



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE NATIONAL COLLEGIATE
STUDENT LOAN MASTER TRUST, THE
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2003-1, THE NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2004-1, THE NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2004-2, THE
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2005-1, THE NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2005-2, THE NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2005-3, THE
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2006-1, THE NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2006-2, THE NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2006-3, THE
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2006-4, THE NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2007-1, THE NATIONAL COLLEGIATE
STUDENT LOAN TRUST 2007-2, THE
NATIONAL COLLEGIATE STUDENT
LOAN TRUST 2007-3, THE NATIONAL
COLLEGIATE STUDENT LOAN TRUST
2007-4,

Plaintiffs,

v.

PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY D/B/A
AMERICAN EDUCATIONAL SERVICES,

Defendant.

C.A. No. 12111-CB
REDACTED - PUBLIC VERSION
FILED MARCH 21, 2016

[REDACTED]

VERIFIED COMPLAINT FOR INJUNCTIVE AND EQUITABLE RELIEF

[REDACTED]

[REDACTED]

Plaintiffs, The National Collegiate Student Loan Master Trust, The National Collegiate Student Loan Trust 2003-1, The National Collegiate Student Loan Trust 2004-1, The National Collegiate Student Loan Trust 2004-2, The National Collegiate Student Loan Trust 2005-1, The National Collegiate Student Loan Trust 2005-2, The National Collegiate Student Loan Trust 2005-3, The National Collegiate Student Loan Trust 2006-1, The National Collegiate Student Loan Trust 2006-2, The National Collegiate Student Loan Trust 2006-3, The National Collegiate Student Loan Trust 2006-4, The National Collegiate Student Loan Trust 2007-1, The National Collegiate Student Loan Trust 2007-2, The National Collegiate Student Loan Trust 2007-3, The National Collegiate Student Loan Trust 2007-4 (collectively, “Plaintiffs” or “The Trusts”), file this complaint against Defendant Pennsylvania Higher Education Assistance Agency, doing business as, American Educational Services (“PHEAA” or “Defendant”), and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs are each Delaware statutory Trusts. They bring this action pursuant to the (a) Amended And Restated Private Student Loan Servicing Agreement Between Pennsylvania Higher Education Assistance-Agency And The First Marblehead Corporation (“FMC”) dated as of September 28, 2006, as purportedly amended from time to time, (collectively, with all purported

amendments, the “Master Servicing Agreement” or “MSA”)), to which Plaintiffs are the assignees of the First Marblehead Corporation pursuant to a series of Servicer Consent Letters (the “Servicer Consent Letters”) between FMC, Plaintiffs and Defendant; and (b) a series of Custodial Agreements (jointly, with the Master Servicing Agreement, the “Governing Agreements”) entered into among Plaintiffs, U.S. Bank National Association, in its capacity as an indenture trustee, and Defendant.

2. Plaintiffs seek specific performance of the Governing Agreements and other injunctive and equitable remedies arising out of Defendant’s substantial breaches of the Governing Agreements. [REDACTED]

[REDACTED]

THE PARTIES

3. Plaintiffs are each Delaware statutory trusts with Wilmington Trust Company, a Delaware banking corporation, as their Owner Trustee. Wilmington

[REDACTED]

Trust Company has its principal business office at 1100 North Market Street, Wilmington, DE 19890.

4. Defendant PHEAA is a public corporation, which describes itself as a governmental instrumentality, organized under the laws of the Commonwealth of Pennsylvania, engaged in non-governmental commercial activity throughout the United States, including in Delaware. Upon information and belief, PHEAA is registered to do business in Delaware and has appointed a registered agent for service of process in Delaware, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801, and can be served with process care of its registered agent.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over Defendant in this action.

6. This Court has subject matter jurisdiction over this action pursuant to 10 Del. C. § 341 because Plaintiff seeks to compel specific performance with contractual obligations and seek other equitable relief.

FACTUAL BACKGROUND

The Trusts and Their Business Operations

7. Each of the Trusts owns a designated pool of Student Loans¹, which serve as collateral for notes issued by the Trusts pursuant to indentures. The notes are held by various noteholders and traded as securities. The face amount of all Student Loans held by the Trusts is \$15,458,246,000.

8. The Trusts indirectly acquired pools of Student Loans originated by banks and other financial institutions.

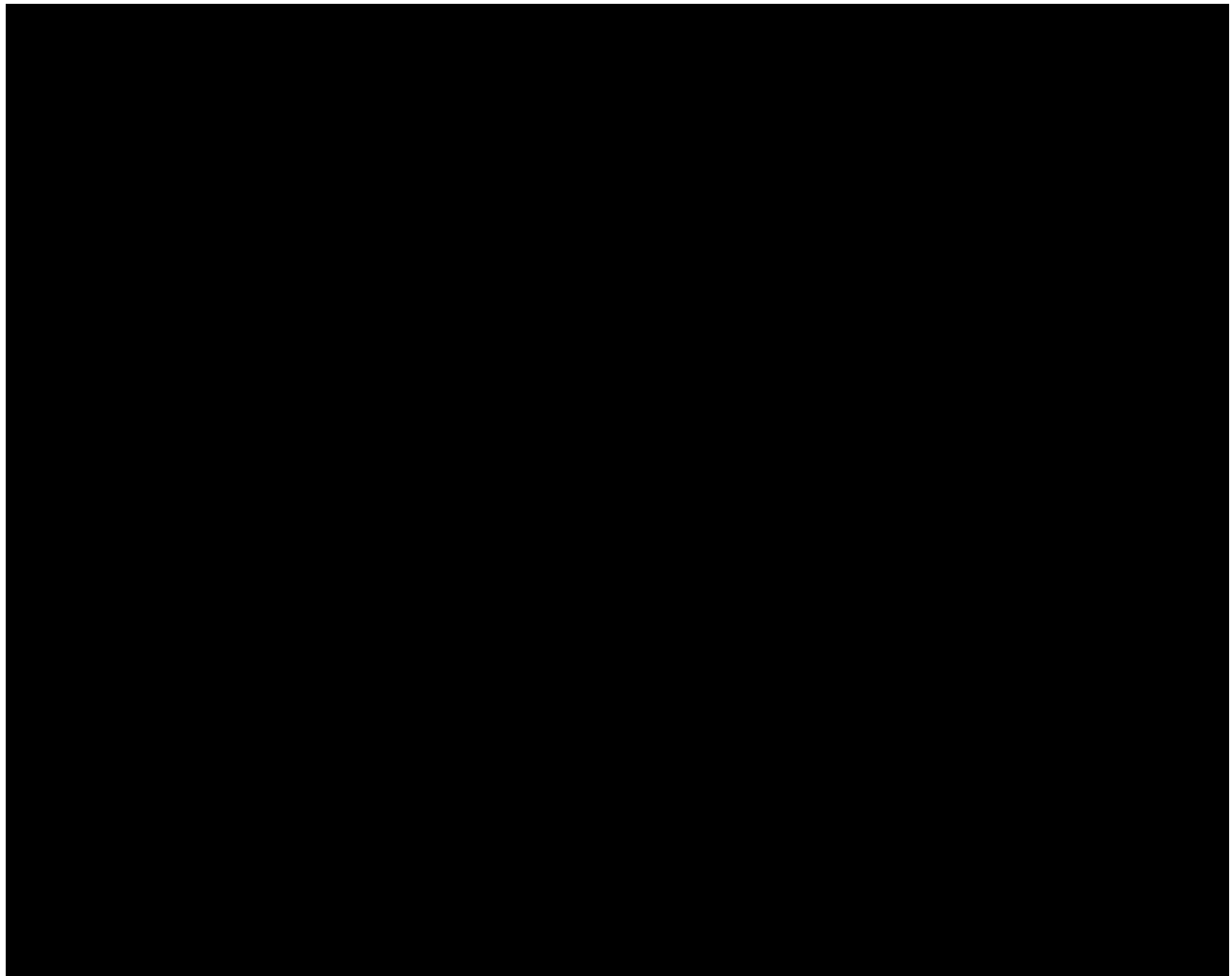
9. In order to preserve the value of the collateral (i.e., the Student Loans), the Trusts are parties to several agreements regarding the servicing and administration of the Student Loans. Relevant agreements include: (a) the Master Servicing Agreement; and (b) the Custodial Agreements.

