IN THE DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

SUZUKI MOTOR CORPORATION,
a foreign corporation,

Petitioner,

vs.

SCOTT WINCKLER,

Respondent.
_____ /

CASE NO.: 1D-

L.T. CASE NO: 16-2014-CA-004130

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT

Suzuki Motor Corporation, pursuant to Florida Rule of Appellate Procedure 9.100, petitions this Court to review by certiorari an order of the circuit court that grants Plaintiff's Application for Letter Rogatory (the "Order"), which compelled the examination of Mr. Osamu Suzuki, Suzuki's former CEO and current Chairman. Suzuki respectfully requests that the Court quash the Order.

I.

BASIS FOR JURISDICTION

This Court has jurisdiction to issue a writ of common-law certiorari to the circuit court. Art. V, § 4(b)(3), Fla. Const.; Fla. R. App. P. 9.030(b)(2)(A). The writ is appropriate when a trial court's order (1) departs from the essential requirements of law; and (2) causes material injury to a petitioner throughout the

remainder of the proceedings and effectively leaves no adequate remedy on appeal. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94-95 (Fla. 1995).

Certiorari is the proper way to review a non-final order compelling discovery. *Langston*, 655 So. 2d at 94. *See also Brooks v. Brooks*, 239 So. 3d 758, 759 (Fla. 1st DCA 2018) (granting certiorari review of an order compelling discovery of medical records); *Hunt v. Lightfoot*, 239 So. 3d 175, 177 (Fla. 1st DCA 2018) (granting certiorari review of an order compelling discovery); *Zarzaur v. Zarzaur*, 213 So. 3d 1115, 1117-18 (Fla. 1st DCA 2017) (same).

This Court recently granted certiorari in similar circumstances, quashing an order compelling the head of a state agency to be deposed. *See Fla. Office of Ins. Regulation v. Fla. Dep't of Fin. Servs.*, 159 So. 3d 945, 947 (Fla. 1st DCA 2015).

II.

STATEMENT OF RELEVANT FACTS

This is a product liability action. Plaintiff alleges that he was riding a 2007 Suzuki GSX R-1000 motorcycle when the braking system failed, causing him to crash into another vehicle (A. 9-10).[1] Plaintiff alleges that the braking system was designed or manufactured by defendant Nissin Kogyo and incorporated into Plaintiff's 2007 Suzuki motorcycle (A. 26).

[1] "A. #" refers to the page number of the appendix filed with this petition.

Suzuki is a multi-national corporation with tens of thousands of employees around the world (A. 106). It manufactures, among other things, motor vehicles, motorcycles, ATVs, outboard engines and power generators (*id.*). During discovery in this action, it has produced over 250,000 pages of documents (A. 206-07). One of those pages is a "List of issues for which field actions are of concern" (the "Document") (A. 155). The Document lists four issues, one of which is "GSX R series Front brake pressure loss" (*id.*). The supplier is identified as Nissin Kogyo and the potential action is "recall" (*id.*). The three other issues involve cars not sold in the U.S. (A. 210). At the top of the one-page Document is the signature of Osamu Suzuki, Suzuki's former CEO and current Chairman (A. 155). One other document, an email that Mr. Suzuki neither sent nor received (the "Email"), notes that the Document was shown to him and that he signed it (A. 159).

Mr. Suzuki is 88 years old (A. 179). He states in his October 4, 2018 Declaration in Opposition to Plaintiff's Application for Letter Rogatory that he has "no independent memory" of signing the Document; that "[i]t was more than five years ago and I cannot recollect even after reviewing the document"; and that he was the CEO of Suzuki when the Document was created and "signed many documents routinely in those days" (A. 180).[2] Mr. Suzuki also notes that the Document is "an informational status report of matters under consideration"; that,

[2] Mr. Suzuki's Declaration was made under penalty of perjury under section 95.525, Florida Statutes.

under Suzuki's "internal standard, any field actions and even recalls are only decided by the Quality Countermeasure Committee, not by me": that he "was not a member . . . of the Quality Countermeasure Committee at that time"; and that, "[a]s Chairman of the Board, or even CEO at the time, I would have no authority to override, reject or even order a field action or recall" (A. 180).[3] Mr. Suzuki's signature on the Document "indicates only that I have saw [sic] the document at that time (April 2013), but does not represent my decision of field actions or recall which might be necessary or when they might occur since that was not in my authority" (*id.*). In sum, Mr. Suzuki "did not prepare the document, and even what I might have known about it in 2013 would have been told to me by someone else in the Corporation. I would have had at that time no personal knowledge of the details in that document" (A. 181).

