

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KRIS ROENA BROWN, et al.

Plaintiffs,

Case No. 16-cv-13003

Hon. Matthew F. Leitman

v.

UNITED STATES OF AMERICA,

Defendant.

**ORDER (1) DIRECTING CLERK OF COURT TO REINSTATE
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF #23) AND
(2) STRIKING PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND CROSS
MOTION FOR PARTIAL SUMMARY JUDGMENT (ECF #25)**

In this action, Plaintiff Kris Roena Brown asserts a claim against Defendant United States of America under the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1) (the "FTCA"), for injuries she allegedly sustained in an automobile accident. (*See* Compl., ECF #1.) On November 16, 2016, the Court entered a scheduling order in which it required, among other things, that any dispositive motions be filed by June 30, 2017. (*See* ECF #15.) On June 30, 2017, Defendant filed a motion for summary judgment. (*See* ECF #23.) On August 4, 2017, Plaintiff filed a "Response in Opposition to Defendant's Motion for Summary Judgment and Cross Motion for

Partial Summary Judgment.” (*See* ECF #25.) Defendant filed a reply on September 1, 2017. (*See* ECF #27.)

On September 19, 2017, before the Court reviewed the briefing on Defendants’ motion for summary judgment, the Court entered an order in which it (1) referred this action to a magistrate judge to conduct a settlement conference between the parties and (2) terminated Defendant’s summary judgment motion without prejudice. (*See* ECF #31.) In that order, the Court stated that it would reinstate Defendant’s summary judgment motion if the settlement conference did not result in a settlement. (*See id.* at Pg. ID 1446-47.) On March 1, 2018, Defendant filed a notice of reinstatement of its motion for summary judgment in which it informed the Court that the parties had not settled the matter. (*See* ECF #36.) The Court has now completed a preliminary review of the briefing on Defendant’s motion for summary judgment.

Based on the Defendant’s notice of reinstatement and the Court’s preliminary review of the briefing on Defendant’s motion for summary judgment, **IT IS HEREBY ORDERED THAT:**

1. The Clerk of the Court shall reinstate Defendant’s motion for summary judgment (ECF #23) to the Court’s active docket.

2. Plaintiff's "Response in Opposition to Defendant's Motion for Summary Judgment and Cross Motion for Partial Summary Judgment" (ECF #25) is stricken. The Court strikes that filing for three reasons:
 - a. In violation of this District's Electronic Filing Policies and Procedures Rule 5(f),¹ the filing combines a response to a motion with a counter-motion for relief. Rule 5(f) provides that such a filing will be stricken;
 - b. Plaintiff's cross-motion for summary judgment was filed far after the dispositive motion cut-off of June 30, 2017 in the Court's scheduling order; and
 - c. The number of pages in the filing far exceeds the number of pages allowed for a response to a dispositive motion. *See* L.R. 7.1(d)(3). The Court did not grant Plaintiff leave to file a brief in excess of the page limits.
3. Plaintiff shall file a new response to Defendant's motion for summary judgment that complies with all applicable rules and filing procedures **by not later than March 28, 2018.**

¹ Rule 5(f) provides in relevant part that "a response or reply to a motion must not be combined with a counter-motion. Papers filed in violation of this rule will be stricken."

4. Defendant may file a reply in support of its motion for summary judgment or may file a paper stating that it relies on its prior reply brief by **not later than April 11, 2018.**

IT IS SO ORDERED.

Dated: March 7, 2018

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 7, 2018, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764