

1 David Berger AKA David Bergere  
2 16868 Main Street  
3 Hesperia, CA 92345  
4 Defendant  
5 In Pro Per  
6 (760) 955-3206  
7 No FAX NO Email

FILED  
2011 OCT -4 AM 10:12 (DTBX)  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE  
BY [Signature]  
VAP  
(DTBX)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ED CV 11 - 01588

11 JG KALLINS INVESTMENTS, LP  
12 Plaintiff

CASE NO.  
NOTICE OF REMOVAL UNDER  
28 U.S.C., section 1441

14 vs.

16 DAVID BERGER AKA DAVID BERGERE  
17 and Does 1 to 10, Inclusive  
18 Defendant

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FILED

To the clerk of the United States District Court for the central district of California.

Please take notice the Defendant, David Berger, hereby removes to this Court  
the State Court action described below.

Defendant David Berger gives notice that this action is removed to the United States  
District Court for the Central District of California from the Superior Court, 14455  
Civic Drive, # 100, Ave., Victorville CA, 92392, in the county of San Bernardino, CA.

Pursuant to 28 U.S.C., section 1441, Defendant further states as follows:

[Signature]

1 That defendant is named as the defendant in a civil action filed in the Superior Court,  
2 14455 Civic Drive, # 100, Victorville, CA, 92392.

3 Titled "JG Kallins Investments vs. Berger", said case is Case No. UDVS-1103043.  
4

5 The above referenced action was commenced by Plaintiff when Plaintiff filed a  
6 Summons and Complaint in the aforementioned court, case # UDVS-1103043  
7 entitled "JG Kallins Investments vs. David Berger AKA David Bergere".  
8

9 Defendant was served with the Summons and Complaint in September, 2011.

10 Defendant has not filed pleadings in the state court action, other

11 than an Answer to Complaint to Unlawful Detainer as deemed necessary.

12 The following activity of said case is attached hereto and incorporated herein by  
13 reference:  
14

15 Exhibit A:

16 Summons & Complaint for Unlawful Detainer, filed in September, 2011.

17 Exhibit B: Defendant's Answer to Unlawful Detainer, filed 9/21/11.  
18

19 Exhibit C: Defendant's Ex-Parte Motion to Vacate Judgment, filed 9/23/11.

20 Exhibit D: Defendant's Notice of Appeal, filed in October, 2011.  
21

22  
23 4. The above mentioned is a civil action of which this court has jurisdiction under 28  
24 U.S.C., section 1443 (1): Denial of due process in Unlawful Detainer -- Eviction after  
25 foreclosure, in that the rules of evidence and civil procedure are applied without equal  
26 protection. The amount in controversy includes up to, but is not limited to, an actuary  
27 exceeding \$75,000, if so determined by plaintiff.  
28

Therefore, this is a civil action over which this court has original jurisdiction and the action is removable to this court pursuant to 28 U.S.C., section 1441(a) and 1446.

Pursuant to the aforementioned, above, the facts of the case are as follows:

A. Plaintiff claims to be the owner of the real property that Defendant lives in as of the time of the Unlawful Detainer case filing in September, 2011, per the subject property located at 16868 Main Street, Hesperia, CA, 92345, County of San Bernardino, and seeks to evict Defendant from the real property.

However, no landlord/tenant relationship exists between Plaintiff and Defendant.

Further, plaintiff is claiming that title to property referenced above was extinguished by foreclosure and subsequent Trustee's Sale, however, plaintiff is not a bona fide purchaser, or subsequent purchaser.

Whereby,

Plaintiff, its attorney, and the Court are not proceeding in the manner required by the Code of Civil Procedure, and particularly the rules in evidence that state:

viz., Code of Civil Procedure section 128.7 provides that when an attorney or party presents a pleading, motion or similar paper to the court, and implied "certification" as to its legal and factual merit is made, and is subject to sanctions for violation of this certification.

Defendant was stonewalled when trying to bring this and other facts to the court's attention, as plaintiff had moved and received a judgment against Defendant even while Defendant was in the process of setting aside and / or vacating the judgment.