Nevertheless, Plaintiff's Application for Letter Rogatory seeks to examine Mr. Suzuki, identifying eight topic areas (A. 148-50). The identical topic areas are topics 38-45 in the notice for deposition of the corporate representative of Suzuki, which is scheduled for February 2019 in Japan (A. 66-67). Suzuki's corporate representative will be Yoshinobu Matsumoto, who is extremely knowledgeable about the recall (A. 212). Co-Defendant Nissin Kogyo also is producing a Rule

[3] Plaintiff has been provided the names of the individuals who were members of the Quality Countermeasures Committee at the time that the Document was created, and is free to seek to depose them.

1.310(b)(6) corporate representative for deposition in February 2019 in Japan, Kenichi Fujii, who has the requisite knowledge of the design and manufacture of the GSX R series braking system.

Mr. Suzuki also states that he "sign[s] voluminous amounts of document[s]" and "attend[s] nearly constant meetings of one type or another as Chairman" (A. 180). As Chairman, he also has to be "involved in governmental affairs in various countries [in which Suzuki] does business including domestically, on-going financial matters, exchange rate issues, expanding and enhancing the multi-product line of [Suzuki] products domestically and internationally" (*id.*). Accordingly, he is "chronically busy with important and business management issues as [Suzuki]'s Chairman, meeting with other [Suzuki] high level executives . . . on [a] regular basis, meeting with government officials and representatives from all countries around the world in which Suzuki does business, regular speaking engagements to industry and business groups, making public appearances representing Suzuki, and regular meeting with major corporate stockholders on the status of Suzuki business" (A. 180-81). As a result, hav[ing] to give testimony potentially in many litigation cases . . . would substantially interfere with my job responsibilities as Chairman" (A. 180).

Indeed, Suzuki is repeatedly sued in United States state and federal Courts. November 2018 searches of state and federal dockets showed that Suzuki was

named as a defendant in as many as 513 cases in the past 10 years. Specifically, a Bloomberg Law search of federal dockets identified 105 such cases between November 14, 2008 and November 14, 2018 (A. 298-316). A Courthouse News Service search of federal dockets for the same period identified 89 such cases (A. 318-33). In the state courts, a Courthouse News Service search from November 14, 2008 to November 14, 2018 identified 412 cases, whereas a Bloomberg Law search for the same period identified 268 cases (A. 335-91; 393-431).

Course of proceedings below

On June 13, 2018, Plaintiff noticed the deposition of Mr. Suzuki as a Suzuki corporate representative under Rule 1.310(b)(6) (A. 53-56). Suzuki filed a motion for protective order, showing that a Rule 1.310(b)(6) notice naming a specific deponent is improper, and that Mr. Suzuki lacked any relevant knowledge and the notice to depose him was a transparent effort to harass Suzuki's most senior officer (A. 70-92). On August 9, the trial court granted Suzuki's motion, ruling that Plaintiff cannot compel the deposition of Mr. Suzuki under Rule 1.310(b)(6), without prejudice to Plaintiff seeking issuance of a letter rogatory (A. 132-34).

Plaintiff then filed his Application for Letter Rogatory (A. 136-67).[4] It states that Mr. Suzuki "possesses unique knowledge about specific facts relevant to

[4] Plaintiff's Application for Letter Rogatory was designated confidential and filed under seal below pursuant to the Circuit Court's June 1, 2016 Order Adopting Joint Stipulation of Non-Disclosure Protection Relating to Confidential and Trade Secret

Plaintiff's allegations"; but does not provide specifics, merely referring to his signature on the Document (A. 137). On October 3, Suzuki filed objections, preserving all procedural and substantive objections for hearing (A. 169-71). It also filed a Motion to Apply "Apex Doctrine" to Plaintiff's Application (A. 173-77). Suzuki also filed Mr. Suzuki's Declaration in opposition to the Application (A. 179-81). The trial court held a hearing on October 5 (A. 183-291).

