

AN AGREEMENT

BETWEEN

TRANSMISSION COMPANY OF NIGERIA LIMITED

AND

PHASE 3 TELECOM LIMITED

PROJECT:

TO DESIGN, BUILD, FINANCE, OPERATE
TRANSYCO'S FIBRE OPTIC CABLE
TELECOMMUNICATIONS INFRASTRUCTURE

UDOM AND UDOM

ILO & OKOLI

EBELE EGBARIN &
ASSOCIATES

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THIS AGREEMENT is made the 20th day of March 2006 BETWEEN **TRANSMISSION COMPANY OF NIGERIA LIMITED** a company incorporated in Nigeria as a subsidiary of the Power Holding Company of Nigeria, with its principal place of business situate at Plot 441 Zambezi Crescent, Maitama, Abuja (hereinafter referred to as "TCN" which expression shall where the context so admit include its successors-in-title and assigns) of the one part **AND PHASE 3 TELECOM LIMITED** a company incorporated in Nigeria with its principal place of business at No. 3 Durban Street, Wuse II, Abuja (hereinafter referred to as "PHASE 3" which expression shall where the context so admit, include its successors-in-title and assigns.

WHEREAS:

1. Transmission Company of Nigeria is the owner of all transmission powerlines, sub-stations, and other transmission infrastructure previously owned by the Power Holding Company of Nigeria ("PHCN").
2. It is the intention of TCN to develop, upgrade, and commercialize its existing and proposed fibre optic network and facilities to provide a cost effective telecommunications infrastructure for a more efficient attainment of its corporate goals, and to generate additional income.
3. PHASE 3 is willing to Design, Build, Finance, and Operate TCN's telecommunications infrastructure to meet the needs of the latter, for a period of fifteen (15) years, and to subsequently Transfer the infrastructure back to TCN.
4. TCN has agreed to grant, and PHASE 3 has agreed to accept a right of use of TCN's infrastructure for the purposes, and upon the terms and conditions hereinafter stated.
5. The Federal Government of Nigeria, through the Federal Ministry of Power and Steel has approved of the performance of this Agreement by the parties herein and upon the terms and conditions hereinafter stated.

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NOW IT IS HEREBY AGREED as follows:

1. Definition of Terms.

Unless otherwise stated in the provisions of this Agreement, the following terms, either in singular or plural, shall have the meaning set forth below:

- "Actual Completion Date" shall mean the actual date that the PHASE 3 Network is completed where such date is different from the Target Completion Date.
- "Agreement" means this agreement as the same relates to the grant of right of use of TCN infrastructure by TCN to PHASE 3 for the purposes stated herein;
- "Apparatus" shall mean any telecommunications equipment, fixtures and/or other facilities associated therewith or ancillary thereto which forms part of the PHASE 3 Network either presently existing or added in future.
- "Buy Out" shall mean the exercise by TCN of its right to acquire the PHASE 3 Network, or such parts of it as is completed upon the happening of events and/or circumstances stated in Articles 15.5, 24 and 26 herein.
- "Call Data Records" shall mean all record of call traffic on the PHASE 3 Network obtained in accordance with industry norm and practice.
- "Co-location" means a joint location of PHASE 3's equipment and fixtures with those of TCN on TCN property under TCN management as may be required for the performance of the main agreement upon the terms and conditions of the "Co-location And Facilities Management Services Agreement" annexed to this Agreement.
- "Commencement Date" means the date the last required signature for this agreement is appended.
- "DBFO" shall mean Design, Build, Finance and Operate, being the terms of the project development between TCN and PHASE 3 .
- "Diversion Notice" shall mean a notice given to TCN by PHASE 3, requiring any part of the equipment or fixtures of PHASE 3 to be moved, altered, re-routed or diverted.

"Duration"	shall mean the period this Agreement shall be in force, which shall be a fixed term of Fifteen (15) Years from the Commencement Date, subject to such earlier termination or subsequent renewal as provided for herein.
"Effective Date"	shall mean not later than six months after the Commencement Date.
"Financial Records"	shall mean all documents, records and data relating to finances of PHASE 3 as they relate to the Project including, but not limited to books of accounts and financial transactional documents.
"FOC Network"	shall mean Fibre Optic Cable Network.
"Force Majeure"	shall mean a set of conditions, which releases either party from of its obligations under this Agreement, upon terms and conditions stated herein.
"Infrastructure"	shall mean such land, building, equipment and rights that form the technical basis of the subject matter of this Agreement.
"ITU-T"	shall mean the Standard Bureau of the International Telecommunications Union.
"NCA"	shall mean the Nigerian Communications Act, 2003 together with all amendments thereto.
"NCC"	shall mean the Nigerian Communications Commission and its agents as appointed pursuant to the powers under the Nigerian Communications Act, 2003.
"Network Control"	shall mean the monitoring of the network performance and attributes.
"Network Control Centre"	shall mean the location dedicated for the monitoring of the network performance and attributes.
"Network Management System"	shall mean a system put in place by PHASE 3 for the effective management of the PHASE 3 Network.
"New Works"	shall mean the different phases of construction and installations to be carried out in the expansion and development of the existing fibre optic cable network to achieve the full span of the PHASE 3 Network.

"NLDL"	shall mean the National Long Distance Licence (NLDO/001/06) granted by the National Communications Commission to PHASE 3 under Section 32 of the Nigerian Telecommunications Act, 2003.
"Notice of New Works"	shall mean a completed notice of new works submitted to TCN by PHASE 3, which shall include a plan showing the proposed location of the New Works on TCN Property, details of the New Work and the programme for such works.
"Operating Parameters"	shall mean the Operating Parameters set out in the First Schedule hereto.
"Operating Permits"	shall include any licenses, consents, releases, agreements and approvals that may be required for all aspects of the project.
"Operator"	shall mean PHASE 3 TELECOM LIMITED.
"Performance Bond"	shall mean the bond for the sum of US\$500,000.00 (five hundred thousand U.S. dollars) issued by a first class financial institution acceptable to TCN in respect of the performance by PHASE 3 of its obligations under this agreement.
"PHASE 3 Network"	shall mean the segments of the TCN fibre optic cable telecommunications network assigned to PHASE 3 for the purposes of this agreement, together with any expansions and development effected during the term of this agreement. The current status of the PHASE 3 Network is more particularly shown in the Fifth Schedule hereto.
"Point of Presence"	shall mean any location within TCN property where PHASE 3's switching and transmission facilities are provided for the purpose of interfacing with it's customers or with another operator.
"Project Scope" or "Project"	shall mean the construction, equipping and activation of the PHASE 3 Network in conformity with the specifications and project scope set out in the First Schedule hereto.
"Telecommunication"	shall mean any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, visual or other electro-magnetic systems.

"Testing"	shall mean the submission of each completed segment of the PHASE 3 Network to the testing procedure contained in the Second Schedule hereto.
"TCN Property"	shall mean all telecommunications, electricity and other infrastructure including land, buildings, rights of way, easements and other access rights belonging to TCN.
"The Project"	shall mean the exploitation of TCN's vast infrastructure for the development of a sustainable and commercially viable Fibre Optics-based ('FOC') backbone network on a DBFO basis with a world class telecommunications company, using TCN's existing FOC infrastructure to build a formidable network that is capable of providing stable inter-city broadband communications services to telecom operators and other corporate organizations in Nigeria.
"WTA"	shall mean the Wireless Telegraphy Act Cap 469 Laws of the Federation of Nigeria 1990 as amended by the Wireless Telegraphy (Amendment) Act No. 1 of 1998.

2. **The Project**

The focus of the project is the exploitation of TCN's vast infrastructure for the development of a sustainable and commercially viable FOC-based backbone network on a Design, Build, Finance and Operate (DBFO) arrangement with a world-class telecommunications company.

The project seeks to use as a foundation, TCN's existing FOC infrastructure to build a formidable network that is capable of providing stable inter-city broadband communications services to telecom operators and others who may require it, as permissible under the terms of the NLDL.

3. **Conditions Precedent**

PHASE 3 shall on or before the commencement date, or such later date as the parties hereto may agree, submit to TCN, copies of the following documents:-

- (i) Copies of the Memorandum and Articles of Association of PHASE 3, Duly certified at the Corporate Affairs Registry.
- (ii) Copies of Resolutions duly passed by the Board of Directors of PHASE 3 authorizing the execution, delivery and performance by PHASE 3 of this Agreement, certified by the Company Secretary in a manner satisfactory to TCN.

- (iii) Performance Bond of a financial institution acceptable to TCN in respect of PHASE 3's obligations under Clause 8. The Bond should be for a sum of \$500,000.00 (five hundred thousand U.S. dollars). The Performance Bond shall take effect ninety (90) days after the Commencement Date of this Agreement, and shall continue in full effect until the attainment by PHASE 3 of a minimum activation of one thousand, five hundred (1,500) kilometres of fibre.
- (iv) Copy of the NLDL issued by the NCC.
- (v) A certificate of the Company Secretary of PHASE 3 confirming that all necessary corporate and other approvals and action have been duly obtained and taken for the due execution, delivery and performance by PHASE 3 of this Agreement. PROVIDED THAT any approvals that can only be obtained after the execution of this Agreement shall be duly obtained immediately after the execution.
- (vi) A certificate of the Company Secretary of PHASE 3 confirming that a copy of this Agreement has been submitted to the NCC in accordance with Condition 12 of the NLDL.
- (vii) Copies of relevant material contracts embodied in business services agreements with third parties for the provision of technical, supply and financial services connected with this agreement. Copies of such material contracts that come into force after the commencement of this agreement shall be submitted to TCN immediately upon execution.

4 Grant of Rights

- 4.1 For the purposes stated herein, and in consideration of the sums of money payable by PHASE 3 to TCN, TCN grants to PHASE 3, the rights of access and use of TCN's existing and planned Fibre Optic Cable network, and other relevant physical infrastructure, as determined and agreed to by both parties, within all that area or territory demarcated in Green colour in the Third Schedule hereto, for the duration of this agreement;
 - i. To design, build, finance and operate on existing TCN infrastructure, as is reasonably required, a new telecommunications infrastructure upon the terms and specifications herein contained.
 - ii. To develop, modify, expand, redesign, operate and use TCN's existing and planned infrastructure.

- 4.2 PHASE 3 shall have right of entry into TCN property as may be required and necessary for the purpose of the business of the project, and to maintain and repair the telecommunications facility, and to undertake new work, provided that the right of entry to undertake such new work shall only be exercisable subject to prior notice to TCN.
- 4.3 TCN shall grant to PHASE 3, an unfettered access to PHASE 3's Point of Presence where the latter occurs in sub-station environments and shall provide PHASE 3 regular electricity supply and back-up power where available in co-location areas, to power associated telecommunications equipment and facilities. PHASE 3 shall also provide its own back-up power supply to make up for any deficiencies in TCN's power supply.
- 4.4 The rights of access and use granted herein in relation to facilities and equipment co-located with TCN facilities and/or within TCN secured areas, shall be exercisable at all such times as are reasonably necessary for the performance by PHASE 3 of its obligations in this Agreement, PROVIDED THAT in the event that PHASE 3, as of necessity has to exercise these rights outside TCN's normal hours of work, or during public holidays, PHASE 3 shall give to TCN a prior written notification of such intention.
- 4.5 PHASE 3 shall bear all costs and charges for special and temporary rights of way required by them in connection with the project. For the avoidance of doubt, PHASE 3 shall incur at its own cost any additional facilities outside the FOC Network required by them for the purposes of the project.

EASEMENTS AND RIGHTS OF WAY

- 4.6 TCN shall assign to PHASE 3 all easements, rights of way and other such rights, over third-party interests, where assignable in law, presently enjoyed by TCN or its holding company, or other predecessor-in-title provided that where such right is inalienable, TCN shall use its best endeavour to ensure that PHASE 3 enjoys those rights for the better performance of its obligations in this agreement.

RENTAL OF PHCN SPACE AND FACILITIES

- 4.7 PHASE 3 shall be entitled to lease from TCN upon terms and conditions stated in the Co-location and Management Services Agreement in the Fourth Schedule hereto, such open space, rooms, pylons, towers, land and other physical infrastructure as are available and necessarily required for the performance by PHASE 3 of its obligations in this Agreement.

LIMITS TO PHASE 3 ACCESS RIGHTS

- 4.8 The Rights of Access granted to PHASE 3 above are not general, but specific and limited in use to the actual and identifiable need of PHASE 3 in the performance of its obligations in this Agreement. PHASE 3 shall however have an exclusive right of access and use of the fibre optic cable network in the PHASE 3 Network throughout the duration of this Agreement.
- 4.9 No PHASE 3 staff, contractor, associate or affiliate shall exercise any right of access whatsoever into or over any TCN property or facility not directly concerned with or related to the performance by PHASE 3 of its obligations under this Agreement.
- 4.10 PHASE 3 shall not exercise its rights herein in a manner that may interfere with, disrupt, or frustrate the performance by TCN of its main function of transmission of electricity nationwide, through its national grid.
- 4.11 Any PHASE 3 staff, contractor, associate or affiliate operating within any TCN Property or facility must at all such times wear an identifiable PHASE 3 Identity badge, a sample of which would have been submitted to TCN before being put to use.
- 4.12 TCN shall at all times be responsible for the security of its property and facilities, and all PHASE 3 staff, contractors, associates or affiliates operating therein shall be subject to all security regulations and provisions established and enforced by TCN.

TCN RIGHTS AND PRIVILEGES

- 4.13 TCN shall have a right of access, upon prior written request, to all operating records, particularly, but not limited to the Call Data Records, financial records, and all other data reasonably necessary for the performance of its function of managing and administering the operation of this Agreement on behalf of TCN.

5. Specifications and Operating Parameters

- 5.1 The Project shall be constructed and equipped in accordance with the technical standards, specifications and project scope set out in the First Schedule hereto.
- 5.1. PHASE 3 shall, in compliance with Condition 23 and 26 of the NLDL, ensure that throughout the term of the Licence, all equipment used for the project, conform with the NCC technical standards and specifications for electro-magnetic compatibility and NCC's requirement for network interface. PHASE 3 shall also ensure that all

necessary compliance certificates are obtained from NCC or a body approved by NCC before commencing operations.

- 5.3 PHASE 3 shall ensure that all circuits installed, maintained and used throughout the duration of the Project, conform to such specifications, standards, and ITU-T recommendations as prescribed by the NCC.
- 5.4 PHASE 3 shall ensure that the technical standards, specifications and project scope agreed upon between itself and TCN conform with the statements and representations made in its application for the NLDL. In the event of any variations thereto, PHASE 3 shall ensure that (in addition to obtaining the consent and approval of TCN), it obtains a written approval of such variations from NCC in accordance with the conditions of the NLDL.
- 5.5 PHASE 3 shall ensure that its network equipment and site are approved in accordance with the terms of the NLDL before commencement of operations.
- 5.6 In constructing and equipping the network to specifications as stated above, PHASE 3 shall ensure that the Network Management Systems have the following features:
 - (a) Operator's window to sites and links.
 - (b) Centralized network control system.
 - (c) Configuration of network parameters.
 - (d) Auto commissioning of additional links on the network.
 - (e) Statistics and status report capabilities.
 - (f) Graphical network management capabilities.
 - (g) Real time traffic monitoring.
 - (h) Component level redundancy for a more assured performance.
 - (i) Dynamic capacity allocation and redistribution.

These features and system capabilities shall be installed and implemented in accordance with standard telecommunications industry norms and practices

- 5.7 Following the Completion Date, the telecommunications facility shall be capable of operating within the Operating Parameters set out in the First Schedule hereto.

6. New Works

- 6.1 Before undertaking any new work in the project, PHASE 3 shall submit to TCN a completed Notice of New Works that shall include a plan showing the proposed location of the New Works on TCN Property, details of the New Works, and the programme for such works.
- 6.2 TCN shall within fourteen days of its receipt of the Notice of New Works, respond in writing, either granting its approval for the New Works, or requesting further information, or suggesting a modification of PHASE 3's plan, provided that TCN's approval shall not in any case be unreasonably withheld. Where PHASE 3 does not receive a response to its notice to TCN for new works after the expiration of the fourteen days, it shall be deemed that TCN approval has been granted for the new work.
- 6.3 PHASE 3 shall ensure that all New Works carried out in the course of the Project shall be in accordance with good industry standards and all PHASE 3 staff and contractors involved in the project shall be subject to best industry practices.
- 6.4 PHASE 3 shall, upon completion of any New Works, make good any damage caused by it to TCN property to the reasonable satisfaction of TCN and so far as practicable, restore the TCN property to its condition before such works were commenced.
- 6.5 Notwithstanding anything contained in this Article, PHASE 3 shall be entitled to enter TCN property in furtherance of the business of the project, without prior notice to, or approval of TCN in the case of emergencies, accidents or other unexpected incidents that might affect the Project adversely.

7. Network Roll-Out

- 7.1 PHASE 3 shall commence the operation of its network not later than six months from the Commencement Date of this Agreement.
- 7.2 In pursuance of its obligations under Condition 25 of the NLDL, PHASE 3 shall implement and comply at all times with a Network Roll-out programme as determined by the NCC. PHASE 3 shall also submit to the NCC, on the 15th day of January of each calendar year of its operation after the effective date of the NLDL, a Report of the Network Roll-Out achieved in compliance with the implementation timetable.

- 7.3 In pursuance of its obligations under Condition 29 of the NLDL, PHASE 3 shall provide the NCC within 90 days of the effective date of the NLDL, details of its Points of Presence as well as its routing arrangements. PHASE 3 must obtain the written consent of the NCC before undertaking any alterations to the location of its Points of Presence or routing arrangements.
- 7.4 PHASE 3 shall ensure that it submits to NCC for approval within 90 days from the effective date of its NLDL its form of Service Agreement containing the terms and conditions for the provision of services to the prospective customers in accordance with the provisions of the NLDL.
- 7.5 Copies of the information submitted to NCC pursuant to Clauses 7.2, 7.3 and 7.4 shall also be submitted to TCN on the same dates.

8. Obligations of PHASE 3

PHASE 3 shall be responsible for:

- 8.1 The construction and operation of the PHASE 3 Network, and shall cause the design, development, expansion, construction, completion, testing and commissioning of the network, capable of operating at a level within the Operating Parameters and in accordance with the Specifications and Project Scope contained herein;
- 8.2 the procurement, installation and commissioning of the PHASE 3 Network in the project phases specified;
- 8.3 the procurement, installation and commissioning of Network Management Centre;
- 8.4 importation and transportation of equipment to site, the obtaining of building, construction, operating and other permits, licences and approvals for the all aspects of the Project, and of visas and work permits for foreign personnel, the recruitment of local labour and compliance with all local and other regulations including the payment of all fees and costs thereof.
- 8.5 Financing all aspects of the developed and upgraded network, and all the new works constituting the entire telecommunication infrastructure under its designated part of the network.
- 8.6 Integration of the backbone network to existing communications sub-systems of commercial clients, subject to contract.
- 8.7 Education, training and manpower development of local TCN staff and local content capacity building to enable TCN understand PHASE 3's operational systems, network performance and attributes, to efficiently

telecommunications equipment and facilities upon the terms stated herein.

- 9.5 TCN shall at its own costs use its best endeavour to obtain all requisite consents, releases and agreements from relevant third parties, where applicable, to facilitate the grant by TCN to PHASE 3 of the rights set out herein, and the exercise of the rights authorized by this Agreement.

10. Testing and Completion

- 10.1. The testing of the telecommunications facility shall be in accordance with the Second Schedule, and in the presence of representatives of each of the parties to this Agreement.
- 10.2. PHASE 3 shall give to TCN not less than 14 days' notice or such lesser period as the parties hereto may agree, of its intention to commence any testing.
- 10.3. TCN shall ensure that there is made available for any testing, electricity, if required, for the proper and effective carrying out of such testing, the cost of which shall be to the account of TCN.
- 10.4. PHASE 3 shall test all the Fibres in accordance with the procedures specified in the Second Schedule to verify that the Fibres are installed and operating in accordance with the specifications described in the First Schedule. Fibre Acceptance Testing shall progress span by span along each Segment to be constructed hereunder as cable splicing progresses, so that the results may be reviewed in a timely manner.
- 10.5. In the event that the results of the tests of the Fibres show the Fibres not to be operating within the Parameters of the applicable Specifications, TCN shall notify PHASE 3 in writing that some or all portions of the PHASE 3 Fibres are unacceptable. Thereupon, PHASE 3 shall expeditiously take such action as shall be reasonably necessary, with respect to such portion of the PHASE 3 Fibres as do not operate within the Parameters of the applicable Specifications, to bring the operating standards of such portion of the Fibres within such Parameters.
- 10.6. If and when PHASE 3 notifies TCN that the test results of the Fibre Acceptance Testing are within the Parameters of the Specifications herein, within an entire Segment, TCN shall provide PHASE 3 with a written notice accepting the Fibres. If TCN fails to notify PHASE 3 of its acceptance or rejection of the final test results with respect to the Fibres comprising a Segment within ten (10) days after TCN's receipt of notice of such test result, TCN shall be deemed to have accepted such Segment. The date of such notice of acceptance (or deemed

acceptance) of all PHASE 3 Fibres for each Segment shall be the "Acceptance Date" for such Segment

11. Alteration and Relocation of Apparatus

- 11.1. PHASE 3 shall not make any construction changes or material alterations to the interior or exterior portions of TCN property or premises, including building of walls or partitions, perimeter fencing, plumbing or any electrical distribution of power supplies for equipment, without the prior notice and express approval of TCN, such approval not to be unreasonably withheld, and the cost of any such changes or alterations so approved shall be to the account of PHASE 3.
- 11.2. In the event that TCN desires to carry out any development, repairs, maintenance, alteration or improvement of any part of its property which houses PHASE 3 equipment or fixtures, and is prevented from so doing, or such work is rendered materially less convenient, by reason of the location of PHASE 3's equipment or fixtures, TCN may serve on PHASE 3 a Diversion Notice, requiring any part of the equipment or fixtures to be moved, altered, re-routed or diverted within a reasonable timeline determined by both parties.
- 11.3. Upon service of the Diversion Notice above, TCN will use its best endeavours to identify and permit PHASE 3 to divert the equipment and/or fixtures to an alternative route within TCN Property and to permit new works to proceed on that basis.
- 11.4. The cost of all removal and relocation upon the service of a Diversion Notice as stated above, shall be to the account of PHASE 3.

12. Maintenance and Repairs

- 12.1. PHASE 3 shall at all times be responsible for the maintenance and repairs of all the equipment, fixtures and infrastructure constituting the PHASE 3 Network, and shall bear all costs and expenses incurred in the performance of this obligation.
- 12.2. PHASE 3 shall ensure that the maintenance and repairs mentioned above are carried out by duly qualified personnel of the company or contractors who are technically qualified to carry out such tasks, and that all industry standards and norms are met in the performance of this obligation.

13. Payment Terms

13.1. In consideration of the rights granted to PHASE 3 under this Agreement PHASE 3 agrees to pay to TCN such amounts as are stated under the heads in Article 13.2 below.

13.2 (a) A fixed sum of \$40,000,000.00 (forty million dollars) payable throughout the duration of the Agreement, in instalments to be agreed to by the parties hereto, for the right of access and use of TCN's infrastructure. The first instalmental payment shall be due eighteen months after the Commencement Date, and thereafter, subsequent payments shall be made on each anniversary date of the first payment.

(b) PHASE 3 shall also pay or cause to be paid to TCN such sums as shall represent 2^{1/2}% (two and one half per cent) of its gross revenue from its operation of the PHASE 3 Network, as Royalty. The computation of payments on this head shall be based on the volume of traffic recorded on the Network, according to industry norms. For this purpose, PHASE 3 shall open its operational records to TCN's officials to confirm traffic recorded and where there is a conflict as to sums due to TCN, an independent financial consultant shall be jointly appointed by the parties to determine the sums due to TCN. Such determination shall be binding on the parties.

13.3 The payments due to TCN above shall be paid net of Value Added Tax, Withholding Tax, and any other taxes or other outgoings.

14 Duration

14.1 This Agreement shall take effect on the Commencement Date and shall be in force for a fixed term of Fifteen (15) Years, subject to such earlier termination as provided for herein, and the same may be renewed for a further term of Five (5) Years if TCN is satisfied with the performance by PHASE 3 of its obligations in this Agreement. The parties hereto may commence negotiations for the renewal of this Agreement at least six months before the expiration of the first term hereby created.

15 Management and Operation of FOC Network

15.1 PHASE 3 shall, at its own cost, be responsible for the management, operation, maintenance and repair of the PHASE 3 Network during the term of this Agreement and shall use its best endeavours to ensure that the Network is in good operating condition within the Operating Parameters.

15.2 In pursuance of its obligations under Article 16.1 PHASE 3 shall have full right to:

15.2.1 enter into contracts for the supply of materials and services, including, contracts with TCN;

15.2.2 appoint and remove consultants and professional advisers;

15.2.3 purchase replacement equipment;

15.2.4 appoint, organize and direct staff, to manage and supervise the PHASE 3 Network;

15.2.5 establish and maintain regular inspection, maintenance and inspection procedure; and

15.2.6 do all other things necessary or desirable for the operation of the PHASE 3 Network within the Operating Parameters.

15.3 **TCN** shall ensure that all infrastructural requirements and utilities necessary for the operation of the PHASE 3 Network within the Operating Parameters are made available in a timely manner and accordingly shall at its own cost, inter alia:

(a) ensure that there is provided within PHASE 3's sphere of operation, when required, electricity, the cost of utilization of which shall be to the account of PHASE 3.

(b) maintain and repair all transmission lines to ensure that at all times, it is capable of operating within the specifications set out in the 1st Schedule hereto.

15.4 TCN and PHASE 3 shall, from time to time, meet and discuss and agree to safety guidelines for the operation of the PHASE 3 Network within the Operating Parameters and following such agreement PHASE 3 shall operate same within such guidelines.

15.5 PHASE 3 shall operate the PHASE 3 Network in accordance with all environmental and other laws and regulations in force as at the date of this Agreement and shall comply with any changes in such laws and regulations provided that if to comply with such changes or new laws and regulations would:

(a) result in the PHASE 3 Network being unable to operate in accordance with the Specifications or within the Operating Parameters; or

- (b) result in PHASE 3's reasonable expectation of its economic return on its investment being materially reduced, prejudiced or otherwise adversely affected,

then the parties shall meet and endeavour to agree on amendments to this Agreement and if after 60 days no such agreement has been reached the provisions of Article 27.1 shall apply.

16 Network Control

16.1 The network performance and attributes shall be monitored remotely from a Network Control Centre.

16.2 The control of the network shall remain with the Network Control Centre at all times, except, where;

16.2.1 there is catastrophic failure of the Network Control Centre;

16.2.2 the Network Control Centre is taken down for routine maintenance;

in which respective case, PHASE 3 shall detail the handover sequence.

17 Relationship Management

17.1 The parties shall set up a committee made up of representatives of both companies for the effective day to day management of the relationship between TCN and PHASE 3 in the course of this Agreement.

17.2 The committee shall meet on a quarterly basis to review the relationship between the two companies, and share information relating to the plans and operations of both companies as they may impact on the Project.

17.3 The parties hereto shall at all times view this project as a collaborative effort, and shall mutually assist each other to ensure that their respective obligations are carried out effectively to the overall success of the project.

18 Insurance

PHASE 3 shall be responsible to ensure that there is effected insurance as provided in the Fifth Schedule and shall provide TCN with copies of all policies of insurance effected by it, and the proceeds of claims from such insurances, except third party liability and workmen's compensation insurance, with respect to damage or other casualty to the telecommunications infrastructure

shall be applied by PHASE 3 to the extent necessary to repair or restore the network to its previous condition.

19 Indemnity

19.1 Subject to the provisions of Article 21, TCN hereby releases and agrees to indemnify, defend, protect and hold harmless PHASE 3, its employees, officers, directors, agents, shareholders and affiliates, from and against, and assumes liability for:

19.1.1 Any injury, loss or damage to any person, tangible property or facilities of any person or entity to the extent arising out of or resulting from the negligent acts or omissions of TCN, its officers, employees, servants, agents or licensees in connection with the performance of its obligations under this Agreement;

19.1.2 Any claims, liabilities or damages arising out of any violation by TCN of regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body in connection with the performance of its obligations under this Agreement; and

19.1.3 Any claims, liabilities or damages arising out of any interference with or infringement of the rights of any third party as a result of PHASE 3's use of the Rights granted by TCN in accordance with terms of this Agreement.

19.2 Subject to the provisions of Article 21, PHASE 3 hereby releases and agrees to indemnify, defend, protect and hold harmless TCN, its employees, officers, directors, agents, shareholders, and affiliates, from and against, and assumes liability for:

(a) Any injury, loss or damage to any person, tangible property or facilities of any person or entity to the extent arising out of or resulting from the negligent acts or omissions of PHASE 3, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees or vendors in connection with the performance by PHASE 3 of its obligations in this Agreement.

(b) Any claims, liabilities or damages arising out of any violation by PHASE 3 of regulations, rules, statutes or court orders of any local, state, or federal governmental agency, court or body in connection with the performance by PHASE 3 of its obligations in this Agreement,

- (c) Any claims, liability or damages arising out of any interference with or infringement of the rights of any third party as a result of TCN's use of the PHASE 3 network.

19.3 The Parties hereby expressly recognize and agree that each party's said obligation to indemnify, defend, protect and save the other harmless is not a material obligation to the continuing performance of the other party's other obligations, if any, hereunder. In the event that a party shall fail for any reason to so indemnify, defend, protect and save the other harmless, the injured party hereby expressly recognizes that its sole remedy in such event shall be the right to bring about conciliatory or arbitration proceedings pursuant to the terms of this Agreement against the other party for its damages as a result of the other party's said failure to indemnify, defend, protect and save harmless. These obligations shall survive the expiration of this Agreement.