Plaintiff's counsel therefore had, in effect, used their knowledge of the law to prevent

1 Defendant from fully and accurately presenting his case.

2 Defendant was, therefore, denied his due process right and equal protection under the  
3 14<sup>th</sup> Amendment to protect his tenancy.  
4

5 B. Further, the rules of evidence prohibit, under objection, evidence from being  
6 admitted without authentication, and personal knowledge. Defendant's (Including the one  
7 subject of this removal) rights to equal protection under the law are non-existent in state court  
8 unlawful detainer actions.  
9

10 Therefore, the actions of Counsel for Plaintiff, and the State Court deprives  
11 Defendant of due process of law in that he will be dispossessed of his property, in  
12 noncompliance with the express language of the aforementioned referenced statute. The State  
13 Court could easily be backed by the appellate department thereby forcing Defendant to fight  
14 for his property from outside of his home.  
15

16  
17 WHEREFORE, Defendant prays that the above action now pending in the  
18 Superior Court, 14455 Civic Drive, # 100, Victorville, CA, 92392, bearing Case No.  
19 UDVS-1103043, be removed to this court.  
20

21  
22  
23 Dated: October 2<sup>nd</sup>, 2011

24  
25   
26 David Berger AKA David Bergere  
27 (In Propria Persona)  
28

**SUMMONS**  
**(CITACION JUDICIAL)**  
**UNLAWFUL DETAINER—EVICTION**  
**(RETENCIÓN ILÍCITA DE UN INMUEBLE—DESALOJO)**

FOR COURT USE ONLY  
..(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

DAVID BERGER AKA DAVID BERGERE

AND DOES 1 TO 10, INCLUSIVE

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JG KALLINS INVESTMENTS, LP

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entreguen una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presente su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos arribados por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

1. The name and address of the court is:

(El nombre y dirección de la corte es):  
SUPERIOR COURT OF CALIFORNIA  
14455 CIVIC DR., SUITE 100  
14455 CIVIC DR., SUITE 100  
VICTORVILLE, CA 92392  
VICTORVILLE JUDICIAL DISTRICT

CASE NUMBER:

(Número del caso):

02VS1103043

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
DURINGER LAW GROUP, PLC 714.279.1100  
STEPHEN C. DURINGER, SBN 134592 714.279.1109  
R. SCOTT ANDREWS, SBN 219936  
160 S. OLD SPRINGS RD., SUITE 135, ANAHEIM, CA 92808-1285

3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415)  did not  did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date:  
(Fecha)

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons. (POS-010).)

[REAL]

4. NOTICE TO THE PERSON SERVED: You are served

- a.  as an individual defendant. **A#1**
  - b.  as the person sued under the fictitious name of (specify):
  - c.  as an occupant
  - d.  on behalf of (specify):
- under:
- CCP 416.10 (corporation)
  - CCP 416.20 (defunct corporation)
  - CCP 416.40 (association or partnership)
  - CCP 415.46 (occupant)
  - CCP 416.60 (minor)
  - CCP 416.70 (conservatee)
  - CCP 416.90 (authorized person)
  - other (specify):

5.  by personal delivery on (date): **9/14/11**

Exhibit A

775-662-8296

UD-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>DURINGER LAW GROUP, PLC</b> <b>STEPHEN C. DURINGER, SBN 134592</b> <b>R. SCOTT ANDREWS, SBN 219936</b> <b>160 S. OLD SPRINGS RD., SUITE 135</b> <b>ANAHEIM, CA 92808-1285</b> TELEPHONE NO.: 714.279.1100 FAX NO. (Optional): 714.279.1109 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>PLAINTIFF</b>		FOR COURT USE ONLY           CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 14455 CIVIC DR., SUITE 100 MAILING ADDRESS: 14455 CIVIC DR., SUITE 100 CITY AND ZIP CODE: VICTORVILLE, CA 92392 BRANCH NAME: VICTORVILLE JUDICIAL DISTRICT		
PLAINTIFF: JG KALLINS INVESTMENTS, LP  DEFENDANT: DAVID BERGER AKA DAVID BERGERE AND <input checked="" type="checkbox"/> DOES 1 TO 10, INCLUSIVE		
<input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Amendment Number):		COMPLAINT — UNLAWFUL DETAINER*
Jurisdiction (check all that apply): <input checked="" type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input checked="" type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (amount demanded exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint (check all that apply): <input type="checkbox"/> from unlawful detainer to general unlimited civil (possession not in issue) <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlawful detainer to general limited civil (possession not in issue) <input type="checkbox"/> from unlimited to limited		