The trial court's October 17, 2018 Order granted Plaintiff's Application. Notwithstanding Mr. Suzuki's Declaration that he has no personal knowledge related to this action, the court ruled that "it is appropriate for Plaintiff to be granted an opportunity to discover from the Chairman, Mr. Suzuki, his perspective on the contents of the Document and Email" (A. 293-96). The Court cited no other evidentiary basis supporting an examination of Mr. Suzuki in this action, and Plaintiff has identified none.

III.

NATURE OF THE RELIEF SOUGHT

Suzuki seeks an order quashing the Order granting Plaintiff's Application for Letter Rogatory to examine Mr. Osamu Suzuki.

Documents (*see* A. 34-51), and is the subject of the parties Agreed Motion, under Rule of Judicial Administration 2.420(g)(8), to Maintain Confidentiality of Documents Filed Under Seal Pursuant to that order. The Agreed Motion is being filed simultaneously with this Petition and its accompanying appendix.

IV.

ARGUMENT

As we show below, (I) the Order departs from the essential requirements of law; and (II) if the examination of Mr. Suzuki is allowed to go forward, Suzuki will be materially injured with no remedy on plenary appeal.

I. THE ORDER DEPARTS FROM THE ESSENTIAL REQUIREMENTS OF LAW UNDER EITHER THE APEX DOCTRINE OR TRADITIONAL STANDARDS FOR DECIDING THE RELEVANCE OF DISCOVERY

Certiorari requires a showing that an order departs from the essential requirements of law. *Langston*, 655 So. 2d at 94. The Order does so because, as we show below, (A) under the apex doctrine, Mr. Suzuki lacks any knowledge of this case and Plaintiff has already scheduled less burdensome discovery; and (B) even apart from the apex doctrine, the Order still should be quashed because a deposition of Mr. Suzuki is not reasonably calculated to lead to the discovery of admissible evidence.

A. Mr. Suzuki lacks any knowledge of this case and Plaintiff has already scheduled less burdensome discovery of the Defendants' corporate representatives

Plaintiff is seeking to depose Suzuki's Chairman even though (1) he has no relevant knowledge of this case, and (2) in February 2019, Suzuki and co-Defendant Nissin Kogyo are making available Rule 1.310(b)(6) deponents who *will* have knowledge of the issues relevant to this action. Indeed, as shown above,

the eight topic areas on which Plaintiff demands to examine Mr. Suzuki are *identical* to topic areas 38-45 in the Rule 1.310(b)(6) notice to Suzuki. In response to a similar strategy, this Court has adopted the "apex doctrine"—albeit in the government context—to shield agency heads from harassing and unduly burdensome discovery where the agency head does not possess any relevant knowledge of the case.

1. This Court has adopted the apex doctrine in the government context and has expanded its application to public universities

The apex doctrine protects high-level officials from burdensome discovery unless and until discovery from lower-level employees has been conducted. *See General Star Indemn. Co. v. Atl. Hospitality of Fla., LLC*, 57 So. 3d 238, 239 n.3 (Fla. 3d DCA 2011). This Court has already adopted the doctrine in certain circumstances. In *Department of Agriculture & Consumer Services v. Broward County*, 810 So. 2d 1056, 1058 (Fla. 1st DCA 2002), this Court quashed an order denying the Department's motion for protective order against the deposition of its agency head, holding that an agency head "should not be subject to deposition . . . unless and until the opposing parties have exhausted other discovery and can demonstrate that the agency head is uniquely able to provide relevant information which cannot be obtained from other sources." As this Court further explained, "[t]o hold otherwise would . . . subject agency heads to being deposed in virtually

every rule challenge proceeding, to the detriment of the efficient operation of the agency." *Id.* Similarly, in *Florida Office of Insurance Regulation v. Florida Department of Financial Services*, 159 So. 3d 945, 951-53 (Fla. 1st DCA 2015), this Court applied the apex doctrine and quashed an order compelling the deposition of an agency head because his testimony was "neither necessary to [the plaintiff's] cause of action nor unavailable from other sources," and noted that "subjecting agency heads to a flood of discovery requests . . . would preclude them from being able to reasonably exercise the statutory duties of office." And in *University of West Florida Board of Trustees v. Habegger*, 125 So. 3d 323, 324-25 (Fla. 1st DCA 2013), this Court expanded the application of the apex doctrine, quashing an order allowing the deposition of a university president where she had had only one conversation with a co-defendant, which was not relevant to the plaintiff's claim, and where she was "not involved" with plaintiff's purportedly wrongful termination.