19.4 Nothing contained herein shall operate as a limitation on the right of either party hereto to bring an action for damages against any third party, including indirect, special or consequential damages, based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the telecommunications infrastructure; provided, however, that each party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other party to pursue any such action against such third party.

20 Warranties

20.1 Each party represents and warrants that:

20.1.1 It has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;

20.1.2 It has taken all necessary corporate action to approve the execution, delivery and performance of this Agreement;

20.1.3 This Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors' rights and general equitable principles; and

20.1.4 Its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

- 20.2 PHASE 3 warrants and represents that the Segments of the PHASE 3 Network that it has constructed or will construct either have been or shall be designed, engineered, installed, and constructed in material compliance with any and all applicable building, construction and safety codes for such construction and installation, and in accordance with the Conditions of its NLDL, as well as any and all other applicable governmental laws, codes, ordinances, statutes and regulations.

21 Liabilities

- 21.1 In the event that, in breach of its obligations hereunder, PHASE 3 fails to construct and develop the PHASE 3 Network, PHASE 3 shall reimburse and indemnify TCN for all costs and liabilities incurred by TCN in respect of TCN's obligations hereunder.
- 21.2 PHASE 3's liability to TCN arising from any breach of this Agreement or otherwise in connection with the design, construction and operation of the PHASE 3 Network shall be limited to payments as provided in Article 24 herein.
- 21.3 Save and except as is otherwise stated in this Agreement, the duties, obligations and liabilities of the parties hereto are intended to be several and not joint or collective and nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture amongst the parties hereto and each party shall be liable individually and severally for its own obligations under this Agreement.

22 Benefit of Agreement

- 22.1 TCN may not assign or transfer all or any part of its rights, benefits or obligations hereunder, without the express approval of PHASE 3, PROVIDED and it is hereby agreed that if in the course of the Nigerian Government Reforms and/or Privatisation of the Energy Sector, TCN undergoes a merger, consolidation or privatization, the surviving entity shall be entitled to an assignment and transfer of all TCN's rights and benefits hereunder, and it shall adopt and become fully liable to perform TCN's obligations hereunder.
- 22.2 PHASE 3 shall not transfer to any person all or any of its rights, benefits or obligations hereunder provided that where the proposed Transferee is a Technical Partner of PHASE 3, such a transfer may be made, subject to the prior approval in writing of TCN, in which case the said Transferee would expressly assume and become liable to perform fully the obligations of PHASE 3 hereunder.

23 **Transfer of Ownership**

- 23.1 On the Transfer Date PHASE 3 shall transfer to TCN, free from any lien or encumbrance created by PHASE 3 and without the payment of any compensation, all its right, title and interest in and to the fixtures, fittings, and equipment (including test equipment and special tools) and all improvements comprising the entire FOC telecommunications network infrastructure.
- 23.2 Six months prior to the Transfer Date, TCN and PHASE 3 shall meet and agree the inventories involved, the mechanics of transfer and security arrangements but PHASE 3 will not be liable for any discrepancies between such inventories and the actual fixtures, fittings and equipment transferred provided that following the agreement on inventories PHASE 3 shall exercise the same care regarding the fixtures, fittings, and equipment and all improvements therein as it did prior to agreement of the same and provided that TCN will be entitled to provide security units over all sites where the fixtures, fittings and equipment are located.
- 23.3 The telecommunications infrastructure, and all other equipment transferred pursuant to this Article 23 shall be transferred on an "as is" basis and any warranties which would otherwise be implied by statute or otherwise, including, without limitation, warranties as to title, fitness for the purpose, the absence of patent and inherent defects, description or otherwise of whatsoever nature will be excluded and after the Transfer Date PHASE 3 shall be under no liability whatsoever to TCN in respect of the operation or otherwise of the FOC telecommunication infrastructure by TCN or a person designated by TCN and TCN shall indemnify and keep indemnified PHASE 3 against any liability to any person arising from the use or operation of the infrastructure after the Transfer Date provided however that PHASE 3 shall subrogate or assign to TCN any and all rights and benefits which it is able to subrogate or assign of any unexpired warranties in respect of any part of the infrastructure.
- 23.4 TCN shall be responsible for all costs and expenses (including legal fees) incurred in connection with transfer referred to in this Article 23, and shall at its own cost obtain or effect all governmental and other approvals, licences, registrations and filings and take such other action as may be necessary for the transfer contemplated in this Article 23, and reimburse PHASE 3 on demand for such costs and expenses incurred by PHASE 3 in respect of such transfer.

24 Event of Default

- 24.1 With respect to all payments required to be made by PHASE 3 hereunder, PHASE 3 shall be in default hereunder if such payment is not paid on the date due and payable hereunder, and from and after such date such unpaid amount shall bear interest until paid at the rate of 15% per annum. With respect to all non-payment obligations, PHASE 3 shall be in default under this Agreement thirty (30) days after TCN shall have given PHASE 3 written notice of such default unless PHASE 3 shall have cured such default or such default is otherwise waived within such thirty (30) days; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if PHASE 3 shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such curing. Events of default also shall include, but not be limited to, the making by PHASE 3 of a general assignment for the benefit of its creditors, the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency, protection against PHASE 3 which is not dismissed within ninety (90) days thereafter, or the filing by PHASE 3 of any petition or answer seeking, consenting to, or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief. Any event of default by PHASE 3 may be waived under the terms of this Agreement at TCN's option. Upon the failure by PHASE 3 to timely cure any such default after notice thereof from TCN, TCN may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default and (ii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the above, if PHASE 3 certifies in good faith to TCN in writing that a default has been cured, such default shall be deemed to be cured unless TCN otherwise notifies PHASE 3 in writing within fifteen (15) days of receipt of such notice from PHASE 3.
- 24.2. With respect to all payments required to be made by TCN hereunder, TCN shall be in default hereunder if such payment is not paid on the date due and payable hereunder, and from and after such date such unpaid amount shall bear interest until paid at the rate of 15% per annum. With respect to all non-payment obligations, TCN shall be in default under this Agreement thirty (30) days after PHASE 3 shall have given TCN written notice of such default unless TCN shall have cured such default or such default is otherwise waived within such thirty (30) days; provided, however, that where such default cannot reasonably be cured within such thirty (30) day period, if TCN shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such curing. Events of default shall also include, but not be limited to, the making by TCN of a general assignment for the benefit of its creditors, the filing of a voluntary petition in bankruptcy or the filing of a petition in bankruptcy or other insolvency protection against TCN which is not dismissed within ninety (90) days thereafter, or the filing by TCN of any petition or answer seeking, consenting

to or acquiescing in reorganization, arrangement, adjustment, composition, liquidation, dissolution or similar relief. Any event of default by TCN may be waived under the terms of this Agreement at PHASE 3's option. Upon the failure by TCN to timely cure any such default after notice thereof from PHASE 3, PHASE 3 may (i) take such action as it determines, in its sole discretion, to be necessary to correct the default, and (ii) pursue any legal remedies it may have under applicable law or principles of equity, relating to such breach.

Notwithstanding the above, if TCN certifies in good faith to PHASE 3 in writing that a default has been cured, such default shall be deemed to be cured unless PHASE 3 otherwise notifies TCN in writing within fifteen (15) days of receipt of such notice from TCN.

25 Termination

25.1 TCN's Right of Termination.

25.1.1 **TCN** has the right to terminate all or any portion of the Agreement without any penalty or payment obligation (other than undisputed outstanding payment obligations as of the date of any such termination, with disputed payment obligations being subject to the dispute resolution provisions of Section 31) upon the occurrence of any PHASE 3 event of default (each, a "PHASE 3 Event of Default") set forth below. References to "PHASE 3" in this Article 25.1.1 shall include PHASE 3 and any assignee of PHASE 3. The occurrence of any one of the following shall constitute a PHASE 3 Event of Default:

- (a) PHASE 3 (i) is insolvent, (ii) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it that is not dismissed within thirty (30) days of such involuntary filing, (iii) admits the material allegations of any petition in bankruptcy filed against it, (iv) is adjudged bankrupt, or (v) makes a general assignment for the benefit of its creditors, or a receiver is appointed for all or a substantial portion of its assets and is not discharged within thirty (30) days after his appointment;
- (b) PHASE 3 commences any proceeding for relief from its creditors in any court under any insolvency statutes;
- (c) PHASE 3 disregards or violates material Applicable Laws or material Applicable Permits;
- (d) PHASE 3 persistently fails to timely correct Defects and Deficiencies in accordance with the terms of the Agreement;

- (e) PHASE 3 persistently fails to fulfil its obligations with respect to the network scope, specifications and operating parameters as set forth in Article 5 hereof;
- (f) PHASE 3 abandons or ceases its performance of the Work (except as a result of an event of Force Majeure or a casualty for which TCN is fully covered by insurance or as to which other provisions reasonably acceptable to TCN are being diligently pursued.
- (g) PHASE 3 fails to pay to TCN any material amount due not otherwise disputed in good faith by the date required for such payment;
- (h) PHASE 3 otherwise materially breaches any provision of the Agreement; or
- (i) PHASE 3 fails to fulfil its obligations as contained in the NLDL.

25.1.2 If any of the PHASE 3 Events of Default exists, TCN may, without prejudice to any other rights or remedies of TCN in the Agreement or at law or in equity, terminate the Agreement upon notice to PHASE 3; provided, however, that TCN shall have first provided to PHASE 3 the following periods of notice and opportunity to cure:

- (a) in the case of a PHASE 3 Event of Default specified in the foregoing Article 25.1.1 (a), (b) and (c), TCN shall have provided thirty days prior written notice to PHASE 3, and PHASE 3 shall have failed to remedy such breach entirely by the end of such thirty day period;
- (b) in the case of a PHASE 3 Event of Default specified in the foregoing Article 25.1.1.1 (j) and (i), TCN shall have provided fourteen days prior written notice to PHASE 3, and PHASE 3 shall have failed to remedy such breach entirely by the end of the fourteen day period;
- (c) in the case of any other PHASE 3 Event of Default, TCN shall have provided seven days prior written notice, and PHASE 3 shall have failed (A) to commence to cure the default within seven days after receipt of such notice, and (B) to diligently pursue such cure and remedy the breach entirely by the end of a fourteen day period.

25.1.3 If TCN elects to terminate the Agreement, TCN may, without prejudice to any other rights or remedies of TCN in the Agreement or at law or in equity, do one or more of the following:

- (a) Take possession of all engineering and design data, manufacturing data, construction and erection data, start-up and testing data, materials, and Products that shall become part of the Network, or the Project, pursuant to the provisions of Article 27 herein, whether any of the same is in a partial state of completion or completed condition (if not already vested in TCN by the provisions of the Agreement);
- (b) Take temporary possession and control of all of PHASE 3's installation equipment, machinery, and PHASE 3's materials, supplies, Software and any and all tools at any project site including, but not limited to, any Network Location, within the Network that in TCN's opinion, are necessary to finish the Work, subject to any enforceable licenses related thereto or any confidentiality restrictions otherwise contained in these General Terms;
- (c) Direct that PHASE 3 assign its Subcontractor agreements to TCN without any change of price or conditions therein or penalty or payment therefore to the full extent permitted by such agreement or agreements; or
- (d) Take over and finish the Work by whatever reasonable methods TCN may deem expedient;

provided, that nothing contained in (a) through (d) above shall require PHASE 3 to relinquish to TCN any of its manufacturing facilities, specific Product designs (other than such designs previously provided to TCN pursuant to the terms of this Agreement), trade secrets or proprietary information not previously provided or made available to TCN, supplies, inventories, tools, software, engineering and/or designs that are not integral or relevant to the completion of the Work and the said provisions shall be subject to Article 27 herein.

25.1.4 Upon such notification of termination, PHASE 3 shall immediately discontinue all of the Work (unless such notice of termination directs otherwise), and, deliver to TCN copies of all data, drawings, specifications, reports, estimates, summaries, and such other information, and materials as may have been accumulated by PHASE 3 in performing the Work, whether completed or in process. Furthermore, PHASE 3 shall assign, assemble and deliver to TCN all purchase orders and Subcontractor agreements (and in connection with such agreements, to the full extent permitted by such agreements) requested by TCN.

25.1.5 In the event TCN terminates the Agreement pursuant to Article 25.1.2, PHASE 3 shall not be entitled to receive further payment, other than payments due and payable under the Agreement and not subject to dispute prior to such termination (with disputed payment

obligations being subject to the dispute resolution provisions of Article 30), and payments determined by the operation of Article 27 herein. Notwithstanding anything herein to the contrary, TCN may withhold payments, if any, to PHASE 3 for the purposes of offset of amounts owed to TCN pursuant to the terms of this Agreement until such time as the exact amount of damages due to TCN from PHASE 3 is fully determined.

25.2 PHASE 3's Right of Termination.

PHASE 3 shall have the option to suspend or terminate the Agreement without any penalty or payment obligations, other than undisputed outstanding payment obligations relating to the Work performed by PHASE 3 as of the date of any such termination (with disputed payment obligations being subject to the dispute resolution provisions of Article 30) pursuant to the terms of this Agreement if:

- 25.2.1 TCN (I) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it that is not dismissed within sixty (60) days of such involuntary filing, (ii) admits the material allegations of any petition in bankruptcy filed against it, (iii) is adjudged bankrupt, or (iv) makes a general assignment for the benefit of its creditors, or if a receiver is appointed for all or a substantial portion of its assets and is not discharged within sixty (60) days after his appointment, and any such filing, proceeding, adjudication or assignment as described herein above shall otherwise materially impair TCN's ability to perform its obligations under this Agreement;
- 25.2.2 TCN commences any proceeding for relief in any court under any insolvency statutes; or
- 25.2.3 TCN fails and/or refuses to fulfil its obligations as contained in Article 9 herein and/or refuses to give effect to the grant of rights stated in Article 4 herein.

25.3 Survival of Continuing Obligations

Notwithstanding anything to the contrary in this Agreement termination or expiration of the Agreement for any reason (i) shall not relieve either Party of its obligations with respect to the confidentiality of the Proprietary Information as set forth in Article 29, (ii) shall not relieve either Party of any obligation that expressly or by implication survives termination, and (iii) except as otherwise provided in any provision expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of its obligations as to portions of the Work already performed or of obligations assumed by PHASE 3 prior to the date of such termination

26 Force Majeure

- 26.1 Neither party shall be in default under this Agreement to the extent that any delay in such party's performance is caused by any of the following conditions, and such party's performance shall be excused and extended during the period of any such delay: act of God; fire; flood; war or civil disorder; coup d'état ; failure of a third party to grant a required permit easement, or other required authorization for use of the intended right-of-way (provided that such required authorization was sought and pursued on a timely and reasonable best efforts basis), or any other cause beyond the commercially reasonable control of such party.
- 26.2 The party invoking Force Majeure shall:
- 26.2.1 notify the other party as soon as reasonably possible by facsimile or by electronic mail, of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected party's obligations under this Agreement, and
- 26.2.2 resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists.
- 26.3 The parties hereto shall consult with each other and shall take all reasonable steps to minimize the losses of either party resulting from Force Majeure.

27 Buy Out

- 27.1 If the circumstances set out in Article 15.5, Article 25, or Article 28 arise, or if PHASE 3 is incapable of completing the Project within the Completion Date or such other date as is agreed to by the parties, or if PHASE 3 is in default of the terms of payment contained herein, or if the corporate, technical or financial status of PHASE 3 is so materially altered that it is incapable of meeting its obligations herein, then, upon TCN giving not less than 90 days notice requiring PHASE 3 to sell out to TCN, TCN shall have the right to purchase all PHASE 3's right, title and interest in and to the PHASE 3 Network and thereupon all PHASE 3's obligations hereunder shall cease.
- 27.2 In the event of a buy out by TCN pursuant to Article 27.1 above, the provisions of Articles 23.3 and 23.4 shall apply thereto.
- 27.3 Subject to the provisions of Article 23.4, the purchase price payable by TCN in the event of a buy out pursuant to Article 23.1 shall be such sums determined by an independent accountant, jointly appointed by the parties, taking into account the costs incurred by PHASE 3 in building the network, including the cost of funds, revenue accruing to

PHASE 3 during the period of its operation of the network , and any sums of money owed by PHASE 3 to TCN, which shall be discounted from the determined buy out price.

- 27.4 If the provision of Article 27.1 applies prior to the Effective Date, the purchase price payable shall be the aggregate of all costs, expenses and liabilities incurred by PHASE 3 in connection with the Project as estimated by an independent accountant jointly appointed by both parties, provided that any existing debts or other liabilities owed to TCN by PHASE 3 as at the date of the buy out shall be discounted from the purchase price.
- 27.5 Completion of a buy out pursuant to Article 27.1 shall take place on the date of the expiry of the notice specified therein at which time TCN shall pay to PHASE 3 the purchase price calculated in accordance with Article 27.3 or, as the case may be, Article 27.4 and PHASE 3 shall warrant that following the buy out, the PHASE 3 Network shall be free from any lien or encumbrance created by PHASE 3.
- 27.6 In the event that the provisions of Article 27.1 apply due to force majeure then there shall be deducted from the sum payable pursuant to Article 27.4 an amount equal to the value, if any, of any insurance proceeds received by PHASE 3 in respect of the event of force majeure.

28 Change in Circumstances

In the event that as a result of any laws or regulations of Nigeria, or any agency or other body under the control of the Government of Nigeria or any State or Municipal authority thereof, coming into effect after the date hereof, or as a result of any such laws or regulations (including any official interpretation thereof which PHASE 3 has relied upon in entering this Agreement) in force at the date hereof being amended, modified or repealed , the interest of PHASE 3 in the Project or PHASE 3's reasonable expectation of economic returns on its investment is materially reduced, prejudiced or otherwise adversely affected then the parties hereto shall meet and agree to amendments to this Agreement, with a view to easing the burden of the change in circumstance on PHASE 3, and if after 90 days, no such agreement has been reached, the provisions of Article 27.1 shall apply.

29 Confidentiality

- 29.1 If either party acquires confidential information of the other, in the course of the performance of this agreement, such receiving party shall maintain the confidentiality of the disclosing party's Confidential Information, shall use such Confidential information only for the purpose for which it is furnished, and shall not reproduce or copy it in whole or in part, except for use as is authorized in this agreement.

Confidential Information shall mean all information of the disclosing party which it treats as confidential or proprietary. Confidential information shall not include information which is or hereafter becomes generally available to others without restriction or which is obtained by the receiving party without violating the disclosing party's right under Article 29 or any other obligation of confidentiality. The terms and conditions of this Agreement shall constitute Confidential Information.

29.2 With respect to all Confidential Information, the parties' rights and obligations under this Article shall remain in full force and effect following the termination of this Agreement.

29.3 All materials and records which constitute Confidential Information, other than service orders and copies of this Agreement, shall be and remain the property of, and belong exclusively to, the disclosing party, and the receiving party agrees either to surrender possession of and turn over or to destroy all such confidential Information which it may possess or control upon request of the disclosing party or upon the termination of this Agreement. PROVIDED THAT all Confidential information relating only to the newly built and/or developed FOC telecommunications infrastructure shall upon transfer of ownership to TCN pursuant to Articles 23 and 27 of this Agreement be deemed to belong exclusively to TCN.

29.4 The parties acknowledge and agree that, in the event of a breach or threatened breach by any party of any aspect of this Article 29, the other party will have no adequate remedy in money or damages and, shall be entitled to an injunction against such breach. However, no specification in this Section of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach of this Article of this Agreement.

29.5 Each party shall be released from its obligations under this Article 29 with respect to information which such party is required to disclose to others pursuant to obligations imposed by law, provided, however, that prior to any such required disclosure, if practicable, such party provides written notice to and consults with the other party.

30 **Dispute Resolution**

30.1 Throughout the term of this Agreement, representatives of the parties hereto, at a senior management level shall meet regularly at quarterly intervals, to discuss the progress of the Project and the operation of the communications network in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

- 30.2 The parties hereto agree that in the event that there is any dispute or difference between them arising out of this Agreement or in the interpretation of any of the provisions hereof they shall endeavour to meet together at senior management level in an effort to resolve such dispute by discussion between them and in the event that a settlement of any such dispute is not reached pursuant to this Sub-Article, then the provisions of Article 31 shall apply.

31 Arbitration

- 31.1 In the event that any dispute between the parties hereto is not resolved in the manner prescribed in Article 30 above, the same shall be referred to arbitration by an arbitral tribunal consisting of three arbitrators: one each nominated by the Parties and the third chosen by the two arbitrators nominated by the Parties. The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004.
- 31.2 The Parties agree that any award of the arbitral tribunal shall be final and binding on them and shall be enforceable in any court of competent jurisdiction.
- 31.3 Notwithstanding any dispute under the Agreement, the Parties shall continue to perform their undisputed obligations under the Agreement without prejudice to any right of termination or suspension in the Agreement.

32 Rules of Interpretation

- 32.1 This Agreement constitutes the entire understanding between the parties regarding the Project and supersedes all previous written and oral representations, agreements or arrangements regarding the Project.
- 32.2 Any amendment, addition or variation to this Agreement shall be valid and binding only if in writing and only if signed by the authorized representatives of both parties.
- 32.3 If any part or parts of this Agreement shall be declared invalid by any competent arbitration tribunal or court, the other parts shall remain valid and enforceable.
- 32.4 In this Agreement;
- 32.4.1 references to Articles and Appendices are, unless the context otherwise requires, references to Articles of, and Appendices to this Agreement;

32.4.2 unless the context otherwise requires, references to party and parties are references to party and parties to this Agreement.

32.4.3 Unless otherwise provided herein, whenever a consent or approval is required by one party from the other party, such consent or approval shall not be unnecessarily withheld or delayed;

32.4.4 In carrying out its obligations and duties under this Agreement, each party shall have an implied obligation to act in good faith;

32.4.5 A reference for any period of time to a given number of days means calendar days.

32.4.6 Reference to days, weeks, months and years are references to days, weeks, months and years of the Gregorian calendar;

32.4.7 A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next following Business Day;

32.4.8 The words "include" and "including" shall be construed at all times as being followed by the words "without limitation" unless the context otherwise requires;

32.4.9 References to agreements are to agreements as enumerated and to appendices thereto; and

32.4.10 References to "maintain" and "maintenance" shall be construed at all time as including "repair" and "replacement".

33 **Operative Law**

This Agreement shall be governed by and construed in accordance with Nigerian law.

34 **Jurisdiction**

Subject to Articles 30 and 31 of the Agreement, the parties hereto submit to the exclusive jurisdiction of Nigerian Courts of competent jurisdiction for the hearing and determination of any action or proceeding arising out of or in connection with this Agreement.

35 **Waiver**

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from the breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such

right may be exercised from time to time as may be deemed expedient. All waivers shall be in writing and signed by the party waiving its rights. If any representation, warranty or covenant contained in the Agreement is breached by either Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and not be deemed to waive any other breach under the Agreement.

36 Acknowledgements

36.1 Nothing contained in this Agreement shall have the effect of limiting and/or restricting TCN in any way whatsoever from carrying on its principal undertaking and/or exercising its statutory powers as a transmitter of electric power.

36.2 The Parties hereto acknowledge for the avoidance of doubt, that their relationship as set forth in this Agreement is not, and shall not be construed as a legal partnership.

36.3 PHASE 3 acknowledges that the rights granted to it by TCN pursuant to Article 4 are subject to:-

36.3.1 all public and other rights of way, light, air and other easements or quasi-easements of any kind whatsoever (if any) whether or not continuous, apparent or reasonably necessary in under or over TCN Property as are subsisting at the Effective Date.

36.3.2 any other legal or equitable rights that may have been granted by TCN or its Holding company, or any other predecessor-in-title prior to the Effective Date or which may have accrued in favour of third parties prior to the Effective Date in respect of TCN Property.

36.4 All TCN Property shall remain the property of TCN at all times and PHASE 3 shall not encumber or charge or otherwise deal with any property of TCN in any manner inconsistent with TCN's ownership rights and title.

36.5 Any new equipment and fittings installed by PHASE 3 in the performance of this Agreement, on TCN Property shall remain the moveable property of PHASE 3 during the term of this Agreement.

37 Notices

Any notice, request, consent, waiver or other communication required or permitted hereunder shall be effective only if it is in writing and shall be deemed received by the Party to which it is sent;

- 37.1.1 upon delivery when delivered by hand.
- 37.1.2 Three days after being sent, if sent with all sending expenses pre-paid, by an express courier with a reliable system for tracking delivery;
- 37.1.3 When transmitted, if sent by confirmed facsimile or electronic mail, or
- 37.1.4 Fourteen days after the date sent, if sent by certified or registered mail, postage pre-paid, return receipt requested, addressed as follows:

If to TCN:

If to PHASE 3:

IN WITNESS WHEREOF the Parties hereto have hereunto caused their respective Common Seals to be affixed hereto the day and year first above mentioned.

THE COMMON SEAL of the within named
TCN was affixed hereto;

In the presence of



DIRECTOR

SECRETARY

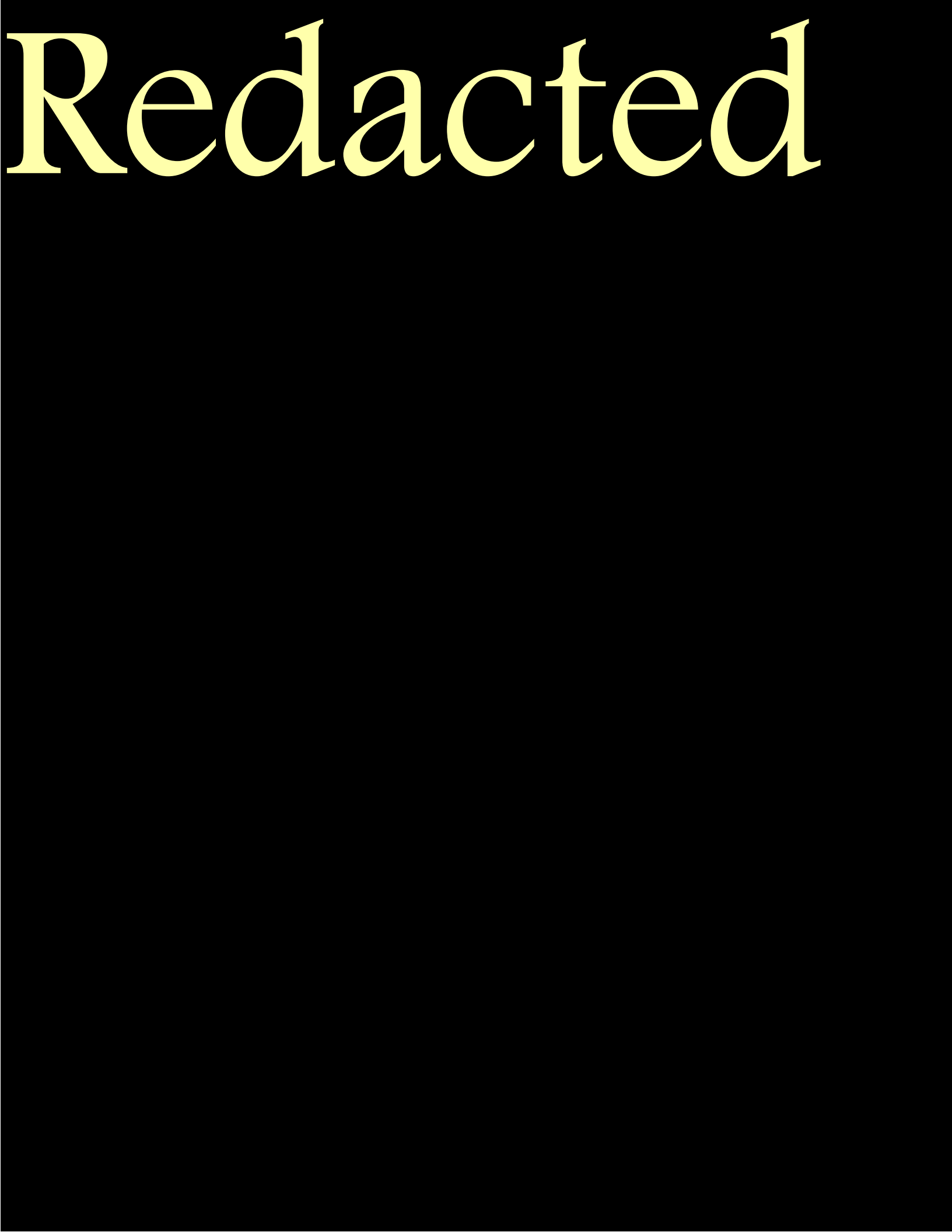
THE COMMON SEAL of the within named
PHASE 3 TELECOM was affixed hereto;