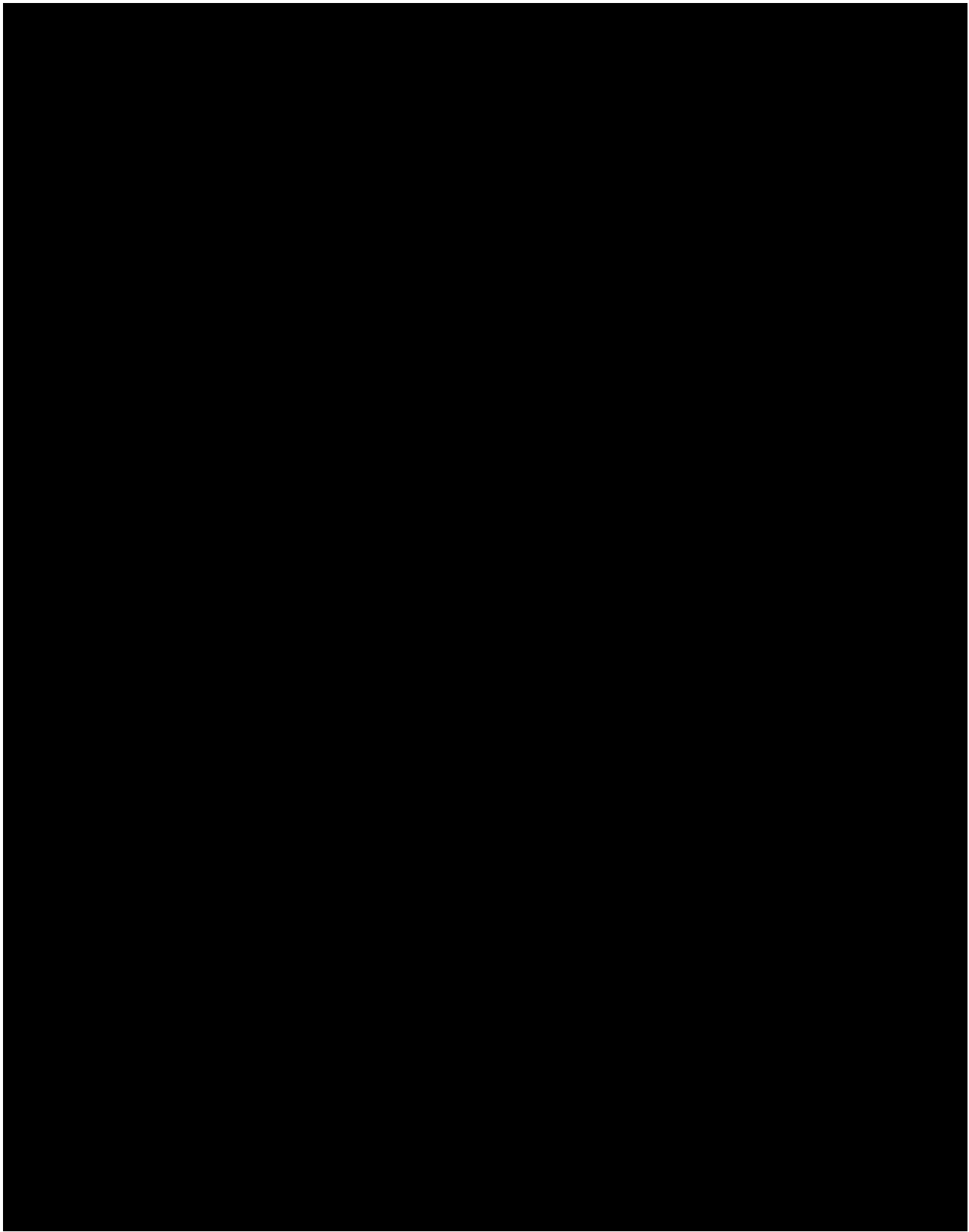
The Master Servicing Agreement and Custodial Agreements

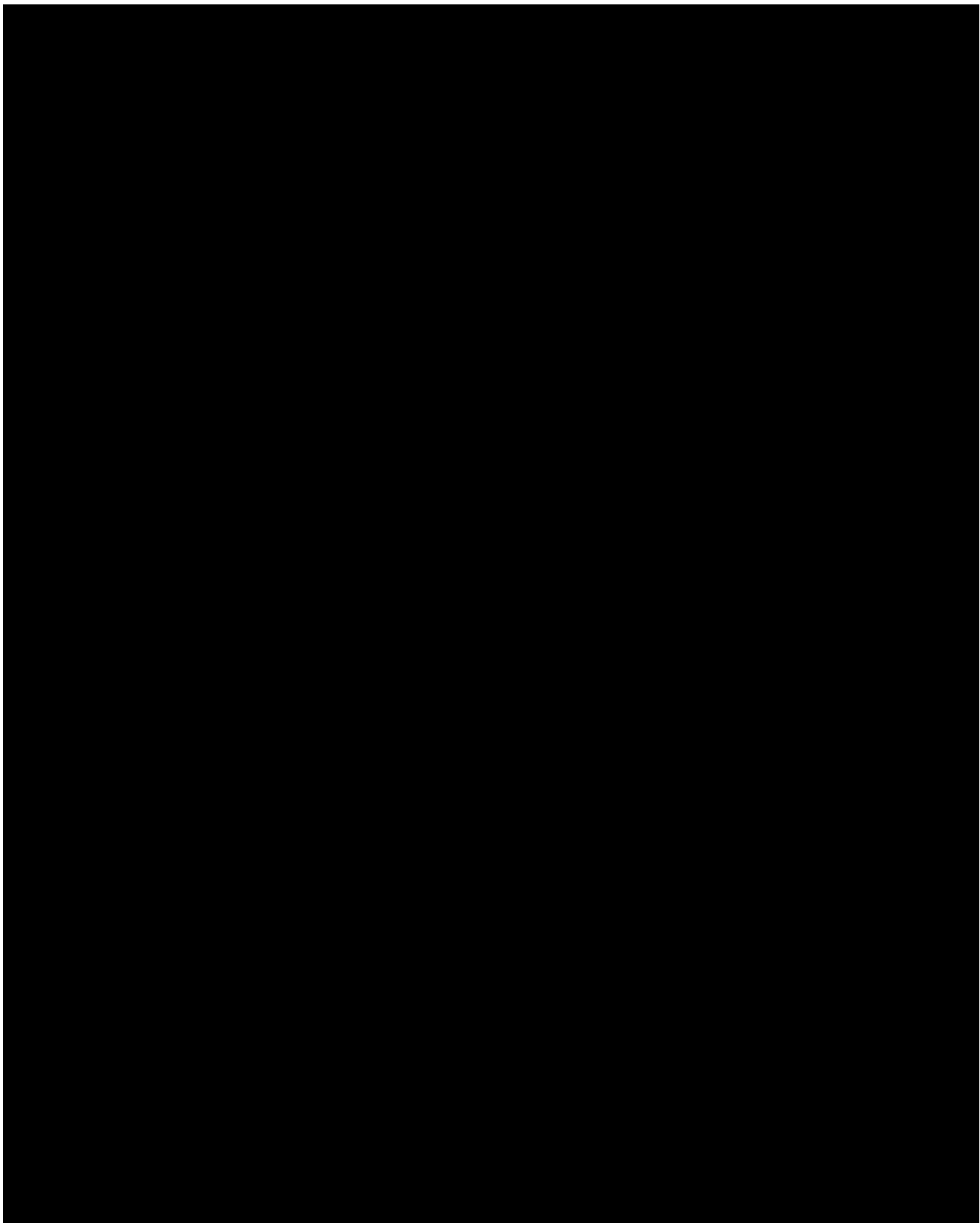
10. As noted above, the Trusts and PHEAA are parties to the Master Servicing Agreement and the Custodial Agreements. As explained more fully below, pursuant to the Governing Documents, PHEAA acts as the custodian of the Student Loans and services the Student Loans while they are in repayment and in the early stages of delinquency or default.

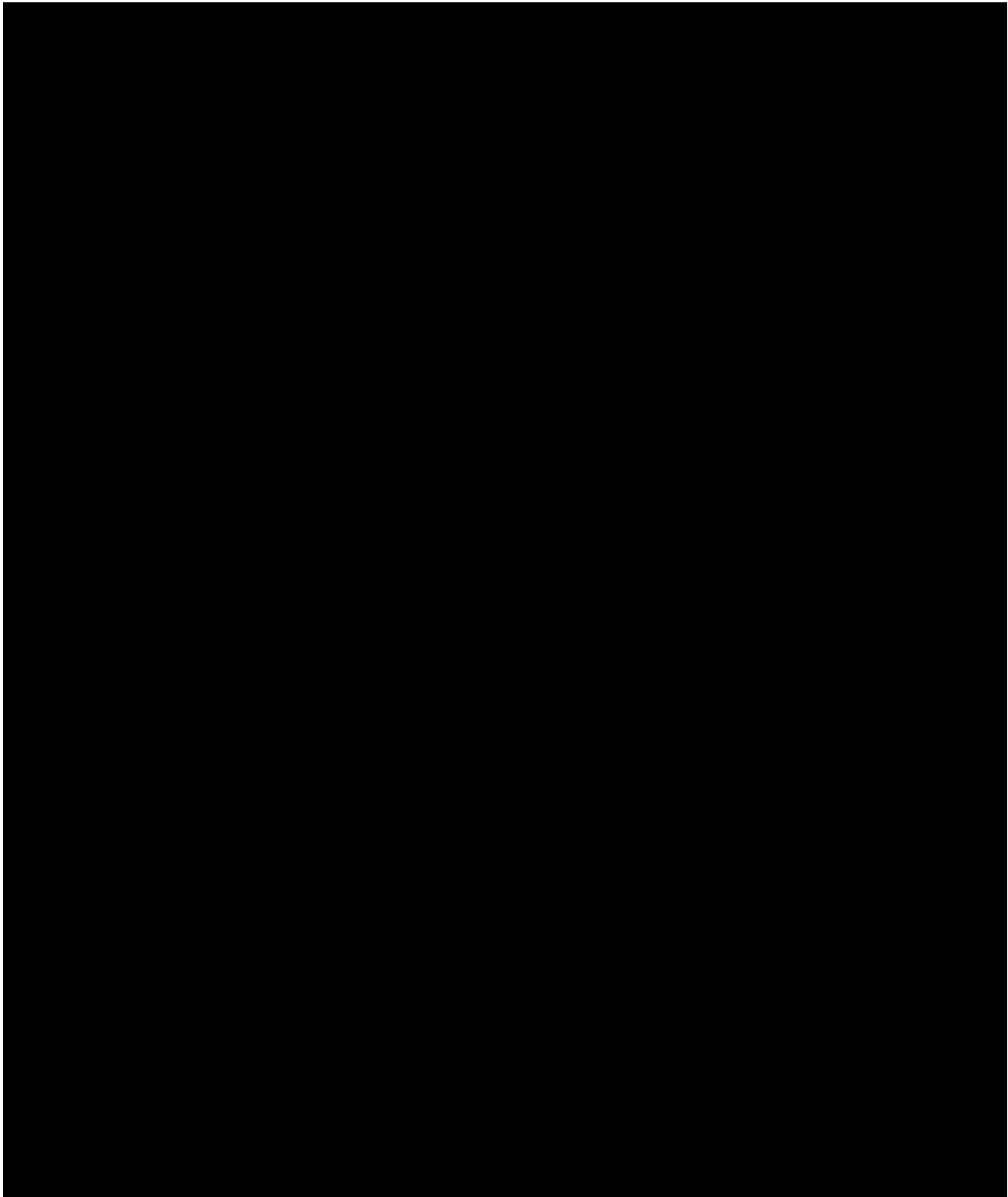
¹ Terms capitalized but not defined herein shall have the meaning ascribed to them in the Governing Agreements.