1. PLAINTIFF (name each): JG KALLINS INVESTMENTS, LP

alleges causes of action against DEFENDANT (name each): DAVID BERGER AKA DAVID BERGERE

2. a. Plaintiff is (1)  an individual over the age of 18 years. (4)  a partnership.  
 (2)  a public agency. (5)  a corporation.  
 (3)  other (specify):

b.  Plaintiff has complied with the fictitious business name laws and is doing business under the fictitious name of (specify):  
JG KALLINS INVESTMENTS, LP

3. Defendant named above is in possession of the premises located at (street address, apt. no., city, zip code, and county):  
16858 MAIN ST., HESPERIA, CA 92345, COUNTY OF SAN BERNARDINO

4. Plaintiff's interest in the premises is  as owner  other (specify):

5. The true names and capacities of defendants sued as Does are unknown to plaintiff.

6. a. On or about (date): 05-10-11 defendant (name each): DAVID BERGER AKA DAVID BERGERE

- (1) agreed to rent the premises as a  month-to-month tenancy  other tenancy (specify): 2 YEAR LEASE  
 (2) agreed to pay rent of \$ 5000.00 payable  monthly  other (specify frequency):  
 (3) agreed to pay rent on the  first of the month  other day (specify):

b. This  written  oral agreement was made with

- (1)  plaintiff. (3)  plaintiff's predecessor in interest.  
 (2)  plaintiff's agent. (4)  other (specify):

\*NOTE: Do not use this form for evictions after sale (Code Civ. Proc., § 1161a).

A - 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): <b>David Berger AKA David Bergere</b> <b>16868 Main Street</b> <b>Hesperia, CA 92345</b>	TELEPHONE NO:  FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>In Pro Per</b> NAME OF COURT: <b>Superior Court of California</b> STREET ADDRESS: <b>14455 Civic Drive, # 100</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>Victorville, CA 92392</b> BRANCH NAME: <b>Victorville Judicial District</b>	
PLAINTIFF: <b>JG Kallins Investments, LP</b> DEFENDANT: <b>David Berger AKA David Bergere</b>	
<b>ANSWER—Unlawful Detainer</b>	CASE NUMBER: <b>UDVS - 1103043</b>

## 1. Defendant (names):

David Berger AKA David Bergere

answers the complaint as follows:

## 2. Check ONLY ONE of the next two boxes:

a.  Defendant generally denies each statement of the complaint. (Do not check this box if the complaint demands more than \$1,000.b.  Defendant admits that all of the statements of the complaint are true EXCEPT  
(1) Defendant claims the following statements of the complaint are false (use paragraph numbers from the complaint or explain):

6,7,8,9,10,11,12,13,14

 Continued on Attachment 2b (1).

(2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them (use paragraph numbers from the complaint or explain):

 Continued on Attachment 2b (2).

## 3. AFFIRMATIVE DEFENSES (NOTE: For each box checked, you must state brief facts to support it in the space provided at the top of page two (item 3j)).

a.  (nonpayment of rent only) Plaintiff has breached the warranty to provide habitable premises.b.  (nonpayment of rent only) Defendant made needed repairs and properly deducted the cost from the rent, and plaintiff did not give proper credit.c.  (nonpayment of rent only) On (date): before the notice to pay or quit expired, defendant offered the rent due but plaintiff would not accept it.d.  Plaintiff waived, changed, or canceled the notice to quit.e.  Plaintiff served defendant with the notice to quit or filed the complaint to retaliate against defendant.f.  By serving defendant with the notice to quit or filing the complaint, plaintiff is arbitrarily discriminating against the defendant in violation of the Constitution or laws of the United States or California.g.  Plaintiff's demand for possession violates the local rent control or eviction control ordinance of (city or county, title of ordinance, and date of passage):

(Also, briefly state the facts showing violation of the ordinance in item 3j.)

h.  Plaintiff accepted rent from defendant to cover a period of time after the date the notice to quit expired.i.  Other affirmative defenses are stated in item 3j.

