

1 Please note:

2 This sample document is redacted from an actual research and writing project we did for a customer some time ago. It
3 reflects the law as of the date we completed it. Because the law may have changed since that time, please use it
4 solely to evaluate the scope and quality of our work.

5 If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANDSTONE
9

10 JOHN QUERCUS,

11 Plaintiff,

12 v.

13 BLACKSTONE INCORPORATED and
14 DOES 1 to 100, inclusive,

15 Defendants.
16

Case No. 345123

OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

Date: June 6, 20__

Time: 10:00 a.m.

Dept. X

Complaint filed:

Trial date:

17
18 Defendant Blackstone's motion for summary judgment should be denied for three
19 separate and distinct reasons. First and foremost, its motion is based exclusively on
20 inadmissible evidence. Defendant Blackstone brought its motion before plaintiff had
21 reviewed and signed his deposition transcript. Not until then was that testimony rendered
22 admissible evidence. For this reason alone, the motion can be denied.

23 Second, defendant Blackstone failed to meet its initial burden of going forward, and
24 of showing that there is no triable issue of material fact that Blackstone met its duty of
25 care. Its moving papers incorrectly assume that it only had a duty to prevent plaintiff
26 Quercus from losing his balance; but Blackstone also had a duty to protect Quercus if he
27 did lose his balance. The moving papers do not even mention this aspect of Blackstone's
28 duty, let alone prove that Blackstone, in fact, acted reasonably toward Quercus in this

1 regard. For this reason as well, the motion should be denied.

2 Third, Quercus's evidence shows triable issues of material fact. When Quercus
3 ultimately did read and sign his deposition transcript, he made a critical addition that is
4 sufficient to defeat this motion in its entirety. His deposition now states that the stairway
5 hand railings were too short and that he was unable to use them to stop his fall. Moreover,
6 his expert witness likewise has determined that the railings were not to Code, as they were
7 considerably shorter than required. Because there are triable issues of material fact as to
8 whether Blackstone maintained a defective condition on its property that caused Quercus's
9 injuries, this motion should be denied.

10 11 **FACTS¹**

12 Plaintiff John Quercus's complaint alleges that defendant Blackstone Incorporated
13 "owned, operated, controlled, maintained, designed, built, manufactured, leased, let, sold
14 and occupied" the property located at 16 Main Street, Alum, CA. The complaint also
15 alleges that Blackstone negligently caused the premises to be dangerous and defective and
16 that Quercus was injured as a proximate result of the property's condition.

17 In his responses to form interrogatories, Quercus stated that Blackstone violated
18 certain statutes and ordinances with regard to the property. His responses also referred
19 Blackstone to his expert-witness report for a list of the various code violations. In his
20 responses to special interrogatories, when asked to state why Blackstone was negligent,
21 Quercus responded that there were Building Code violations. In his response to a question
22 as to how Blackstone's negligence caused the incident, he stated that, had the condition of
23 the stairway complied with the Building Code, and had the owner addressed the defects in
24 the stairway, the accident would not have occurred. Quercus again referred Blackstone to
25 his expert-witness report for further details regarding the condition of the property, the
26 Building Code violations, and Blackstone's negligence.

27 _____
28 ¹ In the interests of brevity, all references to the parties' separate statements of fact have been deleted from
this sample document.

1 Quercus was deposed on February 21, 20__, and the parties stipulated, at the
2 suggestion of Blackstone’s counsel, that the deposition transcript should be forwarded to
3 plaintiff’s attorney for review, correction, and signature, and that within 45 days of receipt
4 of the transcript, plaintiff’s counsel would notify all parties of any changes to the
5 deposition testimony. On February 23, 20__, the court reporter signed the Certificate of
6 Shorthand Report and forwarded the original transcript to plaintiff’s counsel per the
7 stipulation.

8 Blackstone moved for summary judgment before the 45 days expired for Quercus to
9 correct his deposition. On receiving the transcript some time in the following week,
10 Quercus made the following change to his deposition at page 40, line 9: “also the handrails
11 were too short and I could not grab them to stop my fall.” He served notice of the change
12 to his deposition transcript on April 10, 20__.

13 14 **ARGUMENT**

15 **1. Blackstone’s motion is based entirely on inadmissible evidence.**

16 A court reporter’s records of questions and answers, which have not yet been signed
17 by the deponent, are not admissible in evidence as depositions. *Bennett v. Superior Court*
18 *of San Diego County* (1950) 99 Cal.App.2d 585. It is the deponent’s reading and signing
19 of a deposition that renders it his testimony, rather than its mere recording by a reporter.
20 *Reimel v. House* (1969) 268 Cal.App.2d 780.