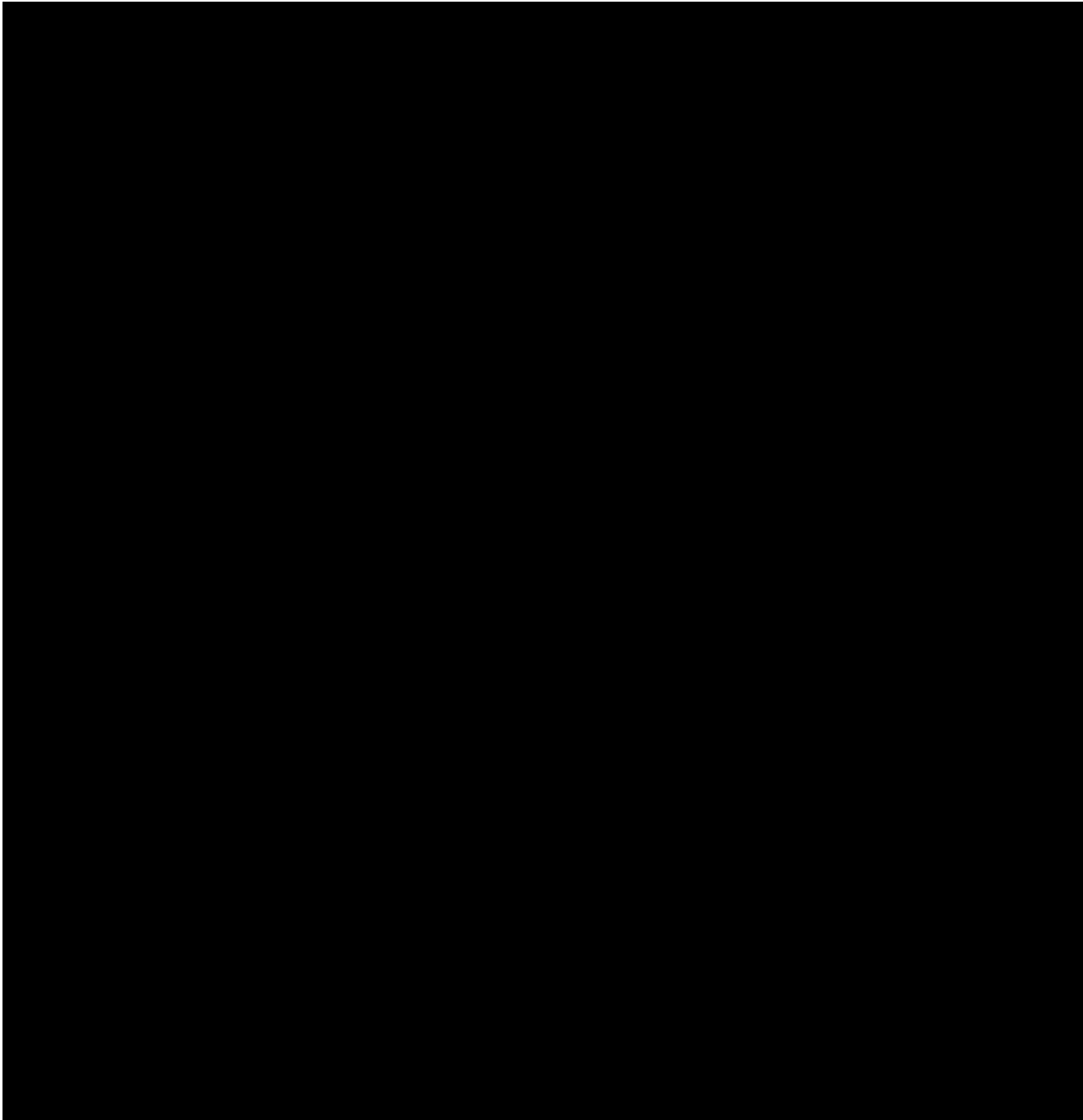
11. Indeed, the Master Servicing Agreement provides that in exchange for fees paid thereunder, PHEAA shall provide services specified in the MSA, which incorporates by reference various other documents and policies, including, the Service Level Agreement, Servicing Guidelines, Program Manuals, the terms and conditions of the Student Loan Credit Agreements, and all applicable federal and state laws and regulations (collectively, the “Servicing Standards”). All fees incurred to date have been paid.