That is precisely the situation here. The Order is based solely on Mr. Suzuki's signature on a corner of one Document and the Email. But the Email, which Mr. Suzuki neither sent nor received, merely notes that the Document was presented to him. And the Document lists four items, only one of which concerns the GSX R series braking system made by co-Defendant Nissin Kogyo, which is the issue at the heart of Plaintiff's claim. The other three items involve cars that

are not available in the U.S. Moreover, Mr. Suzuki's unrebutted Declaration shows that he has no memory of the Document and played no part in the decision to recall the GSX R series braking system (A. 179-81). If the head of a corporation were subject to deposition every time a plaintiff could articulate such a nominal justification, CEOs and board chairs would be subject to the "flood of discovery requests" that this Court warned about in *Florida Office of Insurance Regulation*. 159 So. 3d at 952. Indeed, as shown above, searches of Bloomberg Law and Courthouse News Service show that Suzuki has been sued in U.S. federal court at least 89 times in the past ten years, and that it has been sued in state court anywhere from 268 to 412 times in the same period (A. 298-431). Thus, this Court's rationale in *Broward County* applies equally here: "To hold otherwise [and allow an apex deposition] would . . . subject [corporate] heads to being deposed in virtually every [case against the corporation], to the detriment of the efficient operation of the [company]." *See* 810 So. 2d at 1058.

Although in *dictum* in *Florida Office of Insurance Regulation*, this Court suggested that the "government context is distinguishable [from the corporate context] because of separation of powers concerns," the Court simply identified those separation of powers concerns as (1) that agency heads might be questioned about hypothetical actions in a way that hampers future decision-making; and (2) that subjecting agency heads to a flood of discovery requests would interfere with

the functioning of the agency. 159 So. 3d at 951-52. The Court did not explain how those concerns militated against applying the apex doctrine in the corporate context (and did not need to, as the case involved an agency head). In fact, both of them could apply equally to private companies—especially the concern that subjecting corporate heads like Mr. Suzuki to deposition in every case filed against the company would seriously interfere with the company's operation.

2. Florida federal courts and other state courts routinely apply the apex doctrine in the corporate context

This Court has noted that "no Florida court has adopted the apex doctrine in the corporate context." *Fla. Office of Ins. Regulation*, 159 So. 3d at 951. But in that case the Court found it "unnecessary for us to address whether the apex doctrine applies in the corporate context," and did not rule one way or the other. *Id.* at 951 n.3. And no Florida court has held that the apex doctrine does *not* apply in the corporate context, either.

Florida federal courts, on the other hand, routinely apply the apex doctrine in the corporate context. *See*, *e.g.*, *Sun Capital Partners, Inc. v. Twin City Fire Ins. Co.*, 310 F.R.D. 523, 527-29 (S.D. Fla. 2015) (granting a protective order against depositions of the defendant's co-founders, where the plaintiff did not show that they had unique knowledge and there were less intrusive means of obtaining the information); *Noveshen v. Bridgewater Assocs., LP*, No. 13-61535-Civ-Marra/Matthewman, 2016 WL 824640, at *2, 4 (S.D. Fla. Feb. 26, 2016) (granting

a protective order against the deposition of the defendant's president where the plaintiff could not show that his deposition would provide relevant information, and agreeing that the deposition sought cumulative information and was for purposes of harassment); *Little League Baseball, Inc. v. Kaplan*, No. 08-60554-Civ-Ungaro/Simonton, 2009 WL 426277, at *2-3 (S.D. Fla. Feb. 20, 2009) (denying a motion to compel the deposition of the plaintiff's chairman, because the defendant could not show that his deposition would reveal unique information about the issues raised by plaintiff's claims).