EXHIBIT B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): <b>DAVID BERGER AKA DAVID BERGERE</b> <b>16868 MAIN STREET</b> <b>HESPERIA, CA 92345</b>		TEL. NO.: <b>760-240-6175</b>	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>(TN. PRO PER)</b>		FAX NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN BERNARDINO</b> LIMITED CIVIL CASE			
<b>14455 CIVIC DRIVE, #100</b> <b>VICTORVILLE, CA 92392</b>			
PLAINTIFF/PETITIONER: <b>JG KALLINS INVESTMENTS, LP</b>			
DEFENDANT/RESPONDENT: <b>DAVID BERGER AKA DAVID BERGERE</b>			
NOTICE OF MOTION AND MOTION FOR ORDER		CASE NUMBER: <b>UDVS-1103043</b>	
<input checked="" type="checkbox"/> SETTING ASIDE DEFAULT <u>OR</u> :		HEARING DATE: <b>09/26/11</b>	
<input checked="" type="checkbox"/> VACATING DEFAULT JUDGMENT <u>OR</u> :		TIME: <b>8:30 AM</b>	
<input checked="" type="checkbox"/> STAYING EXECUTION OF JUDGMENT		CO. JRT. ROOM: <b>V-15</b>	
		COMPLAINT DATE: <b>9/12/11</b>	

**EX PARTE MOTION FOR ORDER SETTING ASIDE DEFAULT/VACATING DEFAULT JUDGMENT**

- Defendant **DAVID BERGER** does hereby move the court, pursuant to Section 473 of the Code of Civil Procedure, for an order:
  - setting aside the default entered in this action on **09/20/11**
  - vacating default judgment entered in this action on \_\_\_\_\_
- Defendant further moves for an order permitting defendant to:
  - file an answer, a true and correct copy of which is attached to this motion and incorporated by reference;
  - appear at a trial on the merits. **(EXHIBIT A)**
- This motion is brought because  default  default judgment was/were taken against defendant:
  - Defendant was mistaken as to some material fact or law relating to defendant's duty to respond.
  - Through inadvertence and/or oversight defendant failed to timely respond.
  - Defendant was prevented from responding due to an unexpected condition or situation which arose, without any default or negligence on his/her part, and which ordinary care could not have prevented.
  - Other: **PURSUANT TO POINT # 8 OF DECLARATION (Following) PAGE**
- Defendant possesses a meritorious defense against the unlawful detainer or other civil act on.
 

**PURSUANT TO POINT # 3, ABOVE, AND POINT # 8 OF MY DECLARATION (Following page), I WAS INCORRECTLY INFORMED THROUGH LEGAL AID THAT WEEKENDS AND HOLIDAYS ARE WAIVED PER NUMERICALLY COMPUTING THE 5-DAY WINDOW ALLOWED FOR FILING MY ANSWER, WHEREBY MY ANSWER WAS NOT ACCEPTED BY THE WINDOW CLERK AT THE COURT WHO INFORMED ME THAT PLAINTIFF'S "REQUEST FOR ENTRY OF DEFAULT" HAD JUST BEEN FILED, LEAVING ME NO CHOICE BUT TO IMMEDIATELY MOVE EX-PARTE IN ORDER TO GET MY ANSWER FILED.**

**EXHIBIT C**



**X**EX PARTE MOTION FOR ORDER STAYING EXECUTION

5. Defendant, DAVID BERGER, respectfully applies under Section 918 of the Code of Civil Procedure, for an order from this court directed to the Sheriff of Riverside County, to plaintiff, and to any other persons acting on behalf of or together with plaintiff, staying execution of the judgment entered in this action on the grounds that:

- Defendant would suffer hardship if the judgment were to be executed at this time.
- The judgment may be set aside or modified as requested in defendant's motion to vacate default judgment.
- The judgment may be set aside or modified in accordance with defendant's motion for a new trial.
- The judgment may be set aside or modified in accordance with defendant's motion for judgment not withstanding the verdict.
- The judgment may be set aside or modified in accordance with defendant's motion for relief from forfeiture and restoration of the tenancy under Section 1179 of the Code of Civil Procedure.

