

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FRUIT STREET HEALTH INC.	:	CIVIL ACTION No. <u>2023CV389931</u>
	:	
<i>Plaintiff,</i>	:	COMPLAINT
	:	
v.	:	JURY TRIAL DEMANDED
	:	
SHARECARE, INC.,	:	
	:	
<i>Defendant.</i>	:	

COMPLAINT

Plaintiff Fruit Street Health Inc. d/b/a Fruit Street Health (“Fruit Street” or “Plaintiff”) alleges as against Defendant Sharecare, Inc. (“Sharecare” or “Defendant”) the following.

INTRODUCTION

1. Fruit Street developed a proprietary Diabetes Prevention Program (“DPP”) that gained full recognition status by the Center for Disease Control (“CDC”).

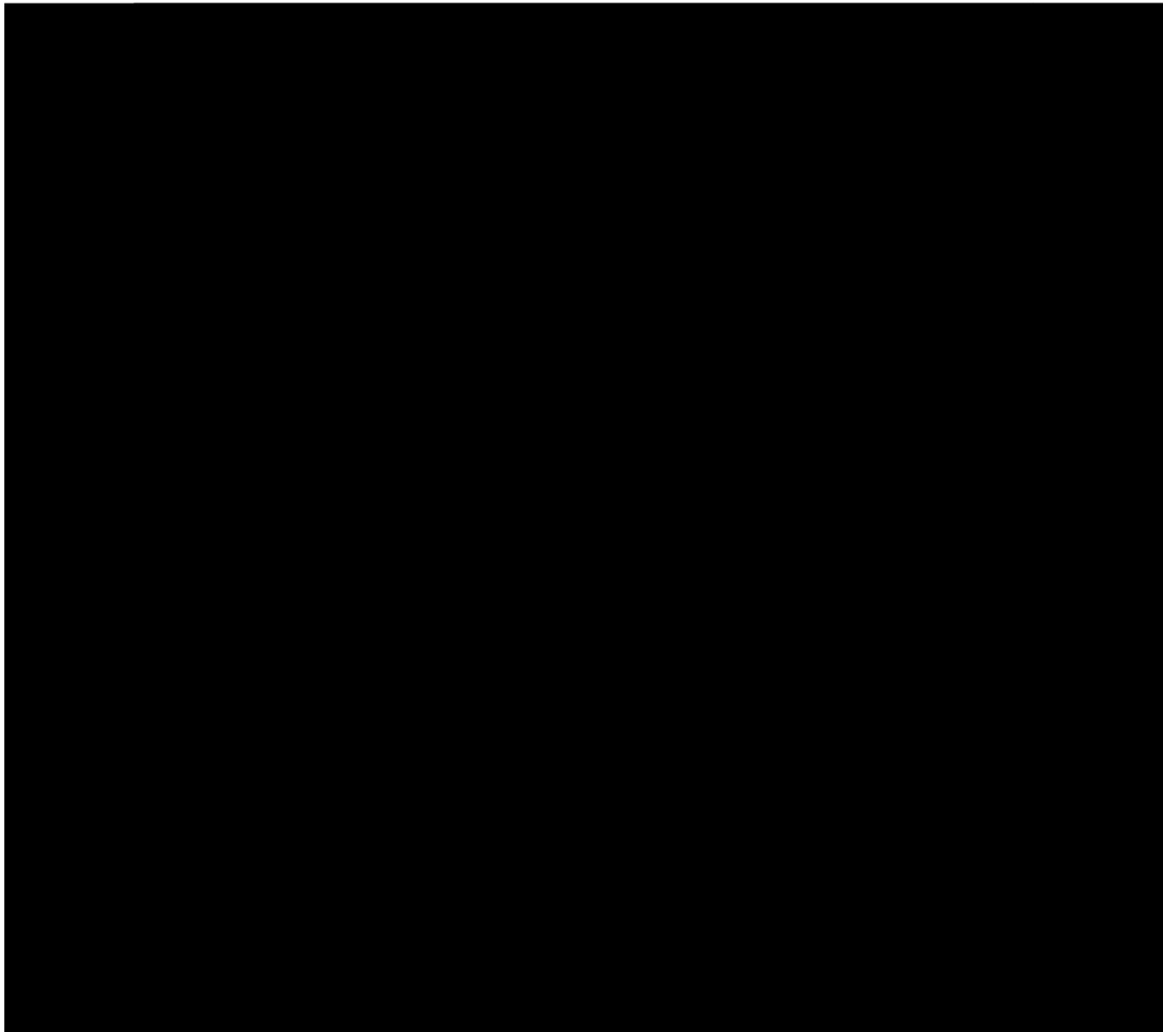
2. Fruit Street partnered with Sharecare to permit Sharecare to deliver the DPP to Sharecare’s enterprise and provider clients.

3. In its S-1 filing with the Securities and Exchange Commission (“SEC”) on July 21, 2021, Sharecare described the partnership as follows:

- Diabetes Prevention Program. An interactive, telehealth-based weight loss program that can be accessed by our members through our partnership with Fruit Street Health. The 12-month program helps participants lose 5-7% of their body weight with the goal of significantly reducing the risk of developing Type 2 diabetes and associated chronic diseases. This innovative program uses the same diabetes prevention curriculum developed by the CDC.

4. The SEC filing described Fruit Street and the DPP as one of “[a]n array of value-added proprietary and partner-powered solutions that integrate directly into our flagship platform ... for enterprise and provider clients to purchase for their populations.”

5. Sharecare branded the DPP as “Scale Back”.



13. On January 1, 2023, Sharecare launched a competing DPP [REDACTED]

[REDACTED] under the brand name “Eat Right Now”.

14. Since launching the Eat Right Now DPP, Sharecare has removed the Scale Back

DPP from its marketing website and replaced it with the Eat Right Now DPP.

15. Sharecare represented in press releases and advertisements that the Eat Right Now DPP is “recognized” and “approved” by the CDC. In doing so, Sharecare falsely and/or misleadingly represented that the Eat Right Now DPP had gained full CDC recognition.

16. Sharecare’s actual CDC status is “pending recognition”.

17. Sharecare has continued to aggressively market and sell the Eat Right Now DPP in lieu of the Scale Back DPP.



PARTIES

20. Fruit Street is a healthcare service provider and public benefit corporation organized under the laws of Delaware with its principal place of business at 6800 Jericho Turnpike, Suite 120W Syosset, NY 11791.

21. Defendant Sharecare, Inc. is a Delaware corporation with offices at 255 E. Paces Ferry Road, Suite 700, Atlanta, GA, 30305. Its registered agent is CT Corporation System, 289 S. Culver Street, Lawrenceville, GA, 30046-4805.

JURISDICTION AND VENUE

22. Jurisdiction and venue are proper in Fulton County, Georgia because the parties’ contract contains a venue provision which subjects the parties to jurisdiction and venue in this

Court.

23. Moreover, Defendant has offices and conducts business in Fulton County, Georgia.

FACTS

CDC Recognition Process

24. The CDC established the Diabetes Prevention Recognition Program (“DPRP”) as part of the National Diabetes Prevention Program (“NDPP”).

25. The DPRP provides information to people at high risk for type 2 diabetes, their health care providers, and payers about the location and performance of organizations offering the NDPP.

26. The purpose of the DPRP is to recognize organizations that have demonstrated their ability to effectively deliver the evidence-based NDPP.

27. The recognition program helps to assure that decisions about participant eligibility, program content, and data collection and reporting that could lead to health insurance benefits are based on accurate, reliable, and trustworthy information.

28. The NDPP is designed to help the 96 million Americans living with prediabetes to avoid developing Type 2 diabetes, an expensive healthcare condition.

29. The NDPP has been proven to help individuals with prediabetes reduce their risk for Type 2 diabetes by more than 58% based on Medicare-funded research published in the New England Journal of Medicine.

30. Any organization that has the capacity to deliver the National DPP may apply for recognition.

31. The DPRP awards three categories of recognition: pending, preliminary and full recognition.

32. Organizations are required to submit data every 6 months on all ongoing cohorts regardless of recognition status achieved.

33. Organizations will be evaluated for preliminary and full recognition only at the time of required data submissions.

34. To be eligible for an evaluation, organizations must have submitted data on at least one completed cohort.

35. A cohort is considered complete when 365 days have lapsed since the first session of that cohort was held.

Fruit Street's DPP Achieved Full Recognition Status

36. Laurence Girard is Fruit Street's founder and Chief Executive Officer.

37. Fruit Street is a public benefit corporation.

38. Unlike traditional C-Corporations, whose primary interest is maximizing shareholder value, public benefit corporations balance stakeholders' pecuniary interests, the interests of those who are involved and affected by the corporation, as well as the advancement of their intended public benefit goal for improving society.