In addition, several other states *have* adopted the apex doctrine in the corporate context, and have applied it in similar circumstances to bar depositions of head corporate officers like Mr. Suzuki. In a remarkably similar product-liability action alleging personal injury from a motor vehicle accident, two Toyota executives had no more than "*generalized* knowledge of Toyota's unintended acceleration problems." *Alberto v. Toyota Motor Corp.*, 796 N.W.2d 490, 497 (Mich. Ct. App. 2010). A Michigan court adopted the apex doctrine and quashed the denial of a protective order against their depositions. *Id.* *See also*, *e.g.*, *Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995) (adopting the apex doctrine and directing the trial court to reconsider its order compelling the deposition of the CEO and chairman of an oil company, whose affidavit showed that he had no personal knowledge of the plaintiff's claim); *State ex rel. Mass.*

Mut. Life Ins. Co. v. Sanders, 724 S.E.2d 353, 364 (W. Va. 2012) (adopting the apex doctrine and applying it to quash an order compelling the deposition of the president, CEO and chairman of an insurance company); *Liberty Mut. Ins. Co. v. Superior Court*, 13 Cal. Rptr. 2d 363, 367-68 (Cal. Ct. App. 1992) (adopting the apex doctrine and quashing the denial of a protective order against the deposition of an insurance company's president and CEO, whose affidavit stated that he had no knowledge of the plaintiff's claims).

3. The apex doctrine does not improperly shift the burden onto a discovery proponent and is consistent with the Florida discovery rules

Parties in these cases have argued that the apex doctrine improperly shifts the burden of demonstrating the need for discovery onto the party seeking it. But courts have been careful to note that no such burden-shifting occurs. The doctrine "merely require[s] the party seeking discovery to demonstrate that the proposed deponent has unique personal knowledge . . . and that other methods of discovery have not produced the desired information *only after* the party opposing discovery has moved for a protective order and [shown] the lack of the proposed deponent's personal knowledge and that other discovery methods could produce the required information." *Alberto*, 796 N.W.2d at 495. That is precisely what Suzuki did here: it sought a protective order against Mr. Suzuki's deposition, submitted his Declaration showing that he lacks personal knowledge, and in February 2019 is

producing its corporate representative to testify on precisely the same subjects on which the Plaintiff proposes to question Mr. Suzuki. Moreover, as *Liberty Mutual* made clear, the apex doctrine does not categorically prevent the deposition of high-level corporate officials; rather, it "prevent[s] undue harassment and oppression of high-level officials while still providing a plaintiff with several less intrusive mechanisms to obtain the necessary discovery, and allowing for the possibility of conducting the high-level deposition if warranted." 13 Cal. Rptr. 2d at 367-68.

In *Florida Insurance Regulation*, this Court noted *dictum* in a Fourth DCA opinion suggesting that the apex doctrine "arguably conflicts with Florida's discovery rules," 159 So. 3d at 951 (citing *Citigroup Inc. v. Holtsberg*, 915 So. 2d 1265, 1267 (Fla. 4th DCA 2005)). But no such conflict exists. As the Michigan appellate court noted, "[w]e find that application of the apex-deposition rule in the public sector and private corporate context is consistent with Michigan's broad discovery policy, and with Michigan's court rules, which"—like Florida's—"allow a trial court to control the timing and sequence of discovery . . . and to enter protective orders 'for good cause shown.'" *Alberto*, 796 N.W.2d at 494 (citations omitted). *See also* Fla. R. Civ. P. 1.280(c) (providing that, "for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires," and listing several possible remedies).

