



Commission alleged that USSA discriminated against those individuals on the basis of sex (female) when it subjected them to a sexually hostile work environment created by its District Manager, Chris Hargrove. The Commission further alleged that USSA's actions, and the failure to take effective remedial relief, caused mental, emotional, and physical harm to those individuals.

Subsequently, various individuals intervened in this case, including Melissa Rodriguez, Melissa Poskarbiewicz, Lisa Whitten, Holly King, Donna Moler and Nakeya Haliburton-Boykin.<sup>1</sup> The Complaints in Intervention filed by these individuals contained not only claims made pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended by the Civil Rights Act of 1991, but also claims made pursuant to the laws of the State of Alabama.

Some of the state law claims are made against both USSA and Chris Hargrove individually, who was added as a defendant. Mr. Hargrove is not a party to this Consent Decree and this Decree does not resolve any of the claims which the Individual Plaintiffs have asserted against Mr. Hargrove.

USSA denies all of the allegations contained in both the Commission's Complaint and the Plaintiff-Intervenors' Complaints.

The Parties engaged in extensive discovery. Multiple motions for summary judgment have been filed and briefed. A three week trial has been scheduled to begin June 6, 2011. In order to avoid the costs, inconvenience, uncertainty, and delay that would result from the continuation of this litigation, the Commission, the Individual Plaintiffs, and USSA have decided to resolve the Commission's lawsuit through the entry of this Consent Decree. It is understood that the entry of this Consent Decree

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<sup>1</sup> Jamie Marks filed an independent action, *Marks v. U.S. Security Associates, et al.*, 2:08-cv-459-KOB (N.D. Al.).

does not constitute an admission by USSA of any violation of Title VII, §1981a, or any provisions of Alabama law, and that all allegations of liability are expressly denied by USSA.

The Parties hereto stipulate to the jurisdiction of the Court and waive a hearing and the right to submit their claims and defenses to a jury. The Parties hereto further waive the entry of findings of fact and conclusions of law as to those claims not triable to a jury.

This Consent Decree constitutes the complete agreement between the Parties hereto. No waiver, modification, or amendment of any provision of this Decree shall be effective unless made in writing, approved by these Parties to this Decree, and approved by the Court or ordered by the Court. This Decree is final and binding upon these Parties, their agents, successors, and assigns.

**B. GENERAL PROVISIONS AND SCOPE OF DECREE**

Upon consent of the parties to this action, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Court has jurisdiction over the parties and the subject matter of this action and retains jurisdiction in order to monitor and enforce the terms of the Consent Decree.

2. The Consent Decree is entered into by the Commission and USSA. The Consent Decree, and its terms, shall be final and binding on the Parties hereto, including their present and future representatives, agents, directors, officers, assigns and successors.

3. The Consent Decree shall fully and finally resolve all claims which were asserted by the Commission in its Complaint in Case No.: 2:09-cv-598-AKK and any

and all federal claims that were made or could have been made by the Individual Plaintiffs against USSA. The Decree fully and completely resolves all claims arising out of or contained in the following charges of discrimination:

Jamie Marks:	420-2007-01734
Melissa Poskarbiewicz:	420-2007-03614
Melissa Rodriguez:	420-2007-04381
Nakeya Haliburton-Boykin:	420-2007-04592
Lisa Whitten:	420-2007-04602
Holly King:	420-2007-04652
Donna Moler:	420-2009-03318

The Consent Decree does not affect any other administrative charges by other persons which may be pending with the Commission or any other cases pending in this or any other court. The Consent Decree shall not constitute an adjudication of or finding on the merits of the case and shall not be construed as an admission by Defendant USSA of a violation of Title VII.

4. The Consent Decree becomes effective upon the date on which the Court enters it and shall continue to be in effect for a period of forty-two months, unless shortened by Court order or agreement of the parties. In particular, no sooner than thirty-five (35) months after the effective date of this Decree, Defendant may seek to shorten the duration of this Decree. Any such request shall be made pursuant to the Dispute Resolution procedures set forth in paragraph 25. Any other desired modification of the Consent Decree by any party must be made by motion to the Court.