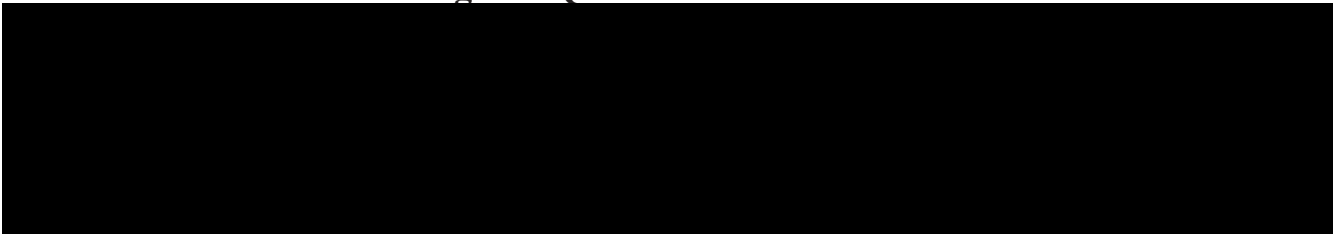


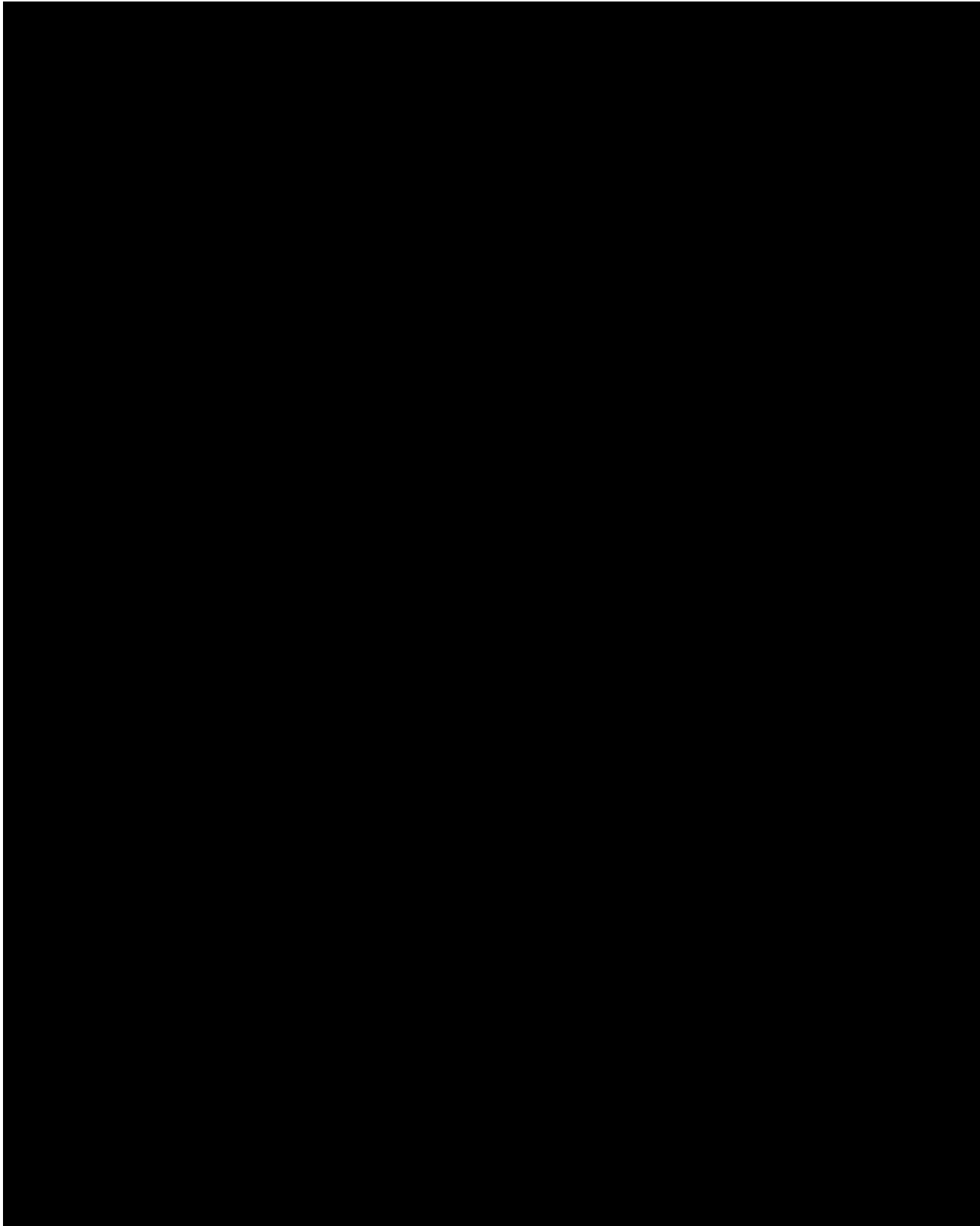


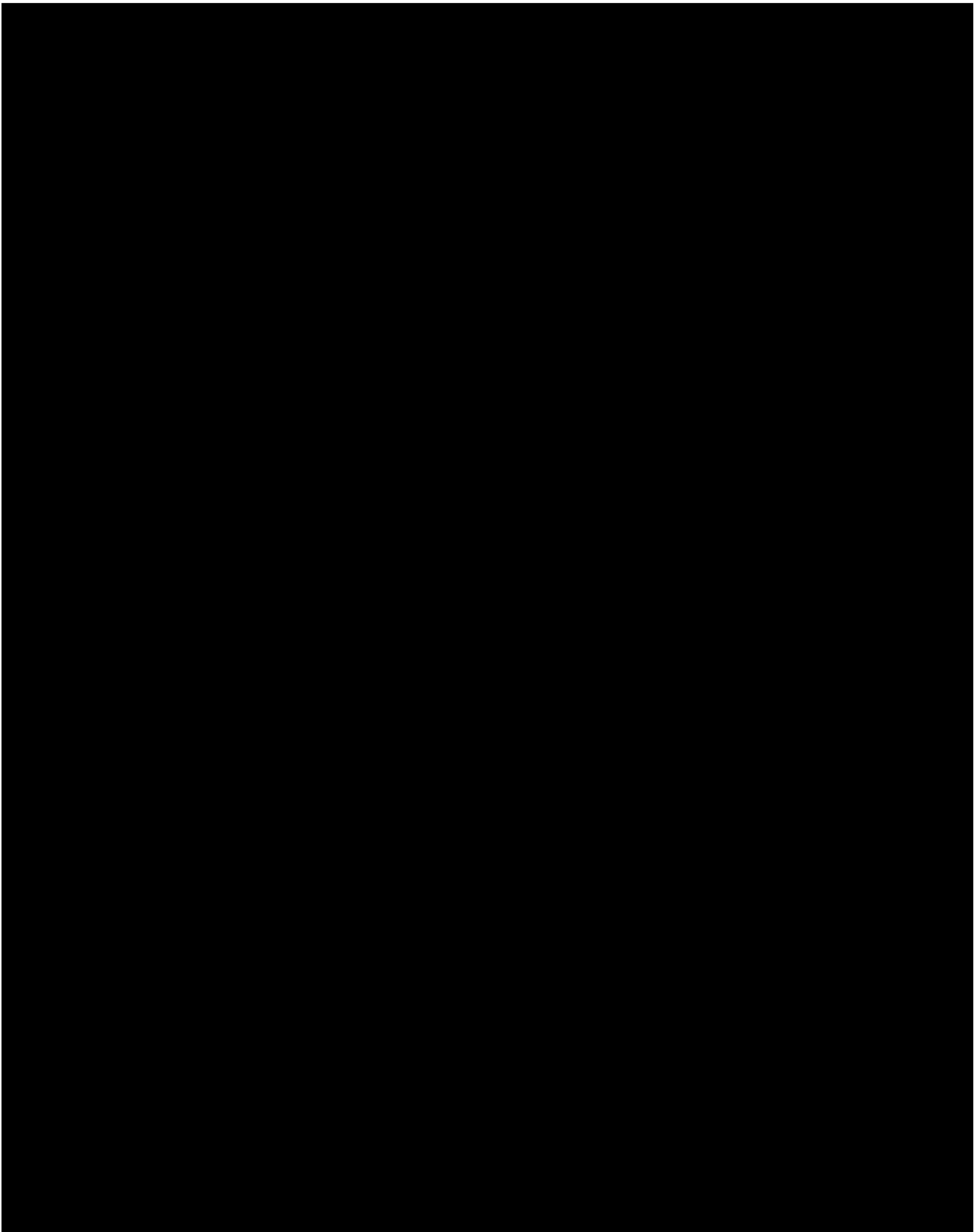


