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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Margaret Rose Brown,  
9 Plaintiff,

No. CV-17-01031-PHX-GMS

**ORDER**

10 v.

11 CIT Bank NA, et al.,  
12 Defendants.  
13

14 Pending before the Court is Plaintiff Margaret Rose Brown's Motion for  
15 Temporary Restraining Order ("TRO") with notice, (Doc. 3). Defendant CIT Bank NA  
16 ("CIT Bank") has responded, (Doc. 11), and a TRO hearing has been scheduled for  
17 Friday, April 28, 2017, at 11:00 AM.

18 Federal Rule of Civil Procedure 12(h)(3) provides that if a court "determines at  
19 any time that it lacks subject-matter jurisdiction, the court must dismiss the action." This  
20 Court had made that determination and therefore dismisses the action.

21 Plaintiff asserts in her Complaint that this court "has jurisdiction pursuant to Title  
22 28 U.S.C. § 1331." (Doc. 1 at 2.) However, there is no federal question on the face of  
23 her Complaint. While she asserts that "Defendants have violated statutory and common  
24 law obligations pursuant to the Home Equity Conversation Mortgage Program, 12  
25 U.S.C.A. § 1715z-20," she makes no claims pursuant to that statute.

26 Count One simply seeks declaratory relief that the pending foreclosure is invalid,  
27 without citing the authority under which Plaintiff seeks declaratory relief. (Doc. 1 at 7.)  
28 Even if she seeks declaratory relief under the federal Declaratory Judgment Act, 28

1 U.S.C. § 2201(a), “[i]t is well settled that the Declaratory Judgment Act does not itself  
2 confer federal subject matter jurisdiction, but merely provides an additional remedy in  
3 cases where jurisdiction is otherwise established.” *Staacke v. U.S. Sec’y of Labor*, 841  
4 F.2d 278, 280 (9th Cir. 1988) (internal citations and quotation marks omitted).

5 Counts Two and Three assert that the Defendants in this case breached their “duty  
6 to Plaintiff to comply with Arizona law and the Deed of Trust, including but not limited  
7 to A.R.S. § 33-801 et seq.” (Doc. 1 at 8, 9.)

8 Count Four asserts two separate breaches of contract. First, Plaintiff asserts that  
9 Defendant Financial Freedom breached the contract formed by the Deed of Trust by  
10 “declaring the entire loan amount due and payable when the conditions precedent for  
11 acceleration of the debt” as stated in the Deed of Trust had not occurred. (Doc. 1 at 10.)  
12 Second, Plaintiff asserts that Financial Freedom “also entered into a contract when it  
13 offered to assign the Note and Deed of Trust to HUD,” and then breached that contract  
14 when Financial Freedom “failed to assign the Note and Deed of Trust even after Plaintiff  
15 fully complied with the terms.” (Doc. 1 at 10–11.)

16 Count Five asserts that the pending trustee sale is wrongful, because Defendant  
17 MTC Financial Incorporated (“MTC”) falsely represented that it was qualified to act as a  
18 trustee under A.R.S. § 33-803(A)(1) and in so doing violated A.R.S. § 33-420.

19 Count Six again asserts that CIT Bank and Financial Freedom breached a contract,  
20 and seeks specific performance of that contract. Plaintiff alleges the CIT Bank and  
21 Financial Freedom made a unilateral offer, which Plaintiff accepted, to evaluate Plaintiff  
22 for an assignment of the loan to the United States Department of Housing and Urban  
23 Development (“HUD”). Plaintiff further asserts that she qualified for such assignment  
24 under HUD’s Mortgagee Optional Election (“MOE”) program, as described in HUD’s  
25 Mortgagee Letter 2015-15, but that Defendants failed to submit her application in a  
26 timely manner. (Doc. 1 at 14–20.)

27 While Count Six (along with, to a lesser extent, Counts Two and Four) references  
28 a federal mortgage assignment program, the statutes, regulations and guidelines

1 pertaining to reverse mortgages generally do not create a private federal right of action.  
2 *See Estate of Leventhal ex rel. Bernstein v. Wells Fargo Bank, N.A.*, No. 14 Civ.  
3 8751(ER), 2015 WL 5660945, at \*12 (S.D.N.Y. Sept. 25, 2015) (collecting cases); *see*  
4 *also Welte v. Wells Fargo Bank Nat’l Ass’n*, 189 F. Supp. 3d 965, 976 (C.D. Cal. 2016)  
5 (“Nothing in this section [12 U.S.C. § 1715z-20] imposes a duty of any kind on financial  
6 institutions”); *Santos v. Reverse Mortg. Sols., Inc.*, No. 12-3296-SC, 2013 WL 5568384,  
7 at \*6 (N.D. Cal. Oct. 9, 2013) (declining to create a federal private right of action for  
8 violations of an HUD “handbook for HUD-approved mortgagees in servicing HUD-  
9 insured HECM mortgages”). Mortgagee Letter 2015-15 itself provides that:

10           Nothing in this Mortgagee Letter confers any right to a Non-  
11 Borrowing Spouse to an assignment or any other action by  
12 HUD or the mortgagee. Further, nothing in this Mortgagee  
13 Letter interferes with any right of the mortgagee to enforce its  
14 private contractual rights and obligations remain unaffected  
15 by anything in this Mortgagee Letter.

16 U.S. Dep’t of Housing and Urban Dev., Mortgagee Letter 2015-15, at \*7 (June 12, 2015).  
17 Moreover, Count Six’s breach of contract claim is premised on Financial Freedom’s  
18 alleged failure to follow through on its contractual promise to submit an MOE application  
19 to HUD in a timely manner, not on any kind of “contested and substantial federal  
20 question” over the interpretation of Mortgagee Letter 2015-15 or any other federal  
21 statutes, regulations or guidelines. *See Grable & Sons Metal Prods., Inc. v. Darue Eng’g*  
22 *& Mfg.*, 545 U.S. 308, 313 (2005) (noting that “federal jurisdiction demands not only a  
23 contested federal issue, but a substantial one”).

24           As such, this Court lacks federal question jurisdiction over this matter.<sup>1</sup>

25           **IT IS THEREFORE ORDERED** that this case is **DISMISSED** for lack of  
26 subject-matter jurisdiction.

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28 <sup>1</sup> Diversity jurisdiction under 28 U.S.C. § 1332 is also lacking; Plaintiff is an Arizona resident and it is alleged that Defendant MTC is an Arizona real estate corporation. (Doc. 1 at 1–2.)

