

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 09-910 JVS (ANx) Date August 31, 2009

Title Marques v. Mortgageit, Inc., et al.

Present: The Honorable James V. Selna

Karla J. Tunis  
Deputy Clerk

Not Present  
Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS)

Order Discharging Order to Show Cause Issued August 21, 2009 and Order to Show Cause re Jurisdiction to MTC Financial

On August 21, 2009, the Court issued an order to show cause directed to defendant Mortgageit, Inc. (“Mortgageit”) on the mistaken premise that Mortgageit had been the defendant removing the action. The order to show cause directed to Mortgageit is discharged.

On August 7, 2007, defendant MTC Financial Inc. (“MTC”) removed this case from the Superior Court for the State of California, County of Orange on the basis of federal question jurisdiction. The Notice of Removal does not cite 28 U.S.C. § 1331, but in the style of the document states “(Federal Question).”

Although the Complaint makes reference in the style and in First Cause of Action to “TILA” (Complaint, Caption page, ¶ 23), in fact, the claim is asserted in one for violation of the Section 17200 of the California Business and Professions Code. The plaintiffs are entitled to control their own pleading, and the have chosen not to assert a federal claim for relief. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). The fact that the unlawful practice alleged in the First Cause of Action is a violation of TILA does not change the state nature of the statutory claim, and is insufficient to create federal question jurisdiction. Eastman v. Marine Mechanical Corp., 438 F.3d 544, 553 (6<sup>th</sup> Cir 2006); Jairath v. Dyer, 154 F.3d 1280, 1284 (11<sup>th</sup> Cir. 1998); see generally Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg., 545 U.S. 308, 313-14 (2005).

MTC is ordered to show cause within 10 days why the action should not be remanded to state court for lack of jurisdiction.

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