In the presence of

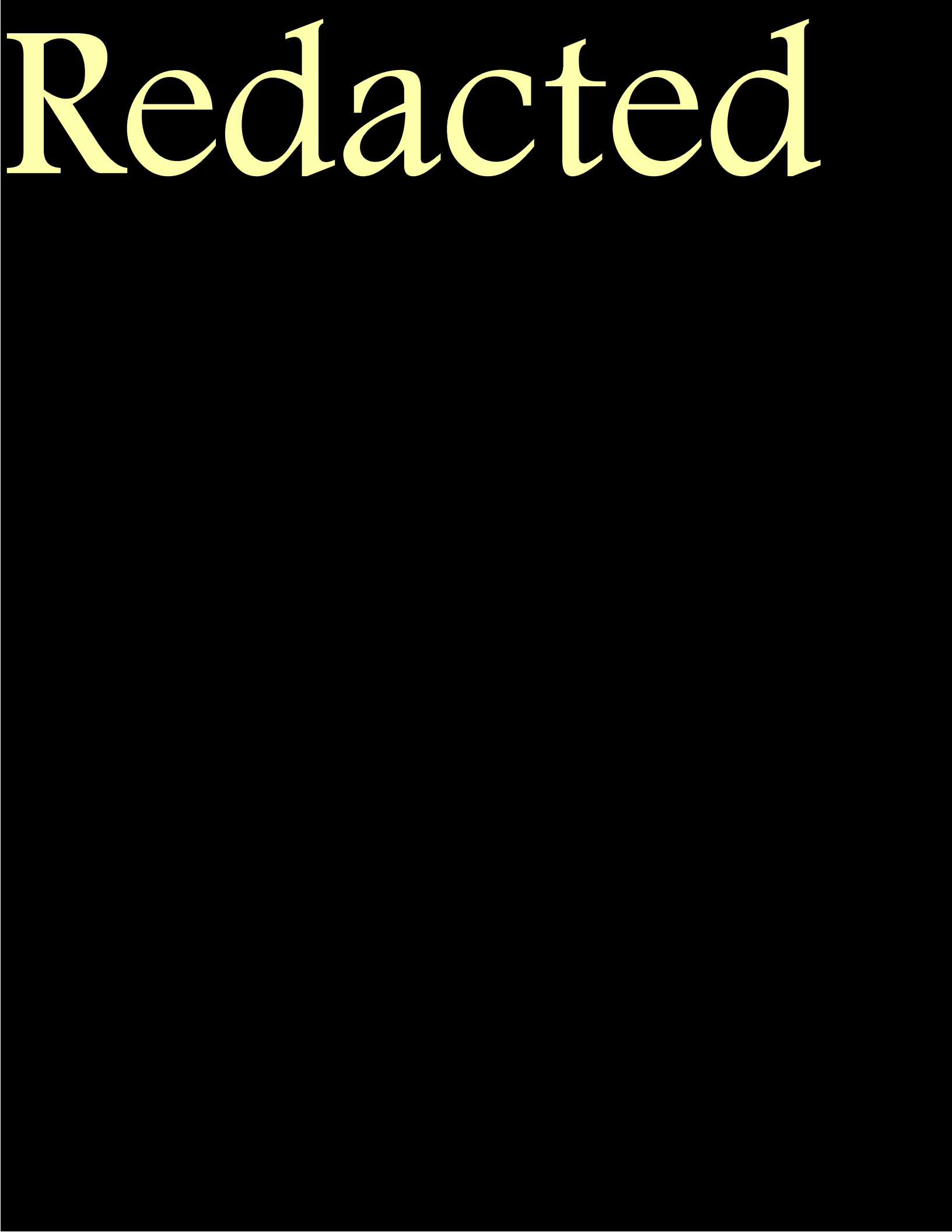


DIRECTOR

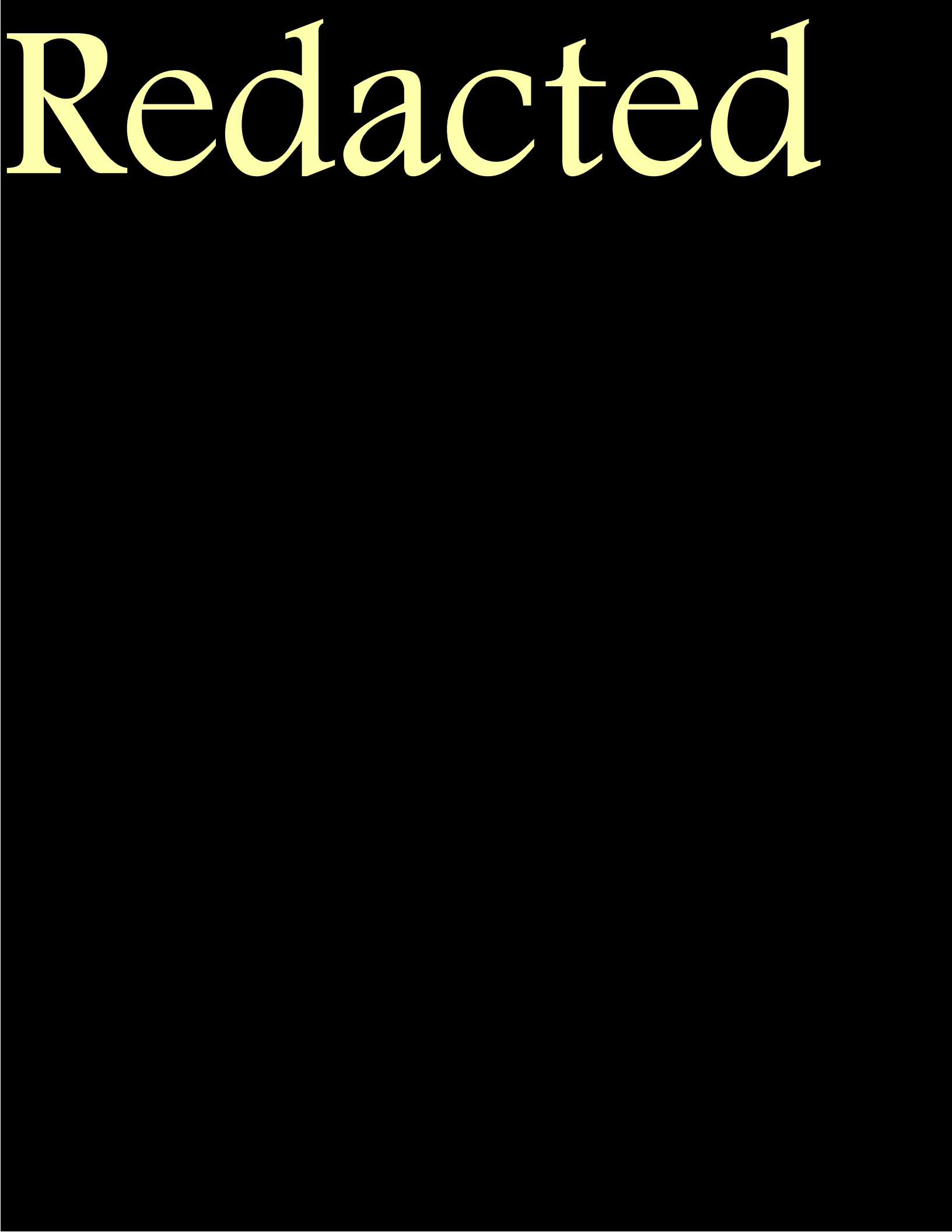
SECRETARY



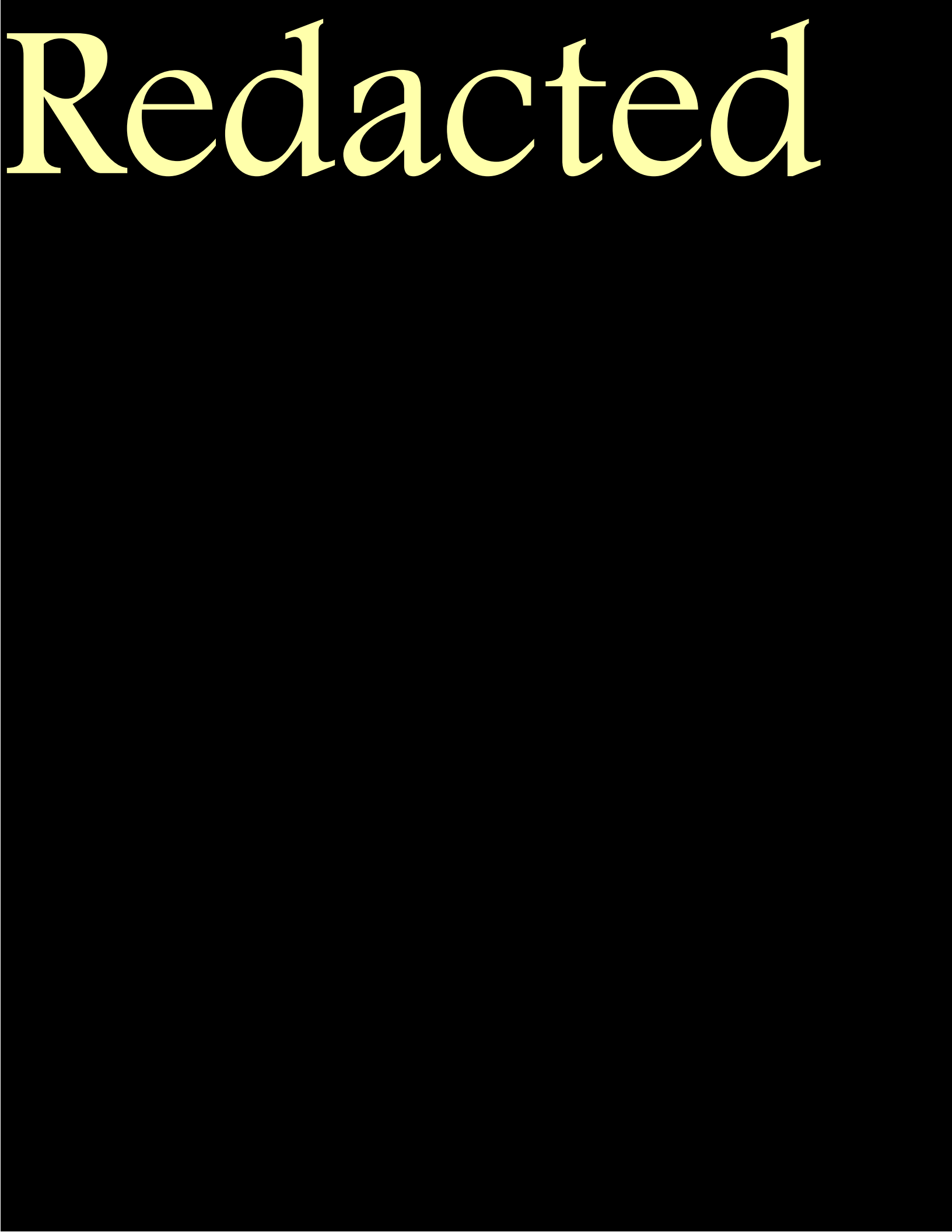
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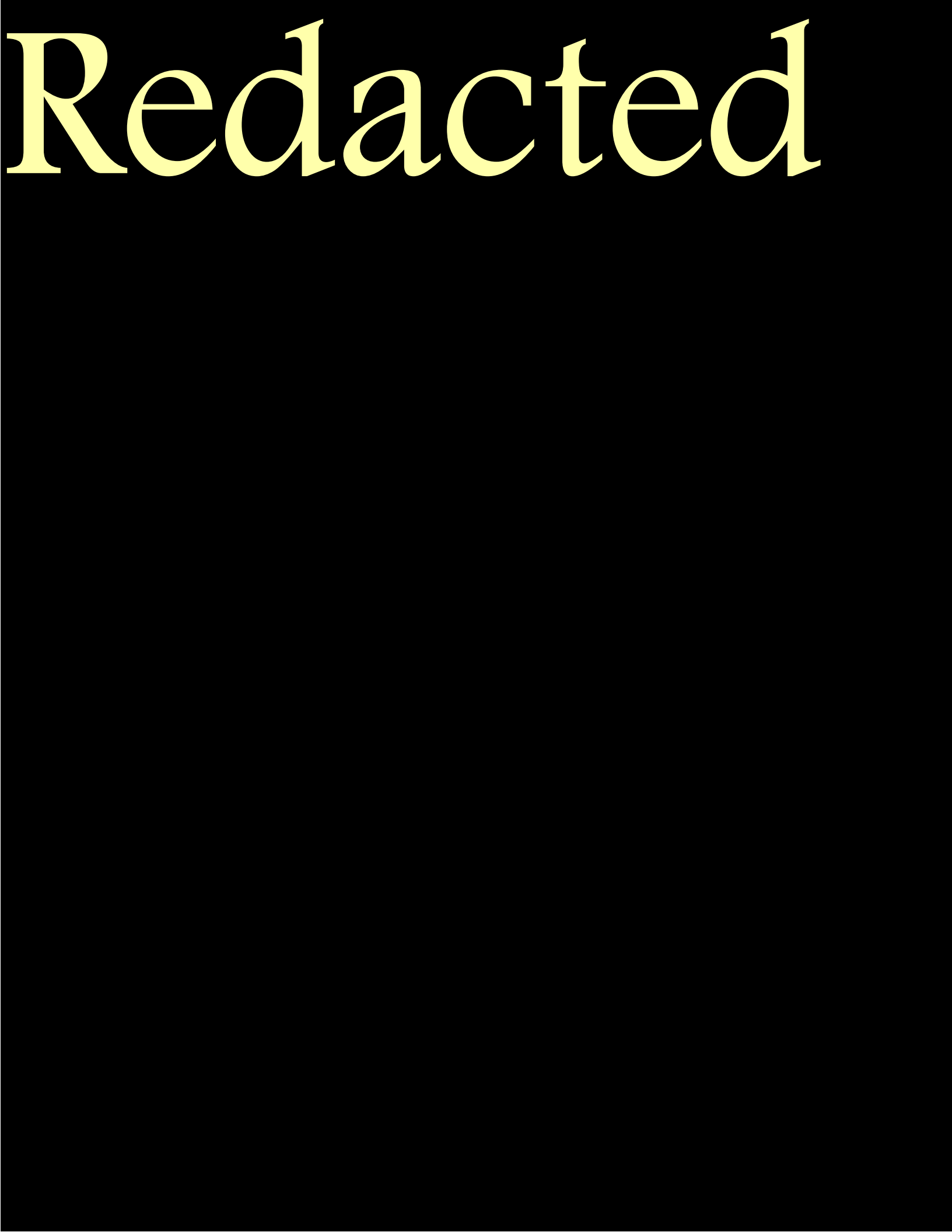
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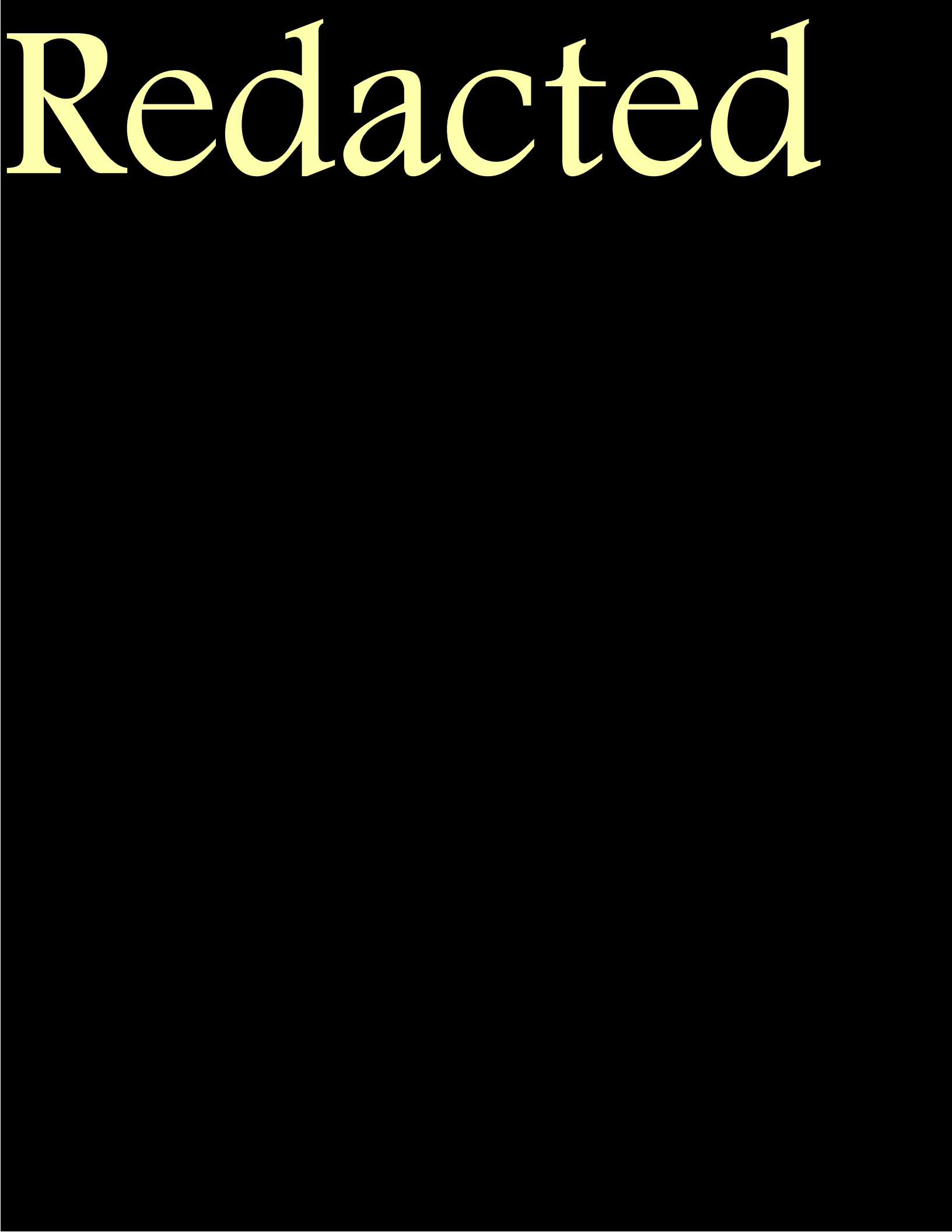
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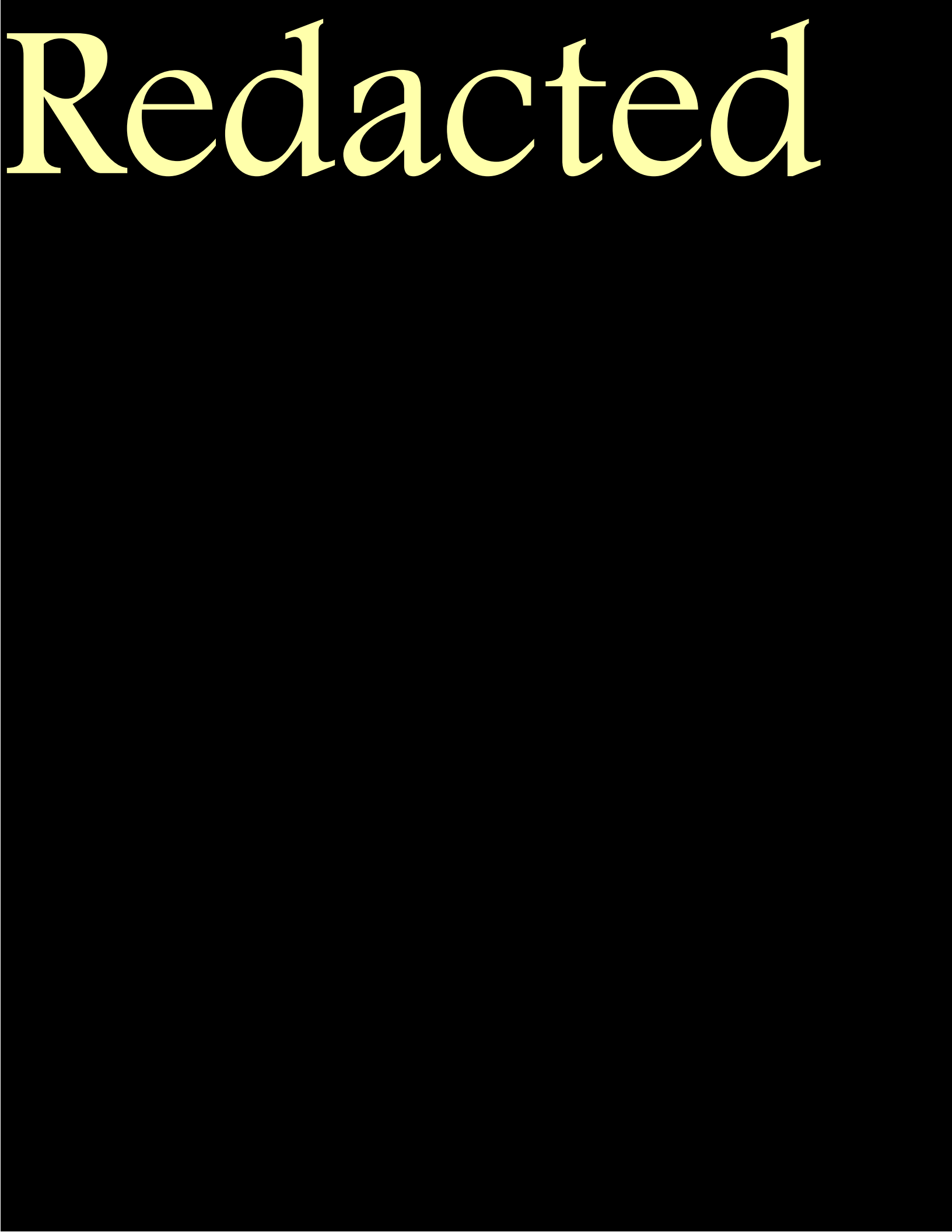
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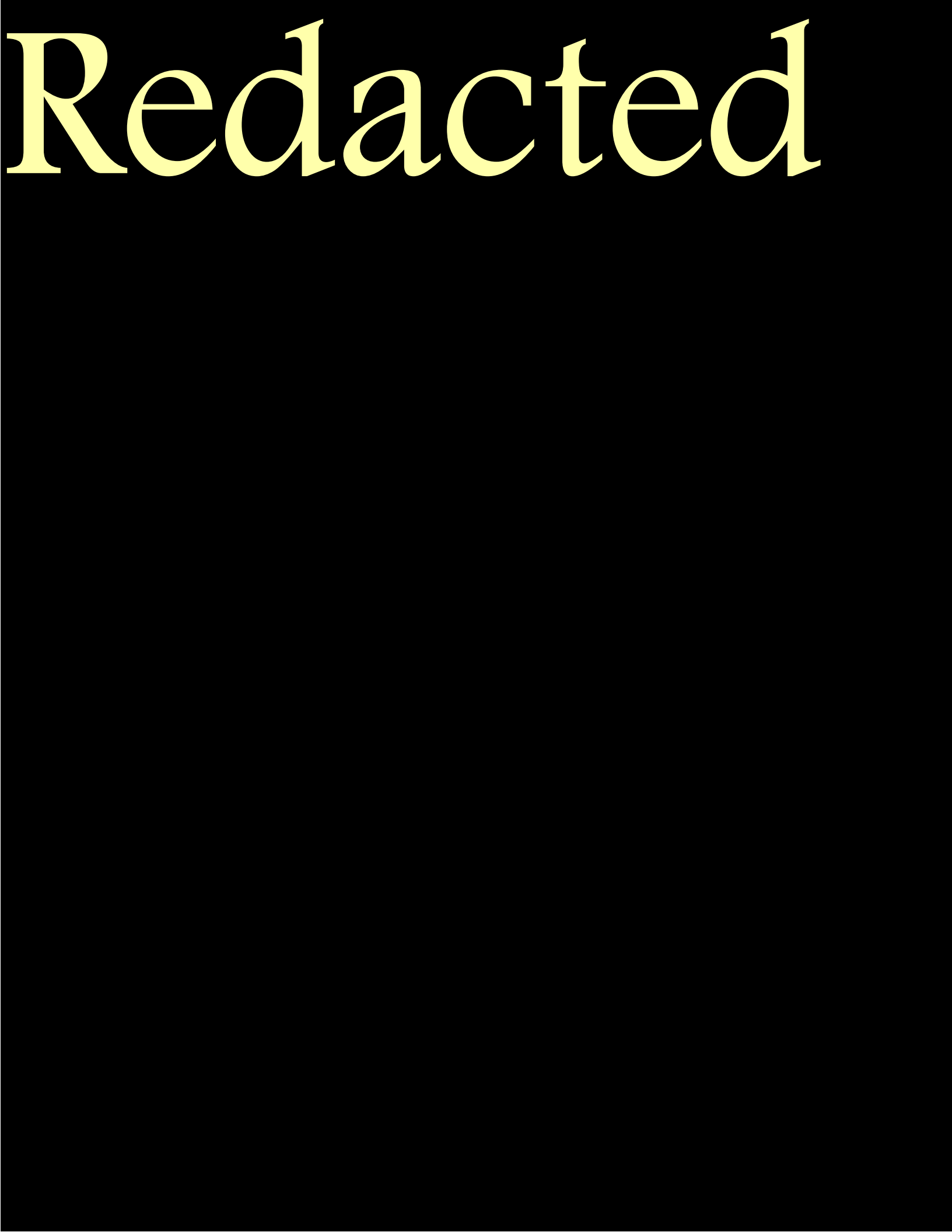
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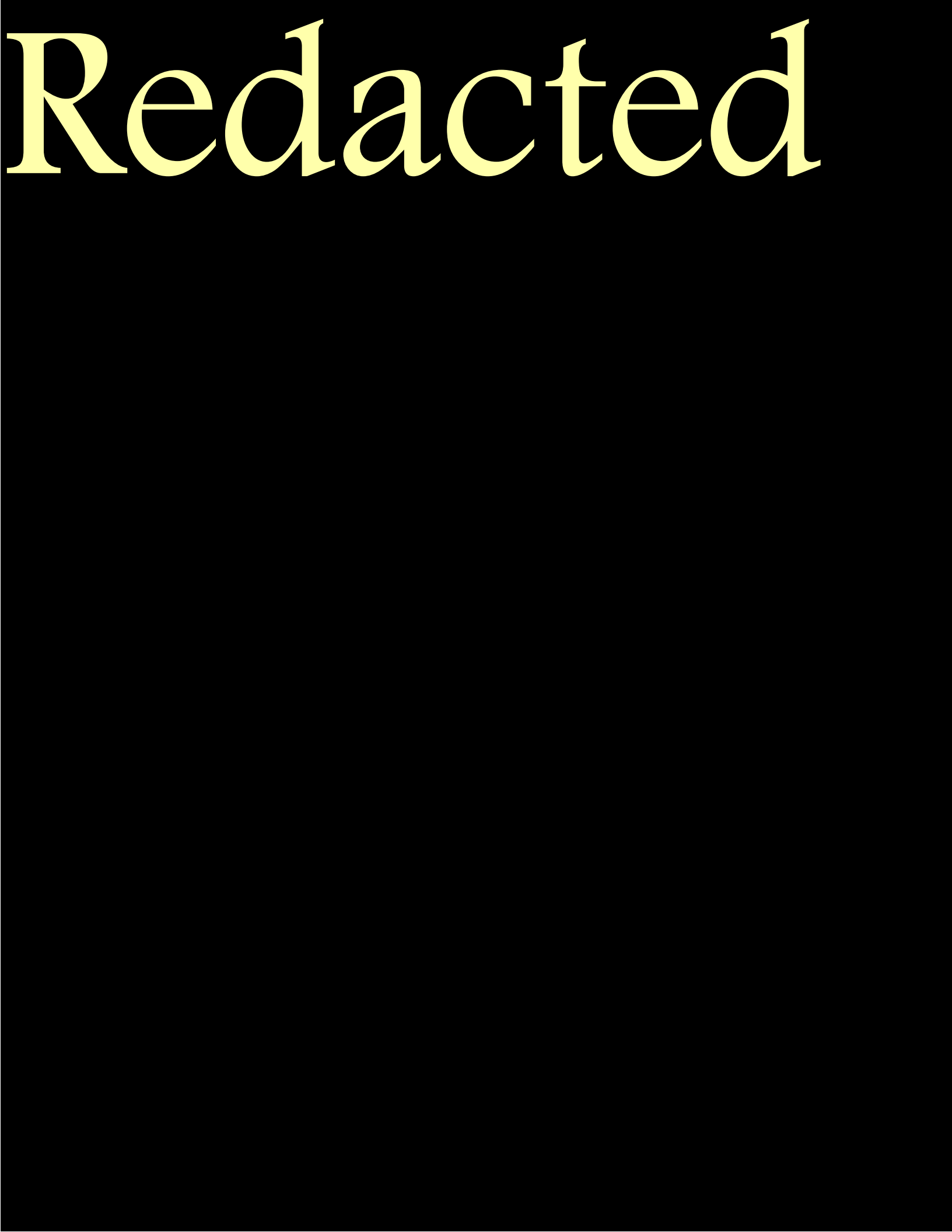
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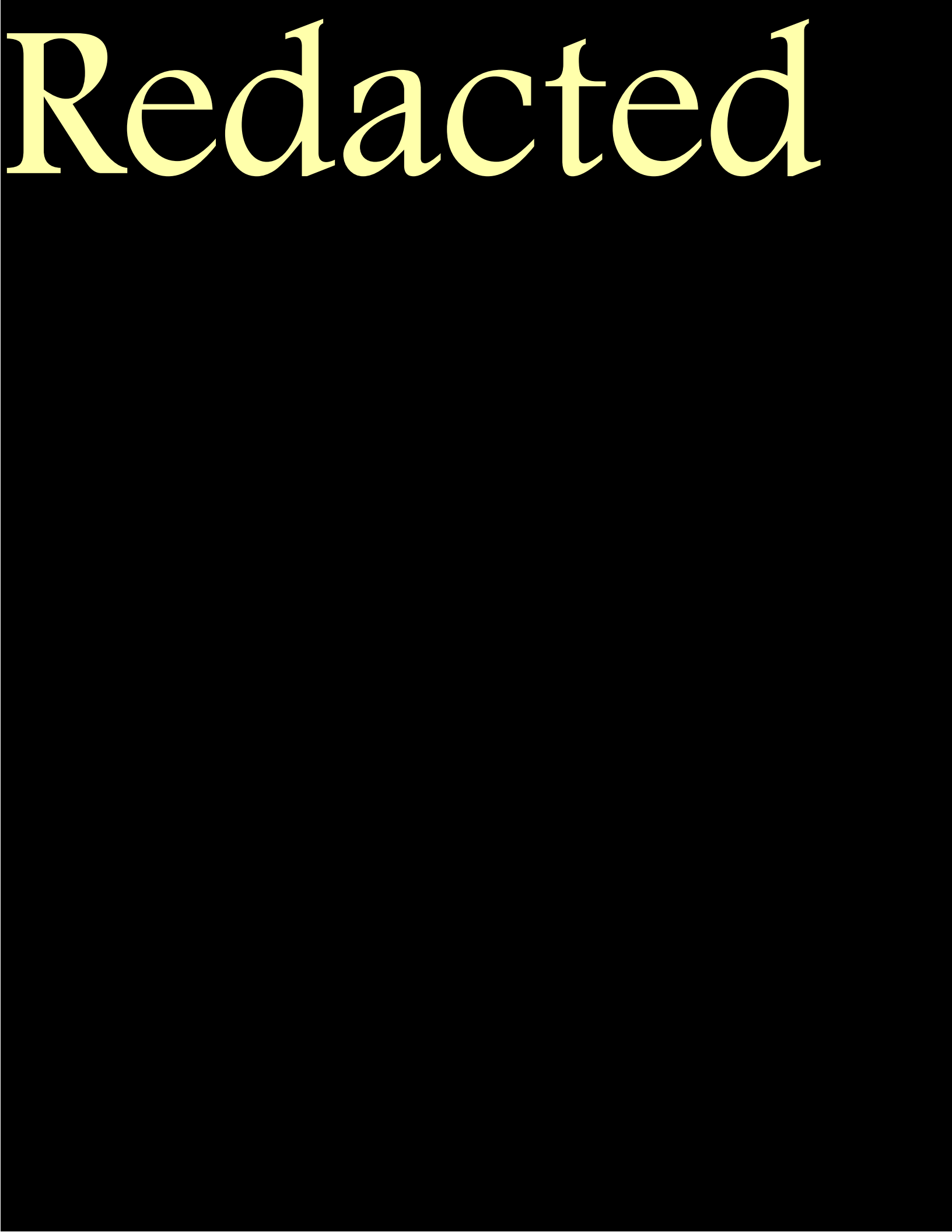
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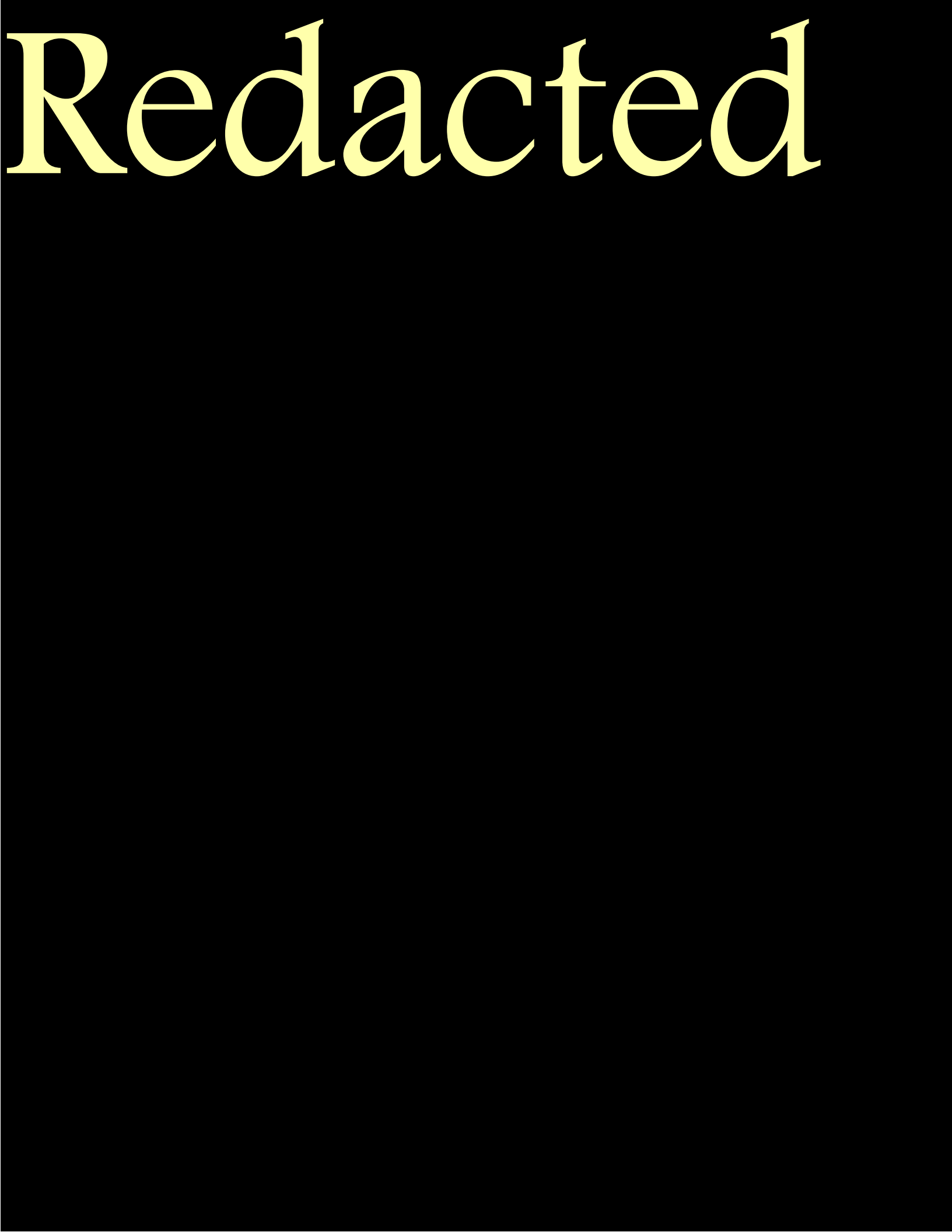