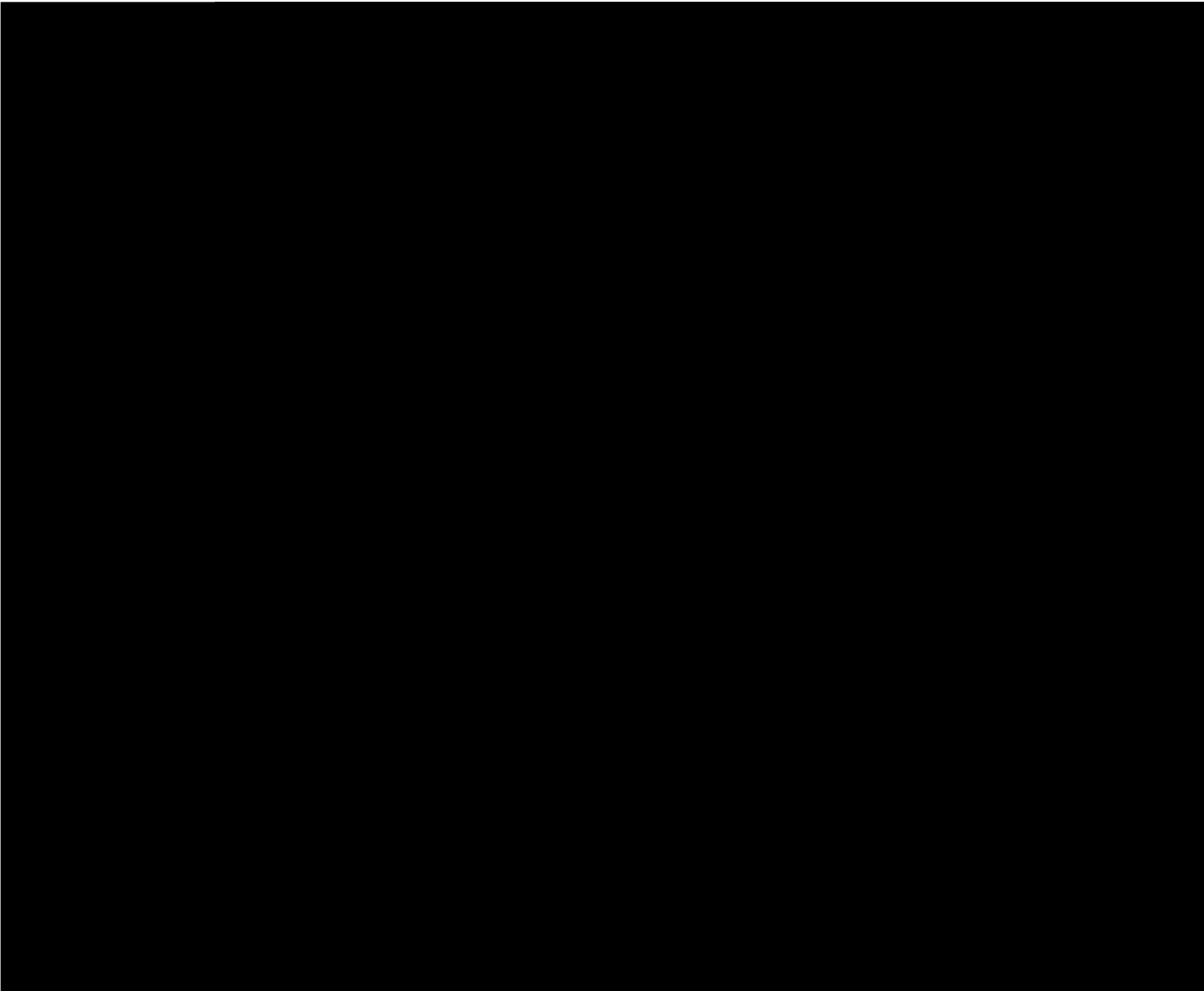
39. Fruit Street's shareholder base consists of more than 500 physicians, who invested in the company and want to improve the health of the public through delivery of Fruit Street's diabetes prevention program.

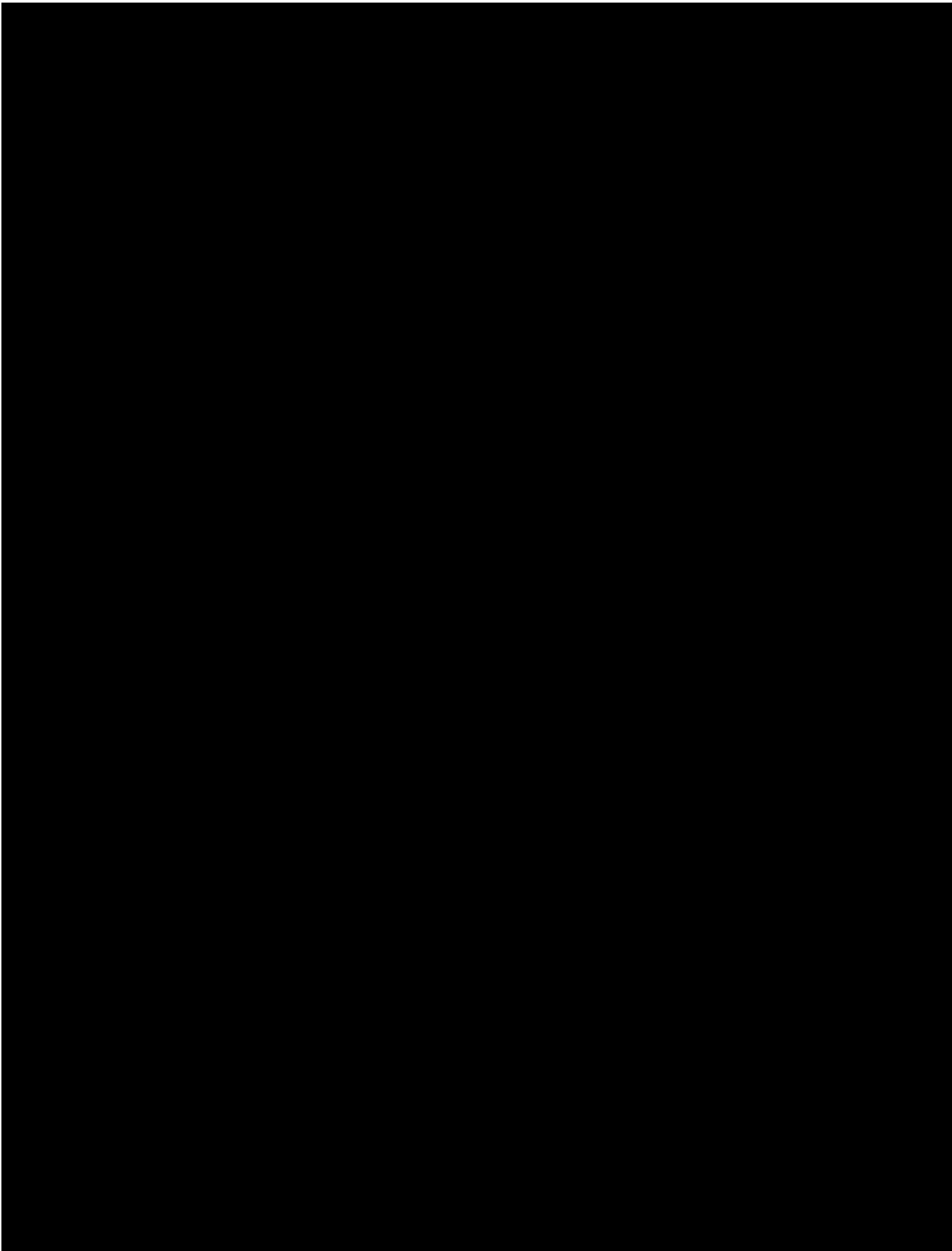
40. On or about July 12, 2019, Fruit Street's DPP achieved full recognition by the CDC.