6. The motion filed above is filed with this application, and is now pending before this Court.

**DECLARATION**

7. I am the defendant in this action. I am asking the court to set aside the  default  default judgment in this case.

8. I did not  file a response to the summons and complaint  appear at the trial in the case because  I did not receive the summons and complaint until \_\_\_\_\_, and by that time it was too late to file a response.
- I did not understand that I had to respond to the plaintiff's papers in five days. I thought weekends and holidays did not count in computing the time. When I tried to file my response at the court, I was told it was too late.
- I was unable to come to the court because of the following medical emergency:

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9. I have the following defenses to the  eviction  civil complaint for damage:

PLEASE SEE POINT # 4, PRECEDING PAGE,  
AND POINT # 8 (ABOVE), OF THE DECLARATION,  
AND POINT # 3, PRECEDING PAGE.

---



---



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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 09/23/11

\_\_\_\_\_  
Signature of Defendant

*Clerk stamps date here when form is filed.*

FILED <sup>Victorville</sup>  
SAN BERNARDINO COUNTY  
Superior/Municipal Court

OCT 03 2011

*Margie Garren*  
MARGIE GARREN, DEPUTY

**Instructions**

- This form is only for appealing in a **limited civil case**. You can get other forms for appealing in criminal cases at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- Before you fill out this form, read *Information on Appeal Procedures for Limited Civil Cases* (form APP-101-INFO) to know your rights and responsibilities. You can get form APP-101-INFO at any courthouse or county law library or online at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).
- You must serve and file this form **no later than 30 days** after the trial court mails or a party serves a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or 90 days after entry of judgment, whichever is earlier (see rule 8.823 of the California Rules of Court for very limited exceptions). **If your notice of appeal is late, your appeal will be dismissed.**
- Fill out this form and make a copy of the completed form for your records and for each of the other parties.
- Serve a copy of the completed form on each of the other parties and keep proof of this service. You can get information about how to serve court papers and proof of service from *What Is Proof of Service?* (form APP-109-INFO) and on the California Courts Online Self-Help Center at [www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving](http://www.courtinfo.ca.gov/selfhelp/lowcost/getready.htm#serving).
- Take or mail the original completed form and proof of service on the other parties to the clerk's office for the same court that issued the judgment or order you are appealing. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

*You fill in the name and street address of the court that issued the judgment or order you are appealing:*

Superior Court of California, County of San Bernardino  
14455 Civic Drive, # 100  
Victorville, CA 92392

*You fill in the number and name of the trial court case in which you are appealing the judgment or order:*

Trial Court Case Number:  
UDVS - 1103043  
Trial Court Case Name:  
JG Kallins Investments vs. Berger

*The clerk will fill in the number below:*

Appellate Division Case Number:

**1 Your Information**

a. Name of appellant (the party who is filing this appeal):

DAVID BERGER AKA DAVID BERGERE

b. Appellant's contact information (*skip this if the appellant has a lawyer for this appeal*):

Street address: 16868 Main Street Hesperia CA 92345  
Street City State Zip

Mailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: (760) 240-6175 E-mail (*optional*): \_\_\_\_\_

c. Appellant's lawyer (*skip this if the appellant does not have a lawyer for this appeal*):