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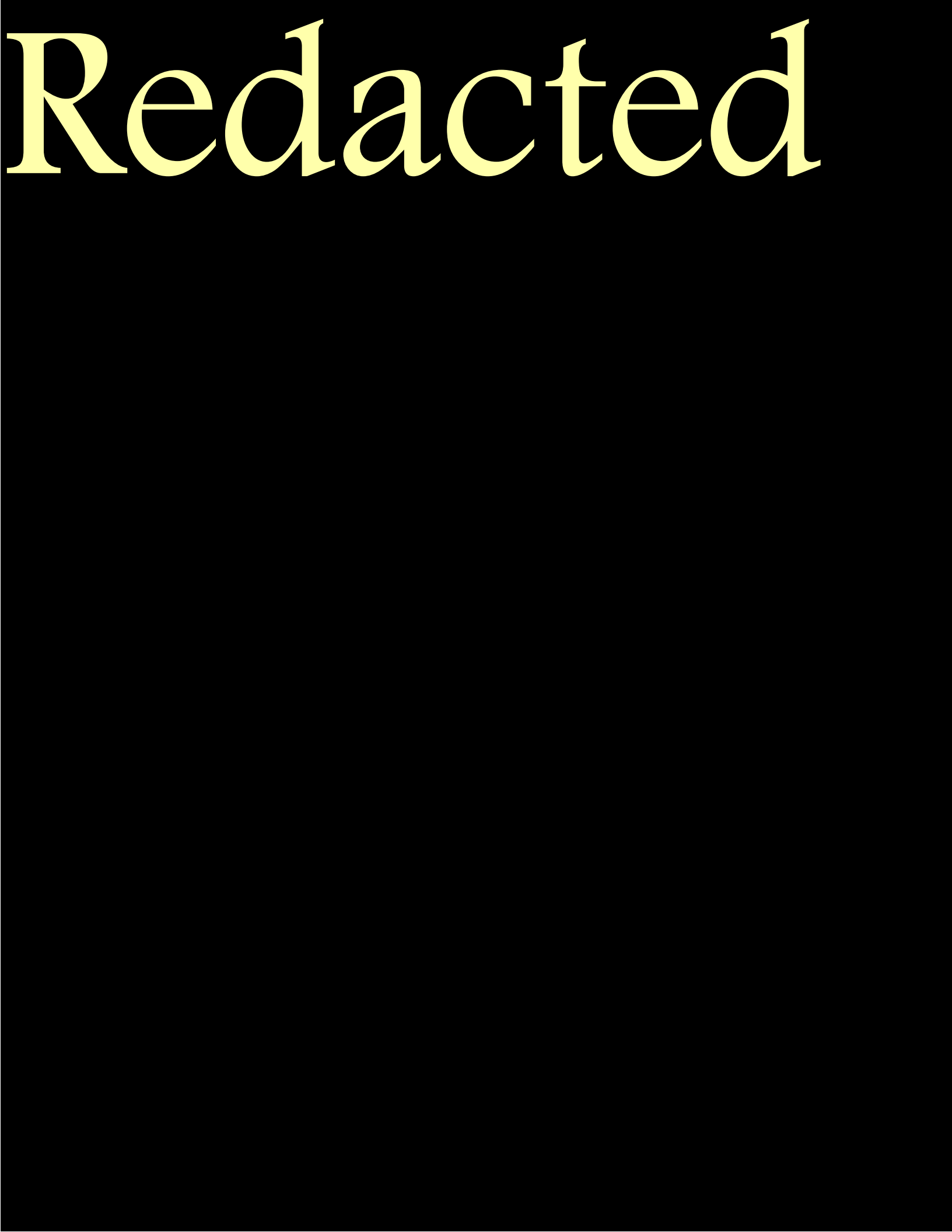
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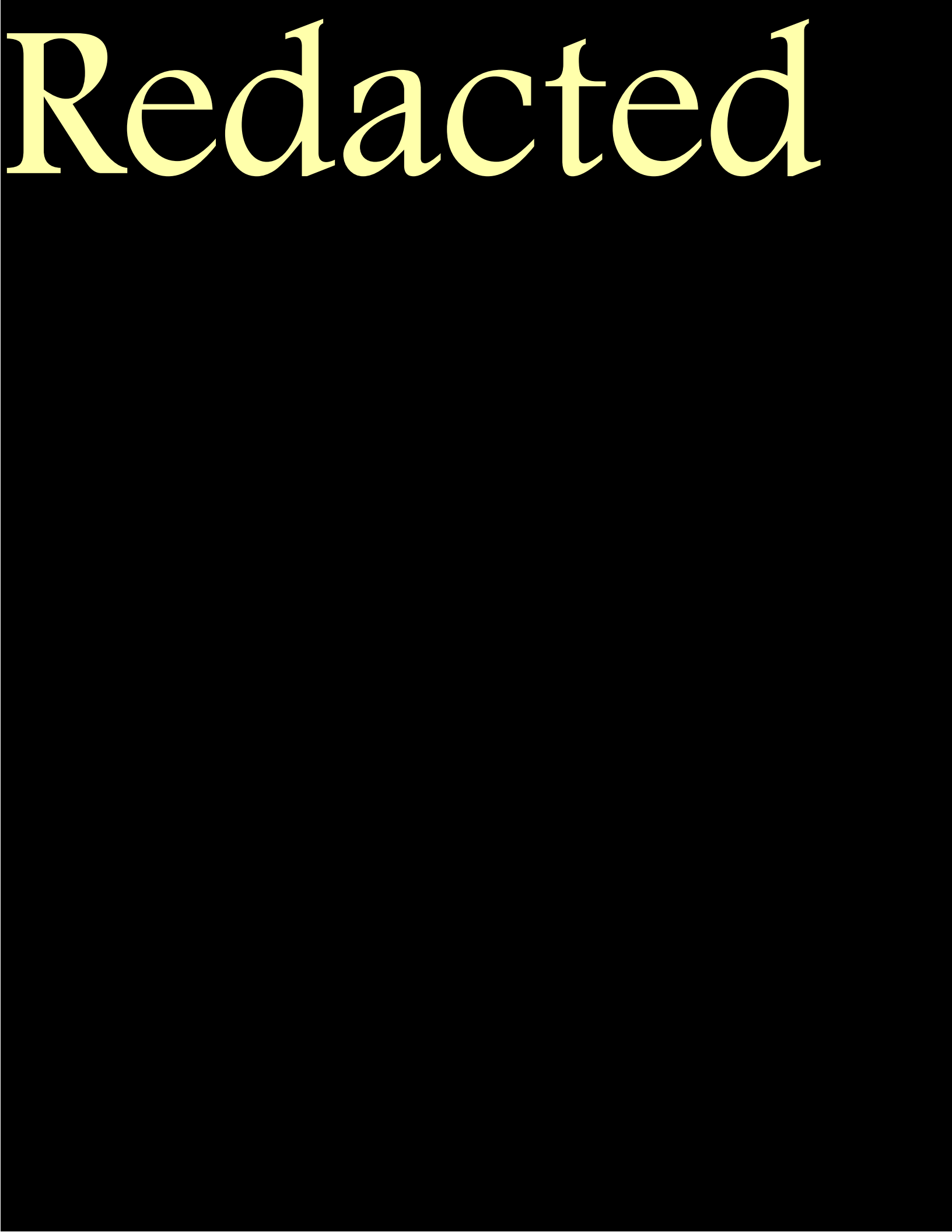
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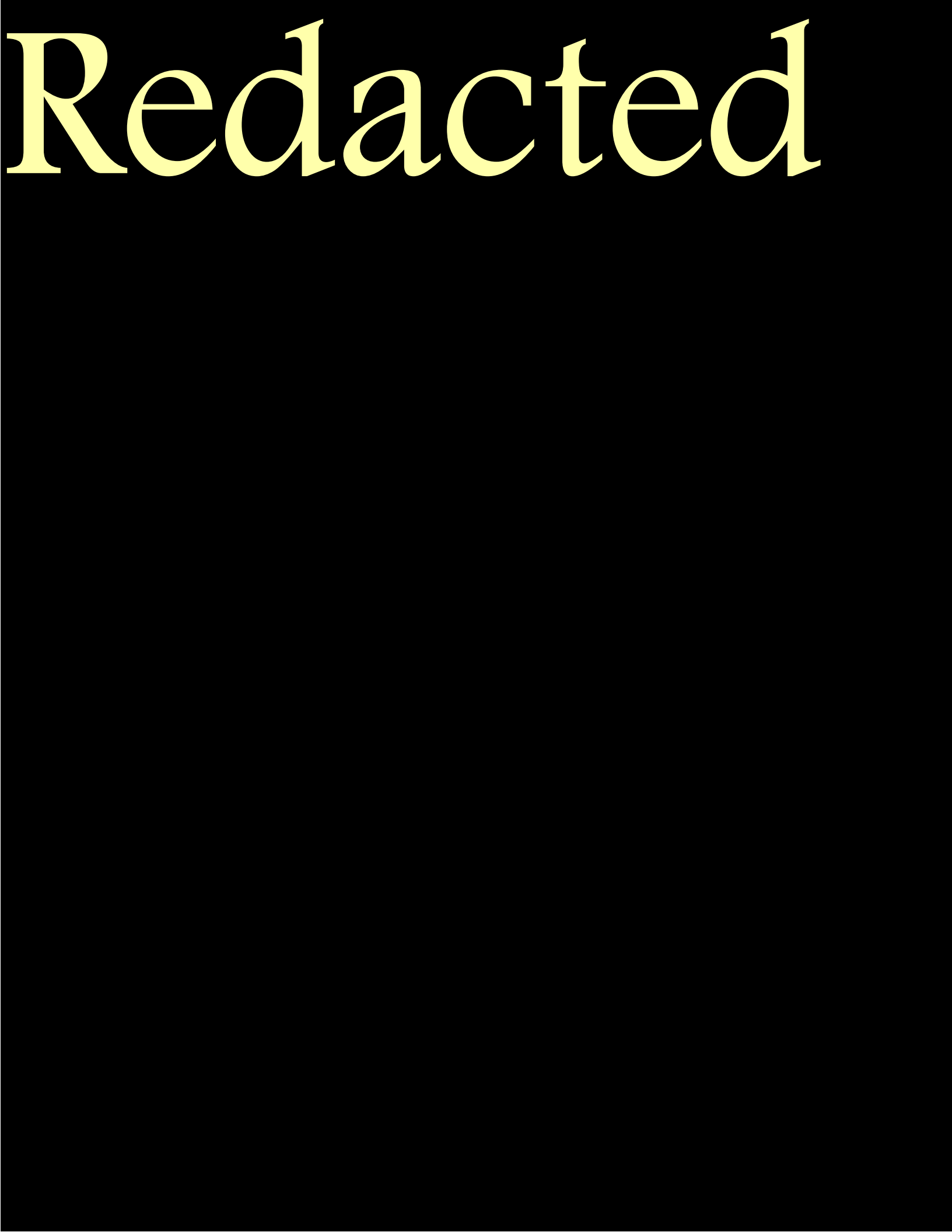
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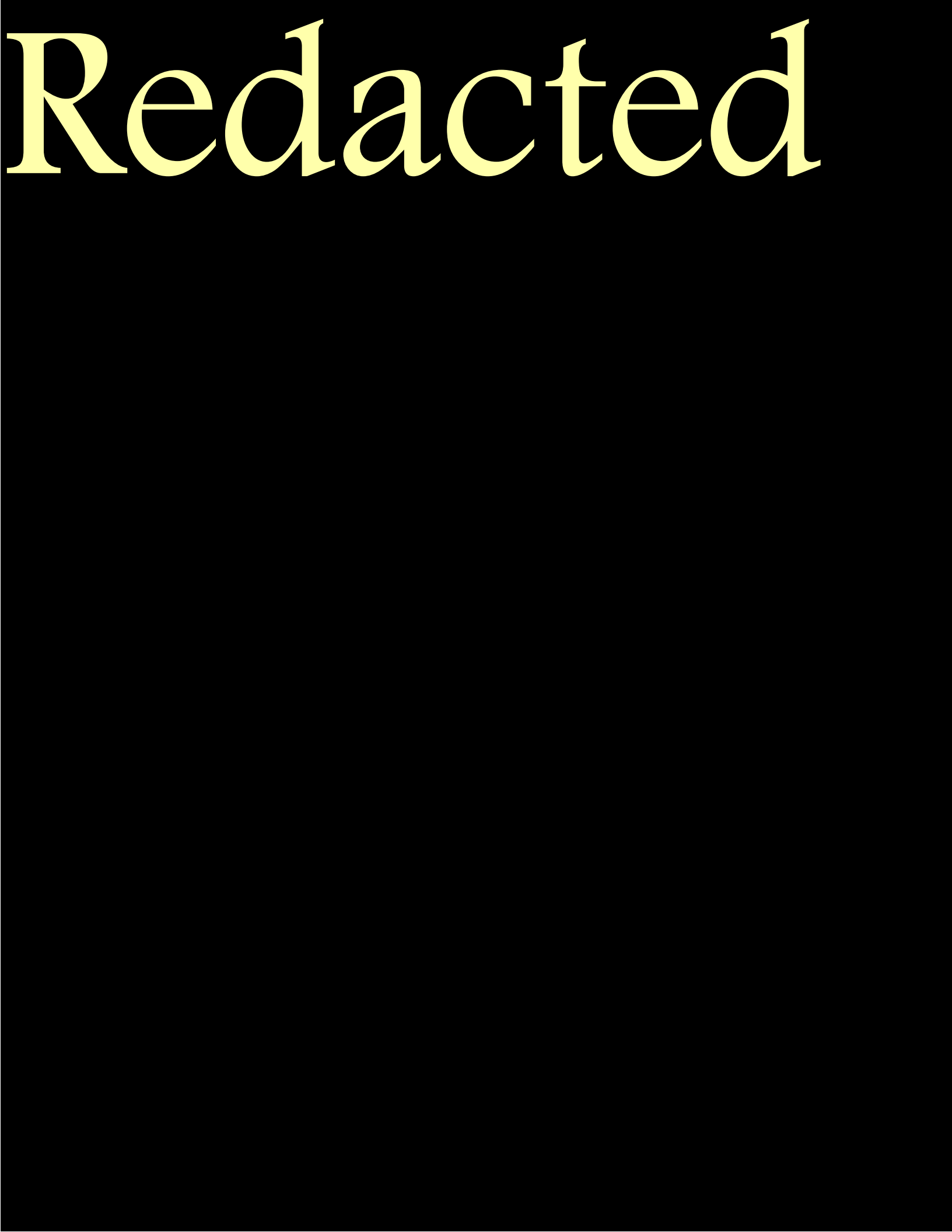
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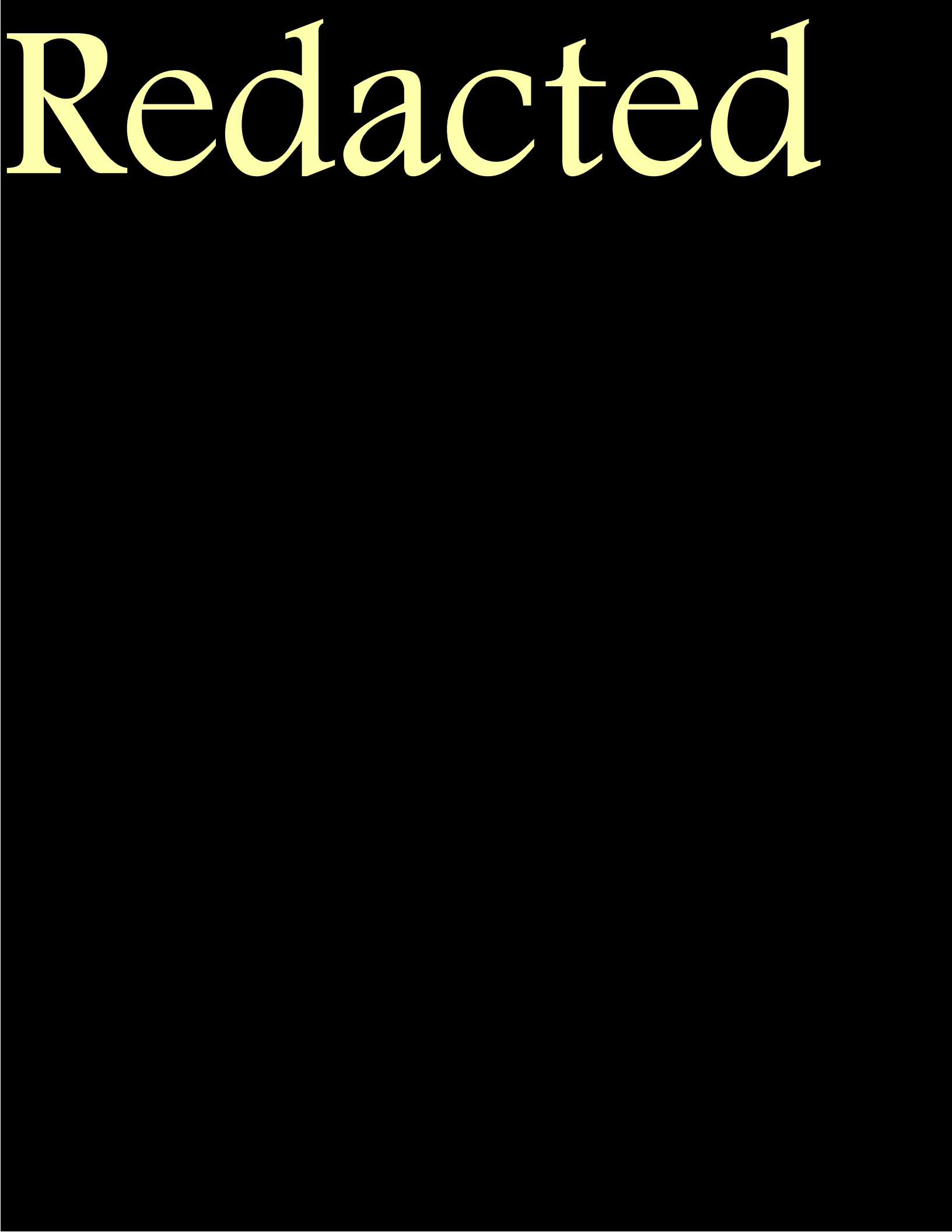
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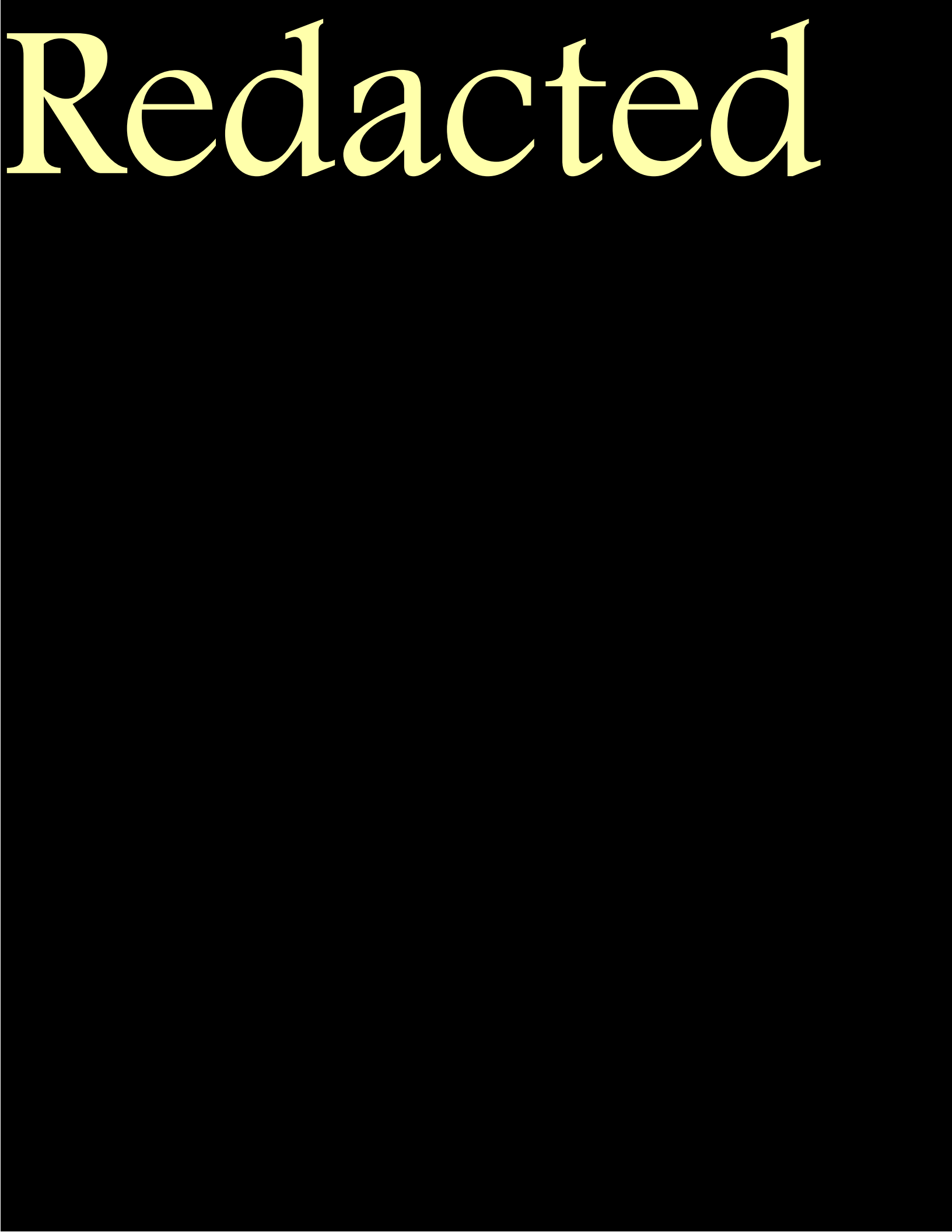
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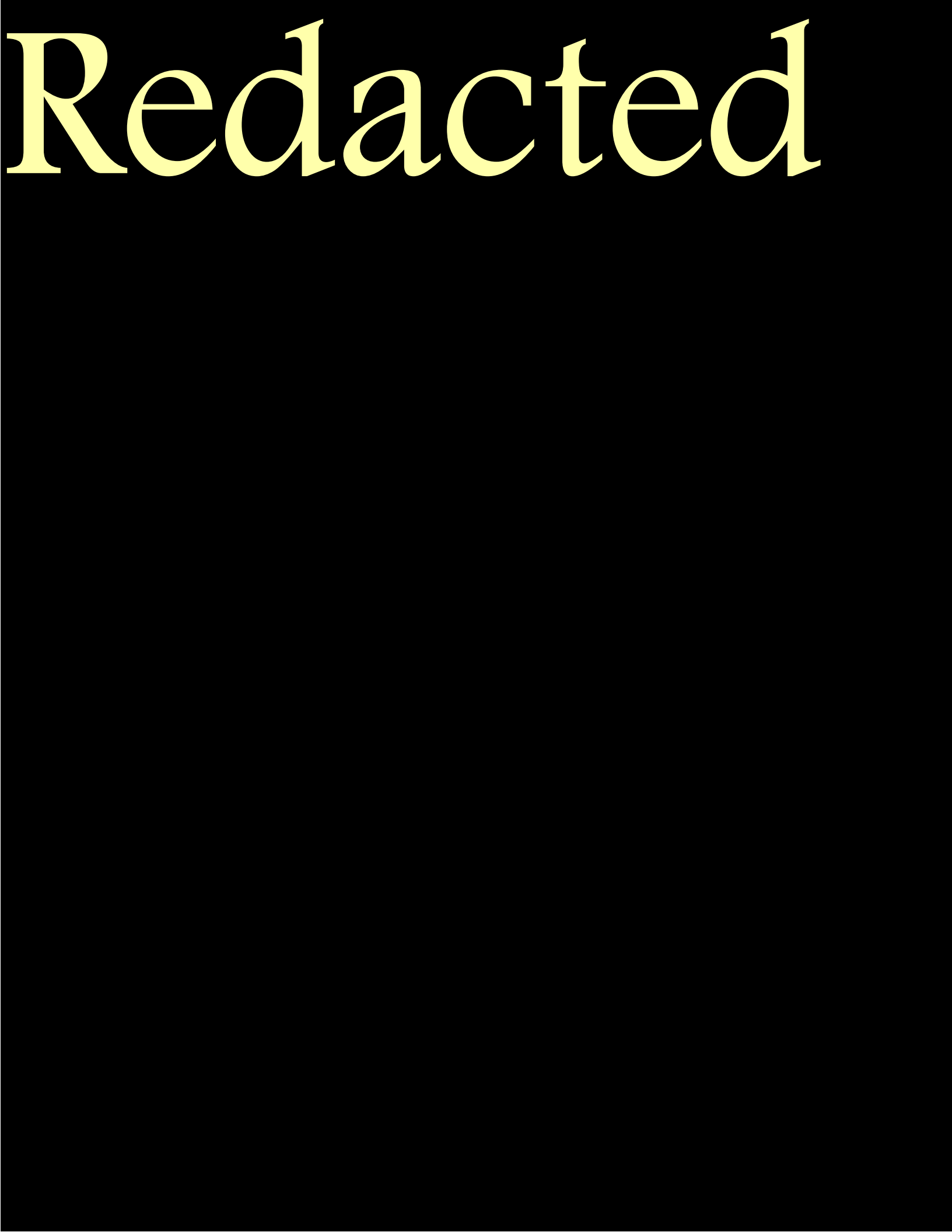
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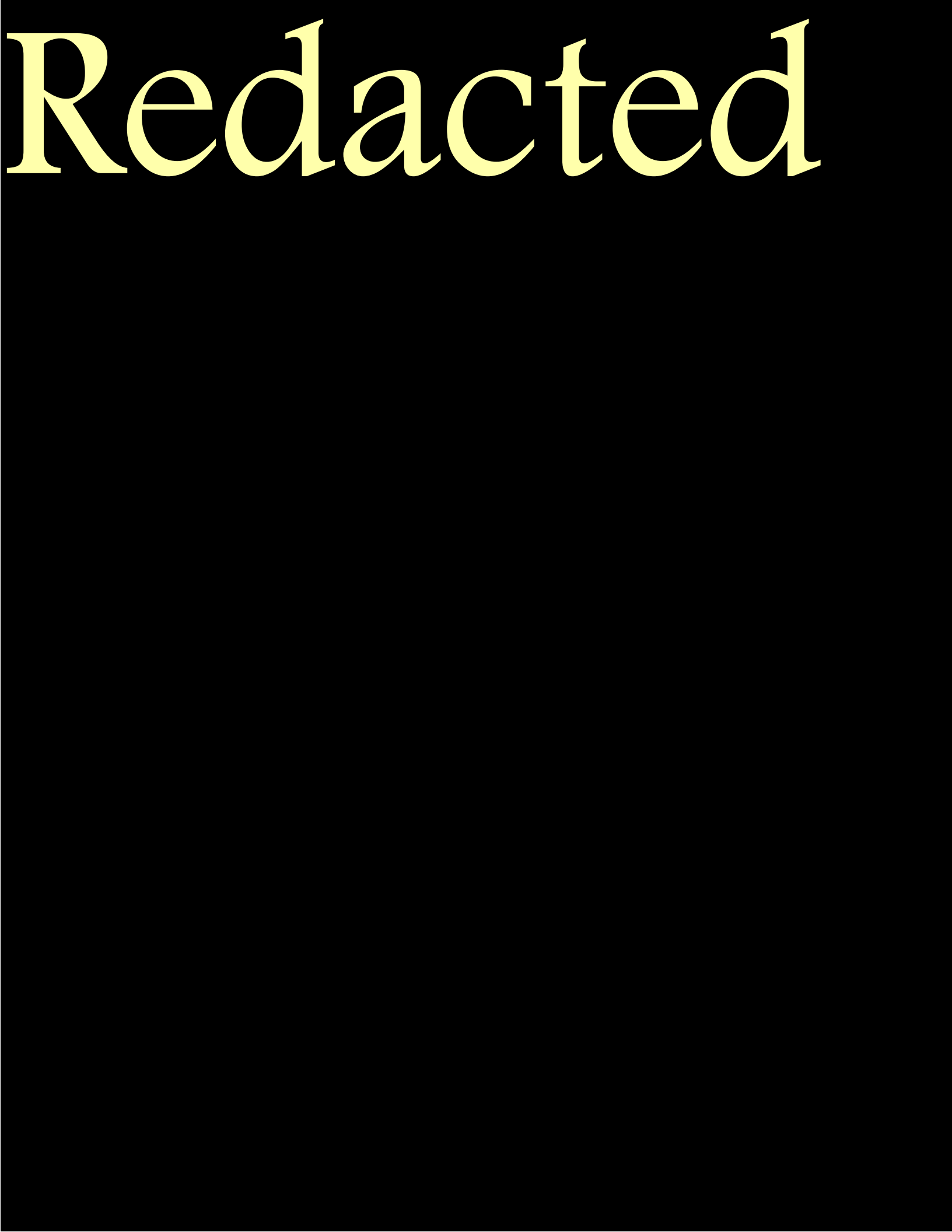
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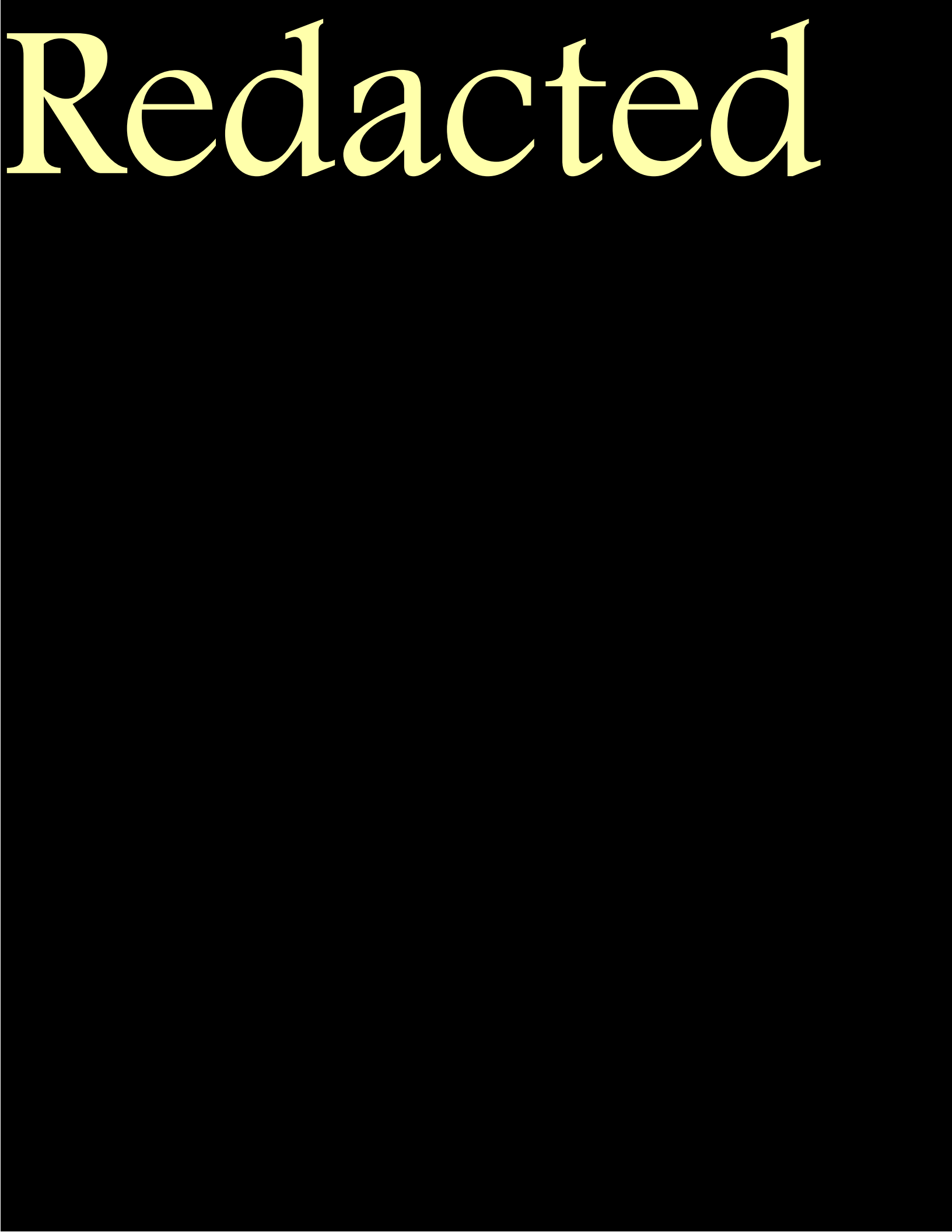