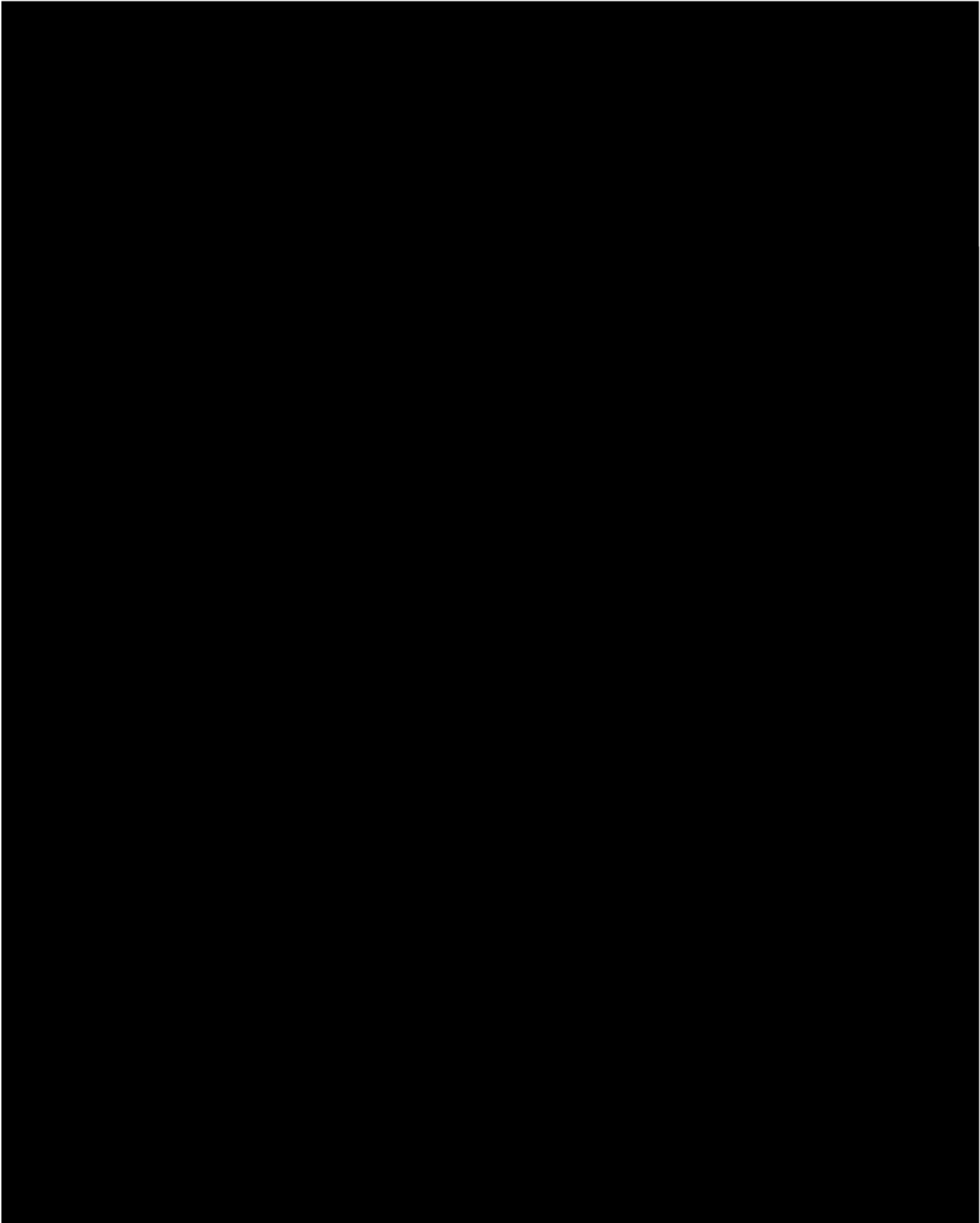
41. In doing so, Fruit Street successfully demonstrated that its DPP reduced the risk of developing type 2 diabetes by showing that at least 60% of all completers achieved at least one of the following outcomes:

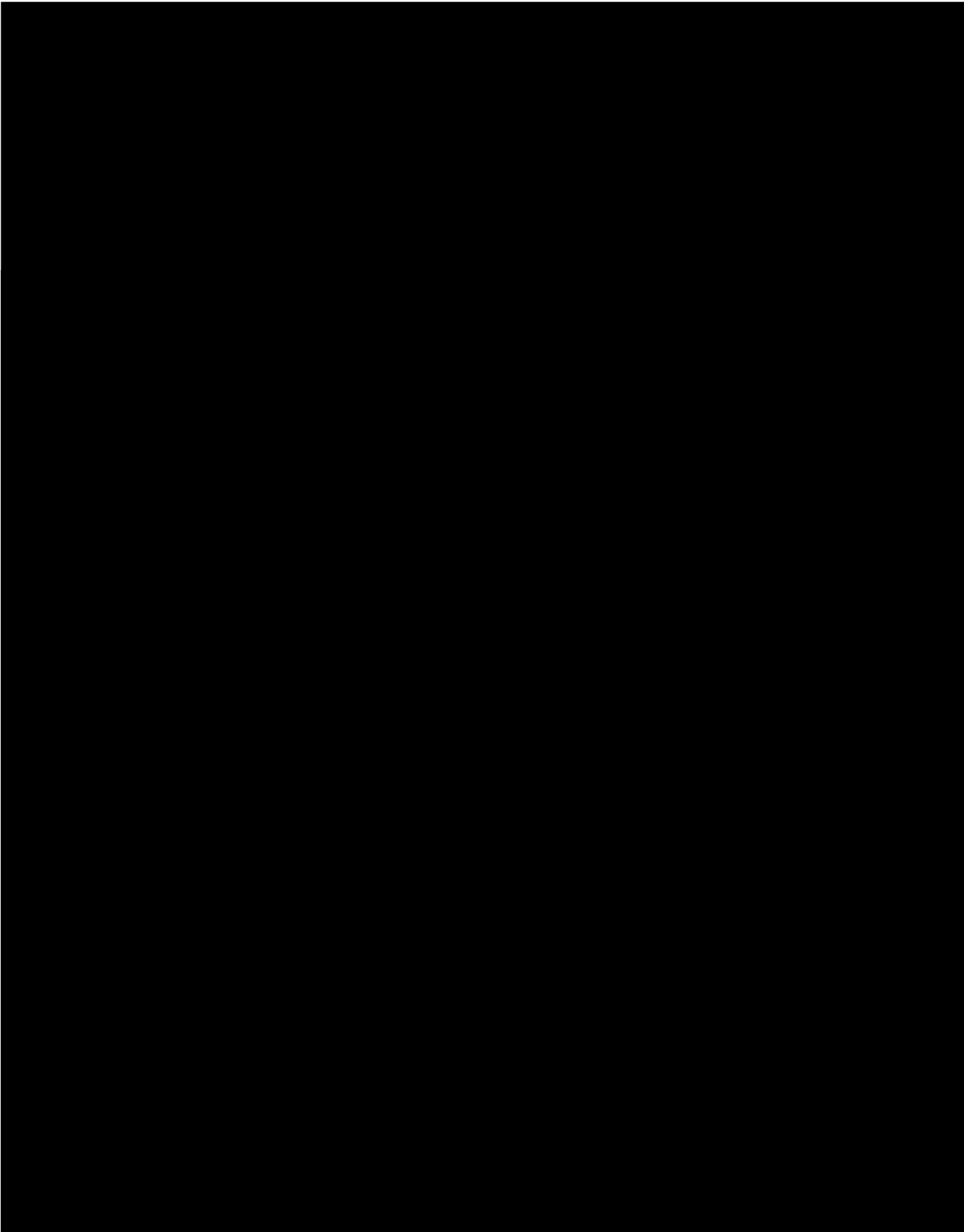
- a. at least 5% weight loss 12 months after the cohort began or
- b. at least 4% weight loss and at least 150 minutes/week on average of physical activity 12 months after the cohort began or
- c. at least a 0.2% reduction in HbA1C