Name: N/A State Bar number: \_\_\_\_\_

Street address: \_\_\_\_\_  
Street City State Zip

Mailing address (*if different*): \_\_\_\_\_  
Street City State Zip

Phone: ( ) \_\_\_\_\_ E-mail (*optional*): \_\_\_\_\_

Fax (*optional*): ( ) \_\_\_\_\_

**EXHIBIT D**

Trial Court Case Name: JG Kallins Investments, LP vs. Berger, et al

**2** This is (check a or b):

- a.  The first appeal in this case.
- b.  A cross-appeal (an appeal filed after the first appeal in this case (complete (1), (2), and (3))).
- (1) The notice of appeal in the first appeal was filed on (fill in the date that the other party filed its notice of appeal in this case): \_\_\_\_\_
- (2) The trial court clerk mailed notice of the first appeal on (fill in the date that the clerk mailed the notice of the other party's appeal in this case): \_\_\_\_\_
- (3) The appellate division case number for the first appeal is (fill in the appellate division case number of the other party's appeal, if you know it): \_\_\_\_\_

**3** Judgment or Order You Are Appealing

I am /My client is appealing (check a or b):

- a.  The final judgment in the trial court case identified in the box on page 1 of this form.  
The date the trial court entered this judgment was (fill in the date): 09/29/2011
- b.  Other:
- (1)  An order made after final judgment in the case.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (2)  An order changing or refusing to change the place of trial (venue).  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (3)  An order granting a motion to quash service of summons.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (4)  An order granting a motion to stay or dismiss the action on the ground of inconvenient forum.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (5)  An order granting a new trial.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (6)  An order denying a motion for judgment notwithstanding the verdict.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_
- (7)  An order granting or dissolving an injunction or refusing to grant or dissolve an injunction.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_



D-1

3 (continued)

(8)  An order appointing a receiver.  
The date the trial court entered this order was (fill in the date): \_\_\_\_\_

(9)  Other action (please describe and indicate the date the trial court took the action you are appealing):

N/A

4 Record Preparation Election

Complete this section only if you are filing the first appeal in this case. If you are filing a cross-appeal, skip this section and go to the signature line.

Check a or b if you are filing the first appeal in this case:

- a.  I have/My client has completed *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) and attached it to this notice of appeal.
- b.  I/My client will complete *Notice Designating Record on Appeal (Limited Civil Case)* (form APP-103) later. I understand that I must file this notice in the trial court within 10 days of the date I file this notice of appeal.

**REMINDER: Except in the very limited circumstances listed in rule 8.823, you must serve and file this form no later than (1) 30 days after the trial court clerk mails or a party serves either a document called a Notice of Entry of the trial court judgment or a file-stamped copy of the judgment or (2) within 90 days after entry of judgment, whichever is earlier. If your notice of appeal is late, your appeal will be dismissed.**

Date: 10/02/2011

DAVID BERGER AKA DAVID BERGERE

Type or print your name

Signature of appellant/cross-appellant or attorney

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is David T. Bristow.

The case number on all documents filed with the Court should read as follows:

**EDCV11- 1583 VAP (DTBx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

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**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) JG KALLINS INVESTMENTS, LP	<b>DEFENDANTS</b> DAVID BERGER AKA DAVID BERGERE
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) STEPHEN C. DURINGER, AAL 160 S. OLD SPRINGS RD., # 135 ANAHEIM, CA 92808	Attorneys (If Known) DEFENDANT IN PRO PER

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DEF</b></td> <td style="border: none;"></td> <td style="border: none; text-align: center;"><b>PTF</b></td> <td style="border: none; text-align: center;"><b>DEF</b></td> </tr> <tr> <td style="border: none;">Citizen of This State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

1 Original Proceeding   
  2 Removed from State Court   
  3 Remanded from Appellate Court   
  4 Reinstated or Reopened   
  5 Transferred from another district (specify):   
  6 Multi-District Litigation   
  7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION under F.R.C.P. 23:**  Yes  No      **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

REMOVAL FROM STATE COURT; CIVIL RIGHTS

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input checked="" type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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ED CV 11 - 01589

VARDTBX

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW

OCT - 4 2011

J

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case?  No  Yes  
If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SAN BERNARDINO	SAN BERNARDINO

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SAN BERNARDINO	SAN BERNARDINO

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
SAN BERNARDINO	SAN BERNARDINO

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved**

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_ Date 10/02/2011

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))