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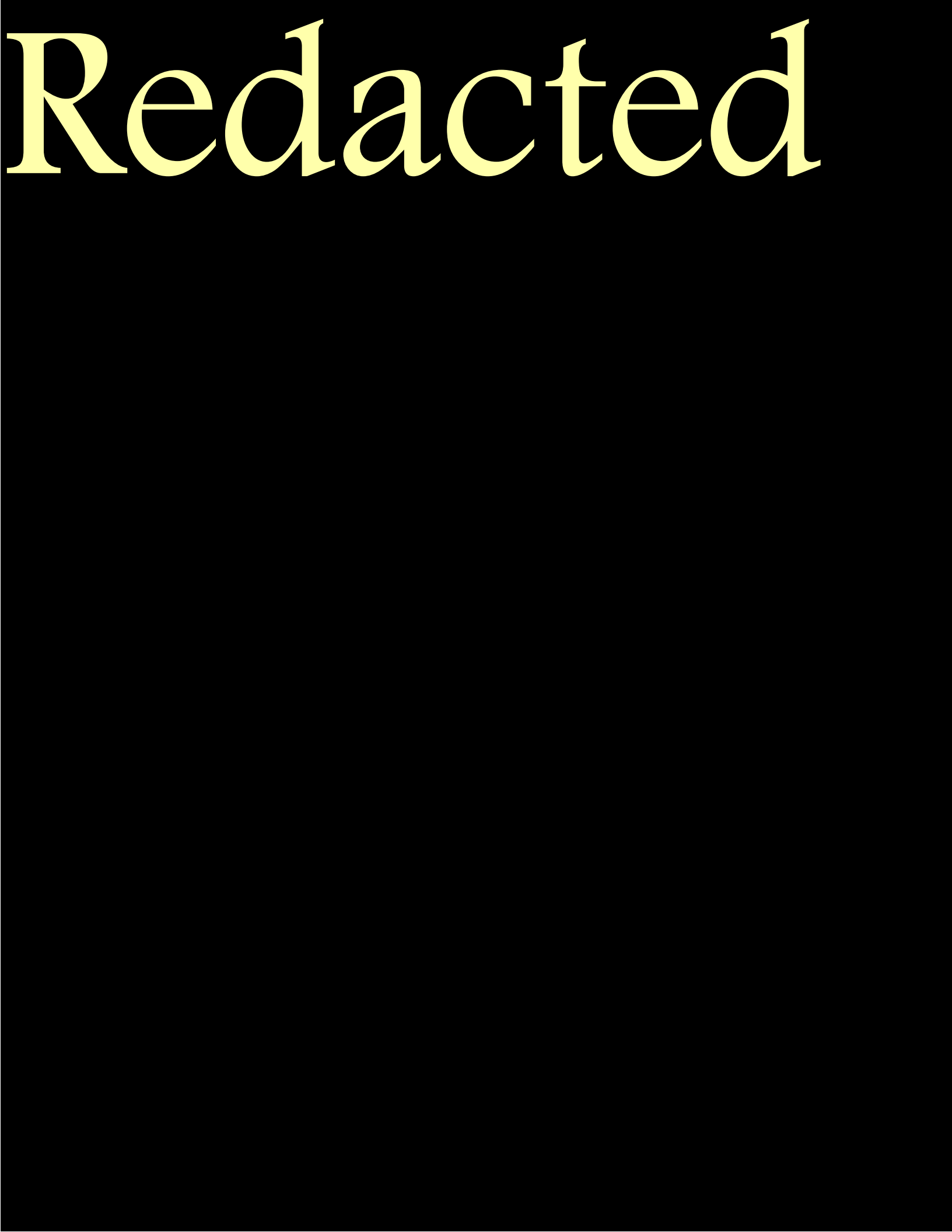
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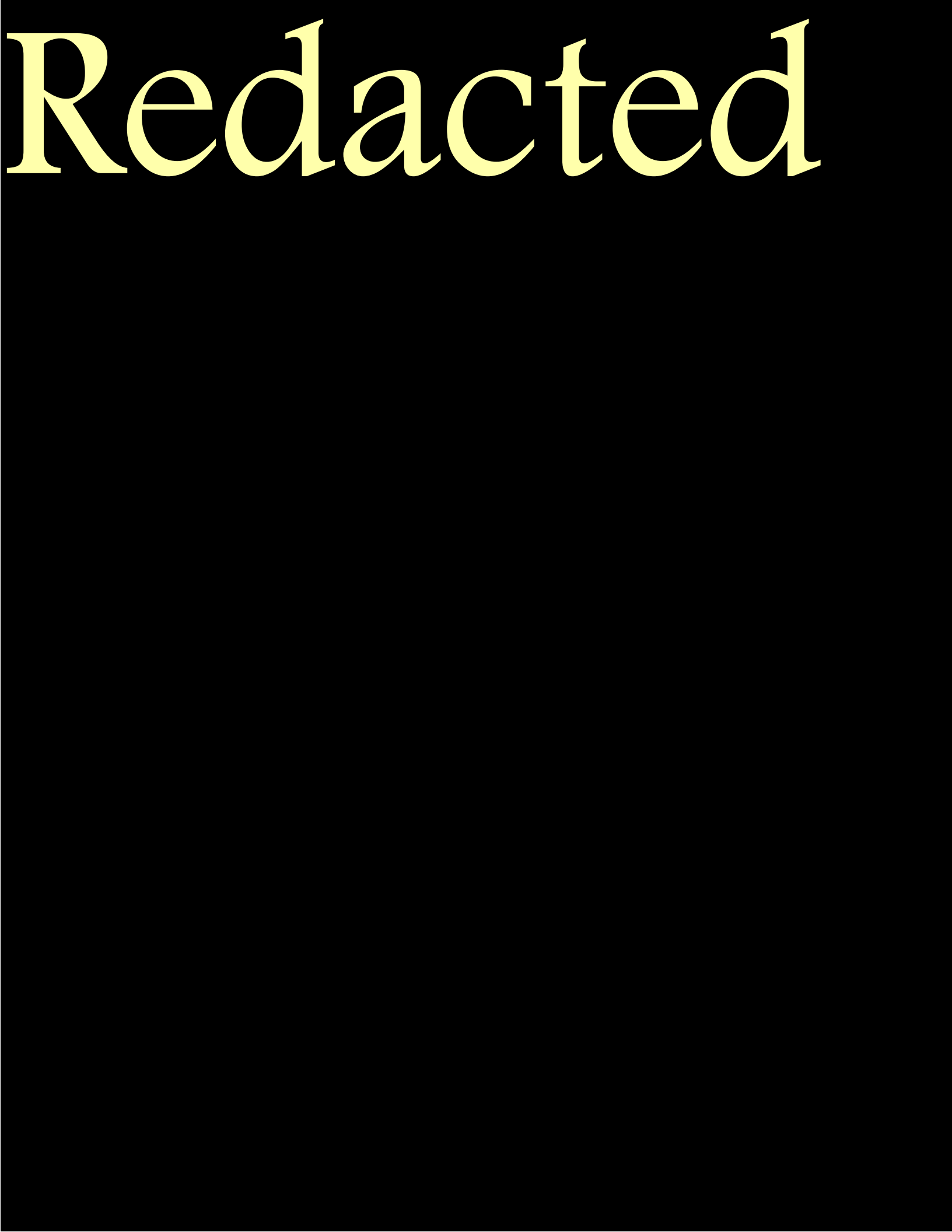
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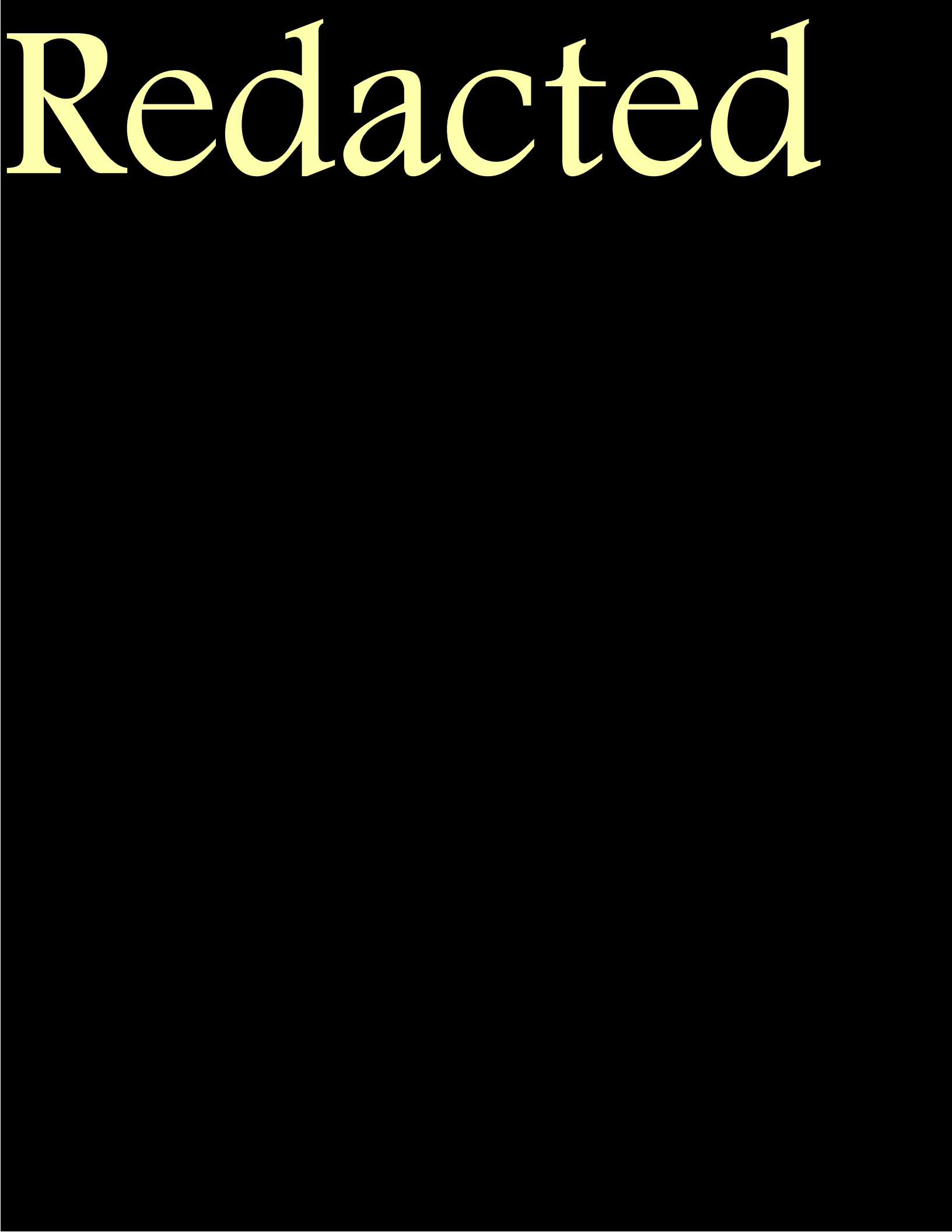
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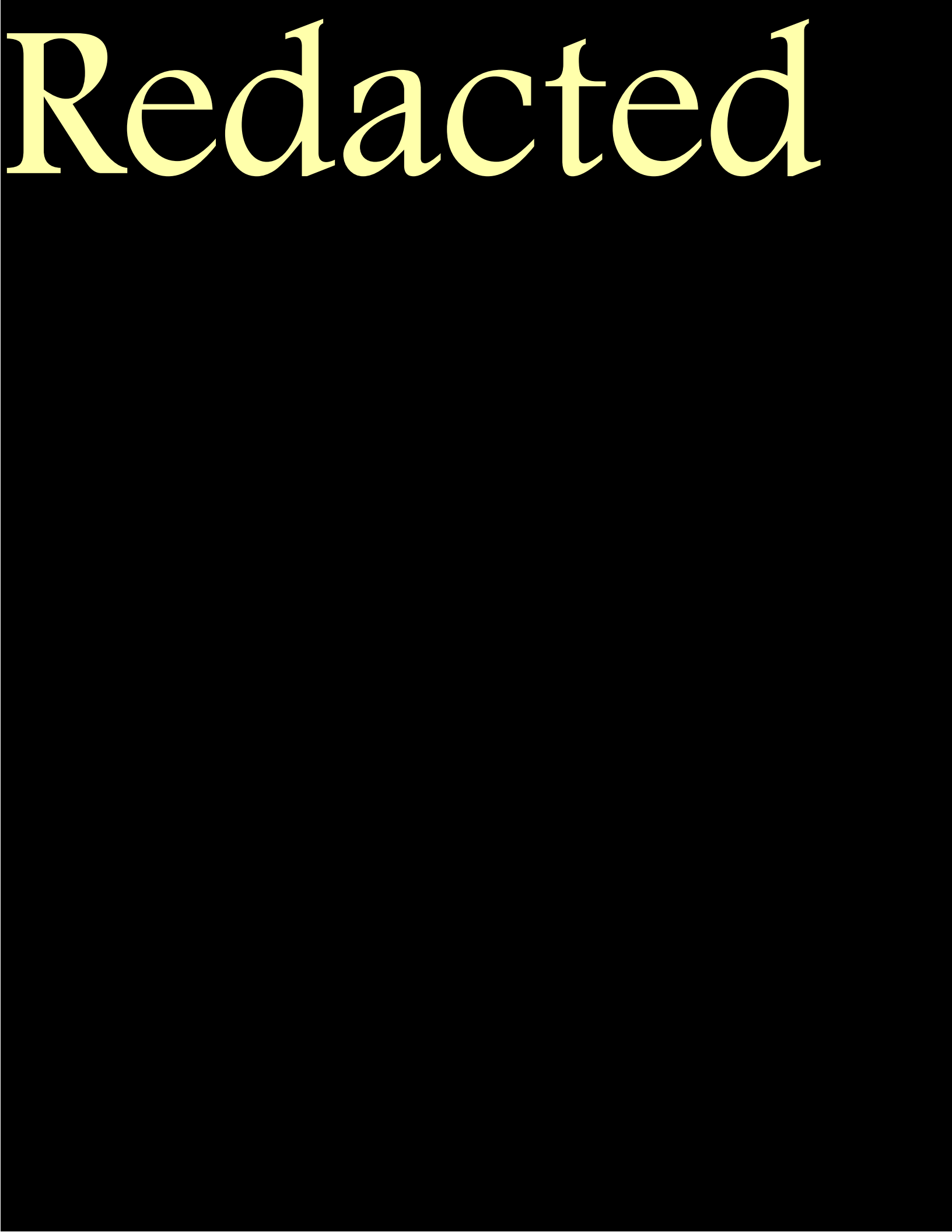
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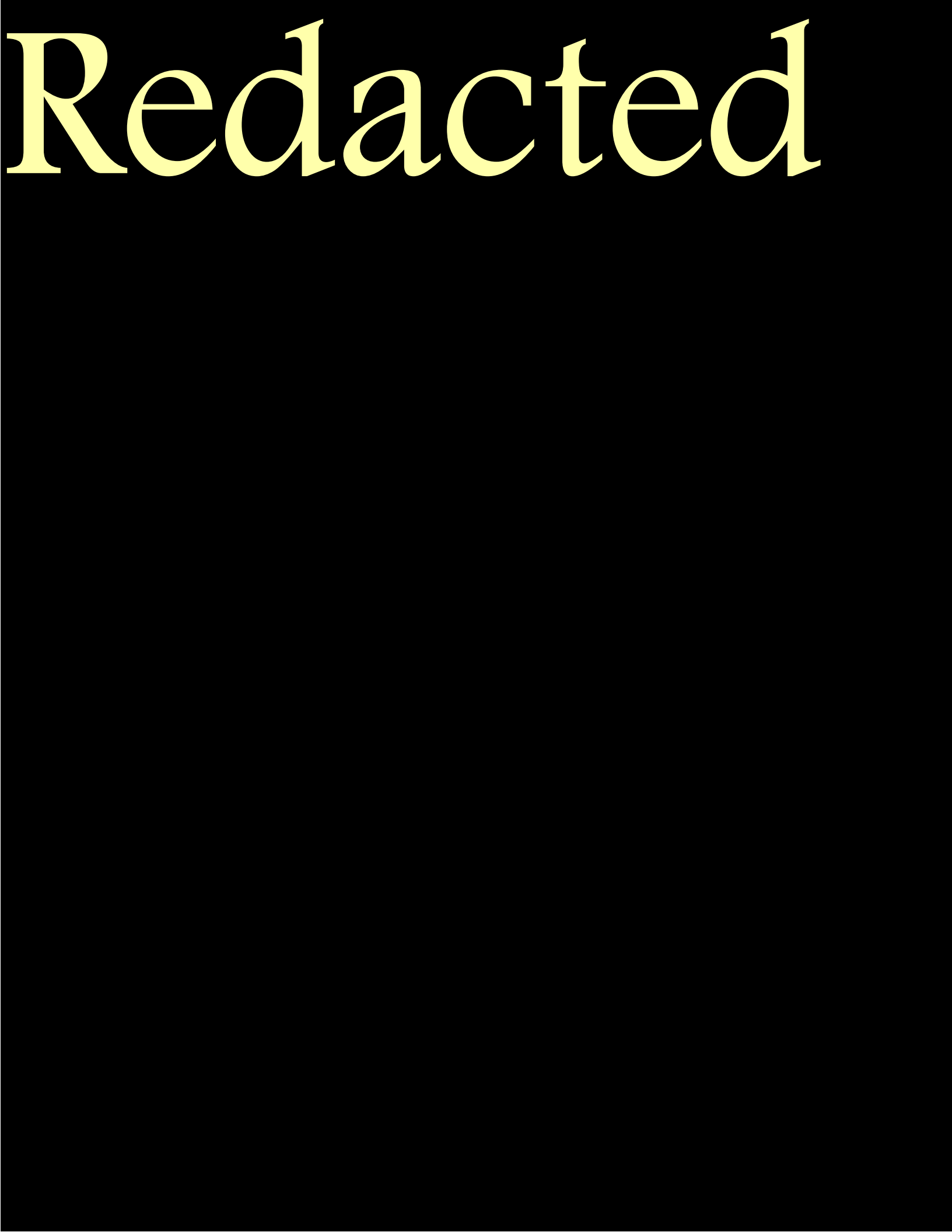
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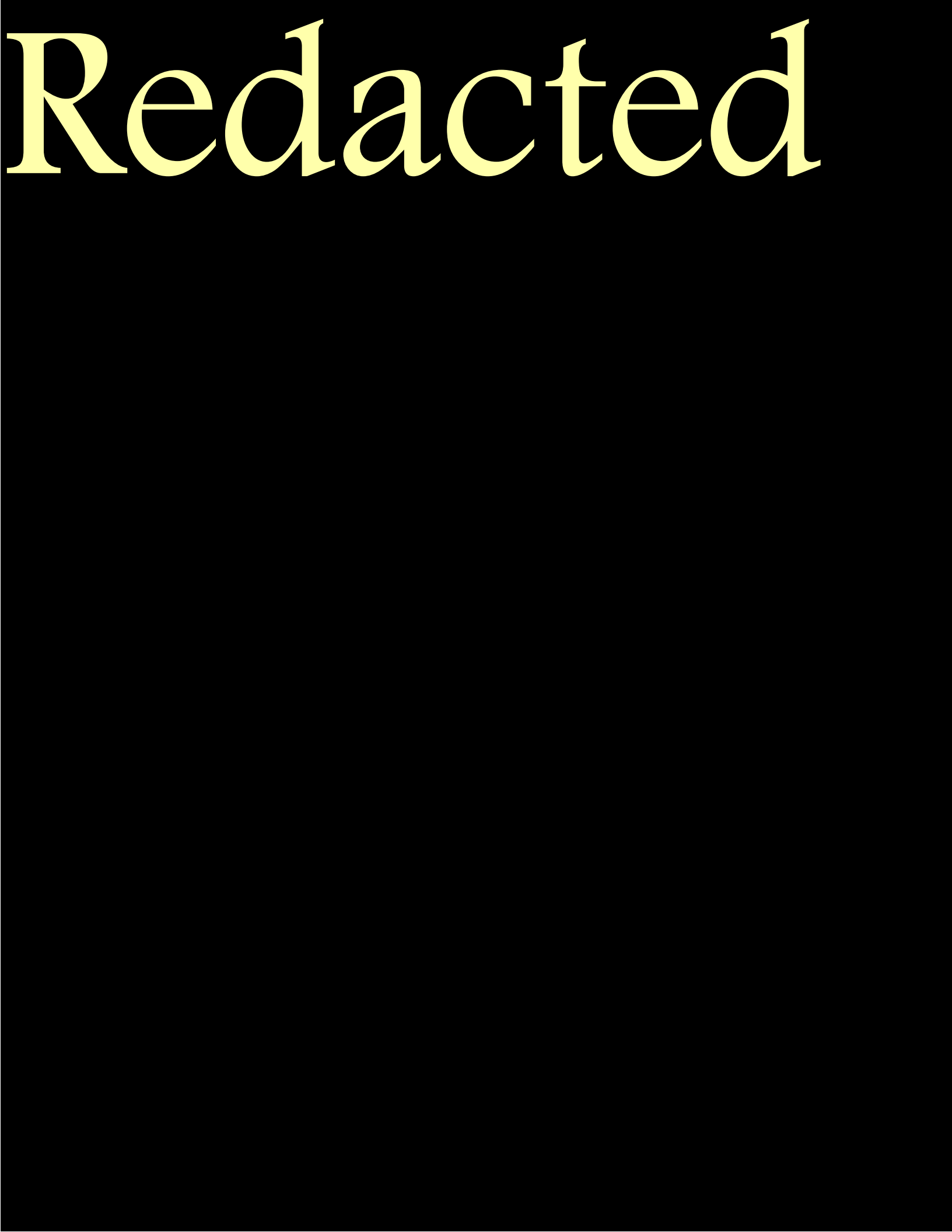
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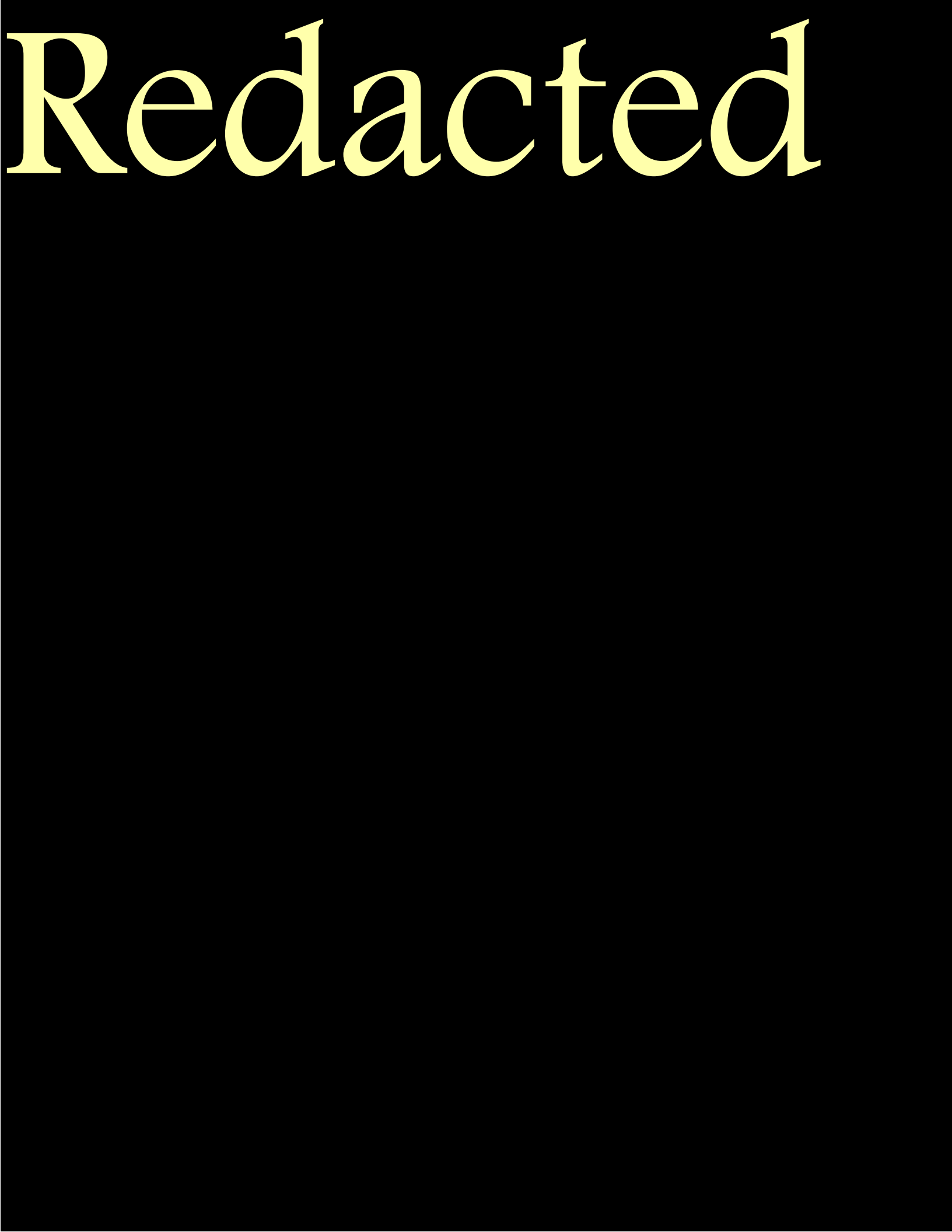
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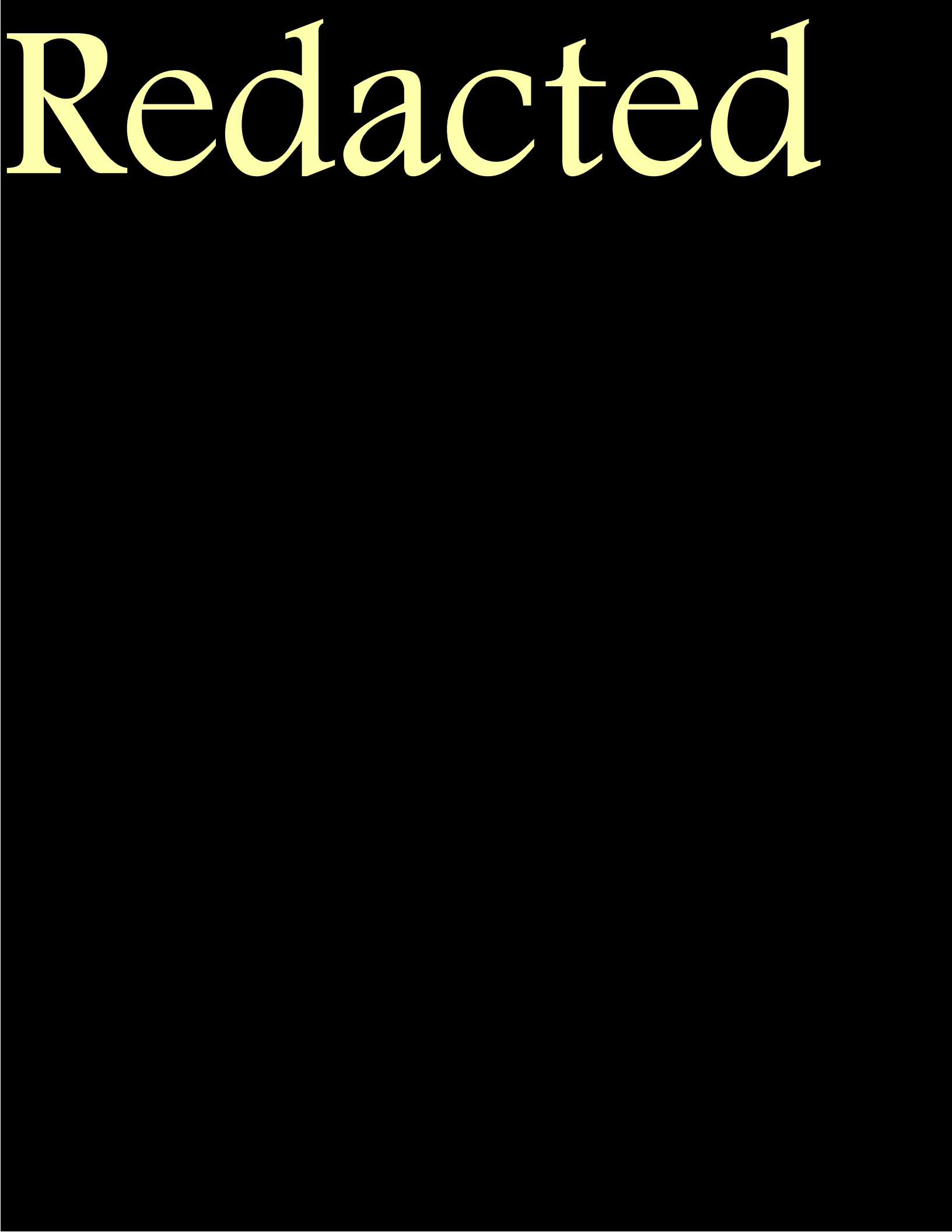
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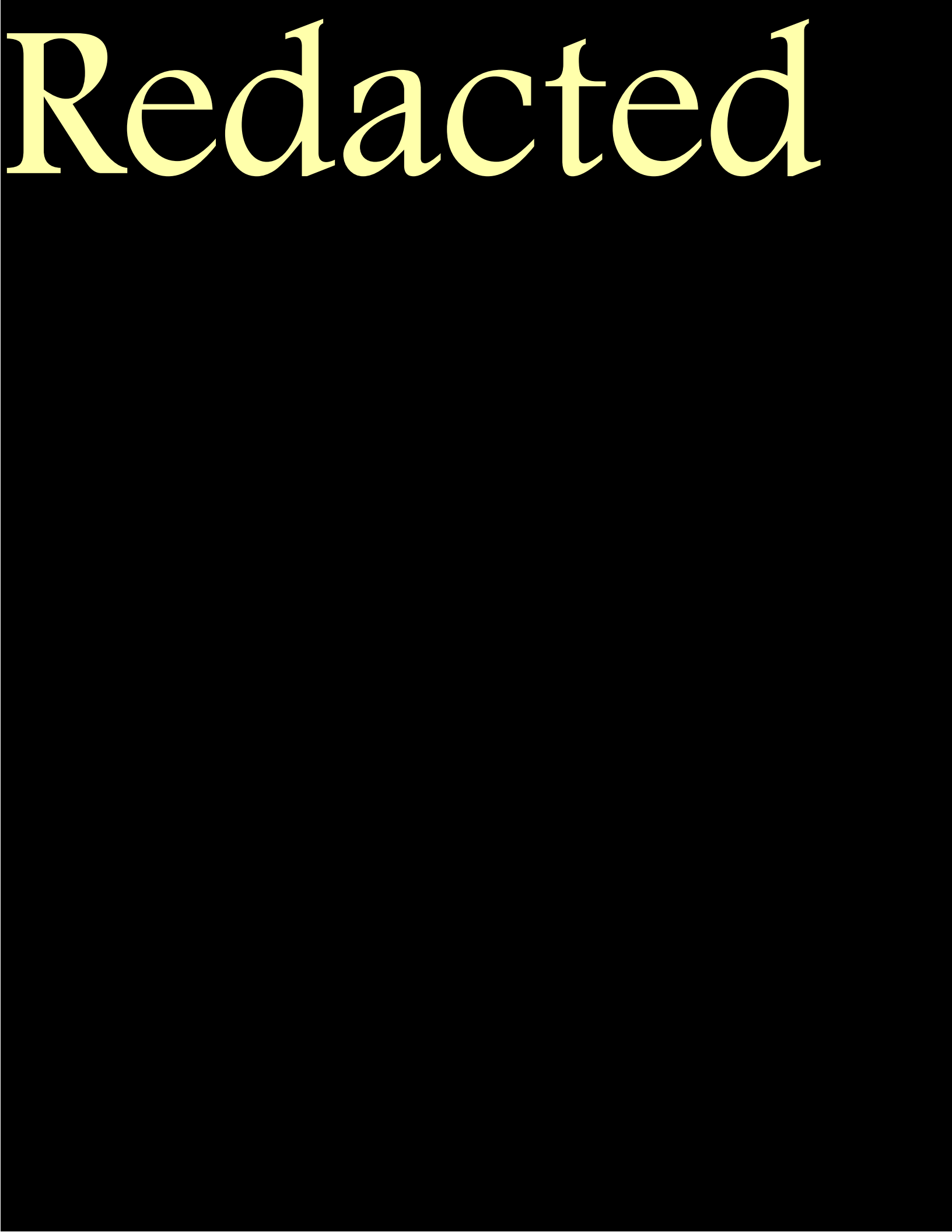