5. The Consent Decree shall apply to Defendant's Alabama operations including all persons employed by Defendant in Alabama or working for Defendant in Alabama, all persons supervised by any Alabama employee of Defendant, all persons in supervisory or decision-making authority over Alabama employees of

Defendant, and all persons providing EEO compliance and human resource oversight for Alabama employees of Defendant.

**C. MONETARY RELIEF**

6. USSA agrees to pay in settlement of all Title VII claims alleged against it by the Commission and the Individual Plaintiffs the gross sum of \$1.95 million.<sup>2</sup> The allocation of this particular settlement amount among the various Individual Plaintiffs is based, in part, upon the separate agreement reached between the Individual Plaintiffs and USSA. USSA authorizes counsel for the Plaintiff-Interveners to advise the EEOC about the specific amounts allocated to the resolution of each Title VII claim. USSA shall make payment as agreed upon between counsel for Individual Plaintiffs and counsel for USSA.

7. The payments to be made by USSA to the Individual Plaintiffs shall be made in a manner acceptable to the attorneys for said Individual Plaintiffs. Defendant shall provide evidence of payment (e.g. copy of check or other proof of payment) to the attention of the Regional Attorney, Equal Employment Opportunity Commission, Birmingham District Office, 1130 – 22nd Street South, Suite 2000, Birmingham, Alabama 35205 within three (3) days of the time payment is made.

**D. GENERAL INJUNCTIVE RELIEF**

8. Sexual Discrimination: USSA and its officers, agents, management (including supervisory employees), successors, and assigns, or any of them, shall not: (a) discriminate against any employee on the basis of sex; (b) engage in or be a party to any action, policy, or practice that is intended to or is known to them to have the

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<sup>2</sup> This figure includes sums paid to Jamie Marks in resolution of the Title VII claims asserted in her individual complaint. No additional award is being made to Ms. Marks as a result of this Consent Decree.

effect of harassing or intimidating any female employee on the basis of sex; (c) create, facilitate, or tolerate the existence of a work environment that is sexually hostile to female employees; and/or (d) condone, encourage, or sanction sexual harassment of its employees by any employee of an entity for which USSA provides services.

9. Retaliation: USSA and its officers, agents, management (including supervisory employees), successors, and assigns, or any of them, shall not: engage in, implement, or tolerate any action, policy, or practice which has the purpose or effect of retaliating against any current or former employee of USSA because he or she opposed any practice made unlawful under Title VII, filed a charge of discrimination challenging any such practice, testified or participated in any manner in any investigation, proceeding, or hearing in connection with this case and/or relating to any claim of discrimination under Title VII, was identified as a possible witness in this action, or asserted any rights under this Decree.

10. USSA shall comply fully with all provisions of the Consent Decree and Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit the obligations of USSA under Title VII or the Commission's authority to process or litigate any charge of discrimination which may be filed against USSA in the future.

#### **E. SPECIFIC INJUNCTIVE RELIEF**

11. Designation of Consent Decree Coordinator: To enable USSA to be a model employer in the area of anti-discrimination and equal employment opportunity, within sixty (60) days of the entry of the Decree, USSA shall designate a senior level employee, with experience in human resources management, to serve as Consent Decree Coordinator (the "Coordinator"). The Coordinator shall not be USSA's

General Counsel and shall be independent of USSA's Human Resources Department.

12. In his or her capacity as Coordinator, this individual shall acquire knowledge, information, and resources in the areas of Title VII sex discrimination and harassment. USSA shall bear all costs associated with the designation, selection, training, and retention of the Coordinator and the performance of the Coordinator's duties during the term of this Decree.

13. The Coordinator shall be assigned to USSA's corporate office and be available to all covered employees of USSA's Alabama operations to: (a) discuss questions, complaints and concerns about sex discrimination (including harassment); (b) provide answers to questions concerning the steps which an employee should take in order to enforce and preserve rights concerning sex discrimination (including harassment); (c) explain USSA's policies against sex discrimination (including harassment) and retaliation in the workplace; and (d) oversee USSA's compliance with the provisions of this Consent Decree. USSA shall inform all covered employees in USSA's Alabama operations of the appointment and function of the Coordinator.