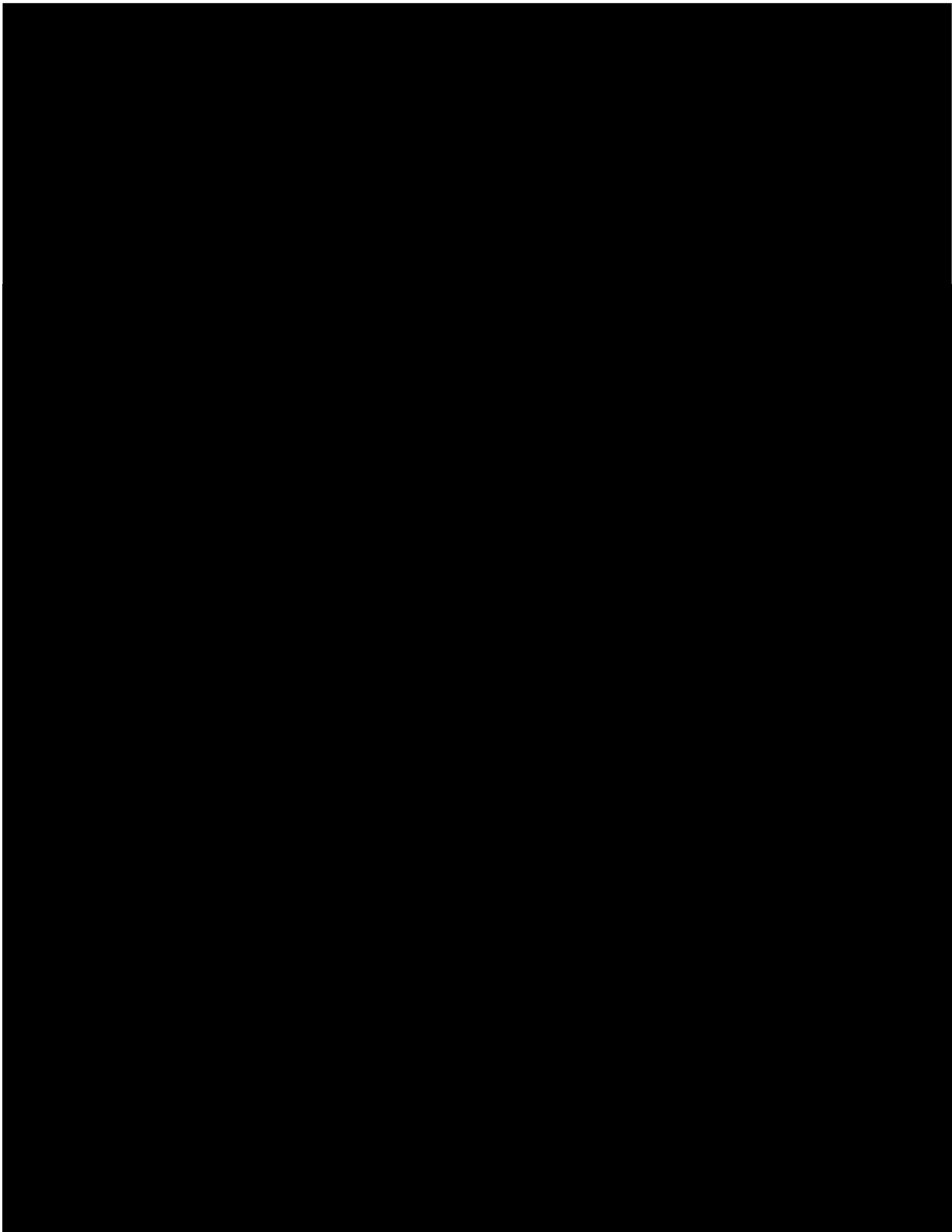
42. Once an organization meets the requirements for full recognition, it retains that status indefinitely, provided that it continues to submit the required data every 6 months and is able to re-achieve the requirements for full recognition within 3 years of first achieving it and then at least every 3 years thereafter.

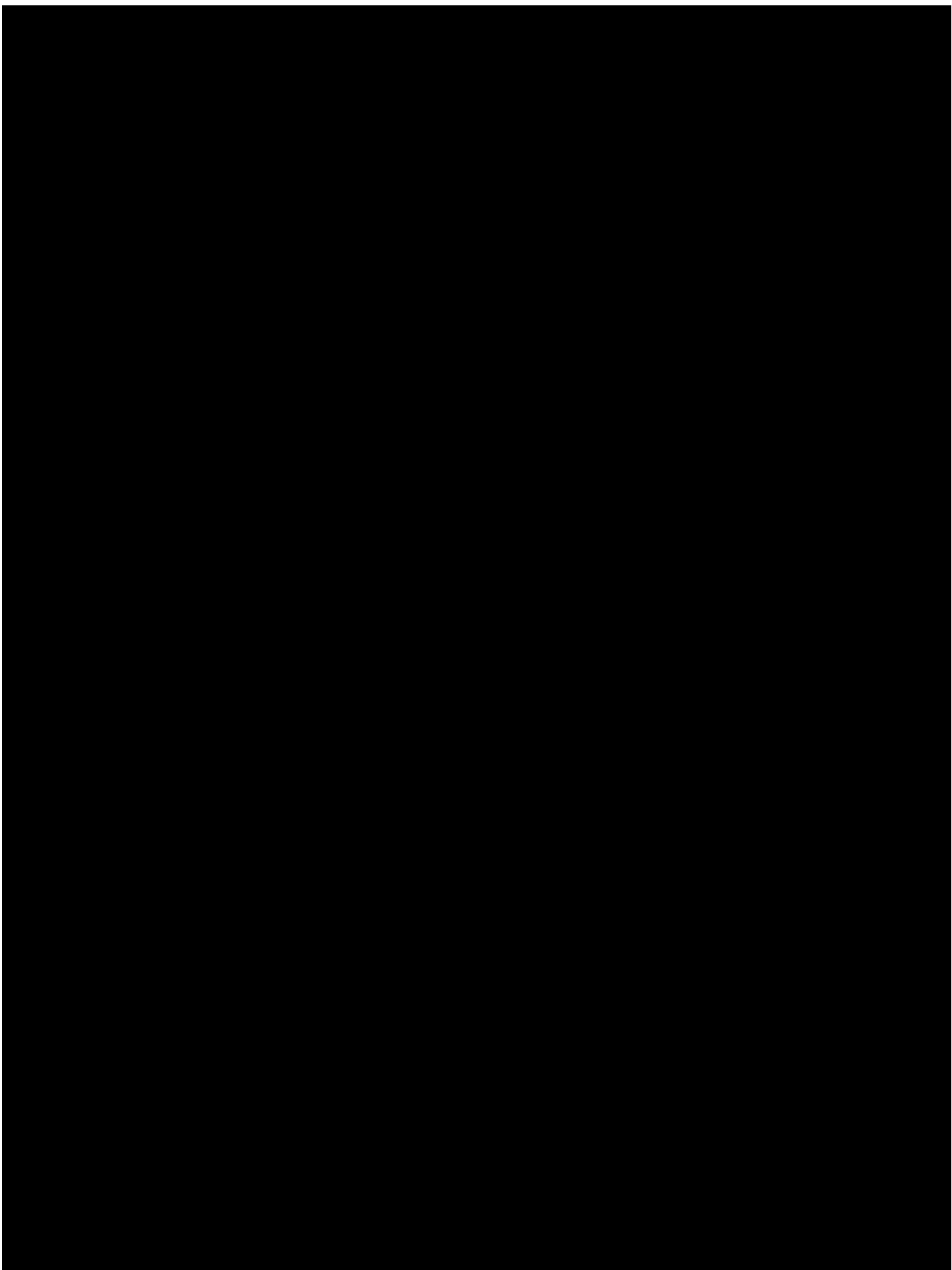


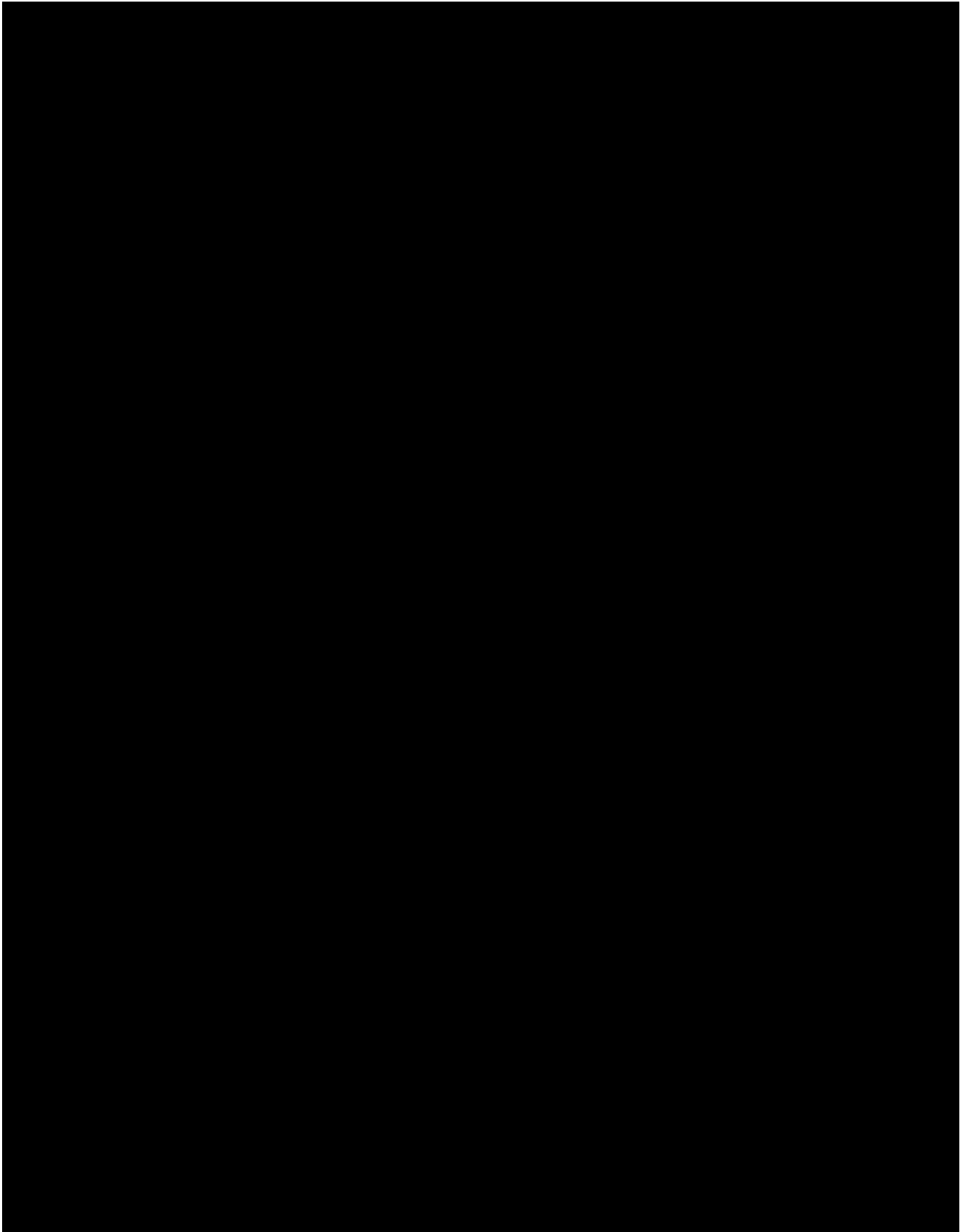












[REDACTED]

