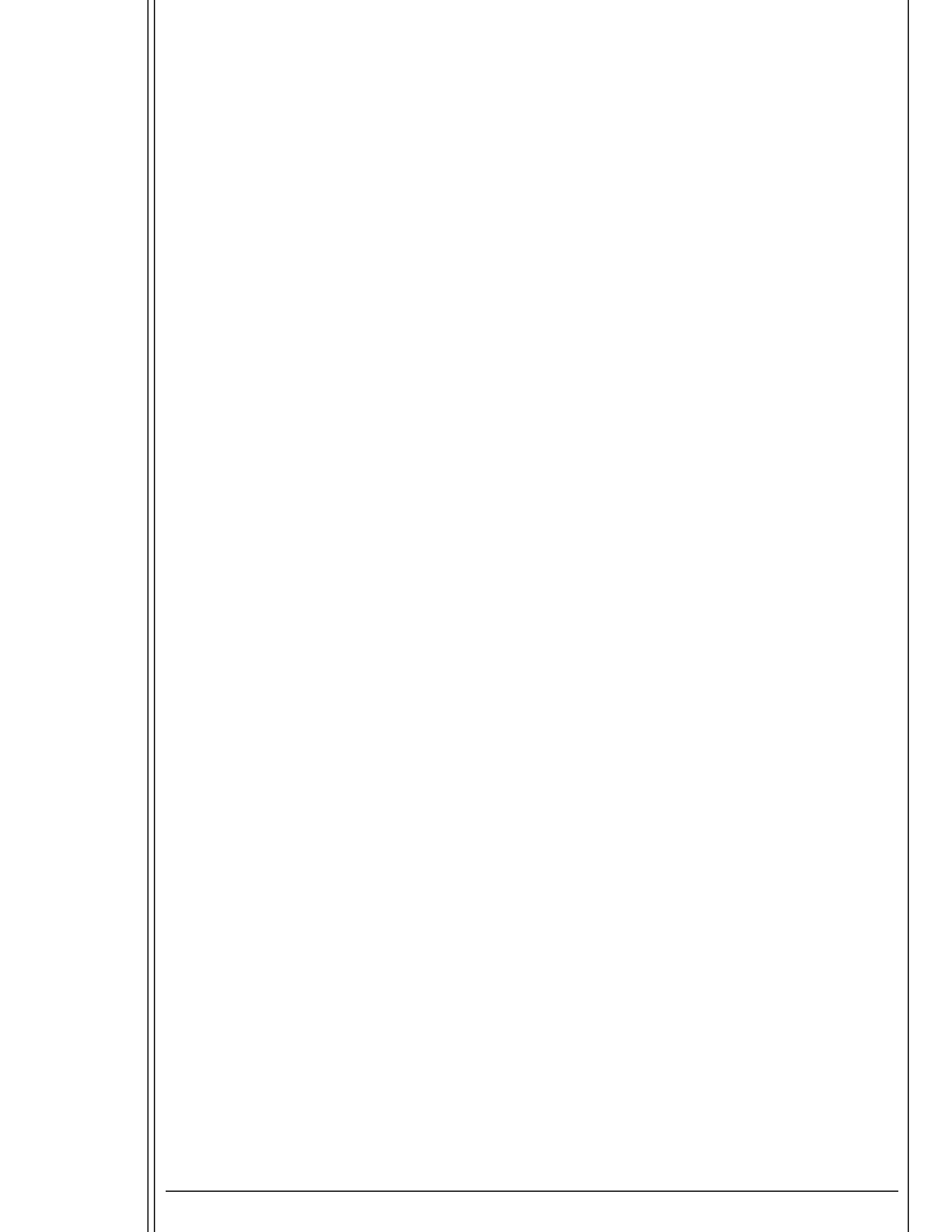
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5/13/2020 10:54 AM  
Superior Court of California  
County of Fresno  
By: Louana Peterson, Deputy

Case No.: 19CECG01224

**REQUEST FOR JUDICIAL NOTICE,  
EXHIBITS VOLUME 6 (EXHIBITS 31-40)**

Complaint filed: April 4, 2019  
Trial Date: July 16, 2020

Assigned for all purposes to Judge Rosemary  
McGuire, Department 403.



**ORDINANCE NO. 17-02**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING CHAPTER 8.52 OF TITLE 8, HEALTH AND SAFETY, OF THE TEMECULA MUNICIPAL CODE TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN THE CITY AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND AMENDING TITLE 17, ZONING, TO PROHIBIT COMMERCIAL MARIJUANA ACTIVITY IN ALL ZONES AND TO AMEND REGULATIONS PERTAINING TO MARIJUANA CULTIVATION, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES, SECTION 15061(B)(3)**

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

**Section 1.** Chapter 8.52 (Marijuana Cultivation) of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended in its entirety to read as follows:

**CHAPTER 8.52 – MARIJUANA CULTIVATION AND COMMERCIAL MARIJUANA ACTIVITY**

**Sections:**

**8.52.010 – Findings and purpose.**

**8.52.020 – Authority.**

**8.52.030 – Definitions.**

**8.52.040 – Prohibitions on commercial marijuana activity.**

**8.52.050 – Prohibitions on marijuana cultivation – Nuisance declared.**

**8.52.060 – Limited exemption from enforcement for medical marijuana.**

**8.52.070 – Abatement of other nuisances.**

**8.52.080 – Violations and penalties.**

**8.52.010 Findings and purpose.**

The City Council finds and declares the following:

A. The Control, Regulate and Tax Adult Use of Marijuana Act (the "AUMA"), was approved by the voters of the State of California on November 8, 2016. The AUMA adds Section 11362.1 to the Health and Safety Code, which makes it "lawful under state and local law" for persons 21 years of age or older to "possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older without any compensation whatsoever" up to 28.5 grams of marijuana not in the form of concentrated cannabis or up to eight grams of marijuana in the form of concentrated

cannabis. The provisions of the AUMA related to the possession, use, and cultivation of marijuana became effective on November 9, 2016.

B. To regulate the commercial use of non-medical marijuana, the AUMA adds Division 10 (Marijuana) to the Business & Professions Code, Sections 26000 et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for marijuana businesses. The AUMA provides that the State shall begin issuing licenses to marijuana businesses under Division 10 of the Business and Professions Code by January 1, 2018.

C. Business and Professions Code section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical marijuana activity, if approval of the State license will violate the provisions of any local ordinance.

D. The AUMA permits cities to (1) adopt and enforce local ordinances to regulate non-medical marijuana businesses, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or (2) completely prohibit the establishment or operation of marijuana businesses within its jurisdiction.

E. The AUMA allows for the planting, cultivation, harvesting, drying and processing ("cultivation activities") of up to six marijuana plants in, or upon the grounds of, a private residence, as well as the possession of any marijuana produced by the plants. The AUMA authorizes a city to enact and enforce an ordinance that reasonably regulates cultivation activities, and to completely prohibit cultivation activities outdoors upon the grounds of a private residence unless the California Attorney General determines that non-medical use of marijuana is lawful in the State under Federal law.

F. On October 9, 2015, Governor Brown signed Assembly Bill No. 243, Assembly Bill No. 266, and Senate Bill 643 into law, which are now collectively known as the Medical Cannabis Regulation and Safety Act (hereinafter "MCRSA"). The MCRSA establishes a State licensing scheme for commercial medical marijuana uses, while protecting local control by requiring that all such businesses must have a local license or permit to operate in addition to a State license. The MCRSA allows a city to completely prohibit commercial medical marijuana activities, including the cultivation of medical marijuana.

G. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" or "CUA"). The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to use it without fear of criminal prosecution under limited, specified circumstances. The proposition further provides that "nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes." The ballot arguments supporting

Proposition 215 expressly acknowledged that "Proposition 215 does not allow unlimited quantities of marijuana to be grown anywhere."

H. In 2004, the Legislature enacted Senate Bill 420 (codified as California Health and Safety Code sections 11362.7, *et seq.*, and referred to as the "Medical Marijuana Program" or "MMP") to clarify the scope of Proposition 215, and to provide qualified patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to certain specified State criminal statutes. Assembly Bill 2650 (2010) and Assembly Bill 1300 (2011) amended the Medical Marijuana Program to expressly recognize the authority of counties and cities to "[a]dopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective" and to civilly and criminally enforce such ordinances.

I. In *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, the California Supreme Court held that "[n]othing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land..." Additionally, in *Maral v. City of Live Oak* (2013) 221 Cal. App.4th 975, the Court of Appeal held that "there is no right—and certainly no constitutional right—to cultivate medical marijuana..." The Court in *Maral* affirmed the ability of a local governmental entity to prohibit the cultivation of marijuana under its land use authority.

J. The *Federal Controlled Substances Act*, 21 U.S.C. §§ 801, *et seq.*, classifies marijuana as a Schedule I Drug, which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that has not been accepted as safe for use under medical supervision. The Federal Controlled Substances Act makes it unlawful, under federal law, for any person to cultivate, manufacture, distribute or dispense, or possess with intent to manufacture, distribute or dispense, marijuana. The Federal Controlled Substances Act contains no exemption for the cultivation, manufacture, distribution, dispensation, or possession of marijuana for any purposes.

