

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

YOSHIMA HOLMES,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION
	)	
UNITED PARCEL SERVICE, INC.,	)	Case No. 04-2315-KHV
	)	
Defendant.	)	
_____	)	

**ORDER**

On July 8, 2004, plaintiff filed this suit against United Parcel Service, Inc. (“UPS”), alleging discrimination based on race, sex and age and retaliation. On February 16, 2005, the Court entered a Confidentiality And Protective Order (Doc. #27) (“Protective Order”) which provides that documents designated as confidential material “shall be used and disclosed solely for purpose of the preparation and trial of this matter and shall not be used or disclosed for any other purpose, unless ordered by this court, or another court or any administrative agency having jurisdiction in this action.” Id. ¶ 7. On April 15, 2005, plaintiff voluntarily dismissed her suit without prejudice. See Stipulation Of Dismissal (Doc. #67). One month later, the Court reopened the case to consider plaintiff’s motion to modify the Protective Order. Order (Doc. #71). On June 17, 2005, Steven Jones and Doyle Clark filed a motion to intervene for the limited purposed of seeking modification of the protective order. Motion Of Steven Jones And Doyle Clark To Intervene (Doc. #80). On February 16, 2006, Magistrate Judge David J. Waxse granted the motion to intervene but denied the motion to modify the Protective Order. Memorandum And Order (Doc. #96). This matter comes before the Court on the Motion To Review Magistrate’s February 16, 2006 Memorandum And Order (Doc. #97) which was filed March 1, 2006. For reasons set forth

below, the Court finds that the motion should be overruled as moot.

### **Analysis**

Stephen E. Jones<sup>1</sup> and Doyle Clark (“intervenors”) filed suit against UPS in the Western District of Missouri, alleging employment discrimination. See Case No. 03-2084-CV-S-GAF. Counsel for plaintiff in this case also represent intervenors in their lawsuit, and intervenors sought to intervene in this case to seek modification of the Protective Order. Specifically, intervenors contended that defendant had provided documents during discovery in this case which it wrongfully withheld in their case. Intervenors sought access to those documents. As stated, Judge Waxse granted intervenors’ motion to intervene but denied the motion to modify the protective order. Memorandum And Order (Doc. #96).

Judge Waxse noted that in the intervenors’ suit discovery had closed, the court had granted summary judgment and the matter was on appeal to the Eighth Circuit. Thus, discovery was no longer being conducted and “the consideration of saving time and effort by avoiding duplicative discovery in the collateral case is simply not present.” Id. at 6. Judge Waxse also noted that intervenors had represented that any confidential materials obtained after modification of the Protective Order would be destroyed in the event the Eighth Circuit affirmed the district court’s entry of summary judgment. Id. at 4.

In a recent decision, the Eighth Circuit affirmed the grant of summary judgment in the intervenors’ suit. Jones v. United Parcel Serv., Inc., --- F.3d ----, Nos. 05-2202, 05-2205, 2006 WL 2404041, at \*11 (8th Cir. Aug. 22, 2006). Their desire to preserve evidence for some future trial is now moot and they have no interest in avoiding duplicative discovery. Moreover, by intervenors’ own admission, the Eighth Circuit ruling means that modification of the Protective Order would only result in the immediate destruction

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<sup>1</sup> The record reflects more than one spelling of Jones’s first name. It is not clear which spelling is correct.

of any materials which they obtain.

In summary, the motion seeks access to materials which are no longer useful to the Jones and Clark suit and it is therefore moot.

**IT IS THEREFORE ORDERED** that the Motion To Review Magistrate's February 16, 2006 Memorandum And Order (Doc. #97) filed March 1, 2006, be and hereby is **OVERRULED** as moot.

Dated this 28th day of August, 2006 at Kansas City, Kansas.

s/ Kathryn H. Vratil

Kathryn H. Vratil  
United States District Judge