21 Here, the deposition occurred on February 21, 20__. The parties stipulated that
22 Quercus would have 45 days from the date of the receipt of the transcript from the court
23 reporter to review, correct, and sign the deposition. The court reporter forwarded the
24 deposition after February 23, 20__. Blackstone brought this motion, based on the then-
25 unsigned deposition transcript, on March 2, 20__. It was not until April 10, 20__, that
26 Quercus read, corrected, and signed his deposition transcript.

27 Thus, when Blackstone brought this motion, Quercus’s deposition transcript was
28 not his “testimony”; it was merely a court reporter’s perceived understanding of what his

1 testimony was. As a result, Blackstone’s entire motion is based exclusively on evidence
2 that was inadmissible when the motion was prepared, filed, and served.

3
4 **2. Blackstone failed to meet its initial burden of going forward.**

5 Where the moving party on a motion for summary judgment is the defendant, it has
6 the burden of proving that the action has no merit. Code Civ. Proc. §§ 437c(a), (f)(1) and
7 (o)(2). A defendant has met that burden if it has shown that one or more elements of the
8 cause of action cannot be established or that there is a complete defense. Code Civ. Proc.
9 § 437c(o)(2). The first step in analyzing any motion for summary judgment is to identify
10 issues framed by the pleadings. *Allyson v. Department of Transportation* (1997) 53
11 Cal.App.4th 1304. The motion must respond to these allegations by establishing a
12 complete defense or by otherwise showing that there is no factual basis for relief on any
13 theory reasonably contemplated by the opponent’s pleading. *Anderson v. Pacific Bell*
14 (1988) 204 Cal.App.3d 277.

15 Here, Blackstone has failed to meet its initial burden. It has artificially truncated
16 the scope of its duty to Quercus, and thus failed to show that there is no factual basis for
17 relief on any theory reasonably contemplated by his complaint. The entire gist of
18 Blackstone’s argument on summary judgment is: Quercus admitted he fell because he lost
19 his balance, and therefore Blackstone is relieved of liability for his injuries. But cases
20 have held that a landowner can be liable if there is evidence that a handrail was either too
21 short, improperly maintained, or non-existent, if the plaintiff can show that this condition
22 proximately caused his injuries. *See, Montijo v. Western Greyhound Lines* (1963) 219
23 Cal.App.2d 342, 346; *Laird v. T.W. Mather, Inc.* (1958) 51 Cal.2d 210, 216.

24 The complaint alleges that Blackstone “owned, operated, controlled, maintained,
25 leased, let, sold and occupied” the premises and caused them to be dangerous and
26 defective. Quercus’s theory of the case was also described in greater detail in his
27 responses to discovery and the report of his expert witness, referenced in those responses.
28 He contends that the premises were defectively designed, built, and maintained in that,

1 among other things, the stairway handrail was too short and did not comply with the
2 Building Code. Blackstone's moving papers did not even mention this aspect of Quercus's
3 theory of liability, let alone show that there is no factual basis for relief on this theory.
4

5 **3. Key material facts are in dispute.**

6 Even if the Court somehow discounts the fact that Blackstone has not addressed all
7 the necessary allegations in the complaint and has not shown that there is no factual basis
8 for any legal theory reasonably contemplated by Quercus's complaint, Blackstone's
9 motion should nonetheless be denied because certain pivotal facts remain in dispute. For
10 instance, Quercus contends, and testified in his changes to his deposition, that the handrail
11 on the stairs was too short and that he was unable to grab it as he fell, thus causing his
12 injuries. He contends that the handrail did not comply with the Building Code because it
13 was far too short. His expert witness has corroborated this contention, concluding that the
14 Building Code requires that the handrail extend no less than 12 inches beyond the bottom
15 riser; the handrail here extended only 2½ inches beyond the bottom riser. The presentation
16 of this evidence is sufficient to raise a triable issue of fact as to whether the stairway and
17 handrail were defective, and whether that defective condition caused Quercus's injuries.
18

19 **CONCLUSION**

20 Defendant Blackstone relies entirely on inadmissible evidence and failed to meet its
21 initial burden of going forward. In any event, key material facts remain in dispute.
22 Plaintiff John Quercus respectfully requests that this Court deny Blackstone's motion for
23 summary judgment.
24

25 Dated:

Respectfully submitted,

Attorneys for Plaintiff