14. The Coordinator's responsibilities shall include:

a. Reviewing USSA's policies and procedures addressing sex discrimination and harassment, including those policies and practices which govern the investigation of such complaints, and recommending modifications, as necessary, to ensure that said policies and procedures are: i) consistent with the provisions of the Consent Decree and ii) designed to result in thorough, independent, prompt, and effective investigations of discrimination complaints;

b. Ensuring training is provided to all covered employees on USSA's

policies and procedures against sex discrimination (including harassment) and retaliation;

c. Ensuring training is provided to all covered supervisors, managers and human resources personnel responsible for implementing USSA policies on recognizing sex discrimination (including harassment) and retaliation and responding to complaints thereof;

d. Assisting USSA in identifying and hiring appropriate staff and personnel for the human resources department of USSA;

e. Overseeing USSA's response to any complaints or inquiries regarding sexual discrimination or harassment (both internal and external) concerning covered employees to ensure a prompt and adequate response and to prevent retaliation against employees who complain or inquire about sex discrimination or retaliation;

f. Recommending procedures for holding USSA employees and managers accountable for conduct not consistent with USSA's anti-discrimination/equal employment opportunity policies, conduct not consistent with anti-discrimination/equal employment opportunity laws, or for engaging in conduct prohibited under this Decree;

g. Providing feedback on the evaluation of covered managers and supervisors in the area of anti-discrimination/equal employment opportunity, especially with regard to managers and supervisors working in human resources;

h. Preparing and submitting reports required by this Decree;

i. Ensuring that all complaints of sex discrimination (including harassment) or retaliation concerning covered employees are promptly and

completely investigated and that all records compiled or relied upon during the investigation, including witness statements and notes of the investigation, are maintained.

j. Otherwise ensuring compliance with the terms of this Decree.

15. Review and Modification of Policies: Within thirty (30) days from receipt of the Commission's comments under ¶ 16, with the assistance of the Coordinator, USSA will develop and provide each covered USSA employee with a written description of the types of practices that are prohibited, either pursuant to Title VII or under the USSA policy against sex discrimination and harassment. This description shall include, at a minimum, the following:

a. A strong and clear commitment to a workplace free from sexual discrimination, harassment, and retaliation;

b. A definition of prohibited sexual discrimination, harassment, and retaliation, including concrete examples;

c. A description of the possible consequences that will be imposed upon violation of the policy against discrimination, harassment, and retaliation;

d. A statement advising employees to come forward if they believe that they have been the victim of sex discrimination, harassment, or retaliation and the legal consequences which may follow if they fail to come forward;

e. An assurance that persons who, in good faith, complain about discrimination or retaliation they experience or witness will not be the subject of retaliation;

f. A clearly described complaint process that provides multiple accessible avenues of complaint;

g. Assurances that the employer will protect the confidentiality of discrimination complaints to the extent possible;

h. A complaint process that provides a prompt, thorough, and impartial investigation;

j. Assurances that USSA will take immediate and appropriate corrective action if it determines that discrimination, harassment, and/or retaliation have occurred;

k. The contact information, including name, address, and telephone number of persons both internal (e.g. USSA Coordinator, human resource personnel or managers) and external (e.g. the Commission) to whom employees may report complaints of sex discrimination, harassment, or retaliation at any time without fear of reprisal. The contact information shall be visibly posted in an area accessible to all employees and placed in the employee handbook.

16. A copy of the reviewed/revised policies in compliance with the above requirements shall be submitted to the Commission for review and comment within sixty (60) days after the designation of the Coordinator. The Commission shall submit any proposed comments to USSA within fifteen (15) days of receipt of the reviewed/revised policies.