K. Cities in California have reported negative effects of marijuana cultivation, processing and distribution activities, including offensive odors, illegal sales and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests. Furthermore, as marijuana plants begin to flower, and for a period of two months or more, the plants produce a strong, unique odor, offensive to many people, and detectable far beyond property boundaries if grown outdoors. This odor can have the effect of encouraging theft by alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery of the plants and creating the potential for violent acts related to such criminal activity.

L. Marijuana cultivation in the City can adversely affect the health, safety, and well-being of City residents, visitors and workers. Regulating marijuana cultivation in the City is proper and necessary to avoid the risks of criminal activity, degradation of the natural environment, and malodorous smells that may result from unregulated marijuana cultivation, and that are especially significant if the amount of marijuana cultivated on a single premises is not regulated and substantial amounts of marijuana are thereby allowed to be concentrated in one place.

M. The justification for regulating or banning commercial marijuana cultivation pursuant to the City's police power includes, but is not limited to: 1) The increased risk to public health and safety, based on the value of marijuana plants and flowers and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; 2) the strong "skunk like" malodorous fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; and 3) the potential for theft and use by school age children where marijuana is cultivated in a visible location, particularly where such location is close to schools.

N. As recognized by the Attorney General's August 2008 Guidelines for the security and non-diversion of marijuana grown for medical use, marijuana cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime.

#### **8.52.020 Authority.**

This ordinance is adopted pursuant to the authority granted by Article XI, section 7 of the California Constitution, Health and Safety Code section 11362.83, Government Code sections 25845 and 53069.4, the MCRSA, the AUMA, and other applicable law.

#### **8.52.030 Definitions.**

As used in this Chapter the following specific terms shall have the following meanings:

A. "AUMA" means the Control, Regulate and Tax Adult Use of Marijuana Act approved by the voters on November 8, 2016, as the same may be amended from time to time.

B. "Child care center" means any licensed child care center, daycare center, child care home, or any preschool.

C. "Community center" means any facility open to the public at which classes, social activities, recreational activities, educational activities, support and public information are offered for all residents of the community.

D. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, delivery, or sale of marijuana and marijuana products, whether or not for profit. "Commercial marijuana activity" also includes the activities of any business

licensed by the State or other government entity under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

E. "Concentrated cannabis" shall have the same meaning as "cannabis concentrate" as defined in Business and Professions Code section 19300.5, as the same may be amended from time to time.

F. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

G. "Delivery" means the commercial transfer of marijuana or marijuana products to a customer. "Delivery" also means the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under California law, that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

H. "Distribution" means the procurement, sale, and transport of marijuana and marijuana products between entities licensed under Divisions 8 or 10 of the Business & Professions Code, as they may be amended from time to time.

I. "Fully enclosed and secure structure" means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors. The fully enclosed and secure structure must maintain a minimum ten (10) foot setback from any property line. Such setback distance shall be measured in a straight line from the fully enclosed and secure structure in which the marijuana plants are cultivated. The ten (10) foot setback requirement does not apply to cultivation occurring in a garage.

J. "Marijuana" means parts of the plant *Cannabis sativa linnaeus*, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" also means the separated resin, whether crude or purified, obtained from marijuana, and any product containing marijuana. It does not include:

1. Industrial hemp, as defined in Section 11018.5 of the California Health and Safety Code; or

2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana also includes "cannabis" as defined in Business and Professions Code section 19300.5(f), as the same may be amended from time to time.