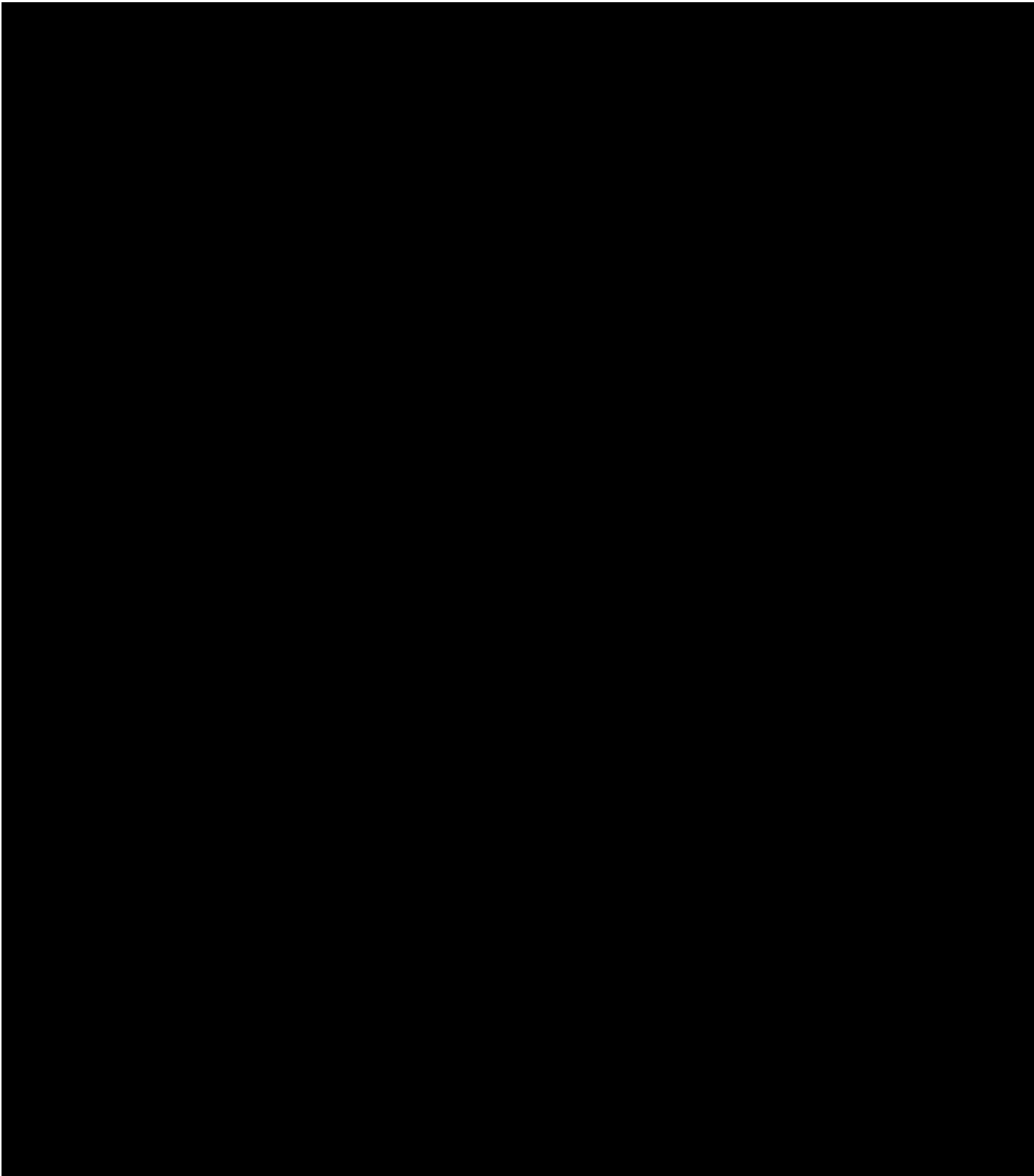


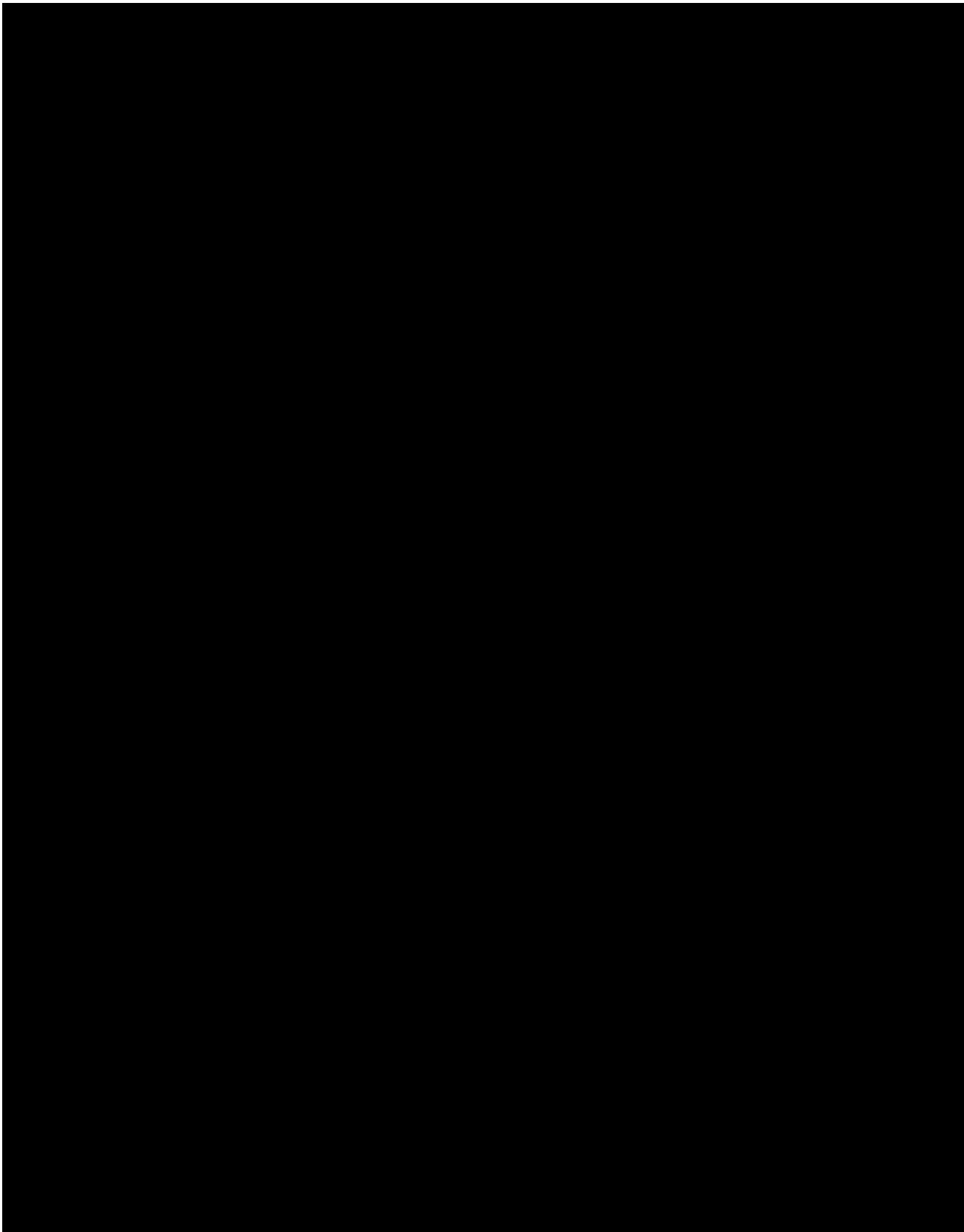
The Trusts Begin to Question PHEAA'S Performance