Florida courts know precisely how to apply the apex doctrine—and how *not* to apply it when it is not warranted. For example, in *JMIC Life Insurance Co. v. Henry*, 922 So. 2d 998, 1001 (Fla. 5th DCA 2005), the court rejected defendant's argument that plaintiff should not be entitled to take the "'apex' deposition" of a Mr. Williams, not because it rejected the doctrine but because "Williams is not an 'apex' level executive" and he was "ultimately responsible for [defendant's] denial of [plaintiff's] claim." *See also*, *e.g.*, *Remington Lodging & Hospitality v. Southernmost House, Ltd.*, 206 So. 3d 764, 765-66 (Fla. 3d DCA 2016) (upholding an order allowing the "apex" depositions of the defendant's president and CEO because their own affidavits revealed that they had relevant knowledge); *Racetrac Petroleum, Inc. v. Sewell*, 150 So. 3d 1247, 1251-52 (Fla. 3d DCA 2014) (upholding an order allowing the "apex" depositions of the defendant's president and two former vice presidents, where the company's own Rule 1.310(b)(6) witness identified them as having relevant knowledge); *Citigroup Inc.*, 915 So. 2d at 1269 (upholding the denial of motion for protective order against the depositions of the defendant's chairman and former CEO, where the "conduct and knowledge of the highest level executives were relevant in this case" and the motion "was not accompanied by the officials' affidavits denying any knowledge of relevant facts").

For these reasons, this Court should adopt the apex doctrine in the corporate context and apply it to quash the Order compelling the deposition of Mr. Suzuki.

B. Even if the Court does not apply the apex doctrine, it should nevertheless quash the Order because a deposition of Mr. Suzuki is not reasonably calculated to lead to the discovery of admissible evidence

Even if the Court declines to apply the apex doctrine in this context, it should still quash the Order under well-established discovery principles. Indeed, as this Court has held, "[d]iscovery is usually permitted only on matters that are relevant or that are reasonably calculated to lead to the discovery of admissible evidence." *Univ. of W. Fla. Bd. of Trs.*, 125 So. 3d at 325-26 (citing Fla. R. Civ. P. 1.280). *See also City of Gainesville v. Scotty's, Inc.*, 489 So. 2d 1196, 1197 (Fla. 1st DCA 1986) ("The right of discovery does not extend to matters which are irrelevant or which cannot reasonably be expected to lead to the discovery of relevant matters."). And "[t]rial courts must be accorded broad discretion in the treatment of discovery problems through the employment of the protective provisions contemplated by Rule 1.280." *Waite v. Wellington Boats, Inc.*, 459 So. 2d 425, 426 (Fla. 1st DCA 1984).

As shown above, Mr. Suzuki is the Chairman of a multi-national corporation. His extensive duties consume his schedule. The notion that Mr. Suzuki has any personal knowledge about a motorcycle accident in Florida is not credible on its face, and Plaintiff does not claim that Mr. Suzuki has any such knowledge. Instead, Plaintiff and the Order rely exclusively on the Document and the Email. But Mr. Suzuki did not send or receive the Email, and his unrebutted

Declaration shows that he has no recollection of the Document and that he is neither a member of, nor has any power over, the Quality Countermeasures Committee, whose action to recall the GSX R series braking system is just one of four items listed on the Document, the other three items having no relevance to Plaintiff's claim. Plaintiff's demand to depose Mr. Suzuki is particularly egregious because in a few months he will be taking the Rule 1.310(b)(6) deposition of a Suzuki corporate representative on the very subjects on which he demands to examine Mr. Suzuki.

Accordingly, this Court should quash the order because the deposition of Mr. Suzuki is not reasonably calculated to lead to the discovery of admissible evidence. That was precisely the outcome in *General Star*. There, upon the defendant's showing that "its president is a manager, not an adjuster or other employee with personal knowledge of the factual disputes involved in the lawsuit," the court quashed an order compelling the president's deposition, holding that it was not "'reasonably calculated to lead to the discovery of admissible evidence' under Florida Rule of Civil Procedure 1.280." 57 So. 3d at 239-40.

This Court reached the same outcome in *University of West Florida Board of Trustees*, 125 So. 3d at 325, where the Court applied the apex doctrine, albeit not by name, to quash an order compelling a university president's deposition but also analyzed the issue under Rule 1.280. In that case, the plaintiff sued the

university for wrongful termination, and also claimed that a co-defendant had tortiously interfered with her employment relationship by providing disparaging information to the university's president. *Id.* at 324-26. The president's affidavit, however, showed that she was not involved in the decision to fire the plaintiff and that her one conversation with the co-defendant did not relate to the plaintiff's termination. *Id.* at 326. This Court held that, because the plaintiff "failed to show that President Bense's deposition could be reasonably calculated to lead to the discovery of relevant evidence, the order [compelling the deposition] departed from the essential requirements of law." *Id.* (citing *General Star*, 57 So. 3d 238). As *General Star* noted, the "job of the president of the company is to manage the company, not to fly around the United States participating in depositions about . . . disputes of which the president has no personal knowledge. . . . If all claimants demand and obtain the same right, the chief executive officer manages his or her deposition schedule, not the company." 57 So. 3d at 240.