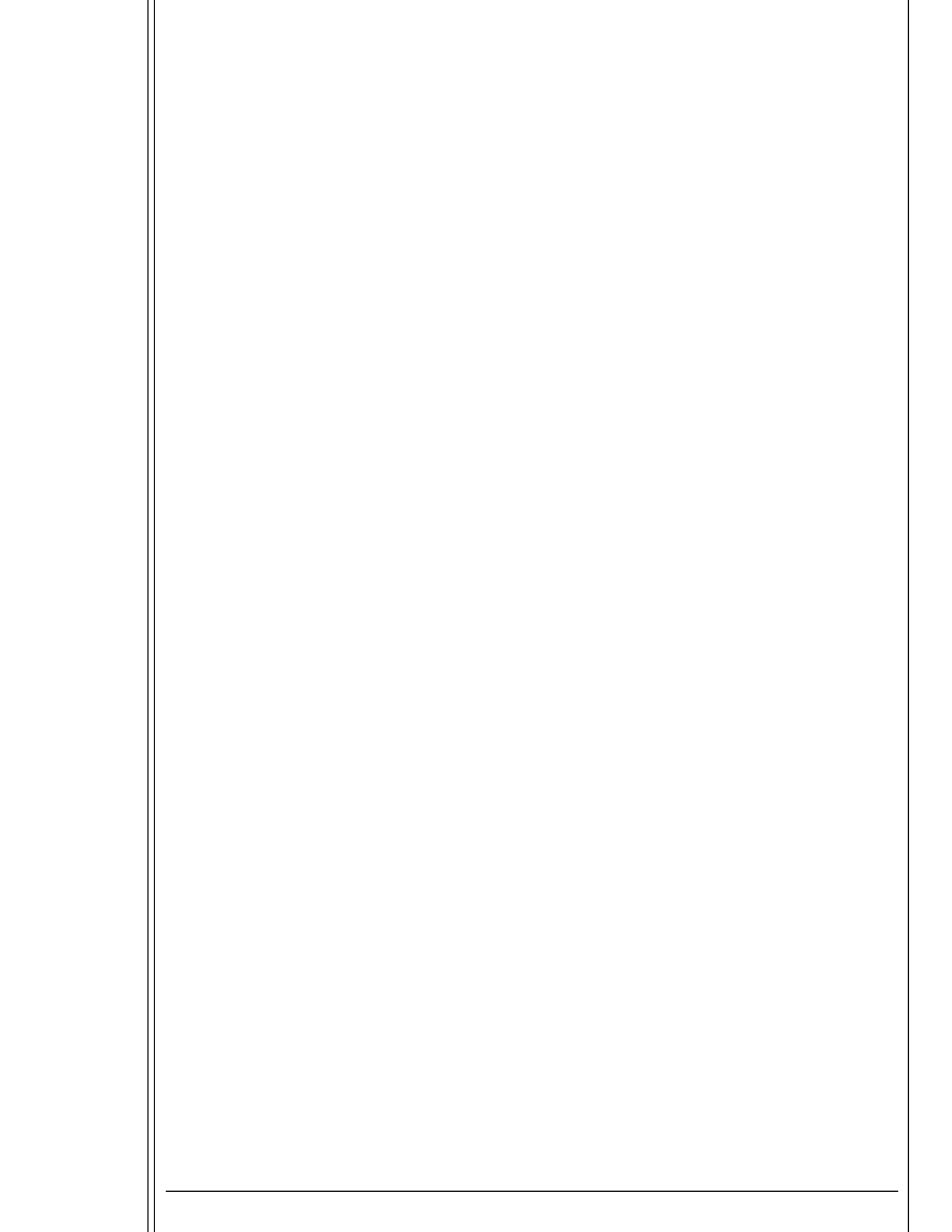


























































































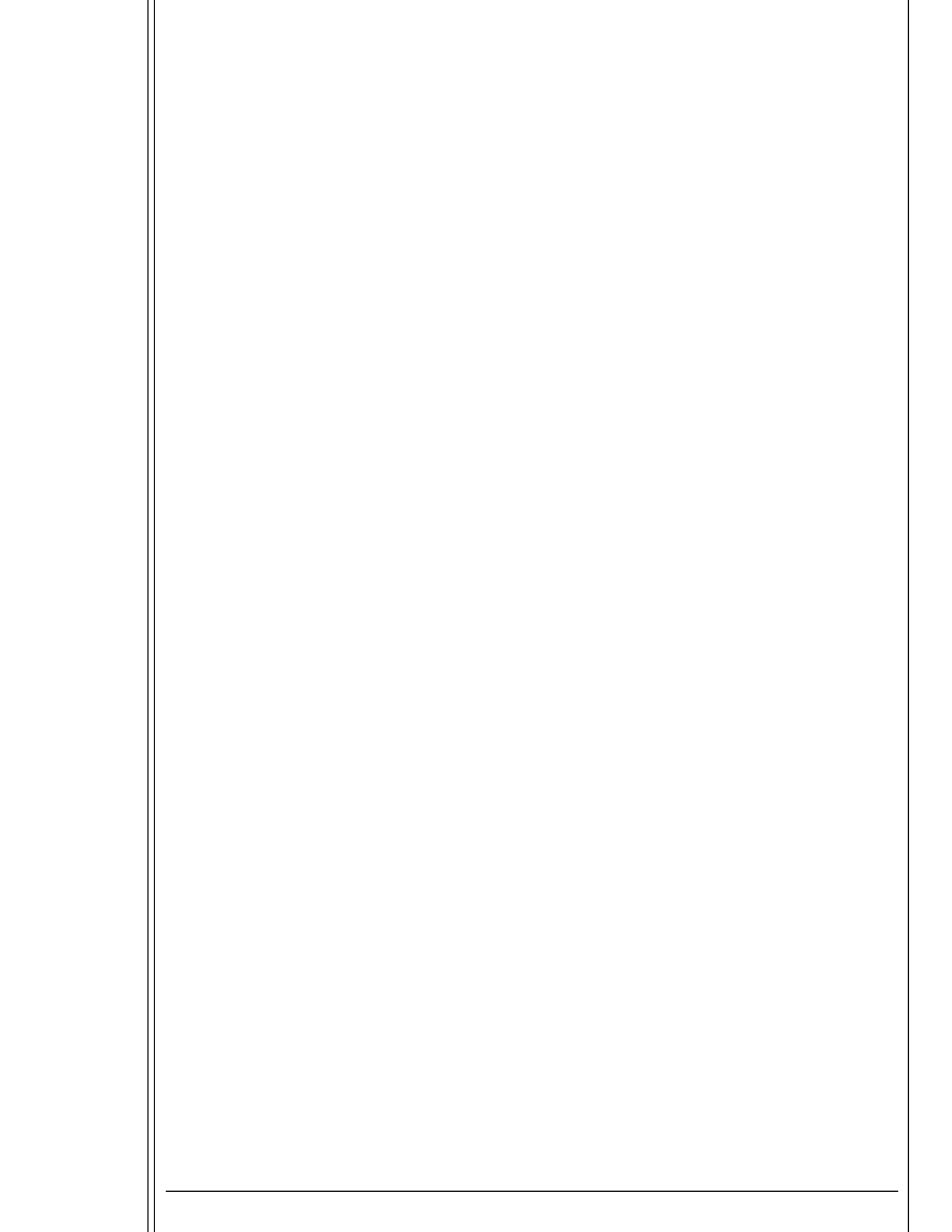


















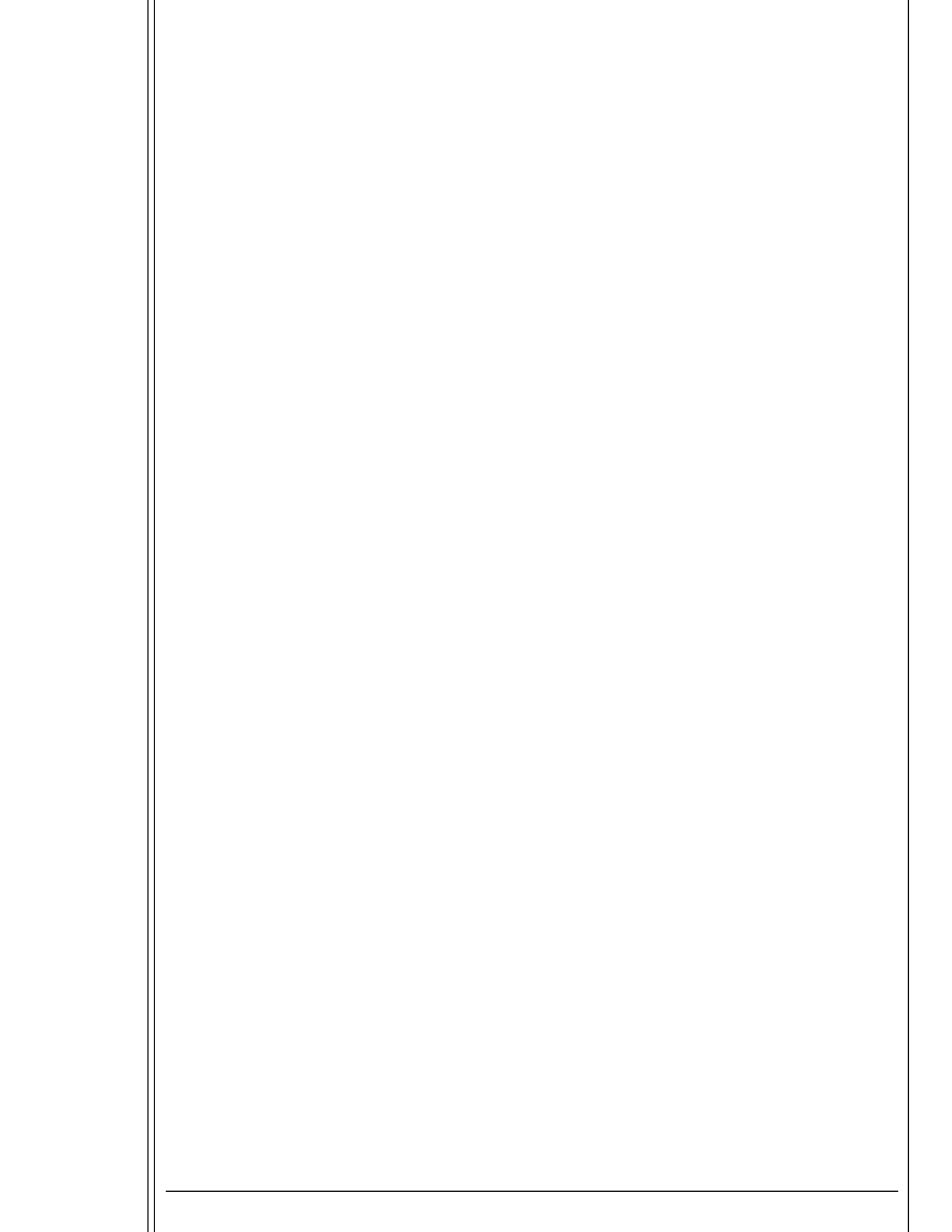










