Sharecare Launches the Eat Right Now DPP

100. On January 1, 2023, [REDACTED] Sharecare formally launched the Eat Right Now DPP.

101. Unlike the Scale Back DPP, the Eat Right Now DPP never gained full recognition status by the CDC.

102. The Eat Right Now DPP has pending recognition status.

103. Despite this fact, Sharecare continues to lead people to believe that the Eat Right Now DPP has gained full recognition.

104. Notably, on January 9, 2023, Sharecare issued a press release, which stated, in relevant part, that:

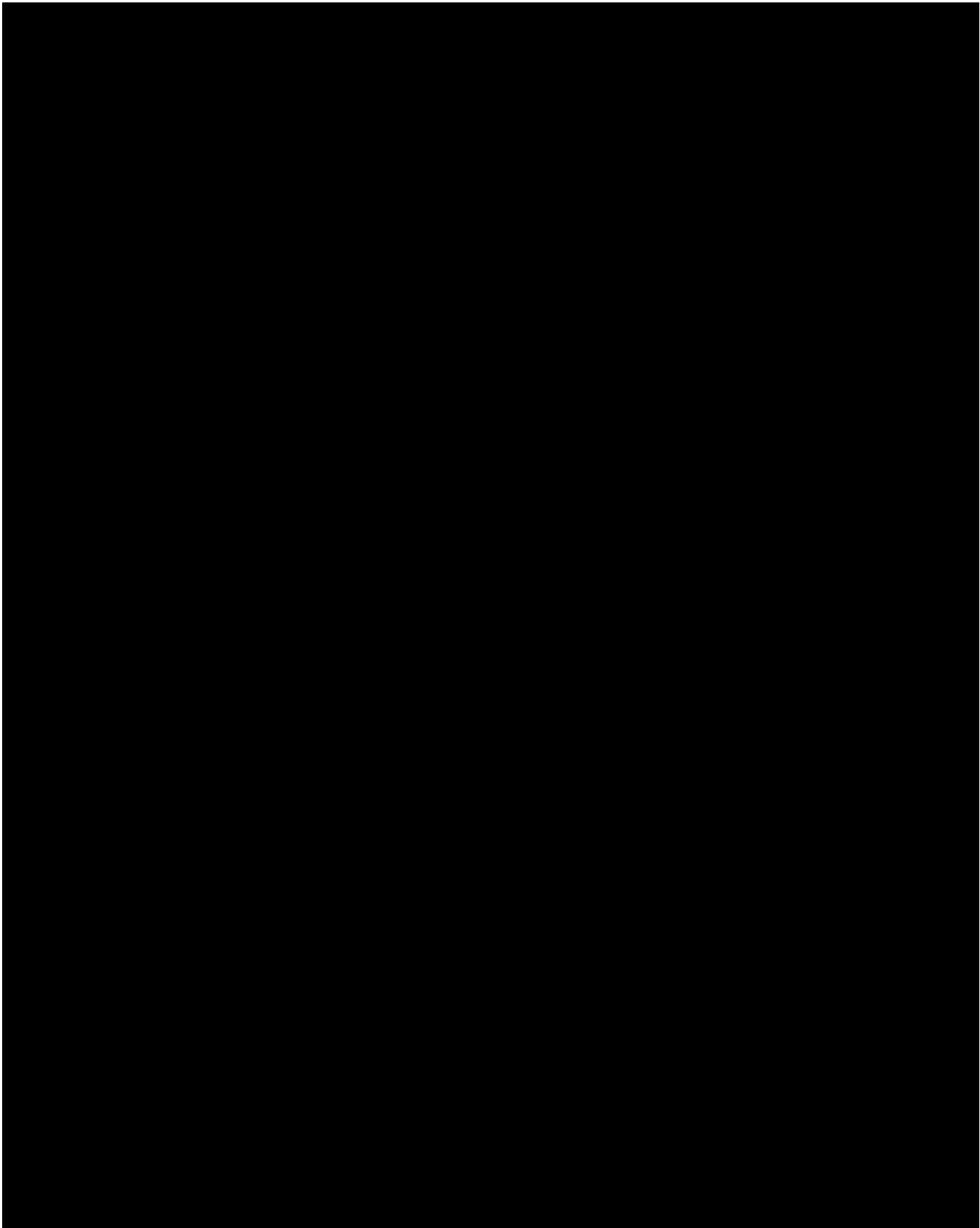
Sharecare (Nasdaq: SHCR), the digital health company that helps people manage all their health in one place, today announced that its new mindfulness-driven Diabetes Prevention Program (DPP) **has been recognized and approved by the CDC**. Available exclusively to Sharecare's employer, health plan, and government customers through its digital therapeutics marketplace, the CDC-approved program launched to eligible client populations on Jan. 1, 2023.

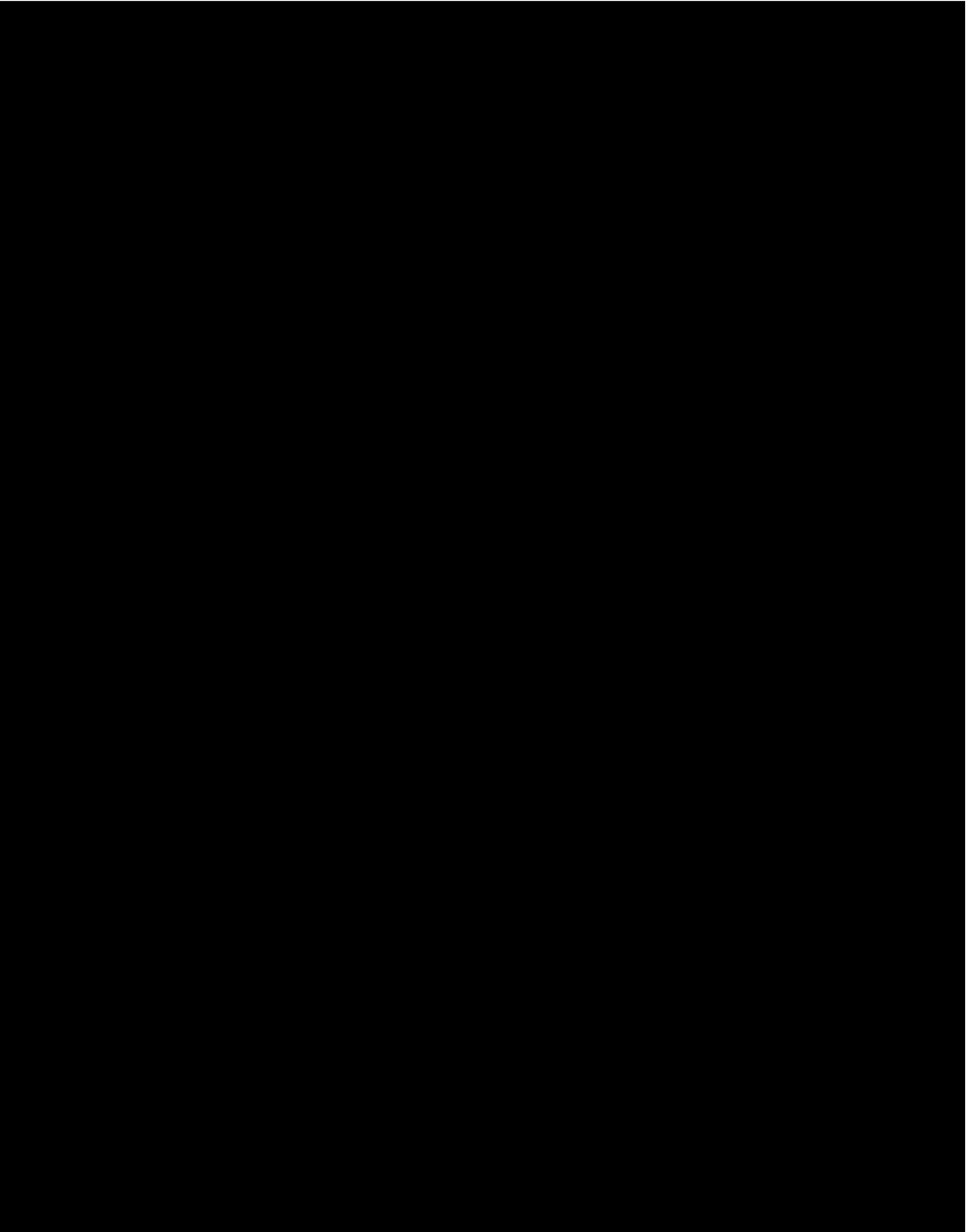
(emphasis added).