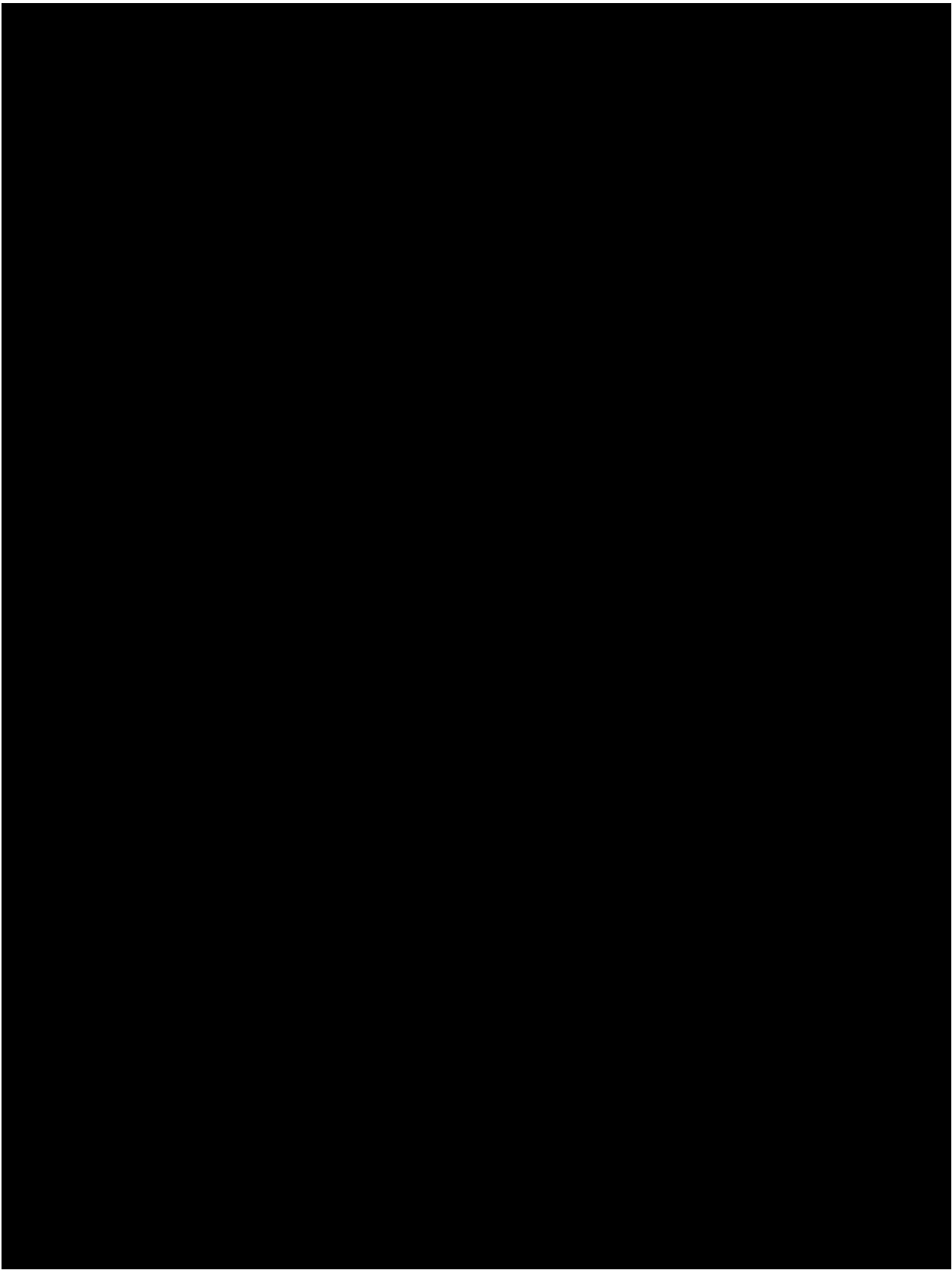


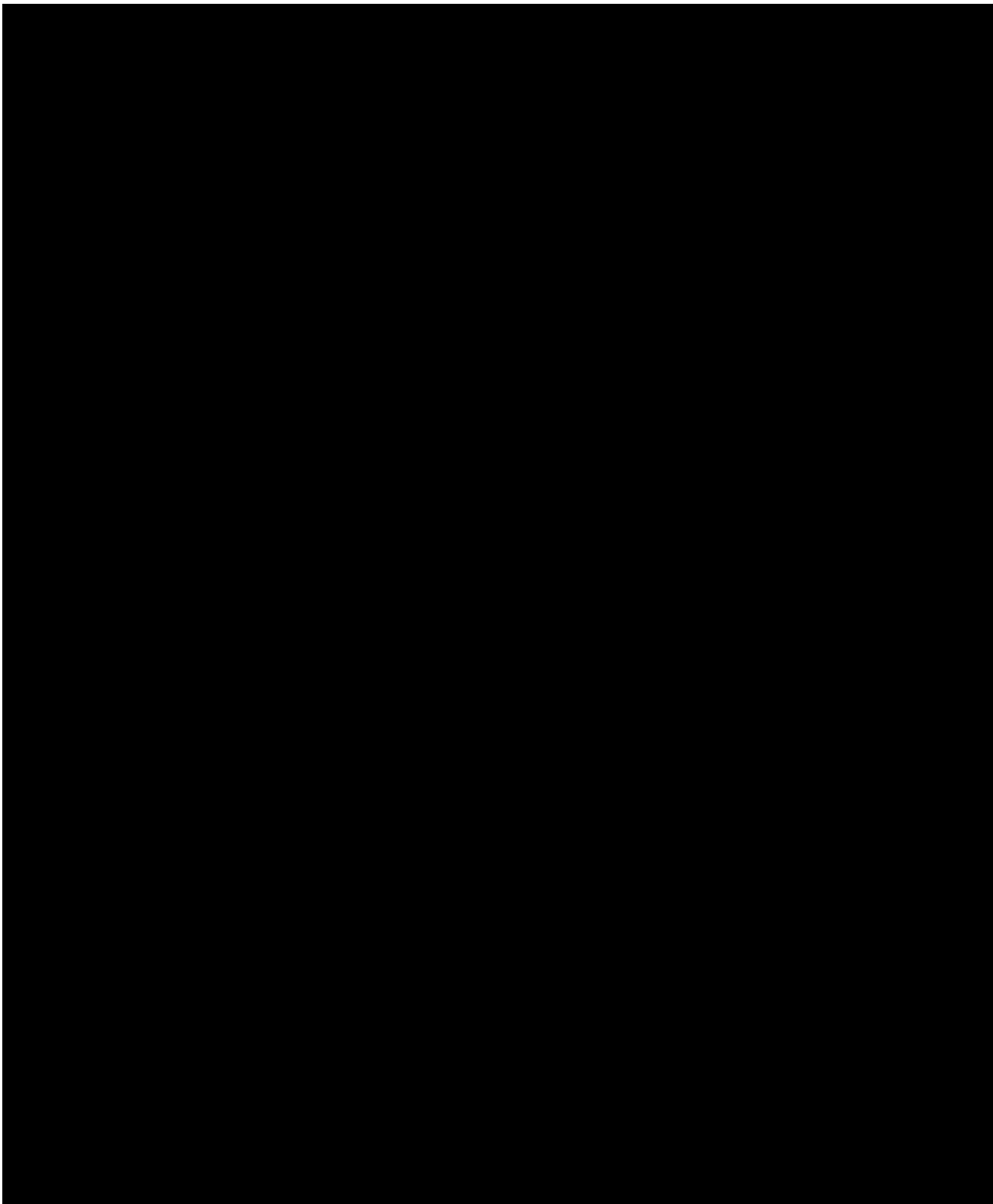


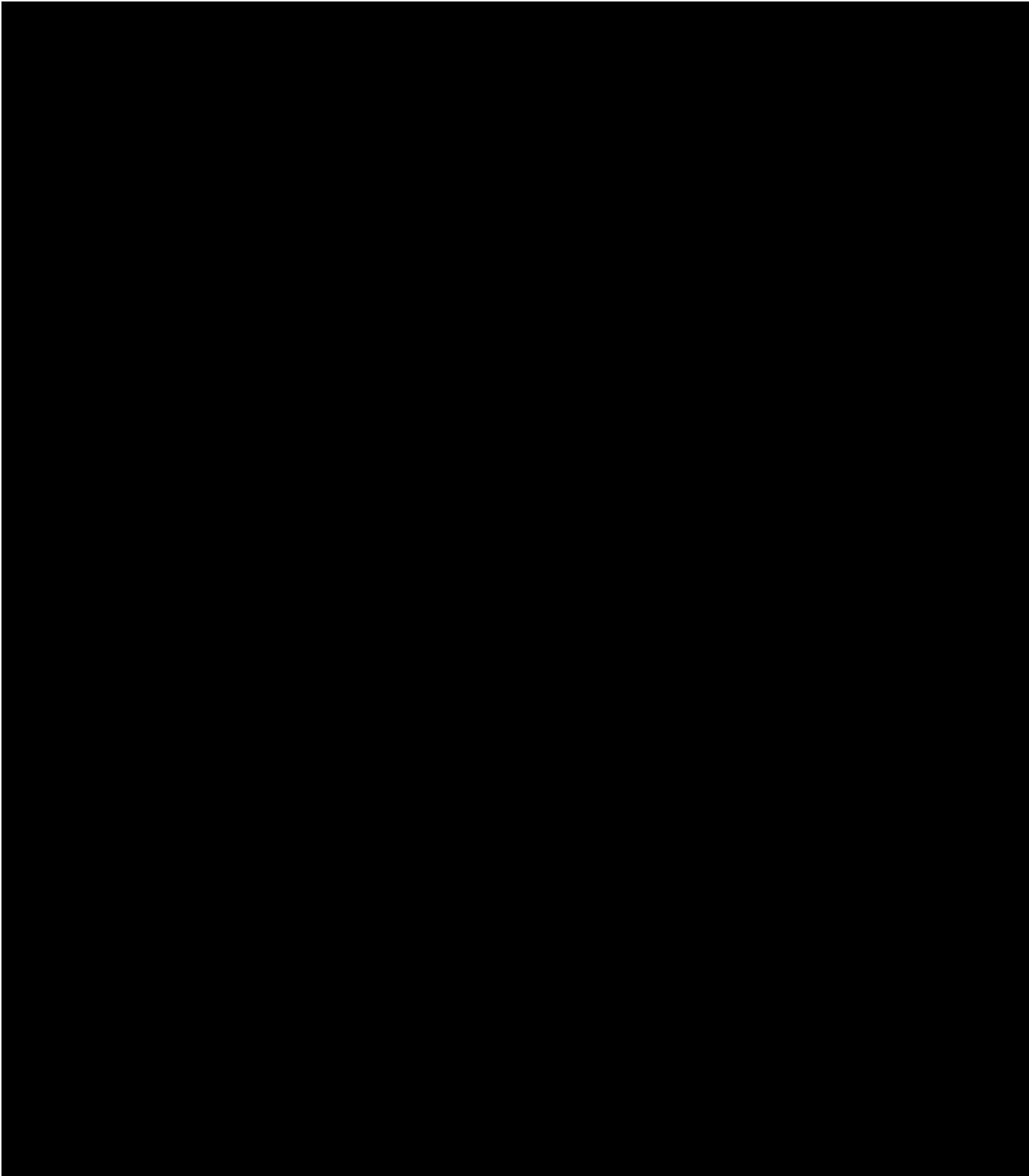






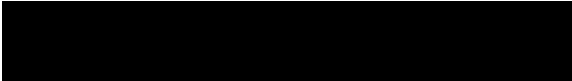








PHEAA Fails to Engage In Dispute Resolution Efforts

49.  the Trusts attempted to engage PHEAA in dispute resolution discussions. On or about December 17, 2015, counsel for the Trusts spoke with outside counsel for PHEAA, at which time the Trusts' counsel requested a face-to-face meeting. Counsel for PHEAA balked at the concept of a meeting without being first provided with a statement of grievances. Counsel for the Trusts referred PHEAA's counsel to the Governing Agreements and specifically, the requirement that the parties confer directly, and again asked for a meeting date.

50. PHEAA repudiated its obligation to conduct an informal dispute resolution when, on December 28, 2015, its counsel indicated PHEAA's refusal to meet absent conditions that are nowhere specified in the Governing Agreements:

PHEAA has many dates available for a meeting with the National Collegiate Student Loan Trusts and you in January. However, PHEAA will not be in a position to

schedule a meeting until the Trusts state what breaches they believe occurred and what other complaints or issues the Trusts have with PHEAA. PHEAA will need time to investigate, analyze and prepare. PHEAA would also need to see a list of proposed attendees. After that PHEAA would be a position to schedule such a meeting.

December 28, 2015 email from Kenneth R. Dugan, Esq. to Lance Gotthoffer, Esq.

Upon information and belief, at the time PHEAA's counsel sent the forgoing email, [REDACTED]

[REDACTED]

51. In view of the pervasive and substantial breaches of the Governing Agreements, coupled with PHEAA's refusal to meet with the Trusts, the Trusts believe that further efforts at pre-litigation dispute resolution would be futile, and that litigation is the sole viable avenue of recourse.

COUNT I
(Breach of Contract -- Request for
Specific Performance Against PHEAA)