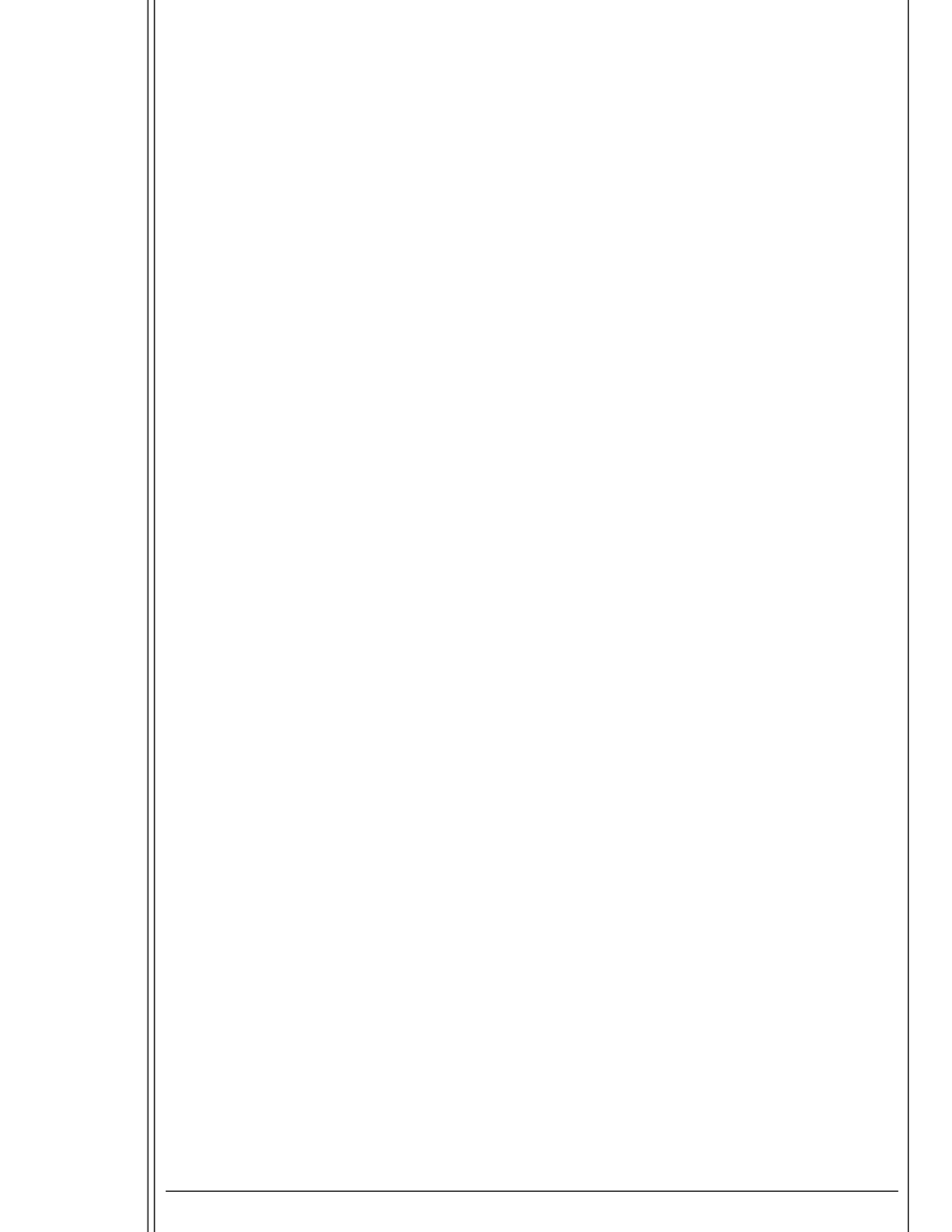


















































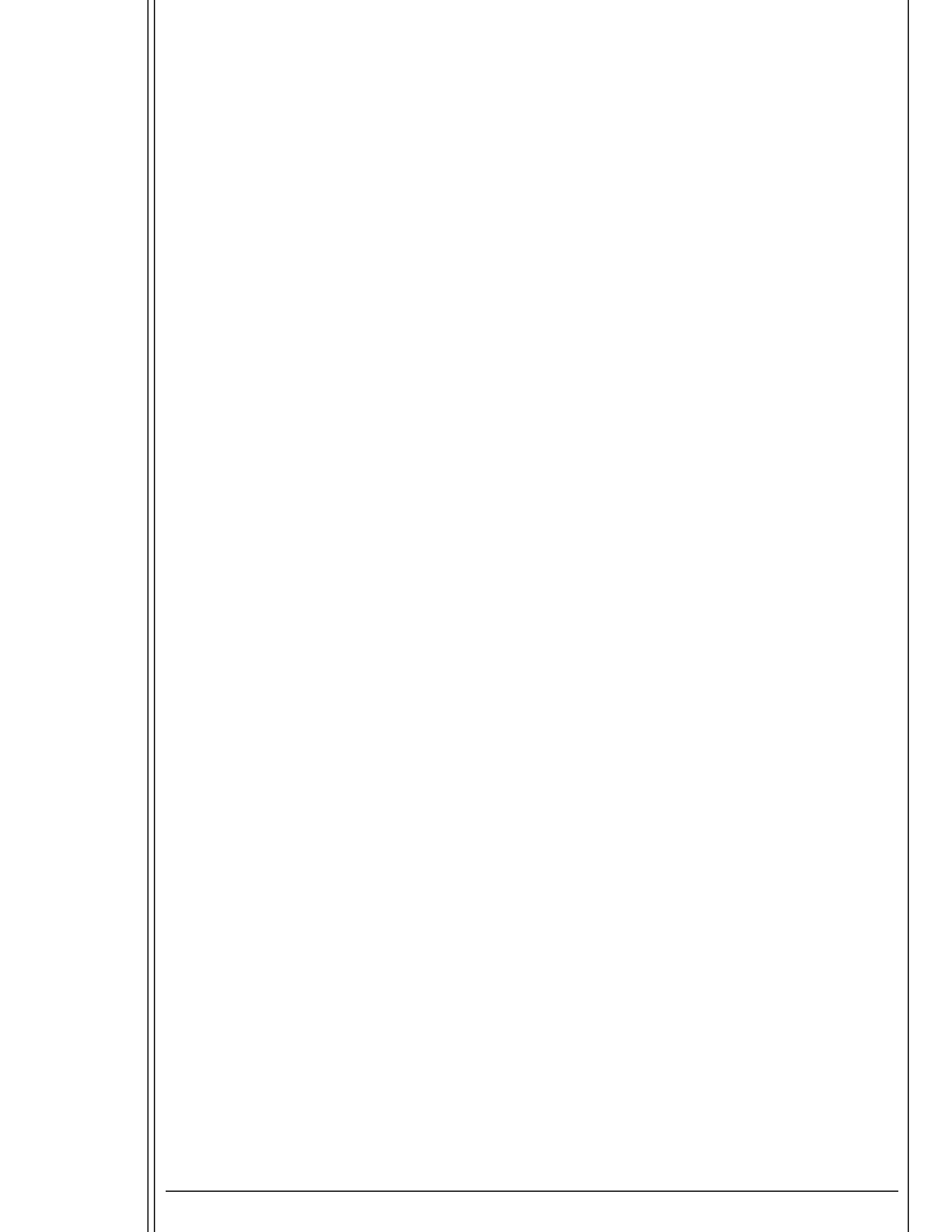


































