The utility of Mr. Suzuki's examination, which is virtually certain not to lead to the discovery of relevant information, also must be measured against its cost. Plaintiff is seeking the examination by letter rogatory to occur in Japan, requiring a significant expenditure of time and expense by the parties and counsel, including travel to Japan for preparation, as well as the resources of the Japanese courts, which would preside over any examination of Mr. Suzuki. Given

Plaintiff's upcoming Rule 1.310(b)(6) deposition, which will cover the identical topic areas, such an expenditure of resources is simply wasteful.

Accordingly, in the alternative, this Court should quash the Order on the basis that an examination of Mr. Suzuki is not reasonably calculated to lead to the discovery of admissible evidence.

II. SUZUKI IS MATERIALLY INJURED BY THE ORDER, AND HAS NO ADEQUATE REMEDY ON FINAL APPEAL

Certiorari relief also requires a showing that the Order will cause material injury to the petitioner throughout the remainder of the proceedings, and that the petitioner has no adequate remedy on appeal from the final judgment. *See Langston*, 655 So. 2d at 94. The material injury here is the undue burden on, and harassment of, Mr. Suzuki and Suzuki. Plaintiff knows that Mr. Suzuki has no relevant knowledge and he knows that his upcoming Rule 1.310(b)(6) depositions will address all the topics on which he seeks to examine Mr. Suzuki. Plaintiff is using Mr. Suzuki's signature on one document—out of 250,000 pages of documents Suzuki has produced to date—as a tool to abuse the opposing party.

Suzuki would be irreparably harmed beyond this case as well. As Mr. Suzuki's declaration shows, he could not exercise his duties as Chairman if he were subject to deposition in even a fraction of the vast number of lawsuits that Suzuki faces in U.S. courts. If the Order is not quashed, other litigants may seek to use it to gain an unfair advantage in other matters.

Suzuki has no adequate remedy on appeal. As the Florida Supreme Court has recognized, "[o]rders granting discovery . . . have traditionally been reviewed by certiorari. The rationale of these cases is that appeal after final judgment is unlikely to be an adequate remedy because once discovery is wrongfully granted, the complaining party is beyond relief." *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987) (citations omitted). When a discovery order departs from the essential requirements of law, the party is "materially injur[ed] throughout the remainder of the proceedings below and effectively [has] . . . no adequate remedy on appeal." *Langston*, 655 So. 2d at 94.

As shown above, the Order departs from the essential requirements of law. If Plaintiff is allowed to pursue his Application for Letter Rogatory and Mr. Suzuki is required to appear for examination, Suzuki will be beyond relief; once Mr. Suzuki's examination occurs, it cannot be undone later. *See CVS Caremark Corp. v. Latour*, 109 So. 3d 1232, 1234-35 (Fla. 1st DCA 2013) (holding that an order compelling the deposition in an improper county caused irreparable harm "because requiring a deponent to appear for deposition at an erroneous location results in harm that cannot be remedied on appeal in that once the deposition is taken it cannot be untaken"); *Dep't of Highway Safety v. Marks*, 898 So. 2d 1063, 1064 n.1 (Fla. 5th DCA 2005) (holding that an order compelling a deposition or "letting the

cat out of the bag" results in "irreparable harm" if the order departs from the essential requirements of law).

For these reasons, the Order will cause material injury to Suzuki throughout the remainder of the proceedings and Suzuki has no adequate remedy on appeal from a final judgment.

V.

CONCLUSION

For the reasons stated, Suzuki requests that the Court grant its Petition and quash the Order.

Date: November 15, 2018

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of this petition, was served by electronic transmission on November 15, 2018 on the following:

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this petition is submitted in Times New Roman 14-point font, which complies with the font requirement. *See* Fla. R. App. P. 9.100(l).

/s/ *Raoul G. Cantero*
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