52. Plaintiffs incorporate by reference, as if set forth fully herein, the averments in paragraphs 1 through 51 above.

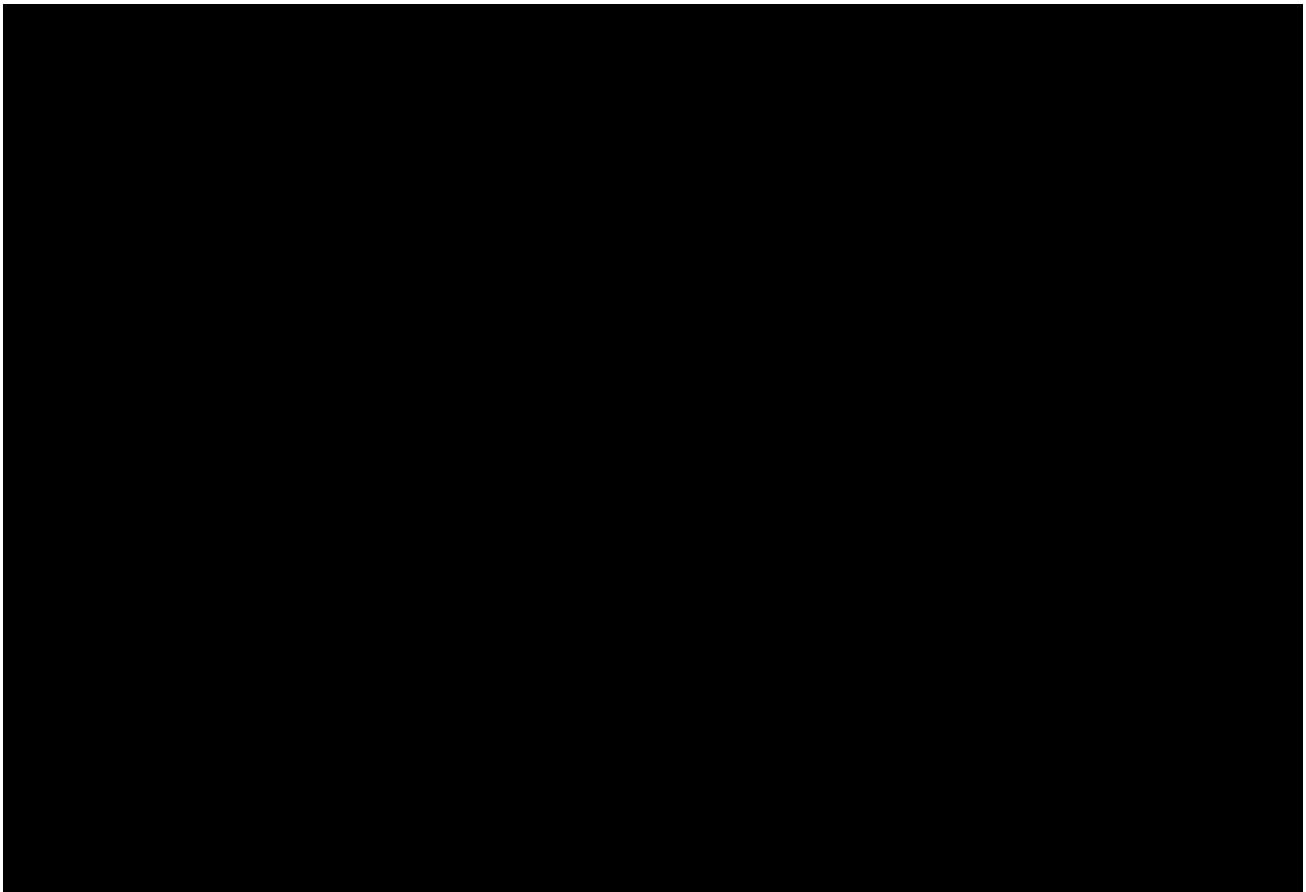
53. The Governing Agreements constitute valid and binding agreements enforceable against PHEAA by Plaintiffs.

[REDACTED]

54. PHEAA had contractual obligations to provide specified services as both servicer and custodian under the Governing Agreements.

55. Because of PHEAA's acts and omissions described above, PHEAA breached its contractual obligations to Plaintiffs.

56. Plaintiffs request an award of specific performance requiring PHEAA to comply with the MSA in all material respects, including without limitation:



57. Plaintiffs have no adequate remedy at law.

COUNT II
(Breach of Contract – Request for Damages)

58. Plaintiffs incorporate by reference, as if set forth fully herein, the averments in paragraphs 1 through 57 above.

59. The Governing Agreements constitute valid and binding agreements enforceable against PHEAA by Plaintiffs.

60. PHEAA had contractual obligations to provide specified services as both servicer and custodian under the Governing Agreements.

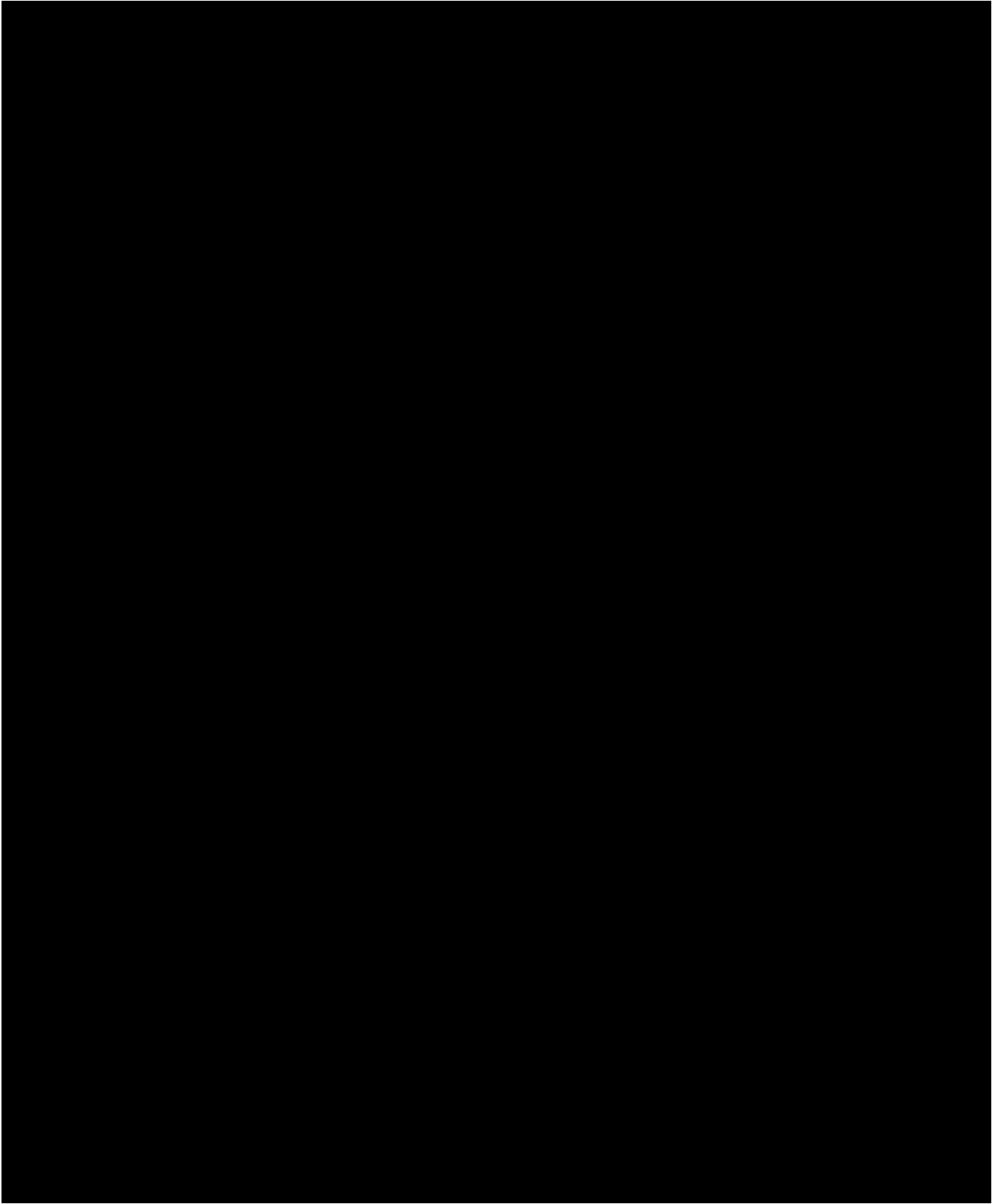
61. PHEAA had an additional obligation to fully carry out each and every action necessary to fulfill the Governing Agreements under the covenant of good faith and fair dealing implied in every contract.

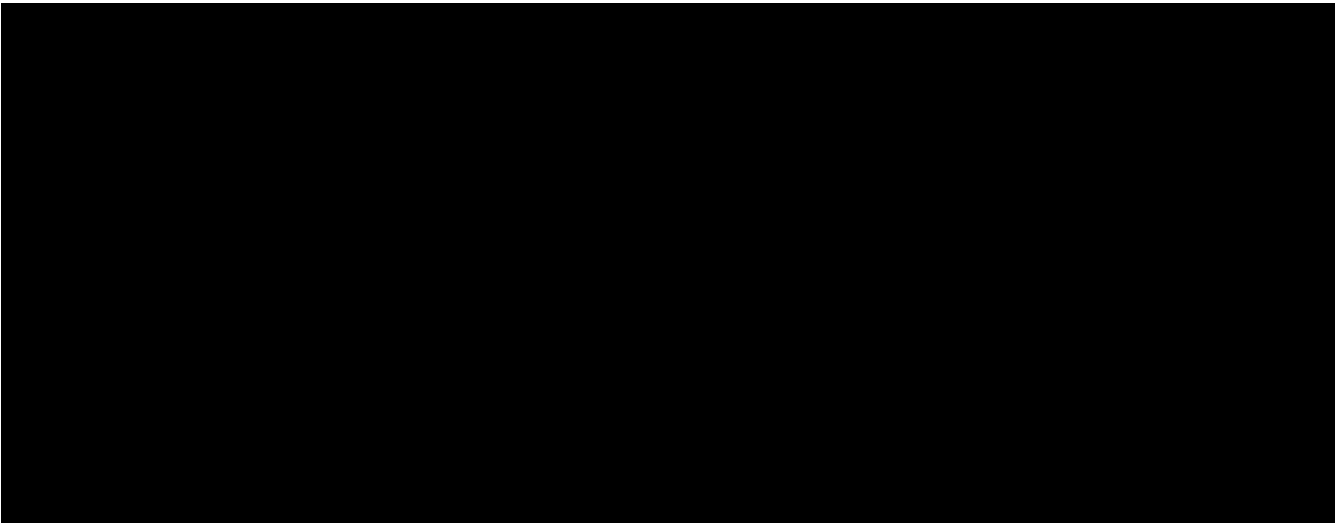
62. Because of PHEAA's acts and omissions described above, PHEAA breached its contractual obligations, as well as the implied covenant of good faith and fair dealing, with respect to Plaintiffs.