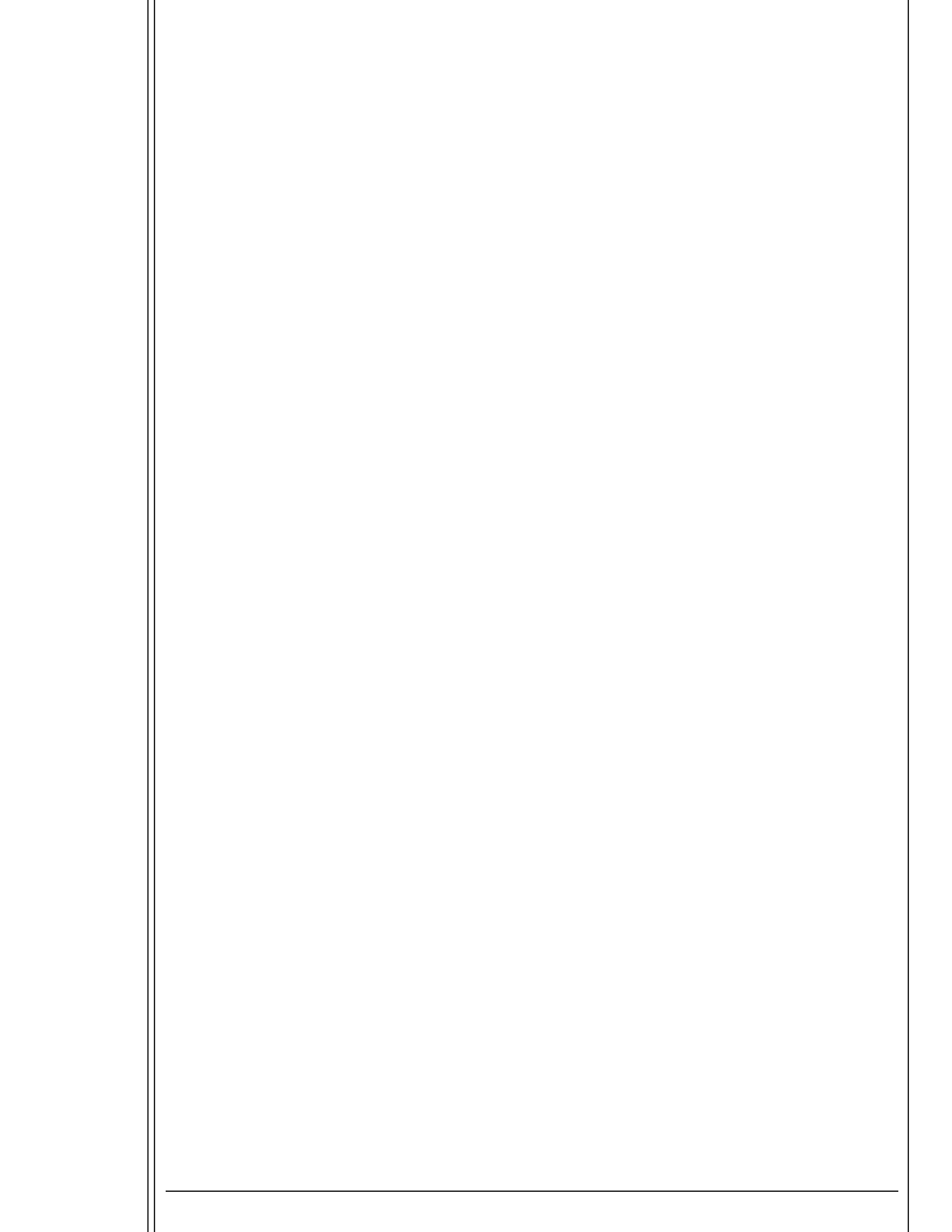














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By: Helena Hanson, Deputy

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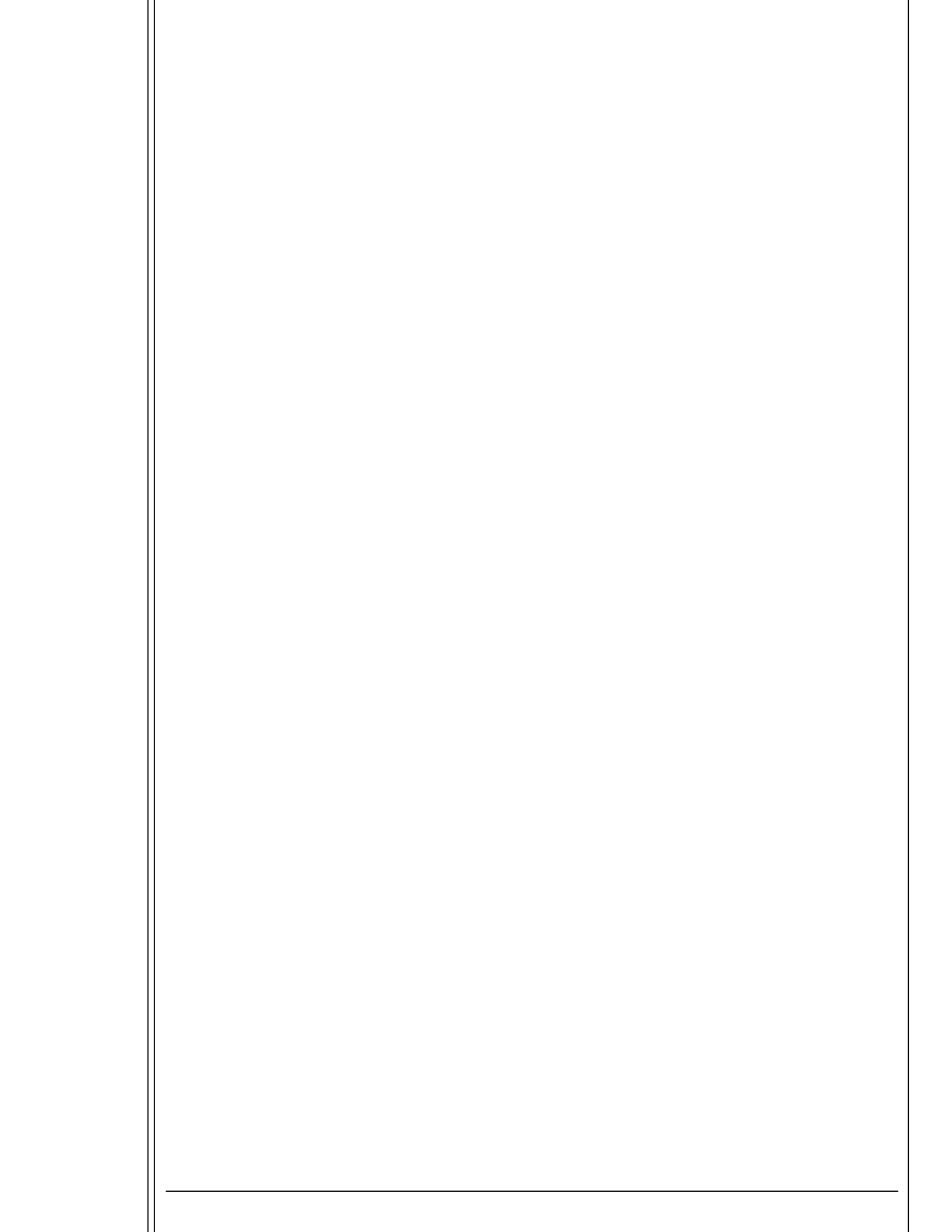