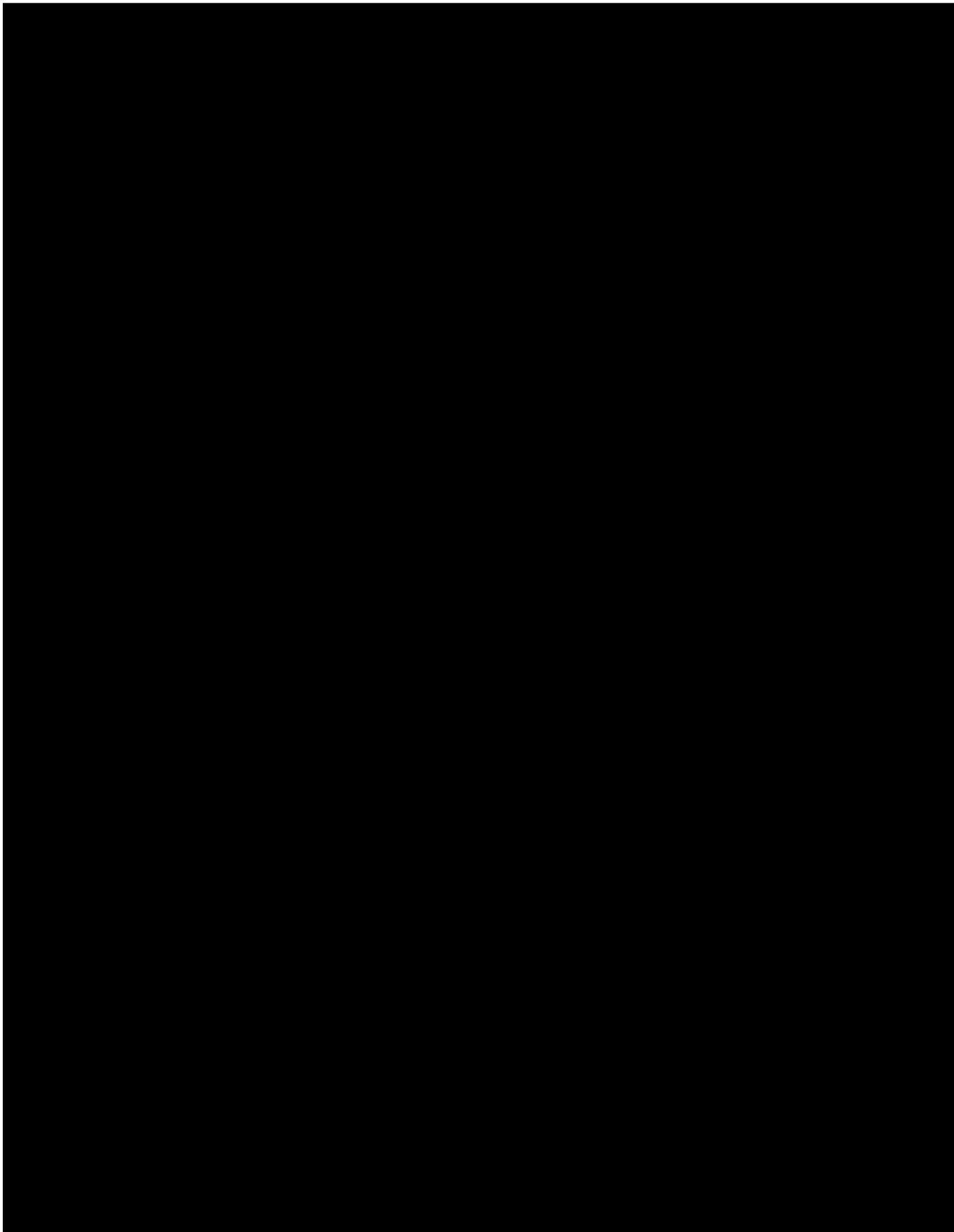
105. Sharecare's advertising and marketing materials for the Eat Right Now DPP is knowingly false and/or misleading.

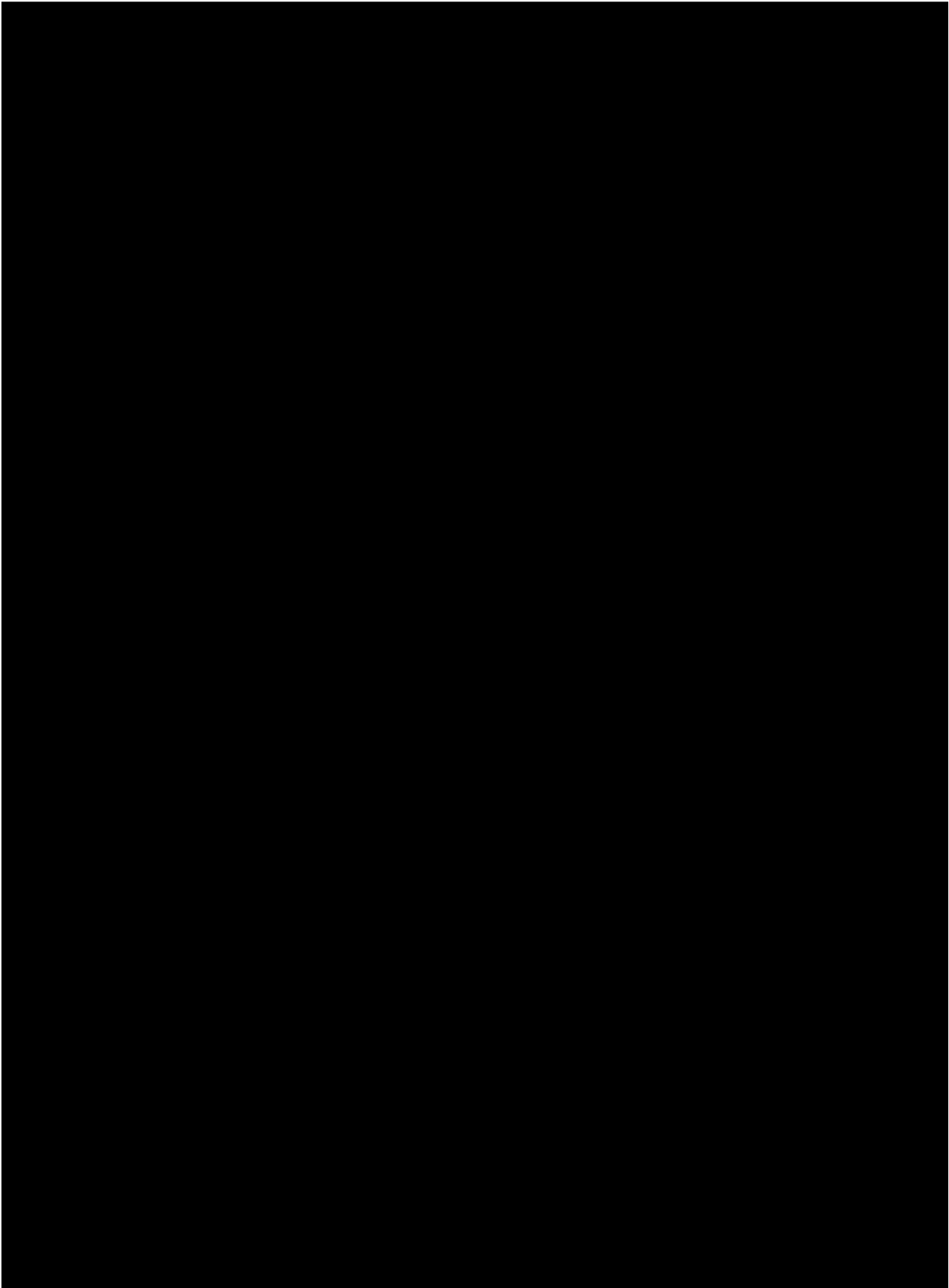
106. Sharecare is intentionally misleading the public in an effort to unfairly compete against Fruit Street and other DPP providers.