63. As a direct, proximate result of PHEAA's breaches, Plaintiffs have suffered massive damages in an amount to be proven at trial.

COUNT III
(Fraud/Misrepresentation)

64. Plaintiffs incorporate by reference, as if set forth fully herein, the averments in paragraphs 1 through 63 above.



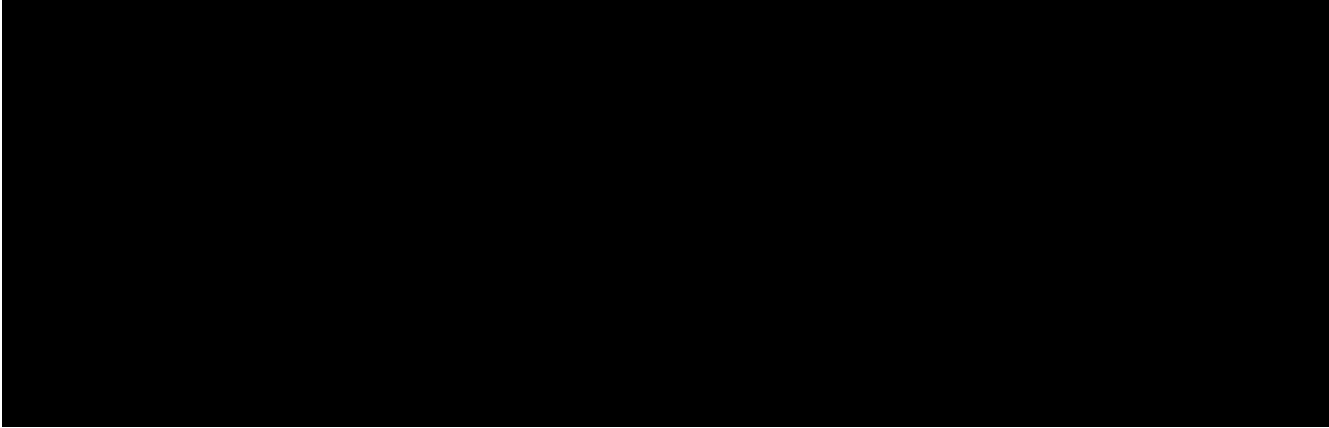


70. PHEAA's misrepresentations and omissions were of a material nature.

71. PHEAA's misrepresentations were made falsely, with knowledge of their falsity or recklessness as to their veracity.

72. PHEAA's misrepresentations and omissions were made with the intent to mislead Plaintiffs.

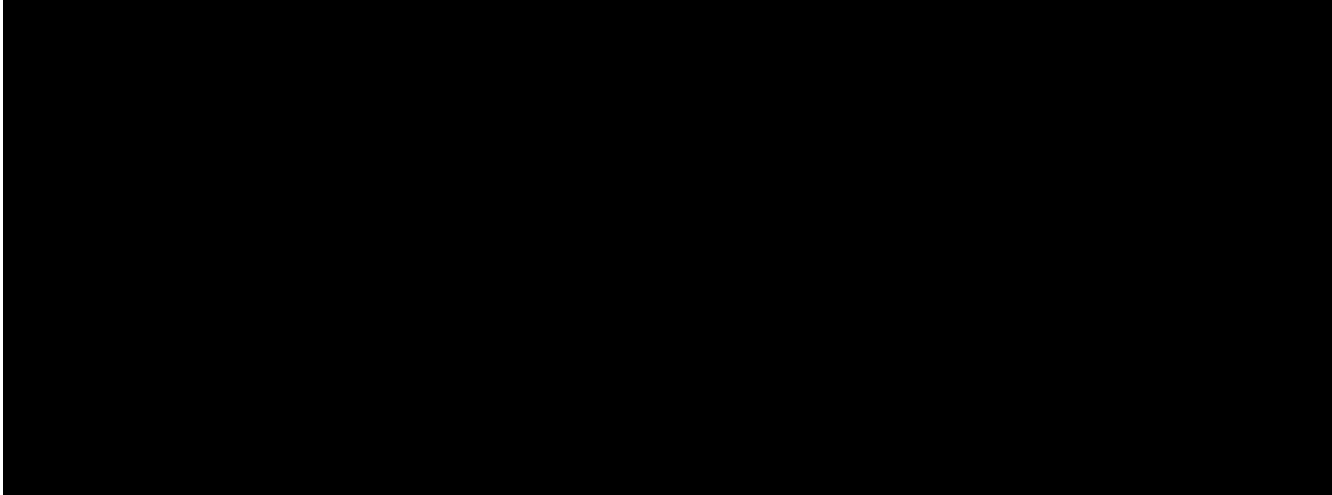




74. As a direct, proximate result of Plaintiffs reliance on PHEAA's misrepresentations, Plaintiffs have suffered massive damages in an amount to be proven at trial.

**COUNT IV
(Unjust Enrichment)**

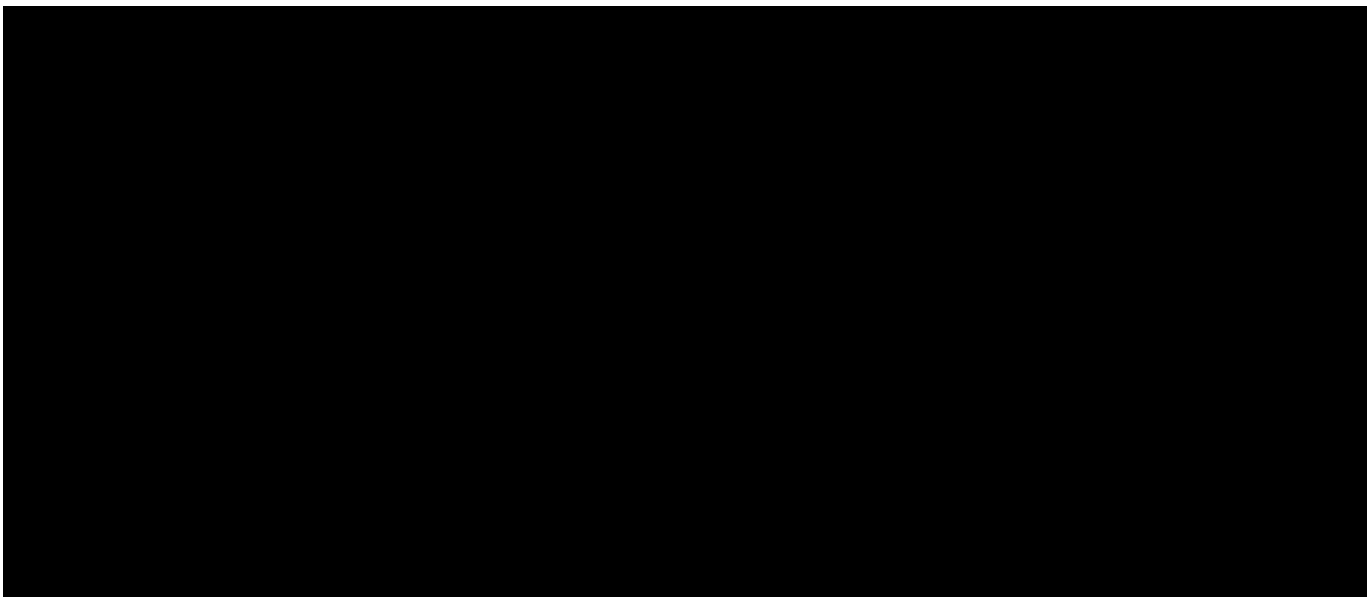
75. Plaintiffs incorporate by reference, as if set forth fully herein, the averments in paragraphs 1 through 74 above.



78. An inequitable and unconscionable injustice would result should PHEAA retain the conferred benefit without payment of value.

**COUNT V
(Accounting)**

79. Plaintiffs incorporate by reference, as if set forth fully herein, the averments in paragraphs 1 through 78 above.



82. PHEAA's misrepresentations were made with knowledge of their falsity or recklessness as to their veracity.

83. The accounts involved are vast and complex in nature.

84. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- a) Granting Plaintiffs preliminary and permanent injunctive relief in the form of an order of specific performance;



- b) Awarding Plaintiffs damages in an amount to be determined at trial;
- c) Ordering an accounting to be conducted at PHEAA's expense;
- d) Awarding Plaintiffs their costs and attorneys' fees incurred in litigating this action;
- e) Awarding Plaintiffs prejudgment and post-judgment interest; and
- f) Awarding Plaintiffs such other and further relief as this Court may deem just and equitable.

Dated: March 16, 2016

McCARTER & ENGLISH, LLP

/s/ Daniel M. Silver

Michael P. Kelly (#2295)

Daniel M. Silver (#4758)

Daniel M. Brown (#4688)

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