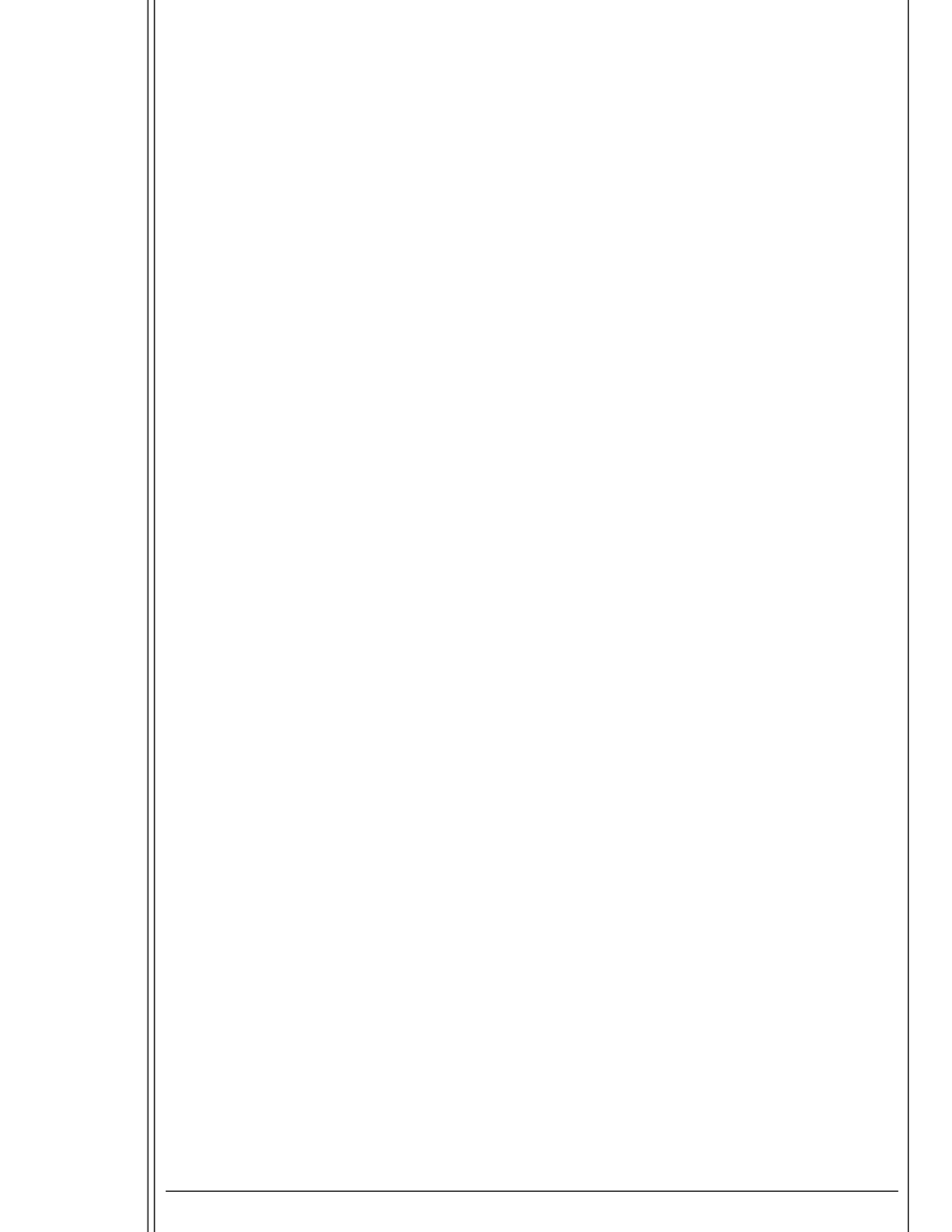




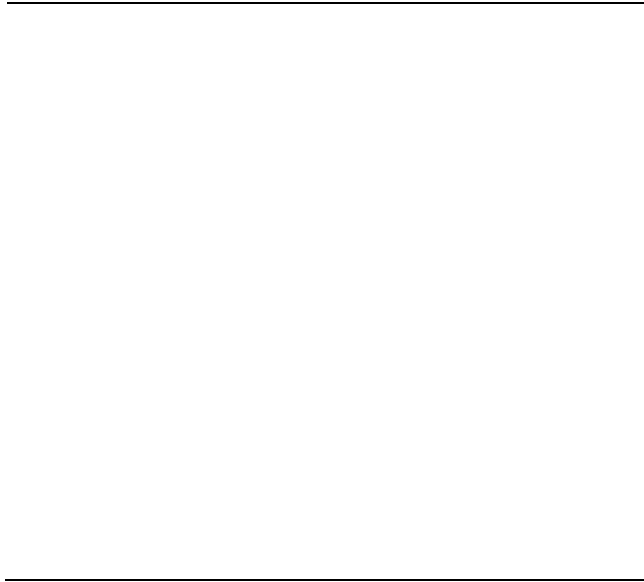


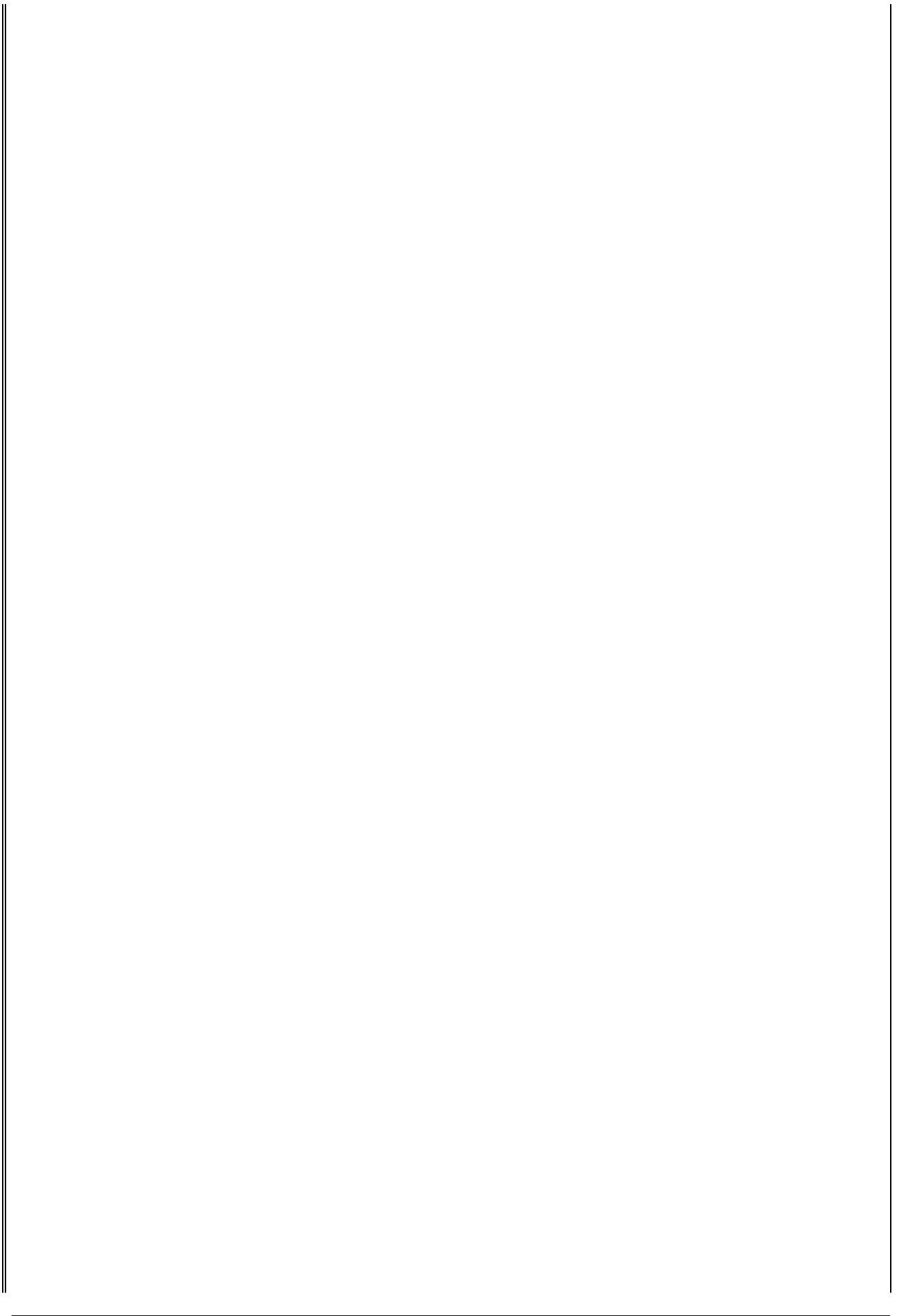




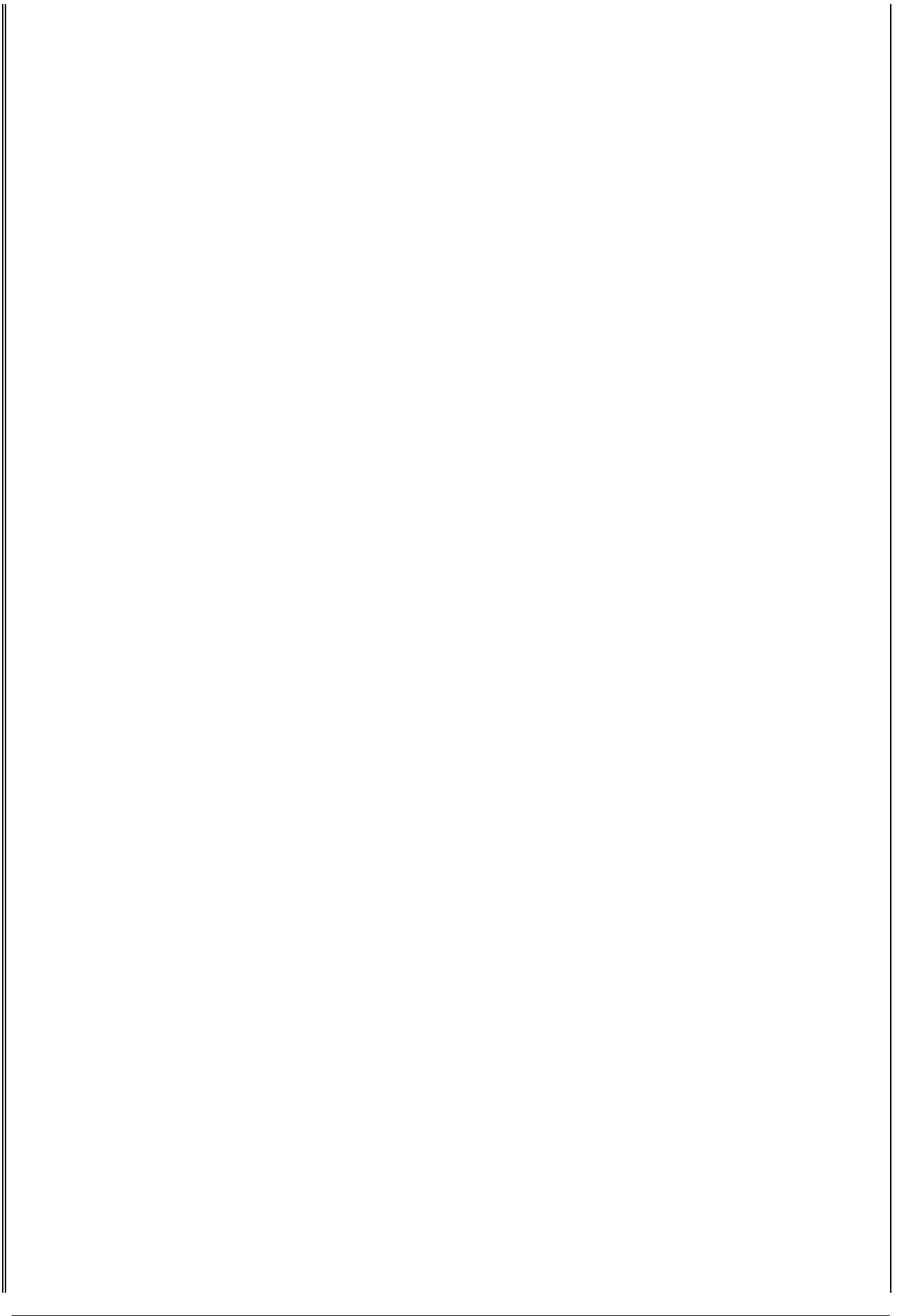


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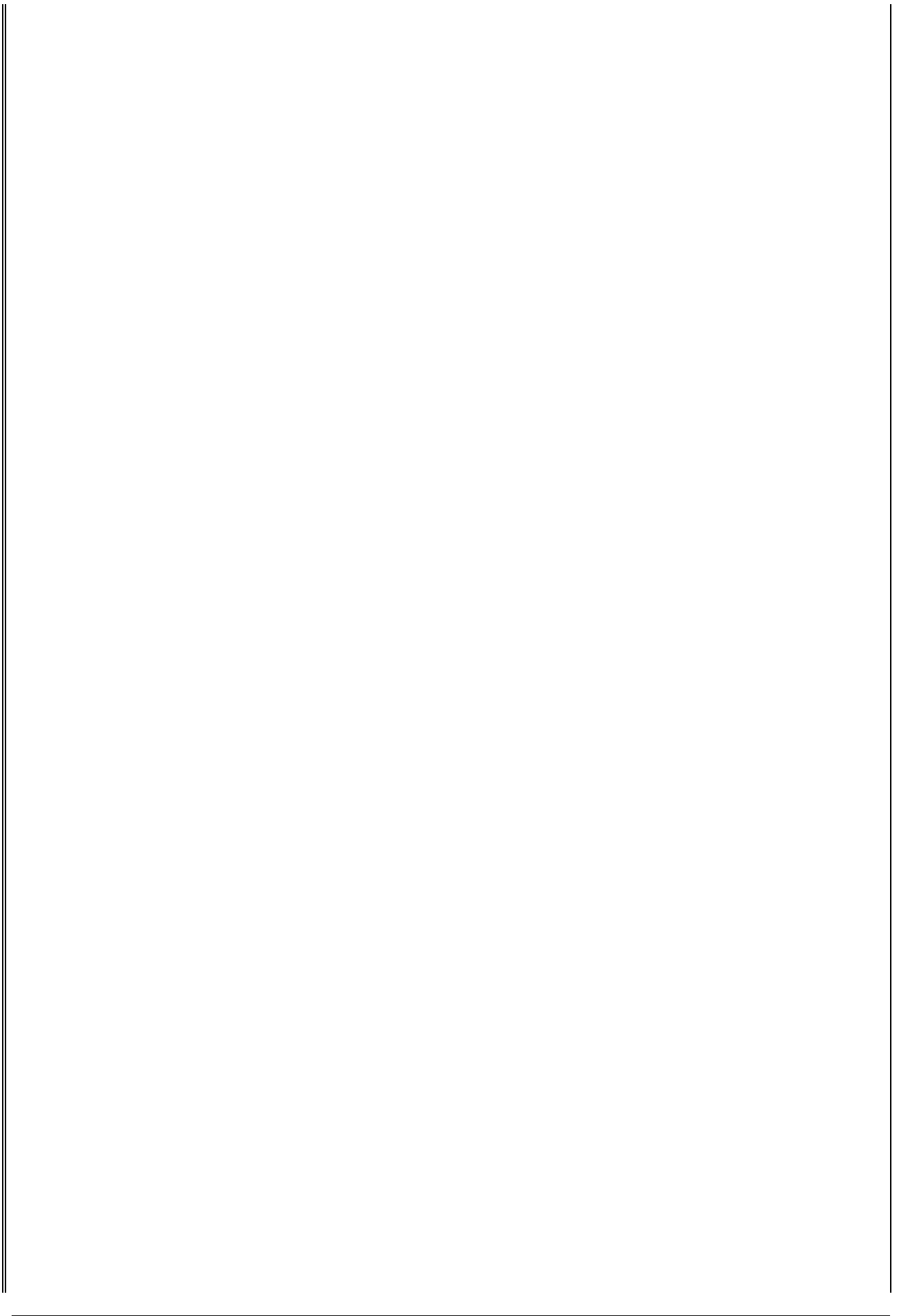