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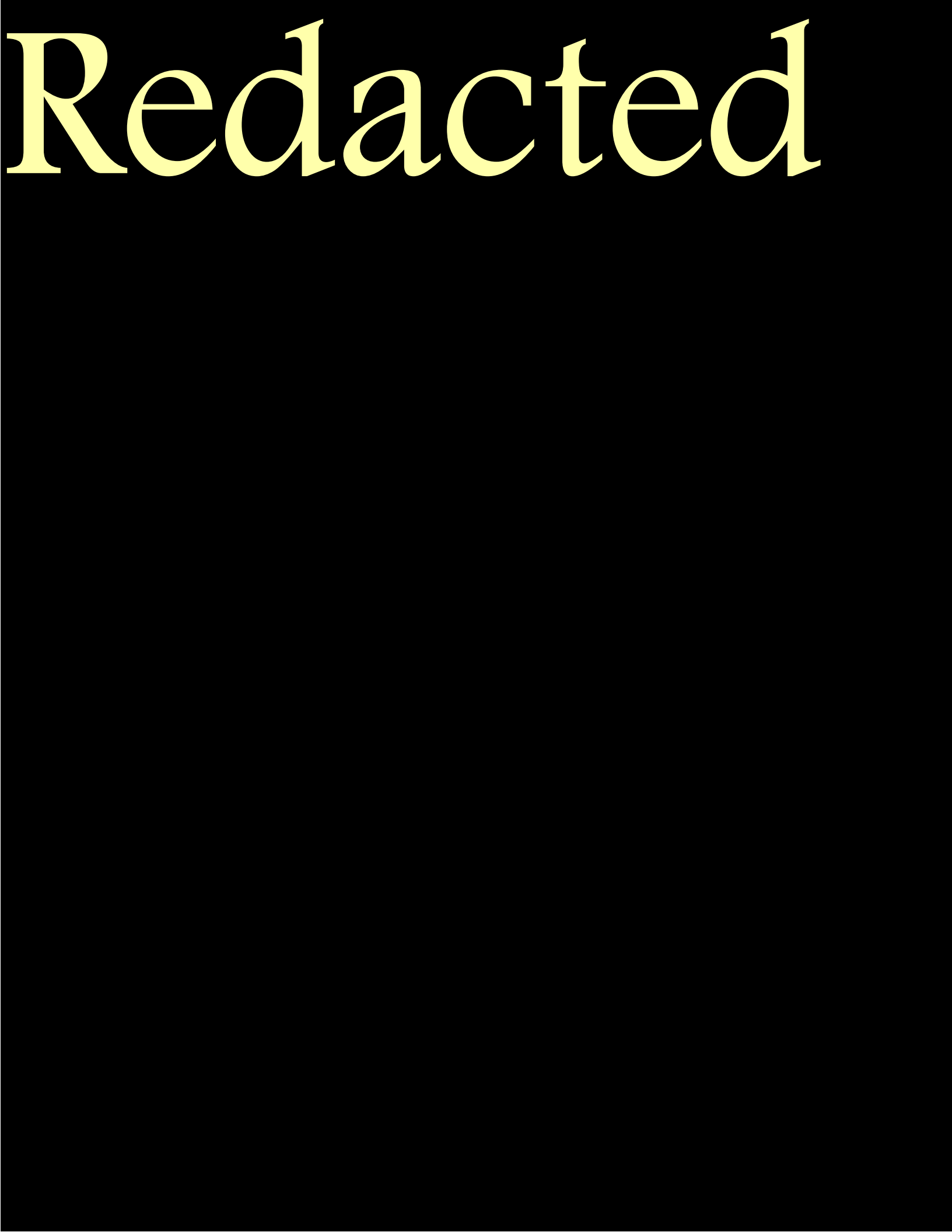
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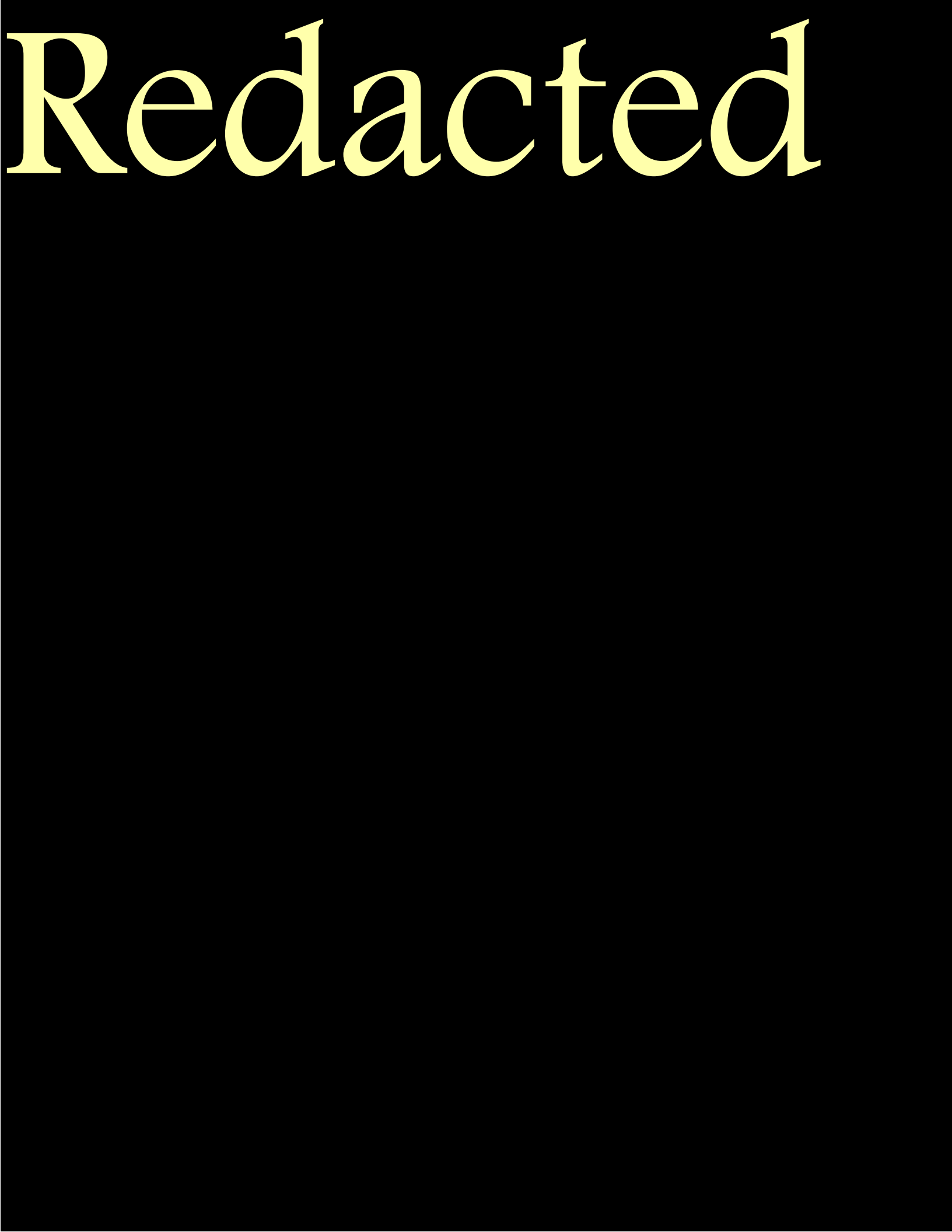
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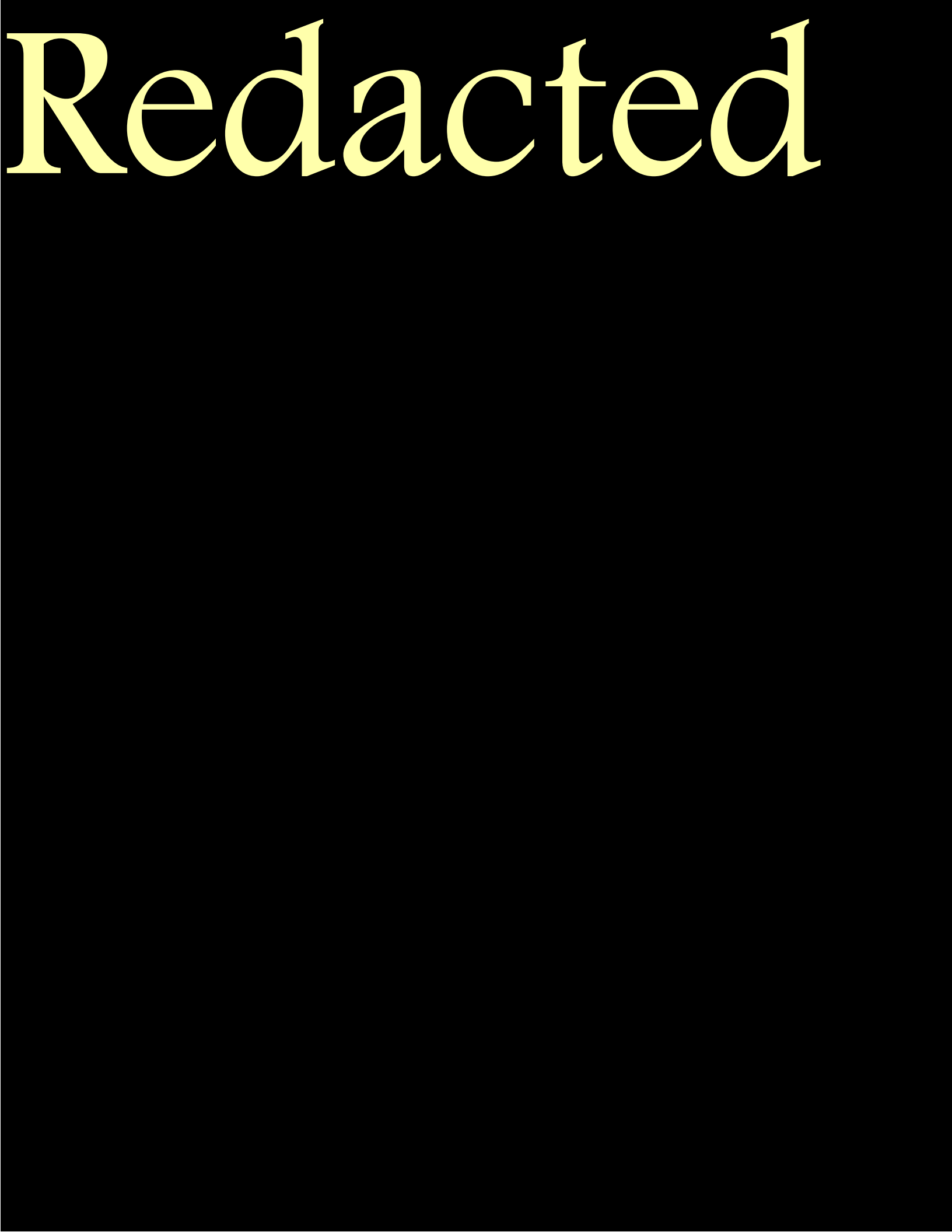
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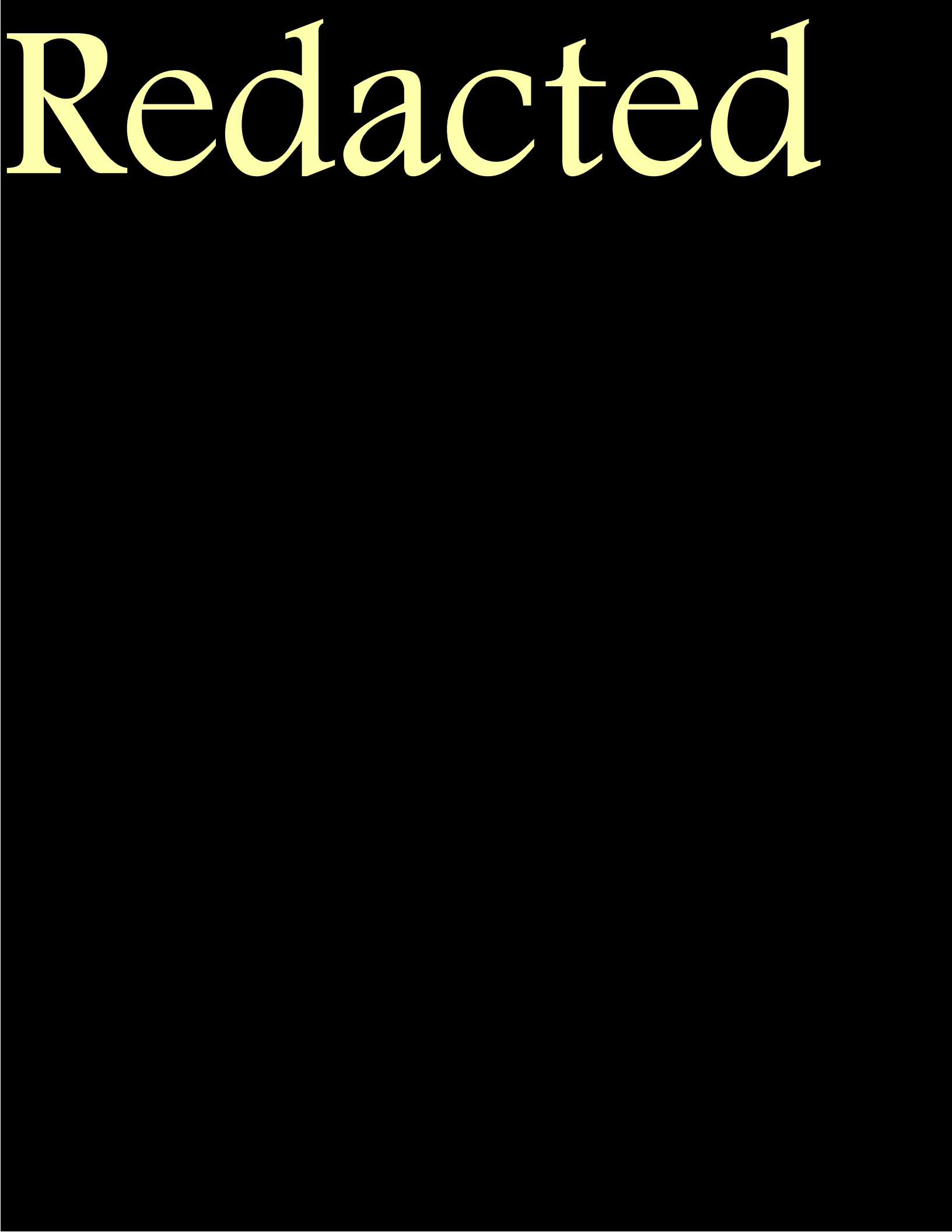
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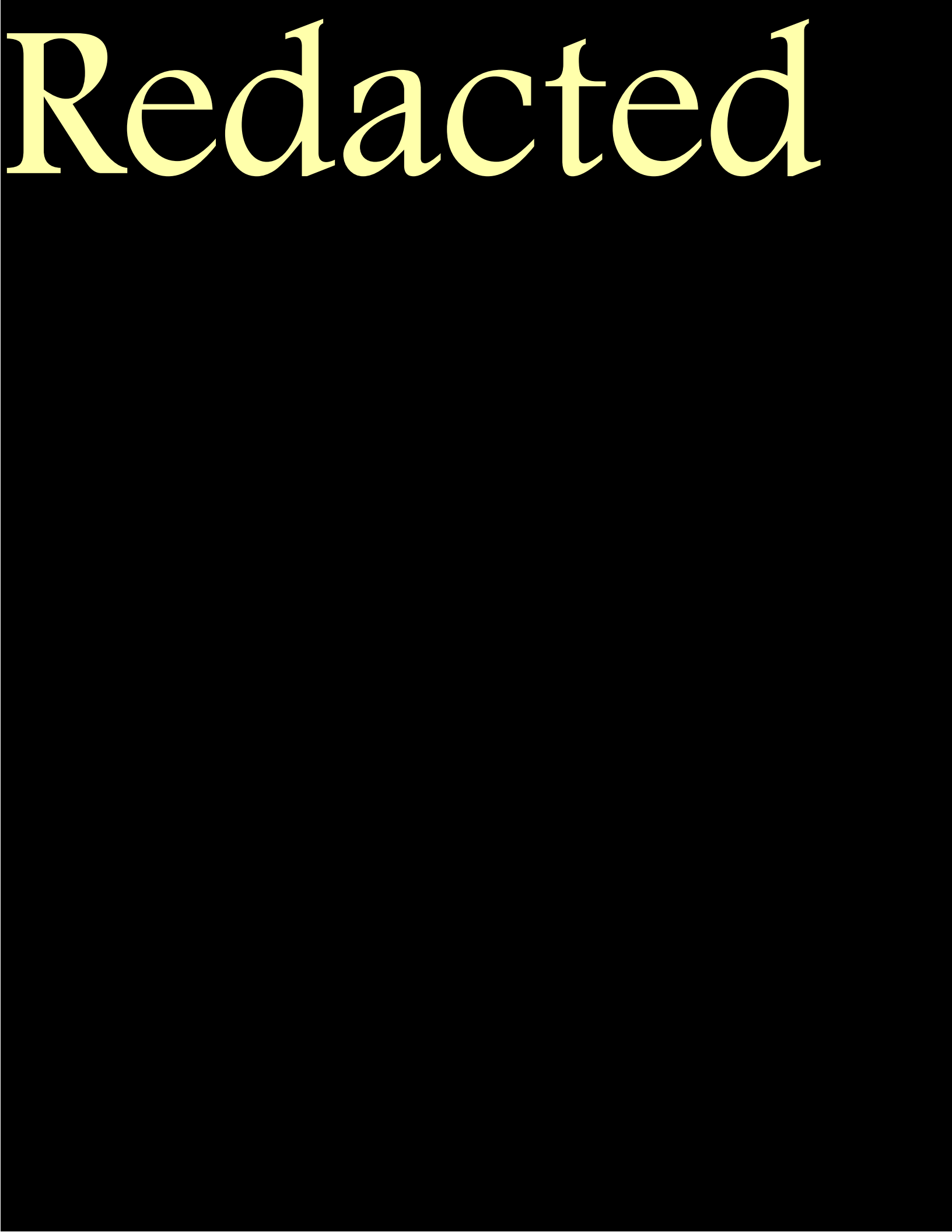
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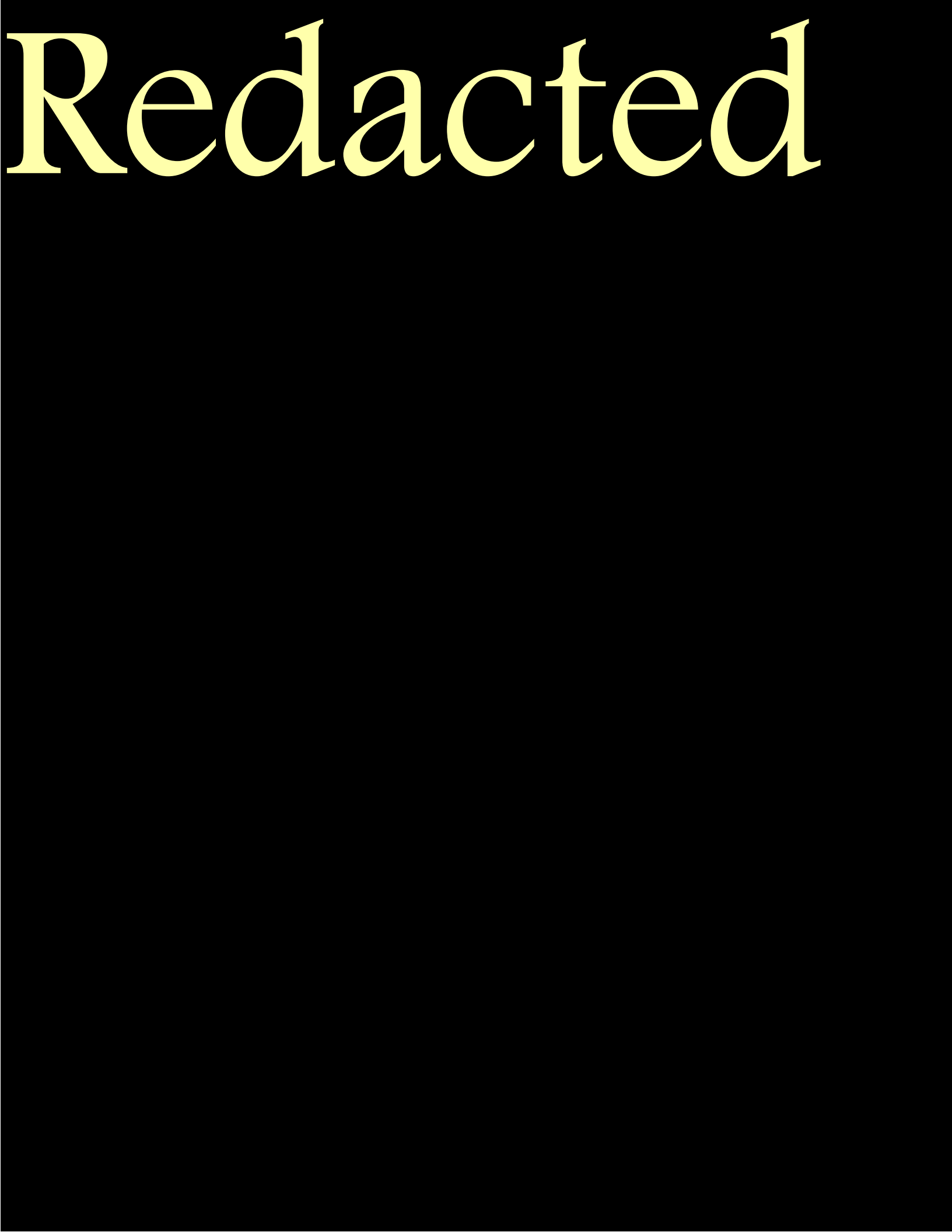
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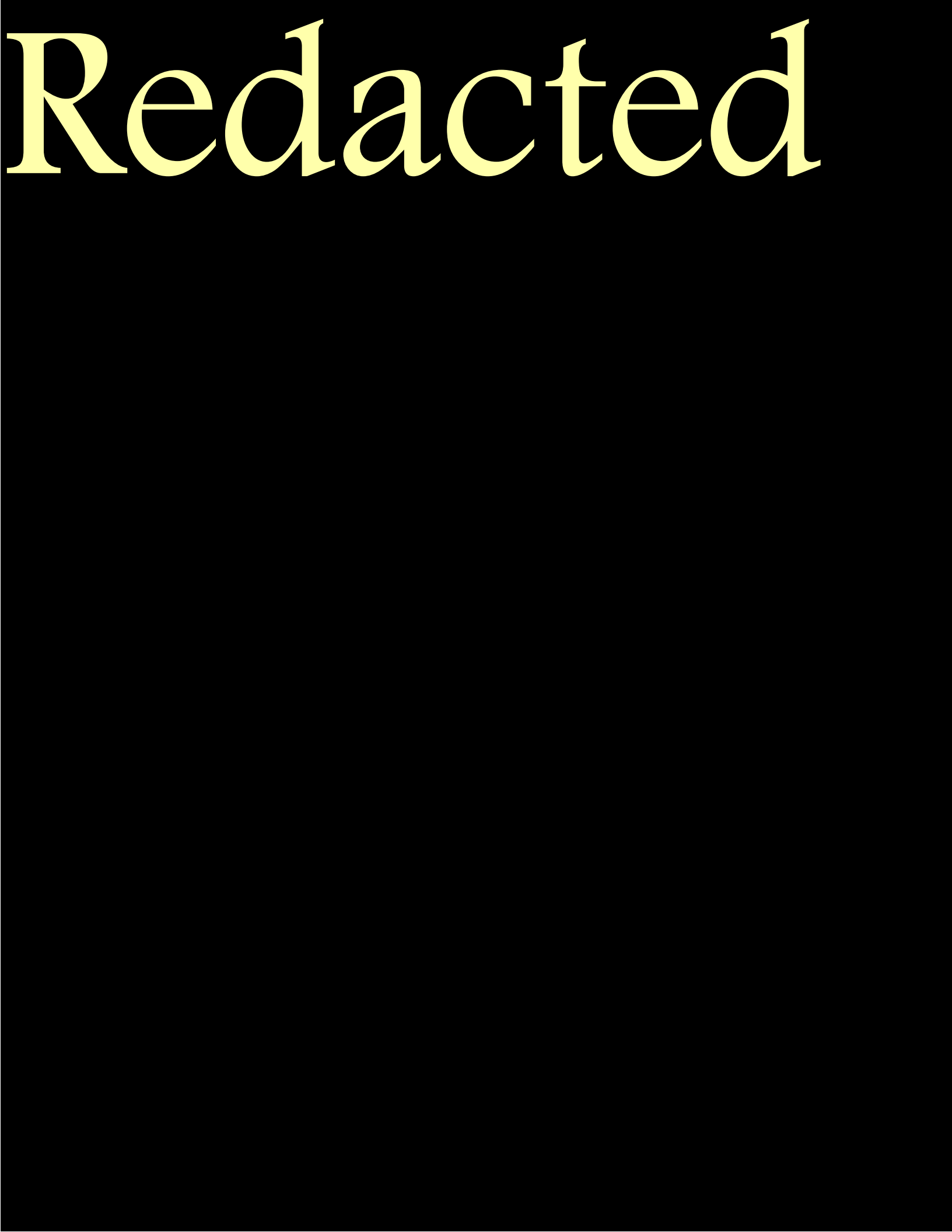
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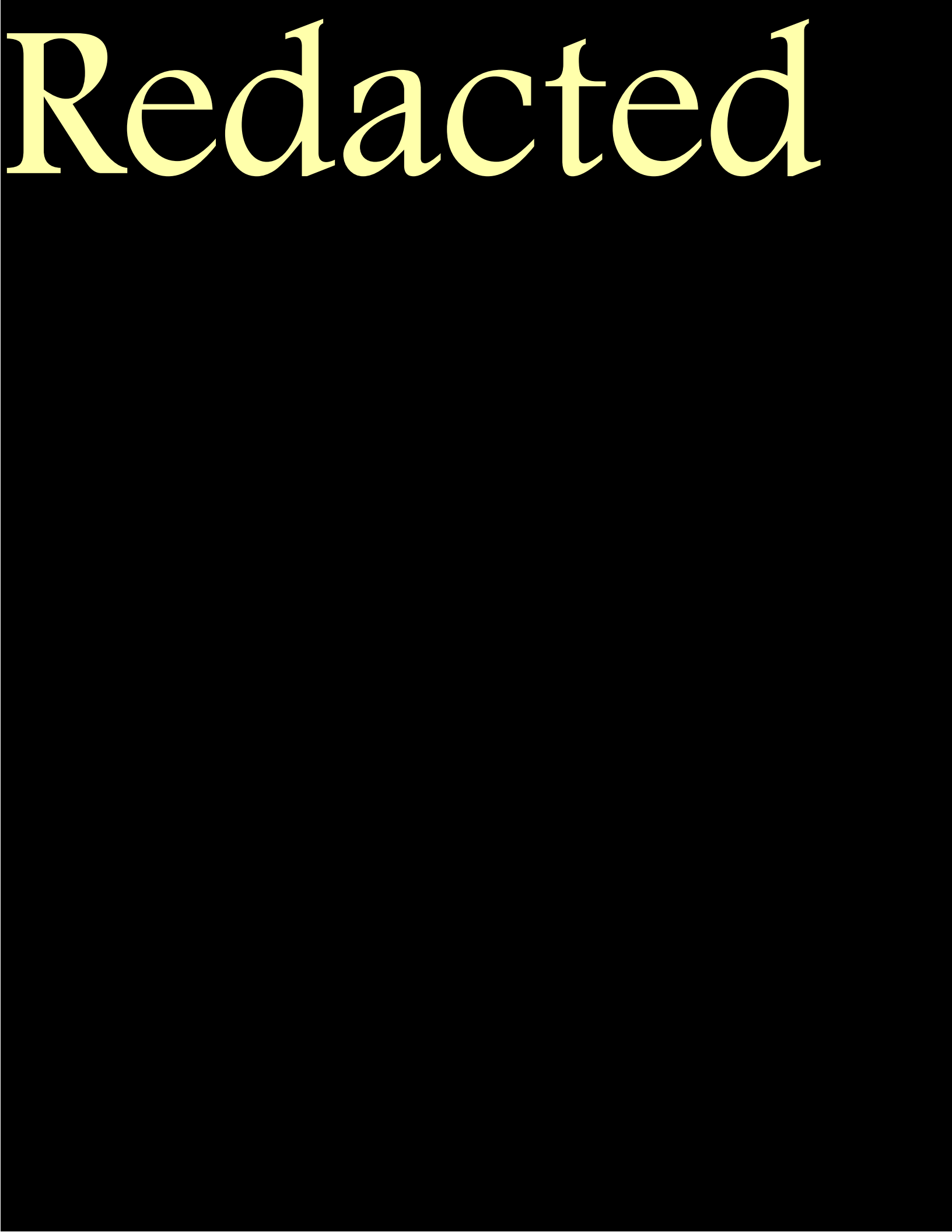
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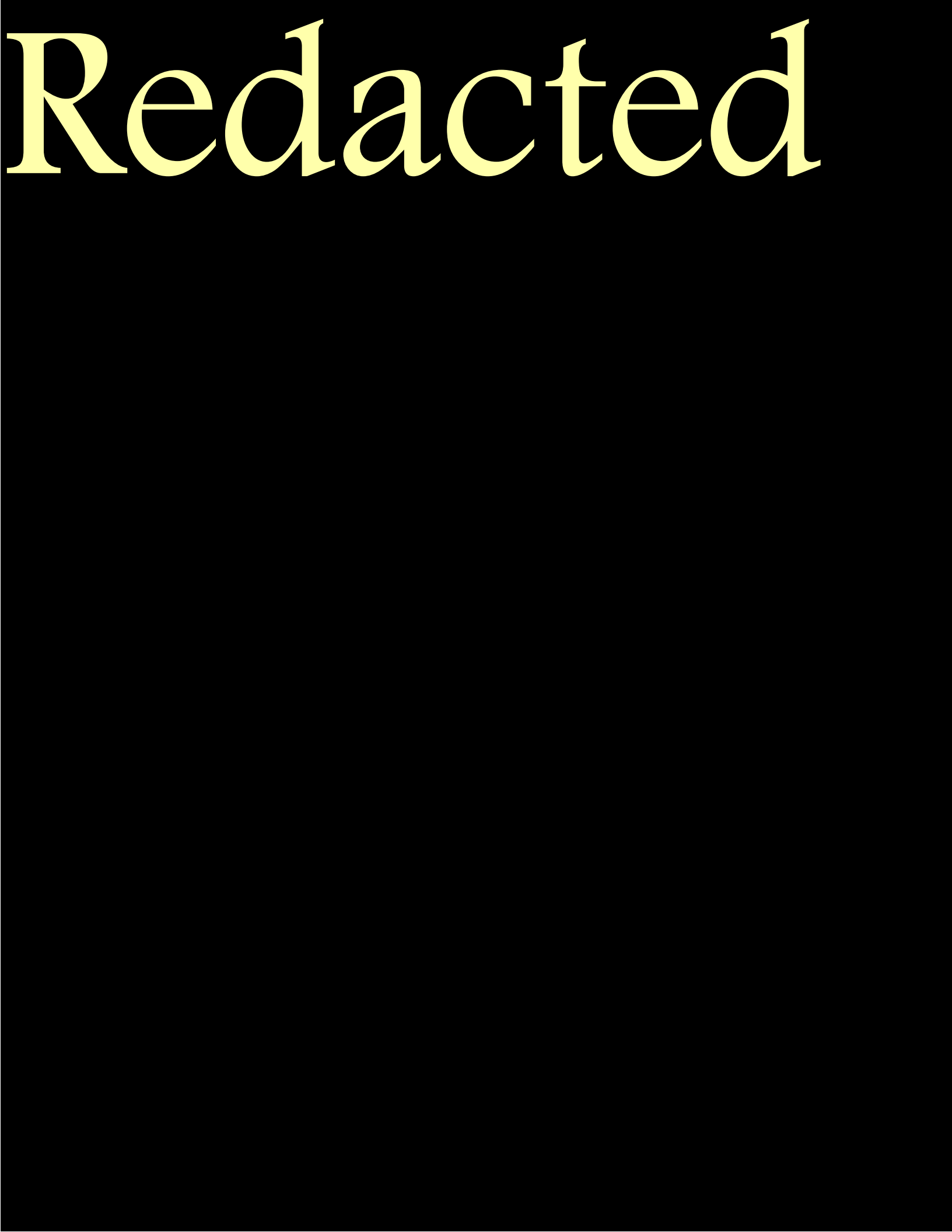