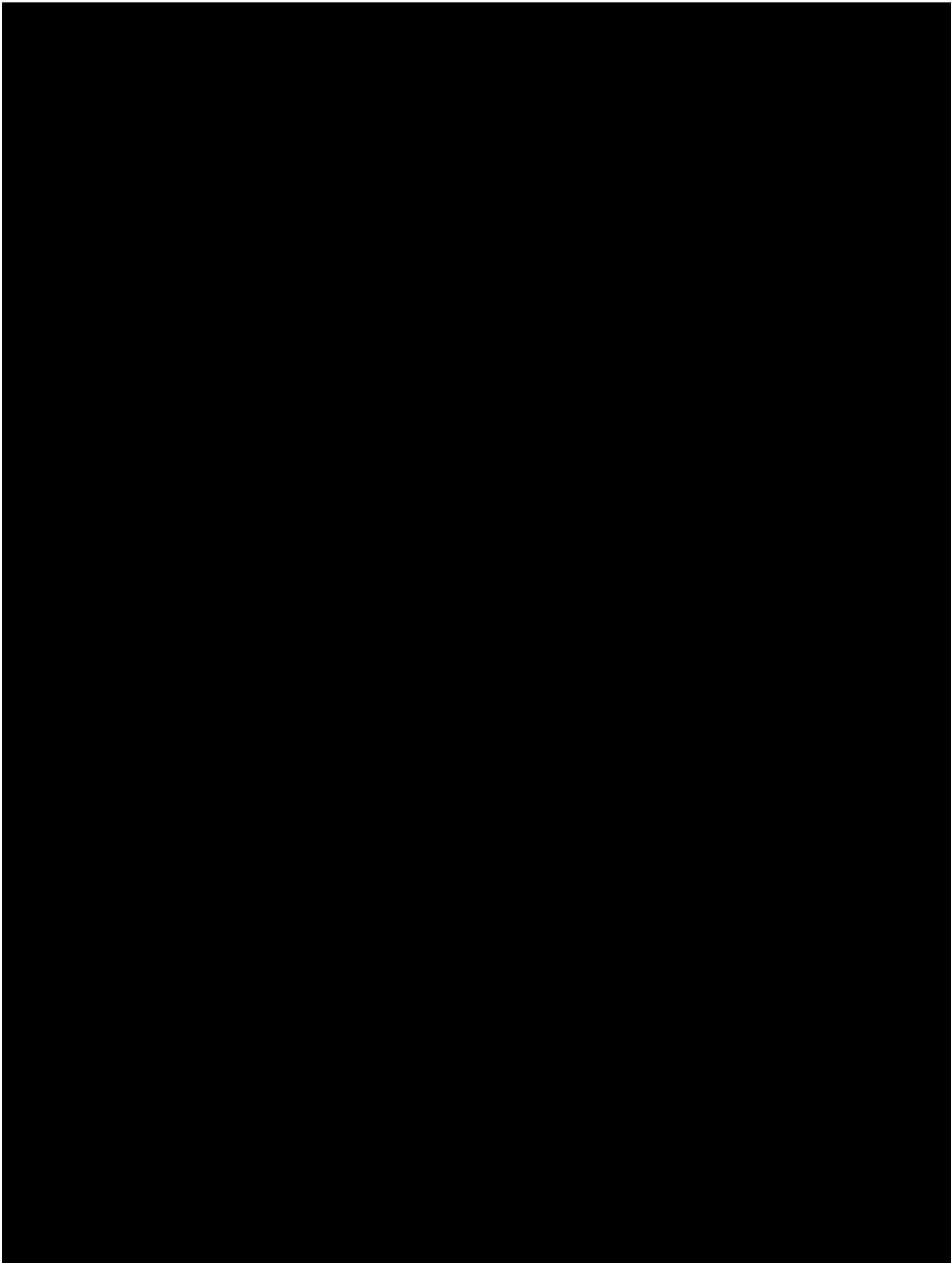
107. And its unfair competition is working.