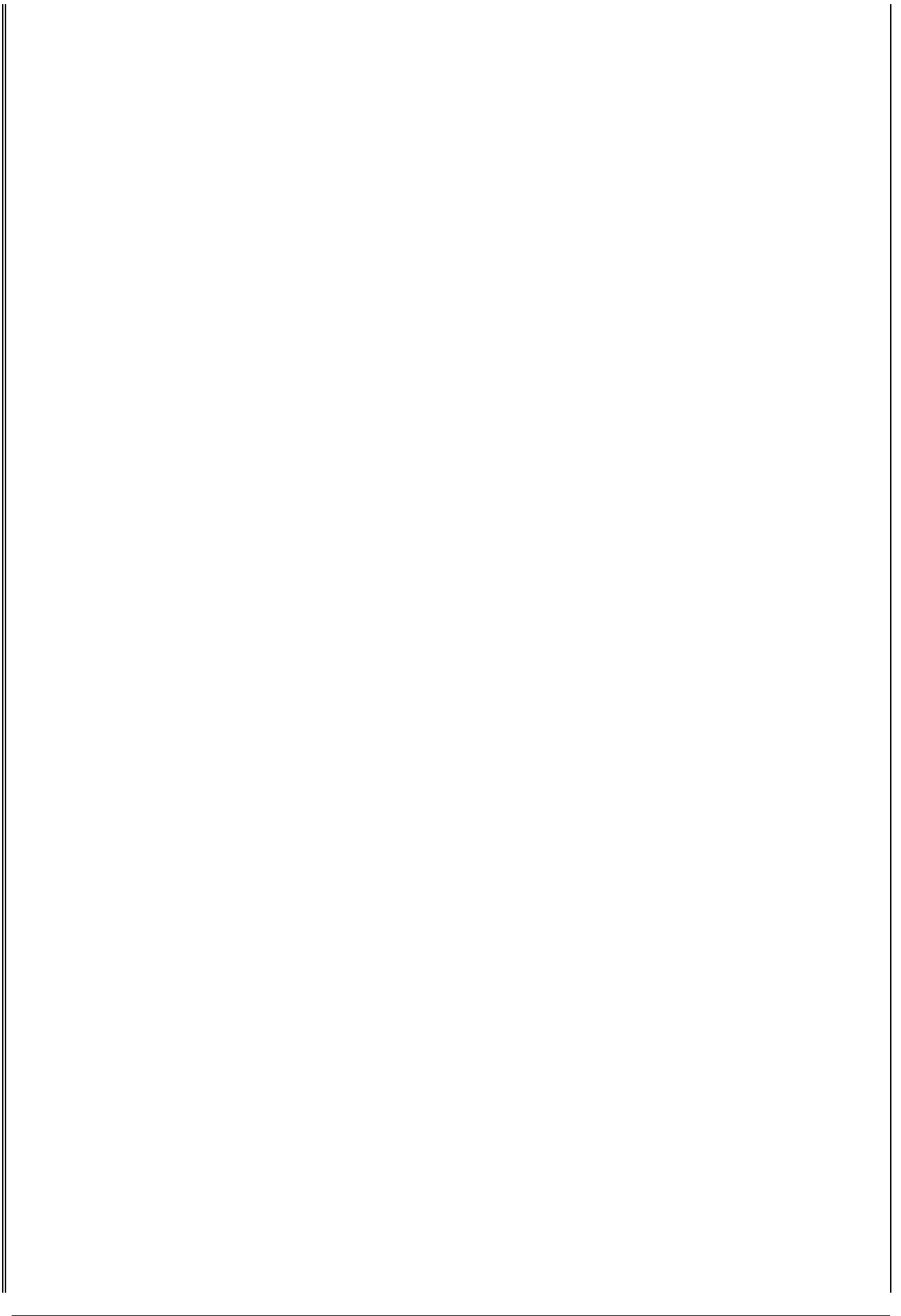


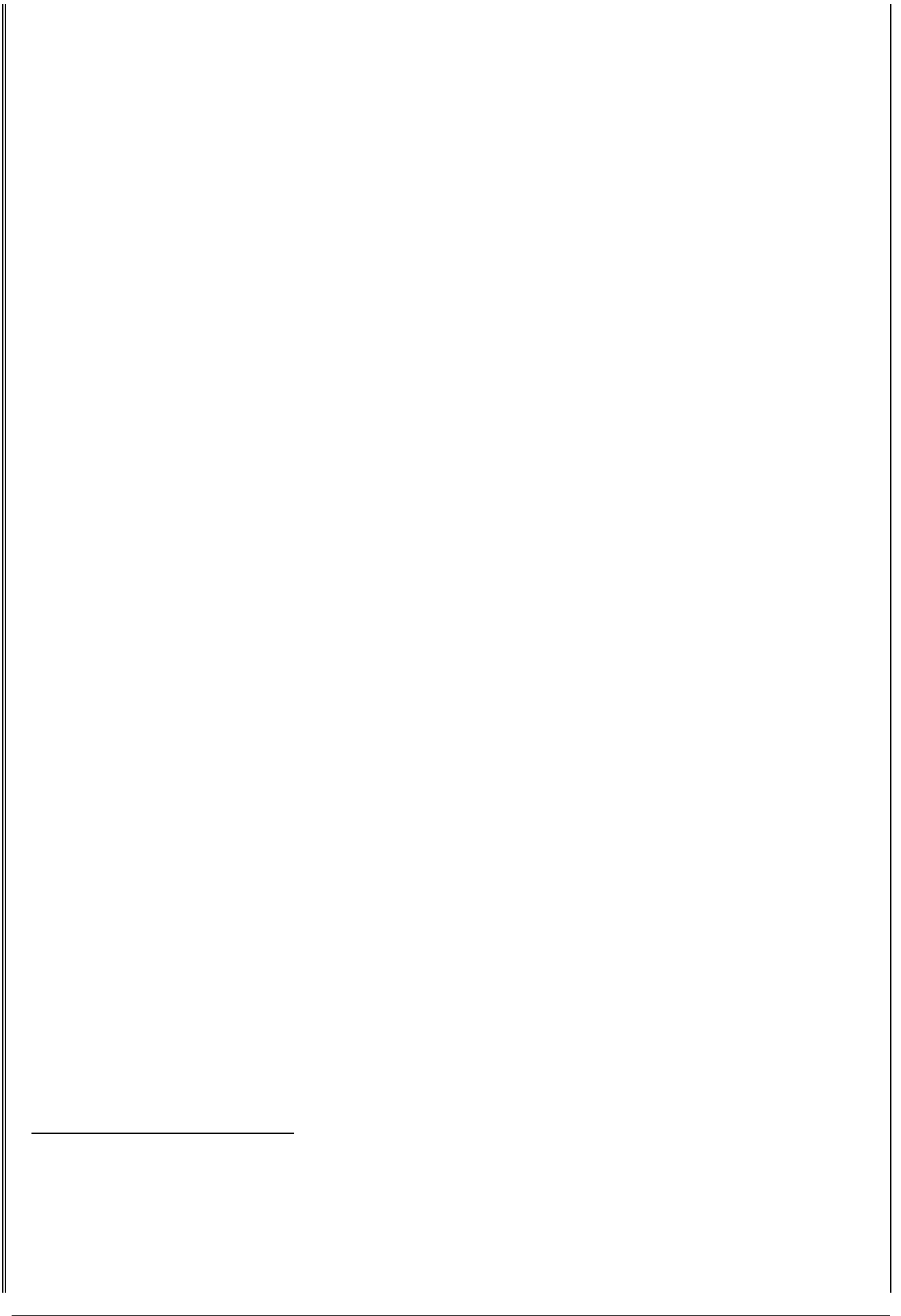


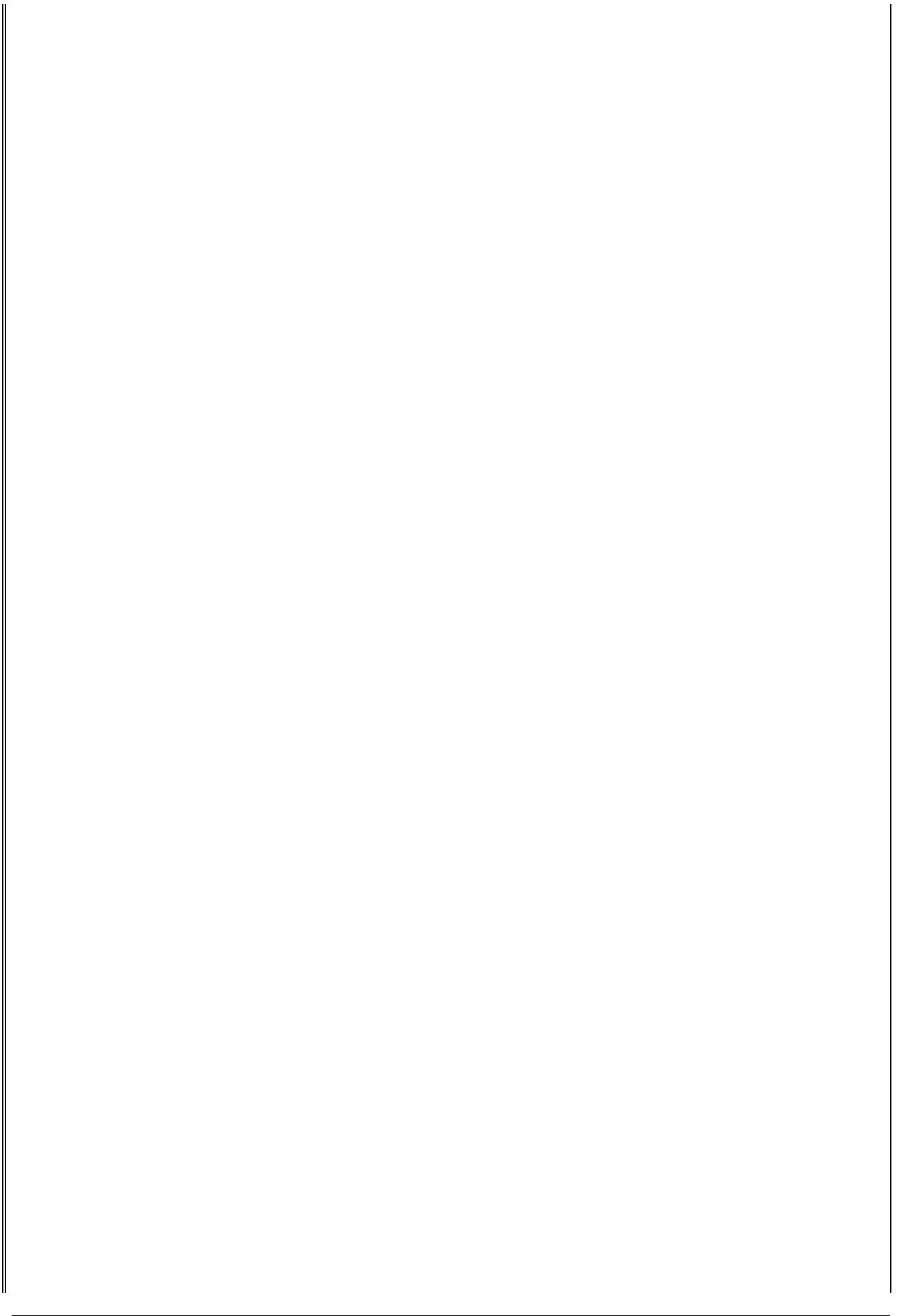