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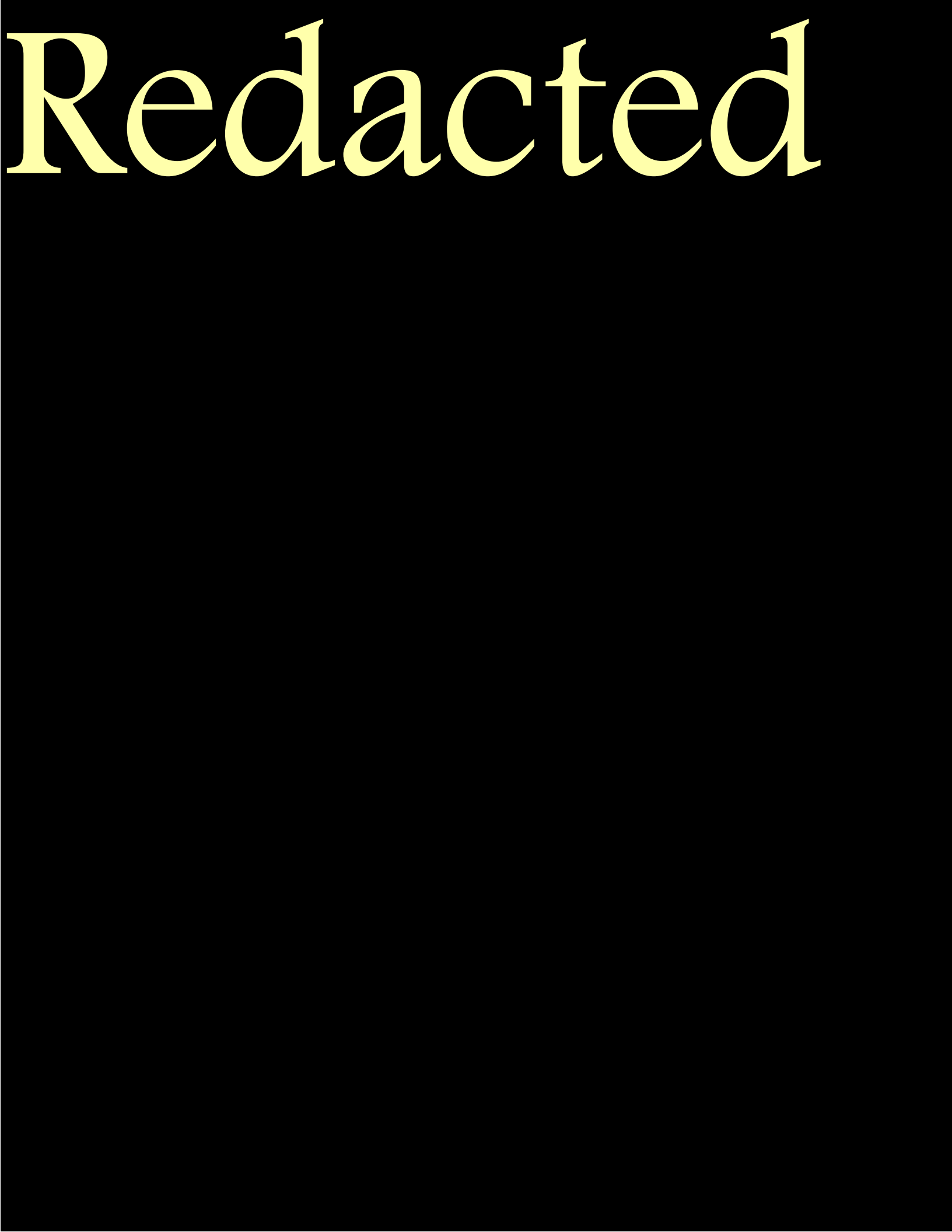
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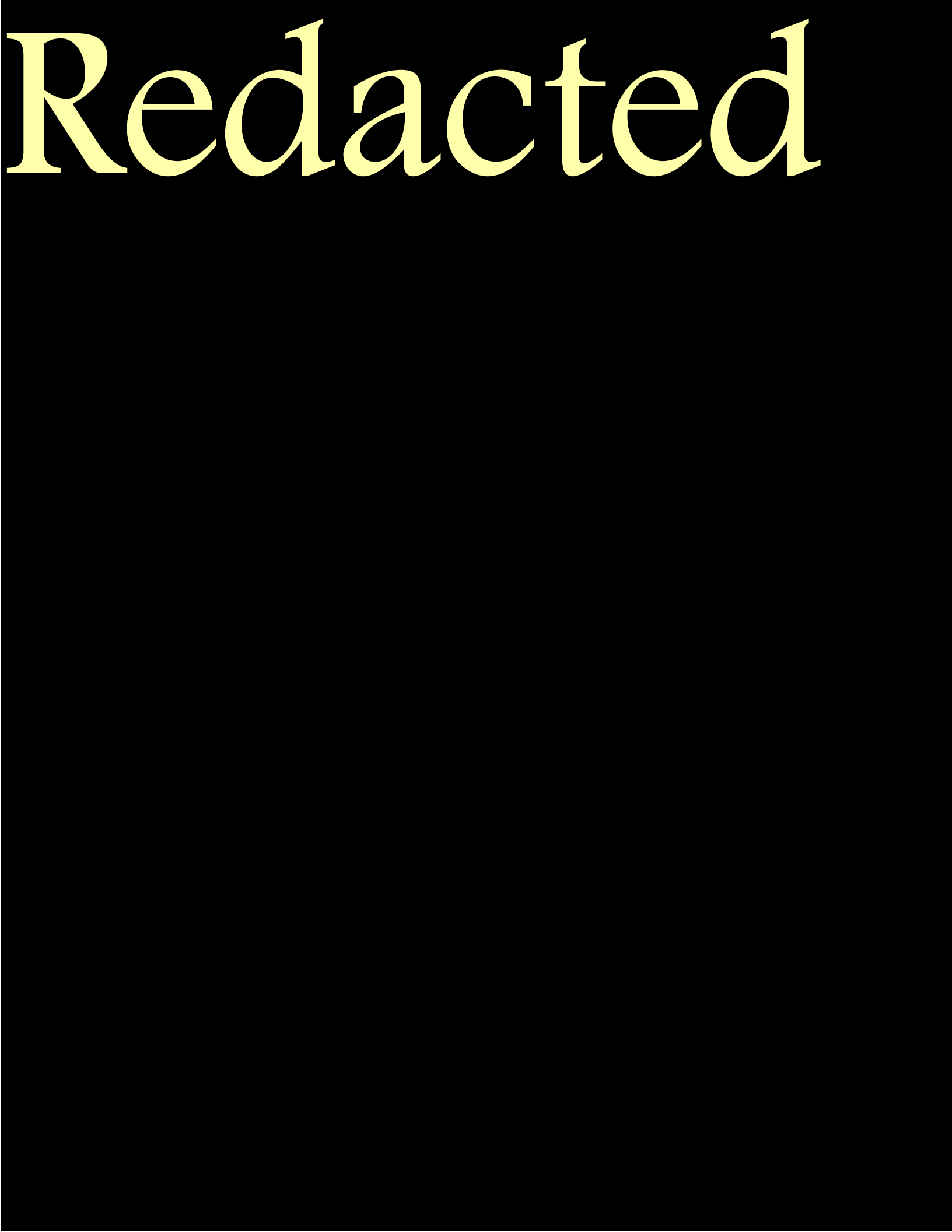
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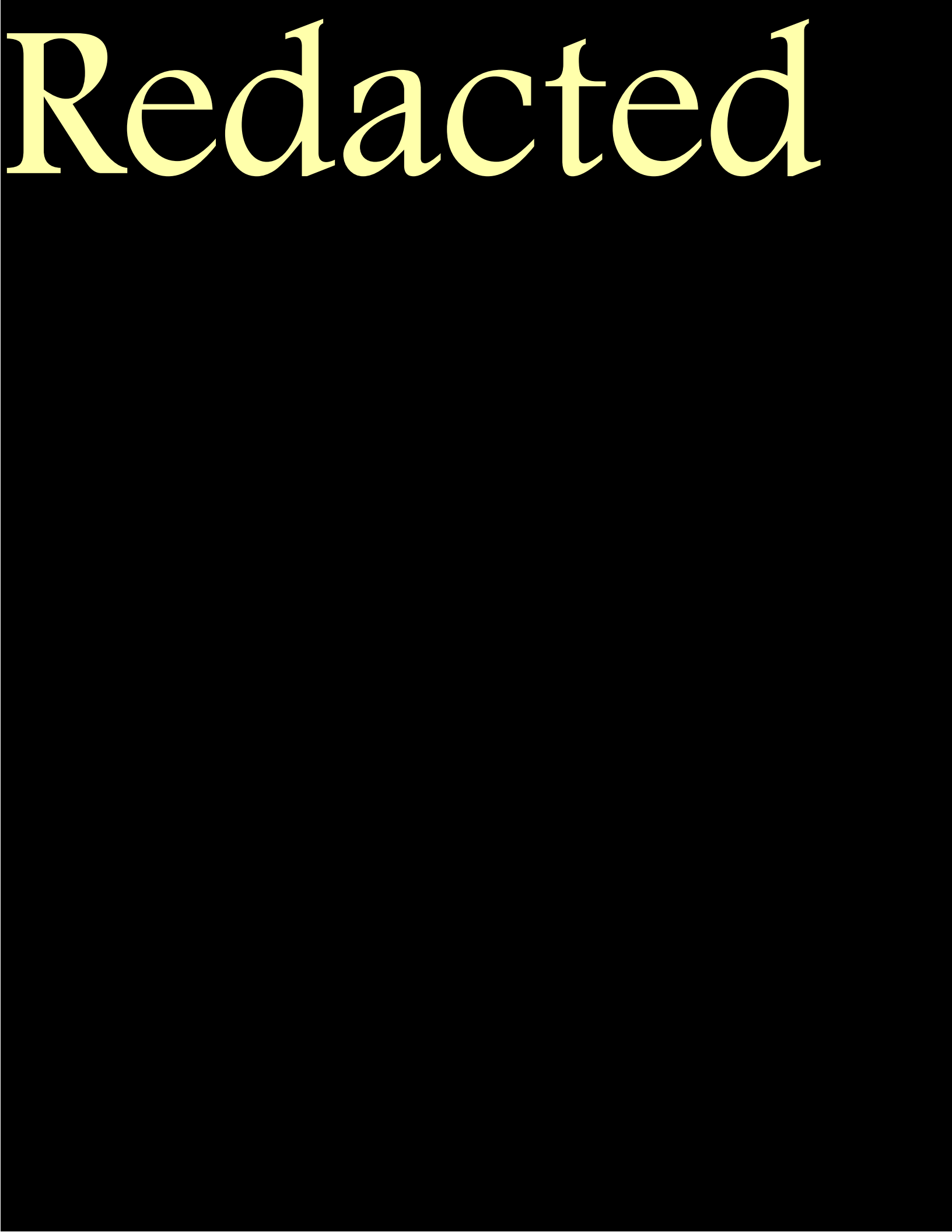
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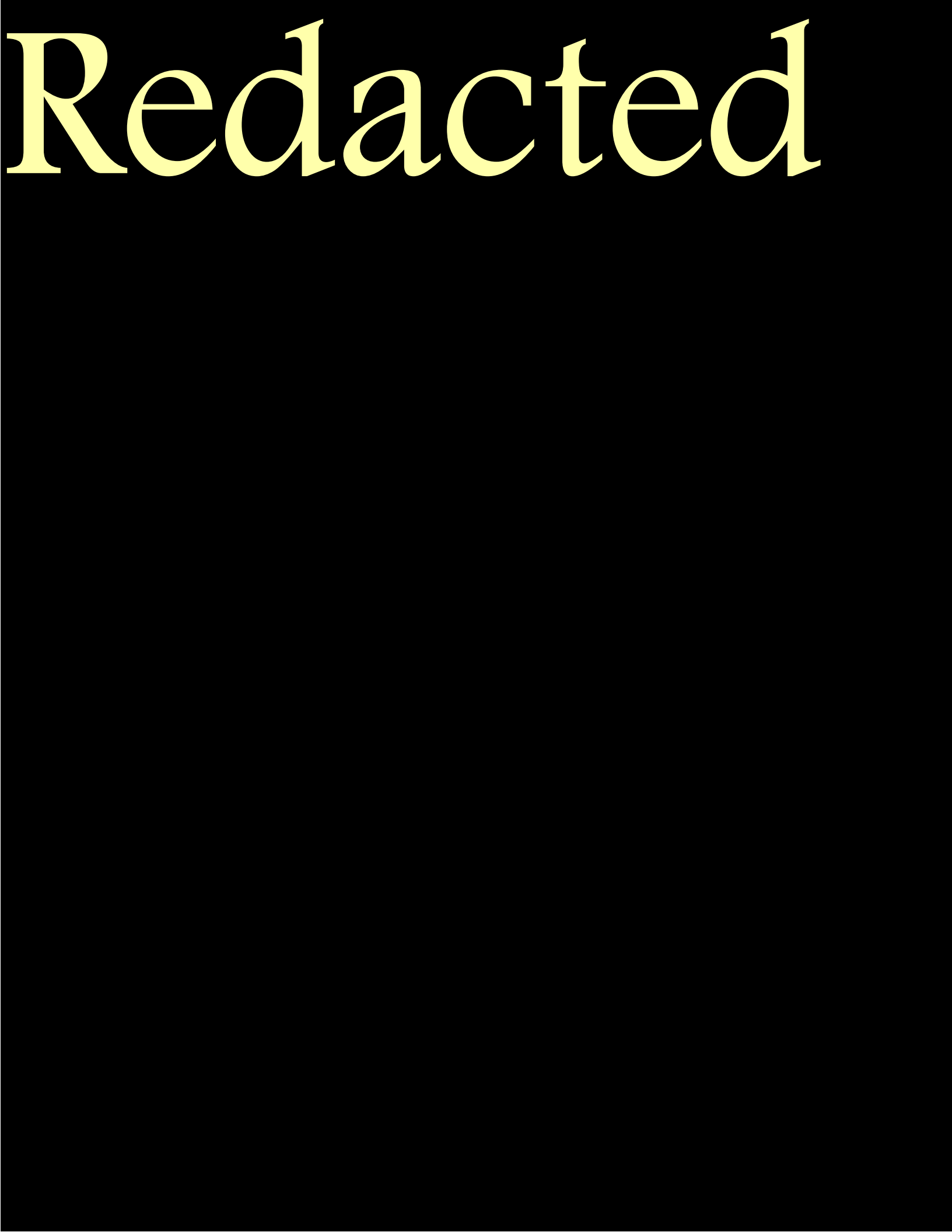
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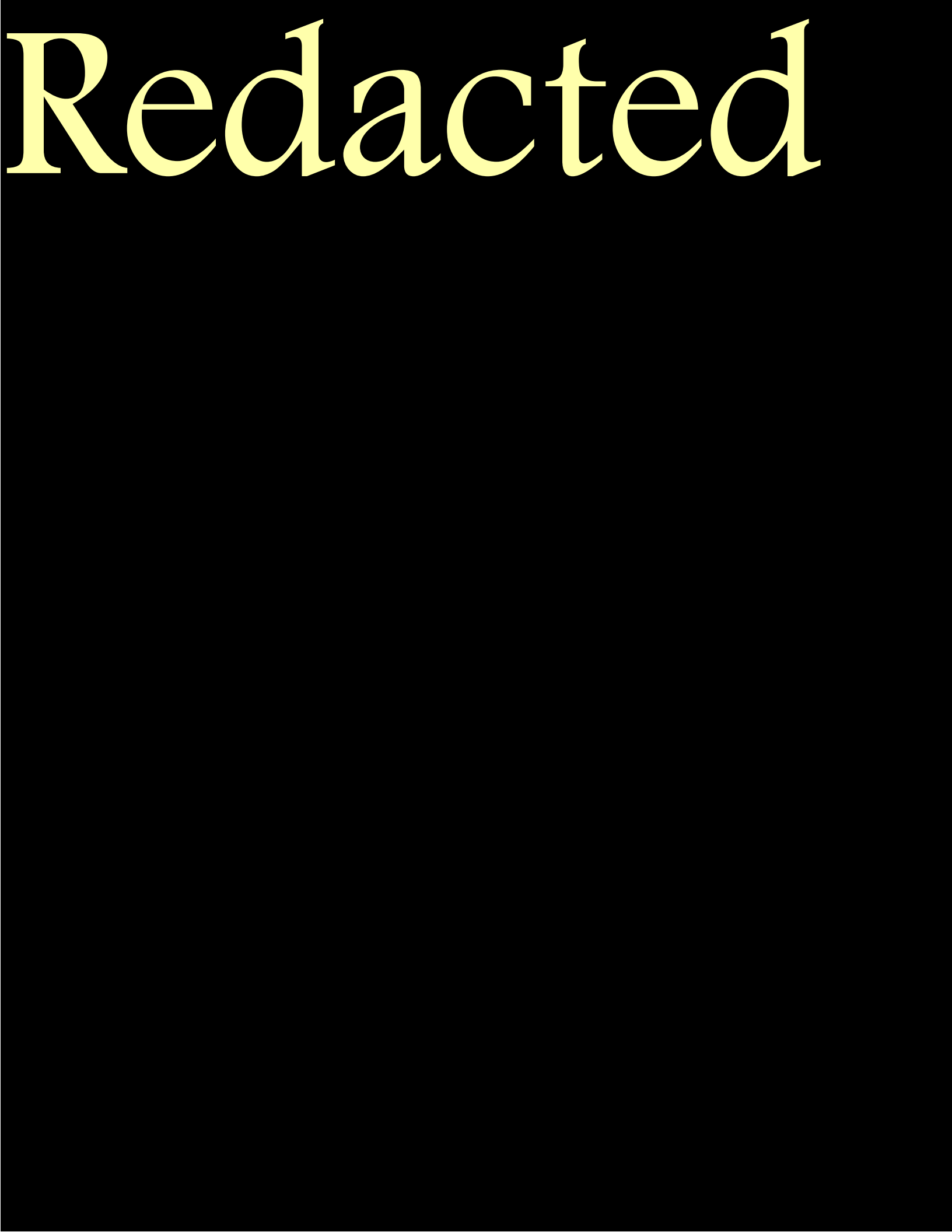
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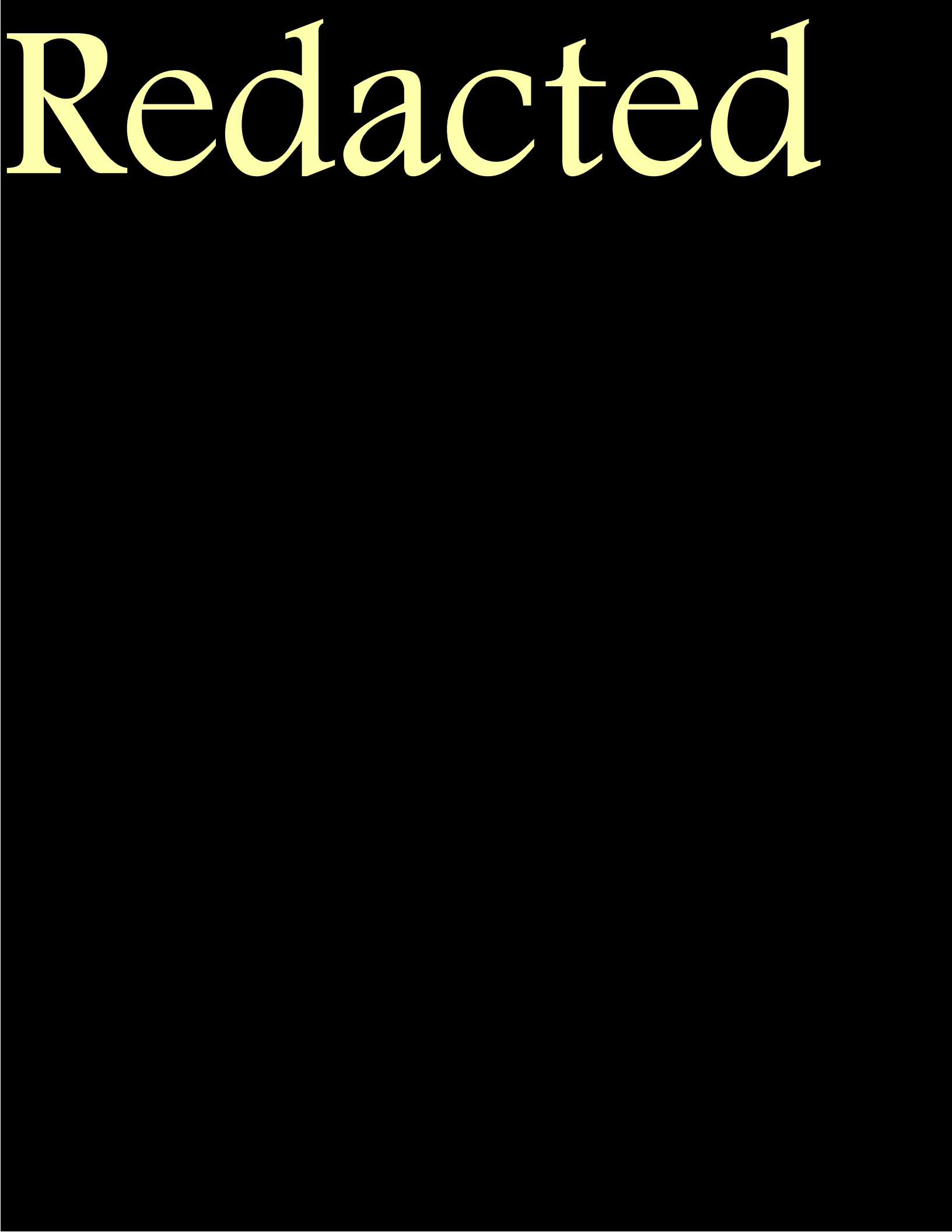
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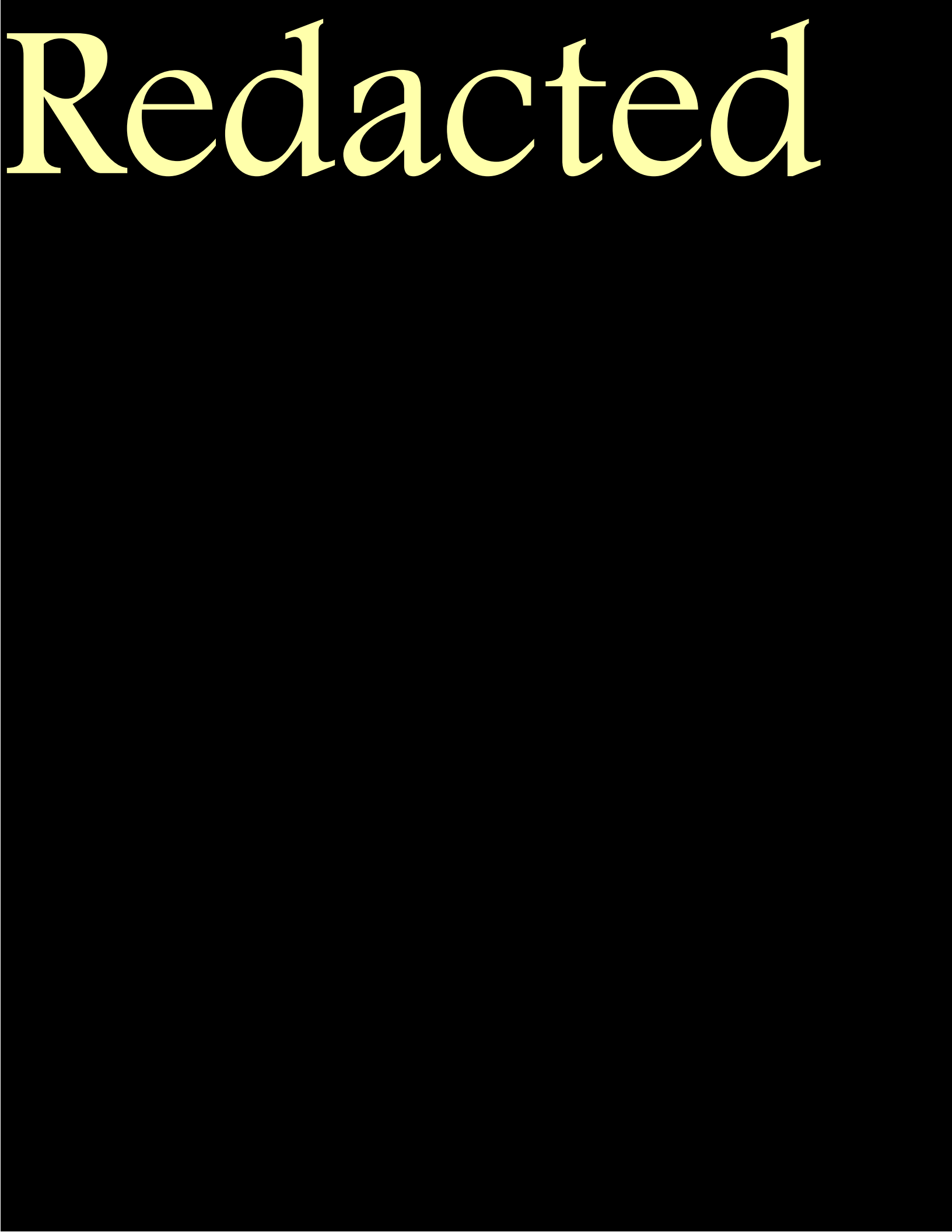
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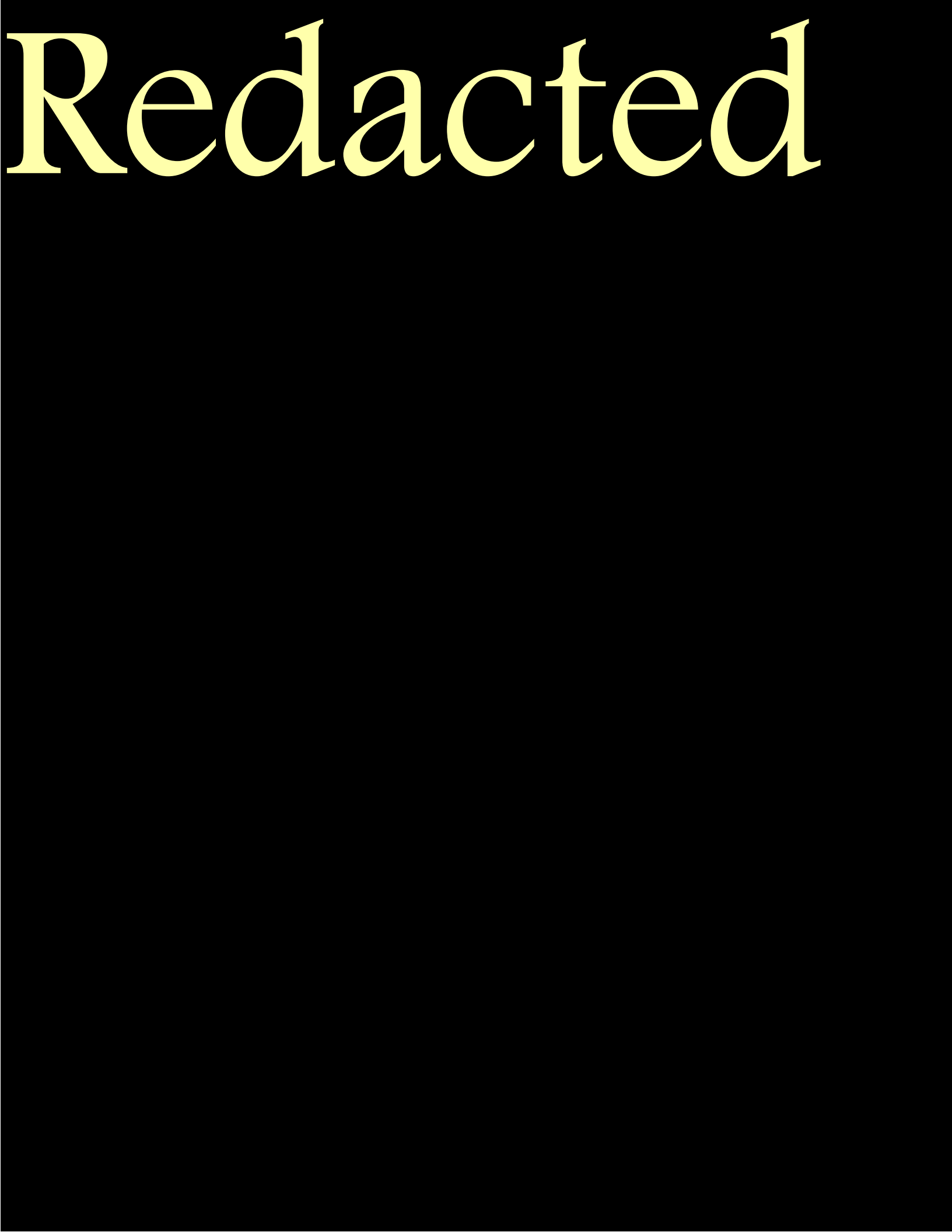
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THIRD SCHEDULE

