IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES EQUAL EMPLOYMENT, OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
SUSAN BRENNEKA, ERIN FOSTER, CHRISTINA JAVID, VICKI MINER, and TRACEY RANGEL,	)	**Case No. 04 C 50375**
Plaintiffs-Interveners,	)	**Magistrate Judge P. Michael Mahoney**
v.	)	
THE BLOOMIN' APPLE ROCKFORD I, LLC, THE BLOOMIN' APPLE, LLC, and HEARTLAND APPLE, INC.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter is before the court on United States Equal Employment Opportunity Commission's ("EEOC") February 2, 2006 Motion to Compel Responses to Plaintiff's Third Set of Request for Admissions. For the reasons stated below, EEOC's Motion is denied.

I. Background

EEOC served sixty-six Requests to Admit on Defendants on January 12, 2006 under Federal Rule of Civil Procedure 36. Defendants chose not to respond, contending that the Requests were untimely served because fact discovery closed December 30, 2005.

EEOC contends the Requests were timely served because Requests to Admit are not discovery devices, so fact discovery cut-off dates do not control, citing *Hanley v. Como Inn, Inc.* 2003 WL 1989607, at *1 (N.D. Ill. Apr. 28, 2003)(holding that requests for admission are not

discovery devices but, rather are used to establish truth or genuineness of a matter in order to eliminate need to prove a matter at trial or to limit triable issues of fact). Defendants counter that Federal Rule of Civil Procedure 26 provides that "parties may obtain discovery of one or more of the following methods: . . . requests for admission."

II. Analysis

While some courts have compelled responses to requests to admit served after the close of discovery, this does not appear to be the trend in the Seventh Circuit. Numerous courts have, in fact, disallowed requests to admit that would require responses beyond the close of discovery. *See, e.g., Coram Health Care Corp. v. MCI Worldcom Communications, Inc.*, No. 01 C 1096, 2001 WL 1467681, at *3 (N.D. Ill Nov. 15, 2001)(Defendants did not have an opportunity to timely submit their responses within the discovery period, so defendants were under no obligation to respond to the request for admissions); *Fahey v. Creo Products, Inc.*, No. 96 C 5709, 1998 WL 474114, at *2 (N.D.Ill. Aug. 4, 1998)(request for admissions served one day before discovery cut-off was untimely; defendant need not respond); *Biegnaek v. Wilson*, 110 F.R.D. 77 (N.D.Ill.1986)("until this court decides to propound a rule specifically dealing with requests to admit, requests to admit should be treated as discovery for purposes of the closing date); *Adams v. Budd Co.*, No. 85-566, 1987 WL 56618, at *2 n.1. (N.D.Ind. Feb. 9, 1987)("Requests for discovery must be made in sufficient time to allow the opposing party to respond before the termination of discovery. Discovery requests not filed in sufficient time to allow the opponent to respond within the discovery period are untimely and the opponent is under no duty to comply with this untimely discovery request.").

Though the Court of Appeals for the Seventh Circuit has not set forth a rule specifically

dealing with requests to admit served beyond the close of fact discovery, *Laborers' Pension Fund v. Blackmore Sewer Construction* does show that the court is inclined to find that Requests to Admit are subject to the discovery cutoff. 298 F.3d 600, 606 n.2 (7th Cir. 2002)("We need not decide today whether requests for admission are a discovery device or should be characterized otherwise. The requests filed here were untimely no matter how they are characterized, and the district court did not abuse its discretion in so finding. We note for future consideration that Rule 29 seems to contemplate that requests for admission are a discovery device.").

Thus, in accordance with Seventh Circuit case law, and in the interest of judicial efficiency, this court will treat requests to admit as discovery for purposes of fact discovery closure unless a rule is propounded otherwise. EEOC's Motion to Compel Responses to Request to Admit served beyond the court ordered close of fact discovery is denied.

III. Conclusion

For the reasons stated above, EEOC's February 2, 2006 Motion to Compel Responses to Plaintiff's Third Set of Request for Admissions is denied.

ENTER:

P. MICHAEL MAHONEY, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

DATE: February 10, 2006