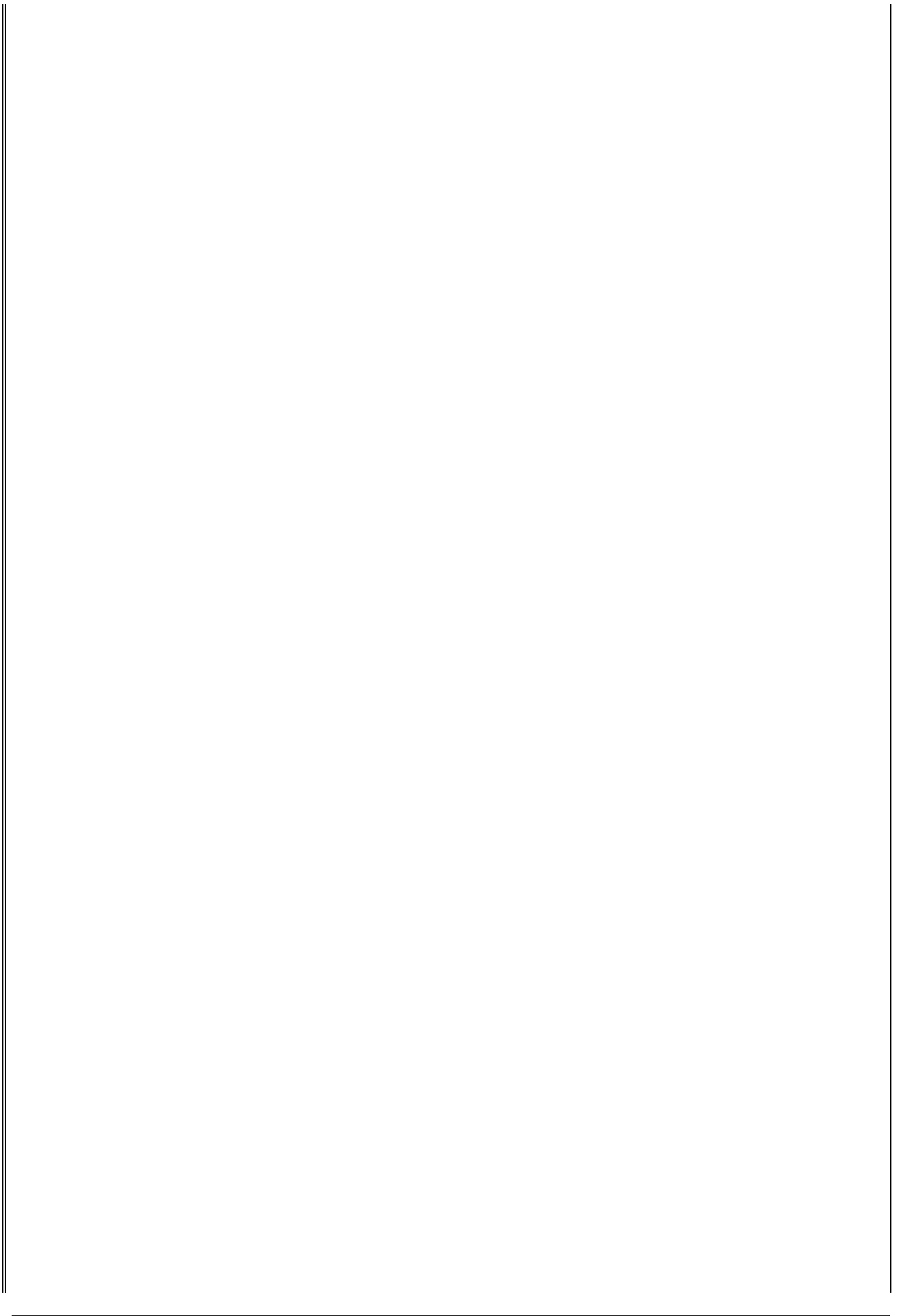






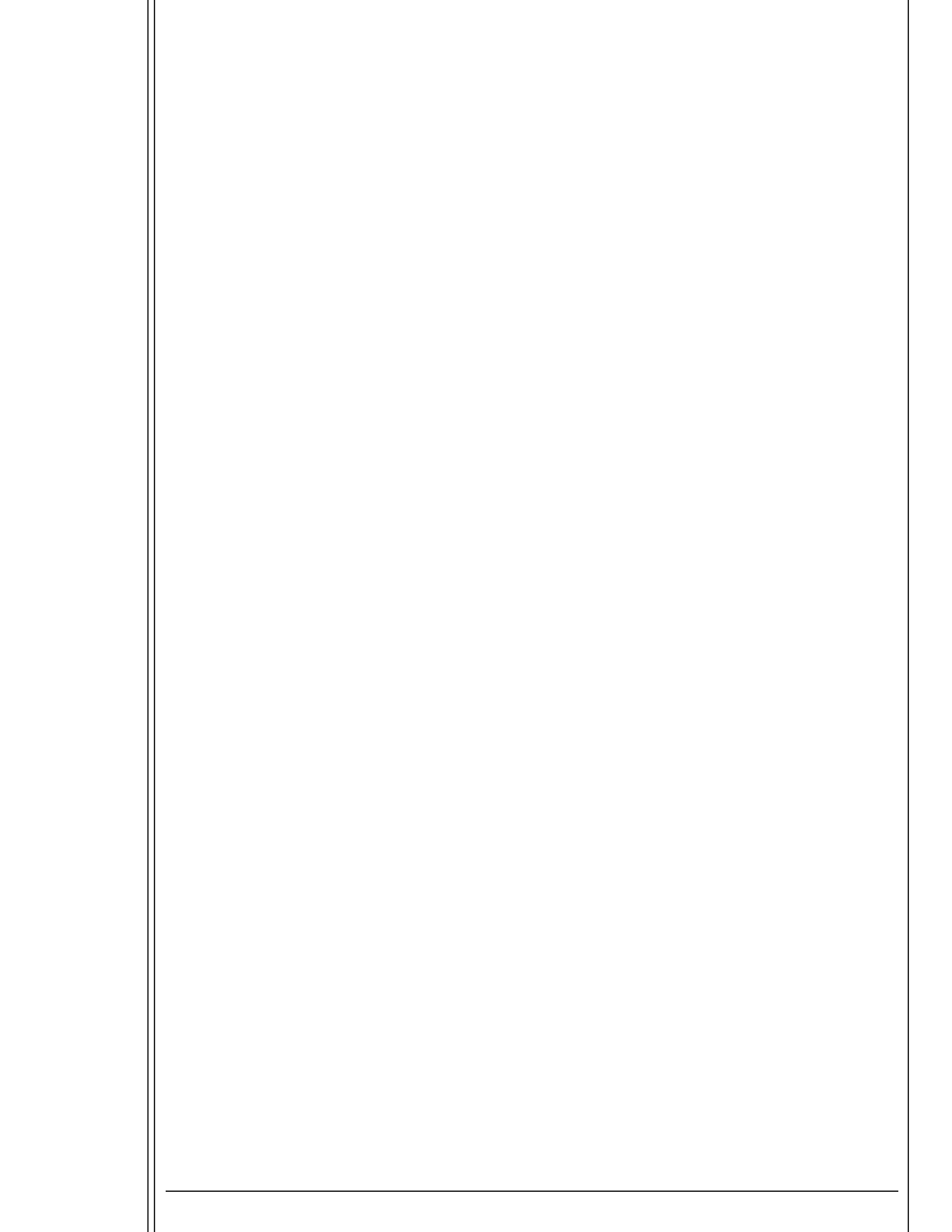














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