PLAN OF PHASE 3 NETWORK

FOURTH SCHEDULE

CO-LOCATION AND FACILITIES MANAGEMENT SERVICES AGREEMENT

THIS CO-LOCATION AND FACILITIES MANAGEMENT SERVICES AGREEMENT is made the _____ day of _____ 2006 BETWEEN **TCN LIMITED** a company incorporated in Nigeria as a subsidiary of Power Holding Company of Nigeria hereinafter called "TCN" (which expression shall where the context admits include its successors-in-title and assigns) of the one part AND **PHASE 3 TELECOMS LIMITED** a company incorporated in Nigeria with its registered office at No. 3 Durban Street, Wuse 11, Abuja, hereinafter called "PHASE 3" (which expression shall where the context admits include its successors-in-title and assigns) of the other part.

WHEREAS:

1. The parties have entered into an agreement for the development of TCN's telecommunications Infrastructure by PHASE 3 on a Design, Build, Operate and Finance basis (hereinafter called the "main agreement").
2. It is necessary for the proper performance of its obligations in the main agreement that PHASE 3 co-locates its equipment and fixtures on TCN property.
3. TCN has agreed to grant and PHASE 3 has agreed to accept the right to use and occupy such space on TCN property as may be required for the performance of the main agreement (hereinafter called the "Equipment Space"), upon the terms and conditions hereafter contained.

NOW THEREFORE in consideration of the mutual covenants and agreements hereinafter set forth, and in consideration of the foregoing recitals, each of which is incorporated in and made a part of this Agreement, the parties hereto hereby agree as follows:

1. Permissible Use

TCN hereby grants and PHASE 3 hereby accepts a licence to use the Equipment Space upon and subject to the terms, covenants, rentals and conditions herein set forth for the purpose locating PHASE 3 equipment and fixtures required for the proper performance of PHASE 3's obligations in the main agreement.

2. Utilities and Technical Undertakings

- 2.1 At all times during the term of this Agreement, TCN shall provide, maintain or cause the maintenance of the electrical system and equipment, back-up generator where provided, ventilating and air-conditioning system and equipment, (hereinafter collectively called "Utility Systems") serving the Equipment Space in good condition and repair, adequate at all times to provide, without interruption, all of the services described in this Agreement.
- 2.2 TCN currently employs technical staff to maintain and manage technical facilities. Upon PHASE 3's request, TCN's technical staff shall perform necessary technical work related specifically to PHASE 3 owned or leased equipment and/or provide technical services to PHASE 3's facilities on a "time and material" basis as set forth in Exhibit A.

3. Additional Terms Governing the Use of the Equipment Space; Installation of Equipment

- a. PHASE 3 shall not make any construction changes or material alterations to the interior or exterior portions of the Equipment Space or Premises, including building of walls or partitions, drop ceilings, lighting, plumbing or any electrical distribution or power supplies for equipment. TCN shall exclusively perform and manage any construction or material alterations within the Equipment Space and Premises at rates to be negotiated between the parties hereto, which rates shall not exceed the generally prevailing market rate that is then being charged to perform such services. PHASE 3's use of the Equipment Space, installation of Equipment, and
- b. access to the Premises shall at all times be subject to PHASE 3's adherence to generally accepted industry standards for facility security and rules of conduct provided, however, PHASE 3 shall be permitted to use the Equipment Space and shall have access through the Premises to the Equipment Space, twenty-four (24) hours per day, three hundred sixty-five (365) days per year.
- c. PHASE 3 shall not market, license or sell co-location services in the Equipment Space to any third party such that Net2Phone is using the Equipment Space to compete with TCN, except that Net2Phone is permitted, subject to TCN's prior written consent, to allow its vendors and customers to co-locate within the Equipment Space if such co-location is needed for purposes of permitting the vendor or customer to connect to

PHASE 3's network. However PHASE 3 may not market, license or sell co-location services in the Equipment Space to other local, inter-exchange, long distance carriers, or Internet service providers, or other such service providers or carriers for the purpose of such carriers or service providers utilizing the Premises or the Building as a point of presence from which the service provider or carrier would provision interconnect services to other users within the Premises or the Building. If PHASE 3 should provide or attempt to make available to any third party use of the Equipment Space without obtaining the prior written consent of TCN, PHASE 3 shall be in breach of this Agreement and TCN may pursue any legal or equitable remedy it is entitled to pursue under Paragraph 9 of this Agreement.

4. PAYMENT

- a. PHASE 3 shall pay TCN a monthly recurring fee for use and occupancy of the Equipment Space (the "Occupancy Fee") as set forth in the attached Exhibit A. If PHASE 3 requests that TCN provide services not delineated herein or in Exhibit A, PHASE 3 agrees to pay TCN's then current standard charge for such service in effect at the time such service was rendered or such charge as the parties may mutually agree upon prior to the delivery of the service.
- b. Commencing on the Commencement Date, monthly instalments of the Occupancy Fee shall be payable in advance on the first day of each calendar month.
- c. Both TCN and PHASE 3 agree to reimburse the other for all reasonable repair or restoration costs associated with damage or destruction caused by their own personnel, agents, suppliers, contractors or visitors or as a consequence of any removal of Equipment or other property installed in the Equipment Space or the Premises. Such reimbursement shall be made within thirty (30) days of the damage or destruction.
- d. The monthly charges for all services used shall be payable in U.S. dollars within thirty (30) days from the date of TCN's invoice. Payment shall be remitted to TCN at the address set forth in Paragraph 13 and will not be deemed to have been made until the funds are received by TCN.
- e. Any payment (including monthly service charges due under this Paragraph or any other amount due hereunder) not made when due will be subject to a late charge of one and one-half percent (1.5%) per month.

5. Hourly Rates for Additional Services

When TCN technical support assistance is requested by PHASE 3 resolution or coordination of problems, PHASE 3 agrees to pay TCN a per hour rate set forth in Exhibit A. TCN will inform PHASE 3 in advance, if any services to be performed by TCN for PHASE 3 are billable and TCN will provide PHASE 3 with a reasonable estimate prior to performance of the services.

6. Interconnect Services

- a. PHASE 3 shall negotiate and bind itself to an interconnectivity agreement with Alheri Engineering Company Limited for the purpose of interconnecting the PHASE 3 Network with the Fibre Optic Cable Network operated by Alheri Engineering Company Limited.
- b. PHASE 3 shall provide all interconnect services required for its interconnectivity with its customers and other networks.

7. Force Majeure

Neither party shall be liable for any failure or delay in performance to the extent caused by causes beyond its reasonable control, including, without limitation, labour disputes, fires or other casualties, weather or natural disasters, damage to facilities, or the conduct of third parties ("Force Majeure").

8. Emergencies and Interruptions

- a. In case of an interruption or failure of any of the services furnished hereunder, including but not limited to power, back-up power and transmission (the "Services"), TCN shall use commercially reasonable efforts to restore service as soon as possible. If TCN elects, it may substitute a reasonably equivalent service. TCN's liability for all mistakes, errors, omissions, interruptions, delays or defects in Services occurring in the course of engineering, installation and operation of its system or the provision of Services shall in no event exceed the charges paid by PHASE 3 for the Services during the two months preceding the outage. In no event shall TCN be liable for any special, consequential or incidental damages.
- b. In the event PHASE 3 experiences an interruption of power services for any cause within TCN's control, which results in the loss of PHASE 3's service for a period of twenty-four (24) hours or more in any single event or for more than ninety-six (96) hours in any consecutive six (6) month period, or if TCN

fails to promptly commence or diligently pursue restoration of any interrupted power services, PHASE 3 shall have the right to terminate this Agreement upon ten (10) days notice to TCN.

- c. In the event PHASE 3 experiences an interruption of back-up power which is the direct result of TCN's Landlord's negligence or wilful misconduct, TCN shall pay to PHASE 3, its proportionate share (based upon the ratio of the gross area of the Equipment Space to the gross area of the Premises) of any damages collected by TCN from its Landlord for such interruption of back-up power.
- d. In the event PHASE 3 experiences an interruption of transmission services for reasons other than Force Majeure which results in the loss of PHASE 3's service for a period of seventy-two (72) hours or more in any single event or for more than one hundred sixty-eight (168) hours in any consecutive six (6) month period, PHASE 3 shall have the right to terminate this Agreement upon ten (10) days notice to TCN.

9. **DEFAULT**

- a. Either party shall be in default if it fails to timely perform its material obligations under this Agreement or becomes the subject of any voluntary proceedings under any bankruptcy or insolvency laws, or becomes the subject of any involuntary proceedings under any bankruptcy or insolvency laws which are not dismissed or withdrawn within sixty (60) days after the filing thereof. Upon such default by a party (other than a service interruption as described in Paragraph 9 hereof), the other party shall provide written notice to the defaulting party within ten (10) days of such default, allowing thirty (30) days for the default to be cured. If the default is not cured within that thirty (30) days, the non-defaulting party may, upon ten (10) days notice to the other, terminate this Agreement, and pursue all other available remedies at law and in equity, all of which shall be cumulative.
- b. If this Agreement or any addendum is terminated by TCN during the Term as a result of PHASE 3's material default or is terminated by PHASE 3 in the absence of a material default hereunder by TCN (in either case, an "PHASE 3 Termination"), PHASE 3 shall be liable to TCN for liquidated damages (due to the difficulty in projecting and establishing actual damages) for the terminated Services, as provided for below:

- i. If an PHASE 3 Termination occurs within twenty-four (24) months from the Commencement Date, then, PHASE 3 shall pay to TCN forty (40%) percent of the monthly Occupancy and related Fees for the remainder of the Term.
 - ii. An PHASE 3 Termination occurs after twenty-four (24) months but prior to forty-eight (48) months from the Commencement Date, then, PHASE 3 shall pay to TCN twenty (20%) percent of the monthly Occupancy and related Fees for the remainder of the Term.
 - iii. If an PHASE 3 Termination occurs after forty-eight (48) months but prior to sixty (60) months from the Commencement Date, then PHASE 3 shall pay to TCN ten (10%) percent of the monthly Occupancy and related Fees for the remainder of the Term.
- c. In the event of an PHASE 3 default and subsequent to a TCN termination of the Services for cause, the parties shall agree upon the amount of any reconnect charges, increase in service rates and/or security deposit required hereunder, prior to any reinstatement of the Services by TCN; it being understood, however, that in the event of a termination by TCN for cause, TCN may sell the Services to others.
- d. Upon termination or expiration of the Term of this Agreement, PHASE 3 agrees to remove the Equipment and other property which was installed by PHASE 3 or PHASE 3's agents. PHASE 3 shall promptly reimburse TCN for all costs associated with the repair and restoration of the Equipment Space, the Premises and the Building affected by the removal of such Equipment. In the event such Equipment or property has not been removed within fifteen (15) days following the effective termination or expiration date, TCN shall have the right to remove, relocate, or otherwise store such Equipment or property at PHASE 3's expense.

10. Term Of This Agreement

The term (the "Term") of this Agreement shall be for a period of fifteen (15) years commencing on the effective date of this Agreement (the "Commencement Date") provided that this Agreement shall immediately terminate upon the earlier termination of the main agreement, notwithstanding that the above term remains unexpired.

11. **Approvals**

PHASE 3 shall be responsible to obtain and maintain all approvals and permits necessary for PHASE 3's use of the Equipment Space.

12. **Indemnification**

The parties shall indemnify each other against all losses, claims damages, expenses and liabilities (including reasonable attorneys' fees and court costs) to extent caused by a wilful or negligent act or omission of such party.

13. **Notices and Other Communications**

- a. Documentation and coordination regarding exchange of technical information relating to local interconnects, and notification for assistance, resolution or coordination of service, and other notices under this Agreement shall be sent to:

If to TCN:

If to PHASE 3:

14. **Insurance**

PHASE 3 agrees to maintain, at PHASE 3's expense, during the entire time this Agreement is in effect for the Premises (i) Comprehensive General Liability Insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury or property damage, (ii) Employer's Liability in an amount not less than one million dollars (\$1,000,000.00) per occurrence, (iii) Worker's Compensation in an amount not less than that prescribed by statutory limits, and (iv) adequate insurance coverage to protect PHASE 3 owned Equipment and property installed within the Equipment Space. Under no circumstances shall TCN be obligated to provide insurance coverage for any PHASE 3 owned Equipment or property installed within the TCN Premises

15. **MISCELLANEOUS**

- a. This Agreement may not be assigned by either party in whole or in part shall not be unreasonably withheld, except that TCN and PHASE 3 shall have the right to assign this Agreement to an affiliate or division, provided that TCN or PHASE 3 exercise management control over and/or own a controlling interest in or are under common control with such affiliate or division. Notwithstanding the foregoing restriction on the assignment of this Agreement, (i) any direct or indirect transfer of the share capital of TCN or PHASE 3 shall not be considered an assignment of this Agreement, and (ii) both TCN or PHASE 3 shall have the right subject to the prior notice to the other, to assign its rights and obligations under this Agreement to any individual, corporation or other business entity which acquires all or substantially all of its shares or assets and upon such assignment, the assigning party shall be released of all of its obligations under this Agreement arising from and after the date of such assignment.
- b. The terms and provisions of this Agreement may only be waived, modified or changed by an amendment in writing signed by both parties hereto. No failure by either party to insist upon the other's performance of any obligation hereunder shall constitute a waiver of the obligation unless in writing.
- c. If any provision of this Agreement shall be determined to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect.
- d. This Agreement and the rights and obligations of the parties hereto shall be governed in all respects by the laws of Nigeria. The parties hereby solely subject themselves to the jurisdiction of the Courts of Nigeria, for the resolution of any dispute arising hereunder and agree that venue in any suit filed in those courts shall be proper, subject to the mediation, conciliation and arbitration clauses in the main agreement.
- e. This Agreement may be executed in two or more counterparts, each of which shall be an original, and all of which, taken together, shall constitute one and the same Agreement.
- f. Both TCN and PHASE 3 each represent and warrant to the other that the person executing this Agreement (or any amendments and changes) on its behalf is its duly authorized representative.

- g. This Agreement and any documents attached hereto constitute the entire Agreement between the parties and supersede all prior agreements, whether written or oral, with respect to the subject matter contained herein. In case of any conflict between this Agreement and the terms of any documents attached hereto, the terms of the documents attached shall control insofar as the services covered thereby are concerned.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective Common Seals to be affixed hereto the day and year first above written.

THE COMMON SEAL of the within-named
TCN was affixed hereto:

In the presence of;

DIRECTOR

SECRETARY

THE COMMON SEAL of the within-named
PHASE 3 TELECOM was affixed hereto:

In the presence of;

DIRECTOR

SECRETARY

Exhibit A- RATES

CO-LOCATION AND FACILITIES MANAGEMENT SERVICE AGREEMENT

CLIENT: PHASE 3 Engineering Company Limited

1. Address of Co-location Centre:
.....
.....
2. Initial Space Allocation:
.....
.....
3. Initial Term: Fifteen (15) years.
.....
.....
4. Monthly Recurring Occupancy Fees:
.....
.....
5. Additional Occupancy Fees:
..... agreed by Payable
at the times and in the amounts as TCN and PHASE 3 when additional
services are requested by PHASE 3.
6. Dispatch Labour Charges:
..... The following
charges apply to work done on PHASE 3's behalf on PHASE 3
equipment located in the Equipment space
("Dispatch Labour Charges").
 - a. Normal TCN business hours (Mon. - Fri. 8:00 a.m. to 5:00 p.m.
except public holidays) will be billed to PHASE 3 at the rate of
\$_____ per hour with a one (1) hour minimum.
 - b. Off-hour support shall be billed at a rate of \$_____ per hours
with a two (2) hour minimum (All other times and public
holidays).

- c. Dispatch Labour Charges apply only if PHASE 3 requests and authorises dispatch of TCN personnel to perform work on 'PHASE 3's behalf. TCN reserves the right to accept or reject any such requests. TCN dispatch of personnel to work on PHASE 3's equipment is also premised on PHASE 3 furnishing instruction to TCN prior to commencement of any work.

FIFTH SCHEDULE

INSURANCE

1. INSURANCES DURING CONSTRUCTION

From the Effective Date until the commissioning of the Power Station, PHASE 3 shall, at its own expense, obtain and maintain in force the following insurances:

- a. Marine insurance in respect of plant and equipment to be imported into Nigeria;
- b. All Risks "Builder's Risk Insurance" to cover the entire works from any and all kinds of damages arising out of any cause whatsoever;
- c. Third Party Liability Insurance" to cover injury to or death of persons (including those TCN) or damages to property caused by the works or by PHASE 3's vehicles, tools and/or equipment or personnel including its sub-contractors; and
- d. "Workmen's Compensation Insurance" as required under the laws of Nigeria.

2. INSURANCE DURING TERM OF THE AGREEMENT

During the Cooperation Period, PHASE 3 shall at its own expense keep the Telecommunication Network insured against accidental damage from all normal risks and to level normal for prudent operators of facilities similar to the Network. In addition, PHASE 3 shall secure adequate insurance cover for its employees as may be required by law.

3. The insurances effected shall be no less favourable to the insured in terms of risks covered than that normally effected by TCN in respect of its own similar operations.