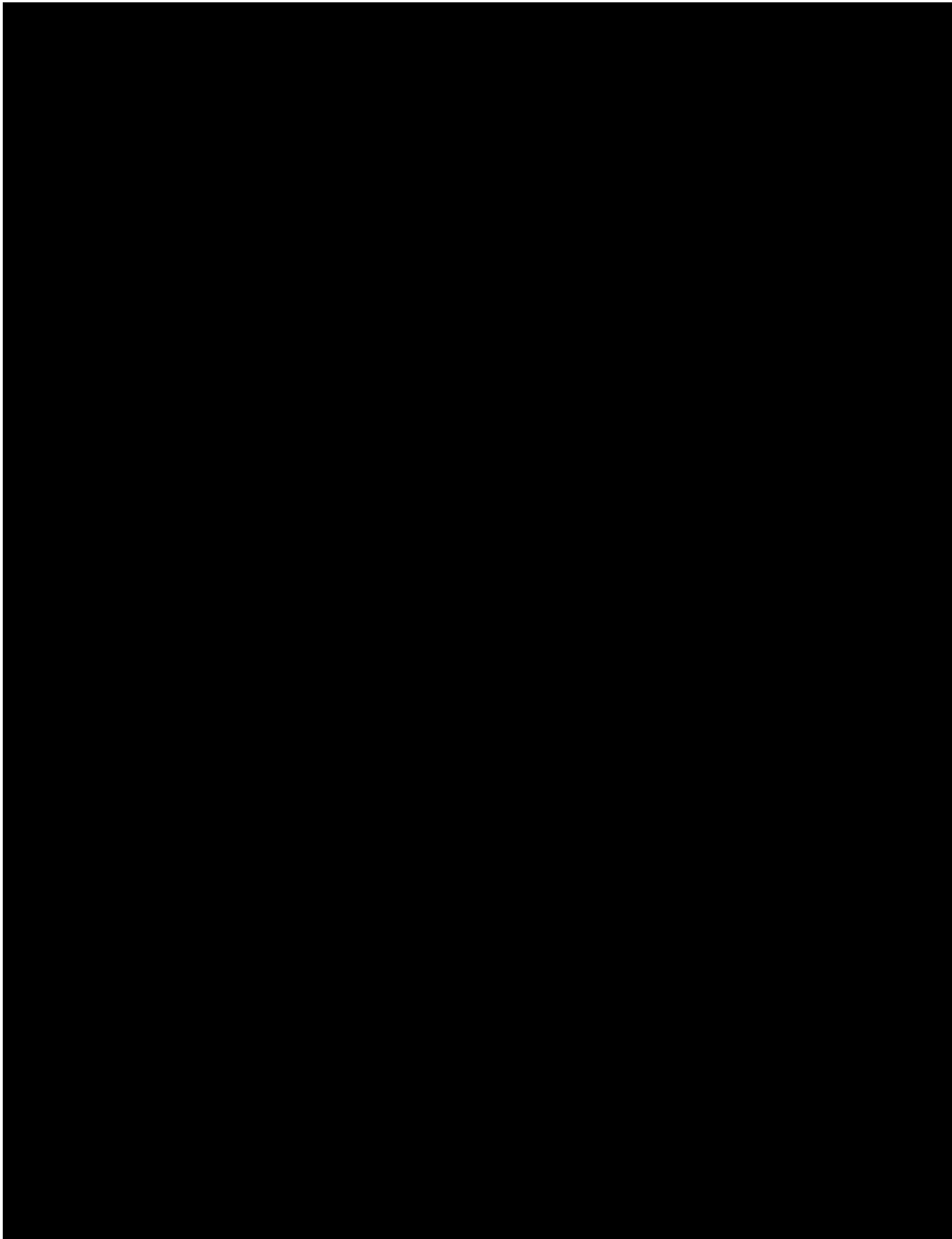















COUNT II
BREACH OF FIDUCIARY DUTY

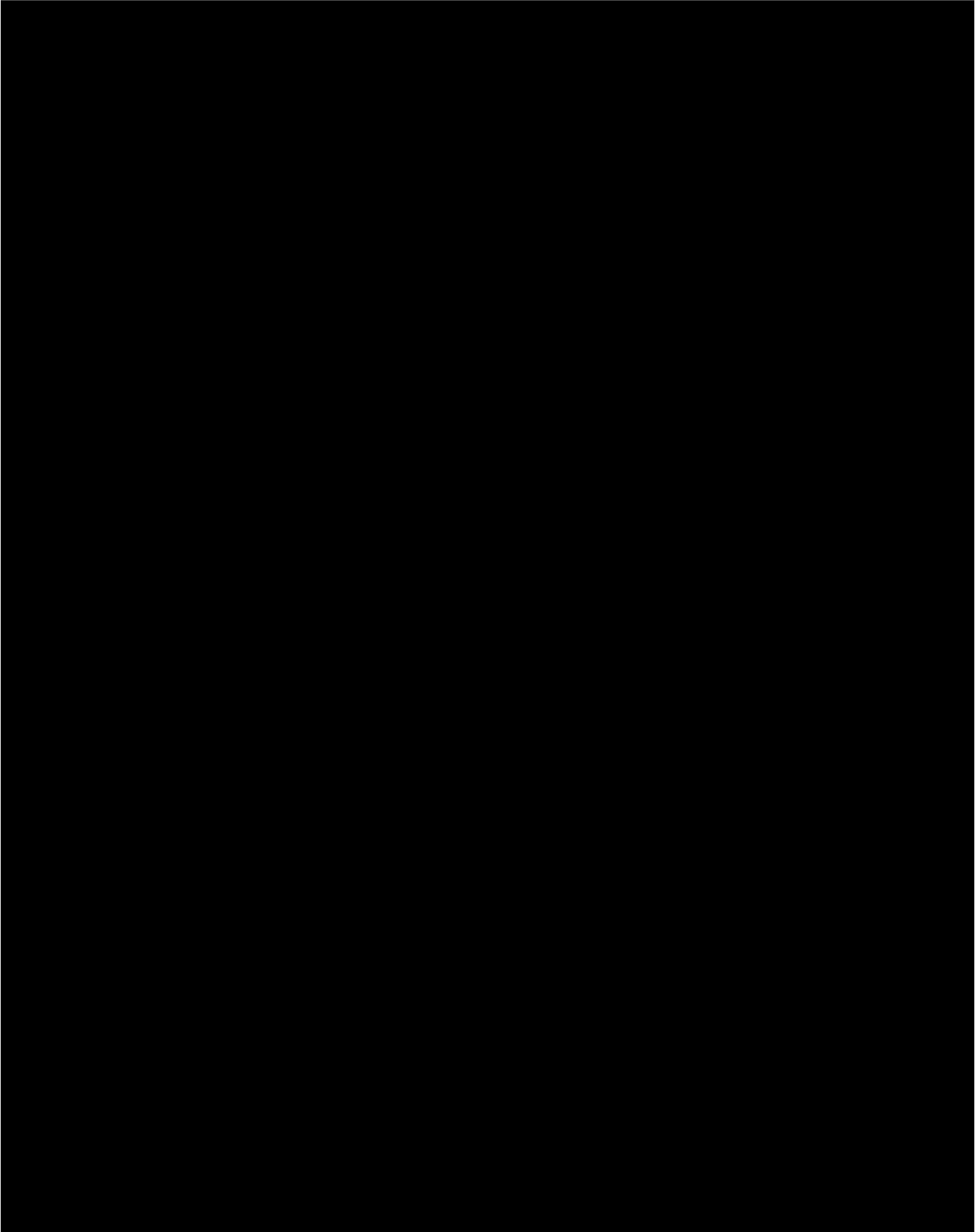
146. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

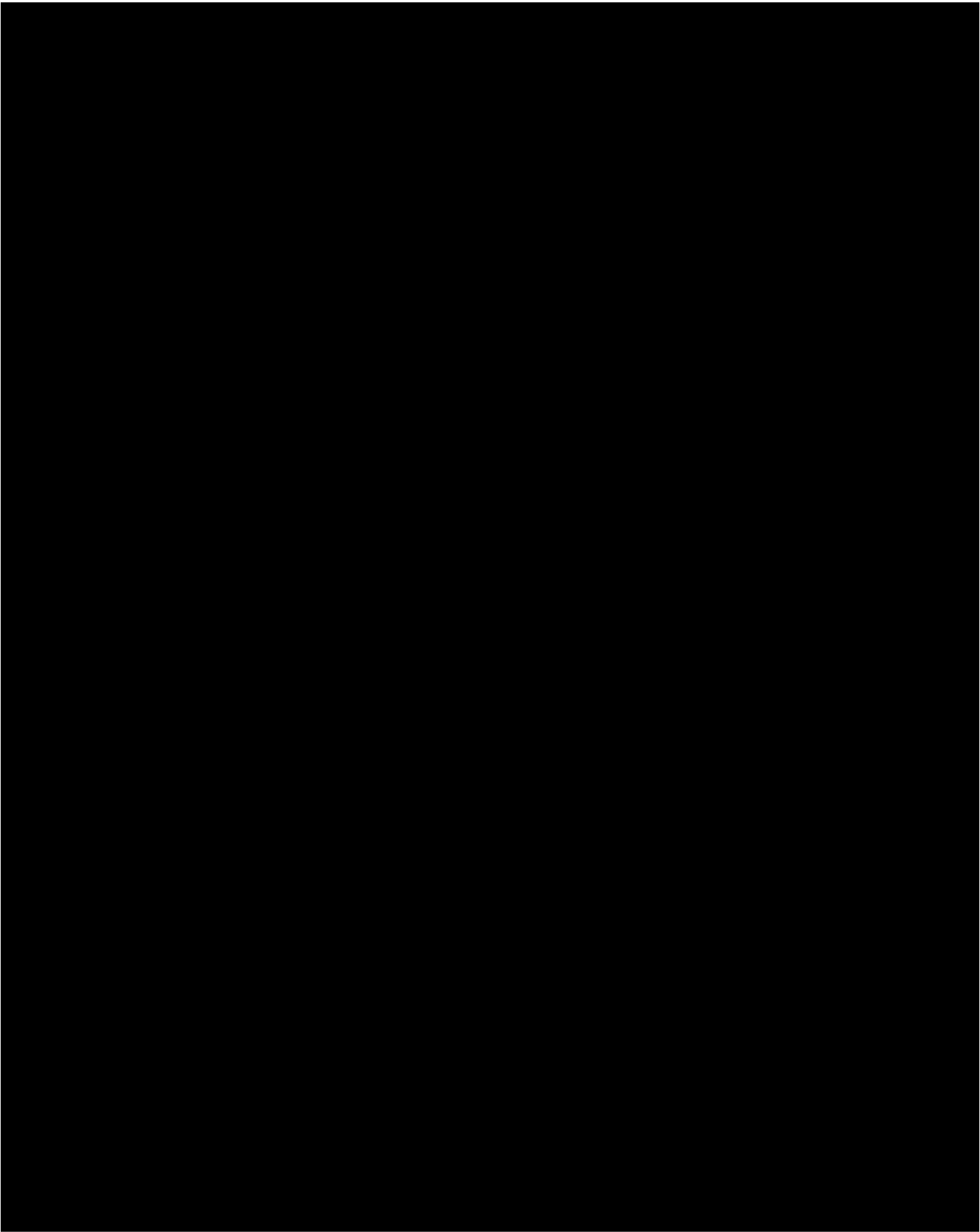
147. A principal-agent relationship is, of course, fiduciary in character, imposing upon the agent the duty to exercise the utmost good faith toward the principal. *See, e.g., Reisman v. Massey*, 84 Ga. App. 796 (1) (67 S.E.2d 585) (1951); O.C.G.A. § 23-2-28.

148. An agency relationship arises “wherever one person, expressly or by implication, authorizes another to act for him. . . .” OCGA § 10-6-1.

149. “Where a confidential relationship exists, concealment when there is a duty to disclose, if resulting in injury is itself actionable fraud.” *Scott v. Lumpkin*, 153 Ga. App. 17, 19 (264 S.E.2d 514) (1980).







COUNT IV
Recovery of Expenses of Litigation O.C.G.A. § 13-6-11

175. Plaintiff repeats the foregoing paragraphs as if set forth at length herein.

176. Pursuant to O.C.G.A. § 13-6-11, the jury may allow the expenses of litigation and attorneys' fees as part of the damages where a defendant "has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense."

177. Defendant through their actions alleged and described herein acted in bad faith, was stubbornly litigious, or caused the Plaintiff unnecessary trouble and expense with respect to the transaction or events underlying this litigation.

178. Plaintiff therefore requests that its claim for recovery of expenses of litigation and attorneys' fees be submitted to the jury, and that the Court enter a Judgment awarding their expenses of litigation and attorneys' fees pursuant to O.C.G.A. § 13-6-11.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Enter an order against Defendant on Count I of the Complaint [REDACTED] including direct damages in an amount to be proven at trial but believed to be in excess of \$25 million, pre-judgment interest, reasonable attorney’s fees, court costs and such other relief as to the Court seems just and proper;

- B. Enter an order against Defendant on Count II of the Complaint for breach of fiduciary duty, including direct damages in an amount to be determined at trial but believed to be in excess of \$25 million or disgorgement of Sharecare’s profits, [REDACTED] [REDACTED] punitive damages and reasonable attorney’s fees, pre-judgment interest, court costs and such other relief as to the Court seems just and proper;

- C. [REDACTED]

- D. Enter an order against Defendant on Count IV of the Complaint awarding litigation expenses and attorneys’ fees pursuant to

O.C.G.A. § 13-6-11 and as otherwise allowed by law.

JURY DEMAND

Plaintiff demands a trial by jury on all issues properly so tried.

Respectfully submitted this 8th day of December, 2023.

/s/ MaryBeth V. Gibson

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