17. Development of EEO Training Program:

a. USSA shall retain and pay for consultant/lecturers or legal counsel who will provide periodic consultation and annual training for the period of this Decree.

b. Within thirty (30) days from receipt of the Commission's comments under ¶ 16, USSA shall have in place a program to provide mandatory

EEO training to (1) all non-supervisory employees in Alabama, (2) all supervisory and management employees in Alabama, and (3) all human resources employees who provide support to and/or have any supervisory or decision-making authority over USSA's Alabama facilities, regardless where said employees perform their duties. This program shall address all aspects of sex discrimination and harassment in the workplace, including (1) a plan to ensure that all covered employees who are to receive the required training actually receive the training; (2) an explanation of the manager's role in reporting potential sexual harassment/discrimination; and (3) clear and concise information about how an employee may enforce their rights under Title VII, including information about the importance of filing a timely charge in order to preserve those rights. The mandatory training will at a minimum: (1) occur once every year for the duration of this decree; and (2) be in person (including video) or interactive training accompanied by materials prepared by trainers experienced in the subject matter to educate the covered employees about sex discrimination (including harassment) in the workplace. The purpose of the training shall be to give the participants a thorough understanding of discrimination and harassment issues, including but not limited to theories of liability under Title VII, sources of legal protection for victims of discrimination and harassment, and the employer's obligation to take preventive, investigative, and remedial action with respect to discrimination and harassment complaints.

c. In addition, at the training provided to supervisors, managers, and human resource personnel, the training shall include: 1) how to recognize, prevent, and correct sex harassment and retaliation in the workplace; 2) a detailed description of the specific responsibilities of USSA's supervisory, managerial, and human

resource personnel when they witness or learn of sex discrimination, harassment, or retaliation or receive a complaint or inquiry regarding sex discrimination, harassment, or retaliation; 3) a detailed description of the consequences for USSA's supervisory, managerial, and human resources personnel who fail to perform their responsibilities when they witness or learn of sex discrimination, harassment, or retaliation; and 4) how to receive and/or report to designated officials complaints of sex harassment or retaliation.

d. Training shall last a minimum of one hour. During training for managers and supervisors, the managers and supervisors will be provided with a written step-by-step process of how to report possible sexual harassment, discrimination, or retaliation.

e. At least sixty (60) days prior to the initial proposed training session, USSA shall identify the consultant/lecturer(s) selected to do the training, together with his/her contact information, the dates of the proposed training session, and an outline of the contents of the training to the Commission. The Commission shall have fifteen (15) days from the date of receipt of the training outline to propose any changes to the contents of the training program. Any disputes concerning whether the substance of the training complies with this Consent Decree shall be resolved in accordance with the Dispute Resolution Procedure set forth below. For the term of this Decree, all new employees and all employees who are promoted from a staff/hourly position to a covered managerial position in USSA's operations shall be trained or shown a videotape of the most recent training program for managerial or staff/hourly employees, as appropriate, within thirty (30) days of hire or promotion.

f. Attendance at Training: At least thirty (30) days prior to the

scheduled annual training under Paragraph 17 USSA will provide the Commission with notice of the date, time, and location of the annual scheduled training. The Commission, at its discretion, may send one representative to observe the scheduled annual training. Any representative who observes any scheduled training shall not interject him or herself into the training. Any dispute regarding whether the substance of the training complies with this Consent Decree shall be resolved in accordance with the Dispute Resolution Procedure set forth below.

g. In order to stress the importance of the policies prohibiting sexual harassment in the workplace, USSA shall discuss the terms of this Consent Decree (as well as the total dollar amount spent by USSA and its insurer to resolve and defend this case) at USSA's next annual performance awards weekend, i.e., "Winner's Circle". Also, the terms of the Consent Decree (as well as the total dollar amount spent by USSA and its insurer to resolve and defend this case) shall be discussed at the next regularly-scheduled conference call with the Alabama managers and supervisors.

18. Internal Investigations:

a. USSA shall memorialize all complaints or reports of alleged sexual harassment in writing and request written statements, make written findings of facts (including the names and contact information for witnesses) and make written recommendations and/or determinations. These, and any other documents generated by or related to a sexual harassment or misconduct investigation, shall be retained in an independent sexual harassment file maintained by the department of human resources/personnel. Copies shall be provided to the Coordinator as well.

b. The Human Resources Department is expected to conduct its

investigation of complaints or reports of alleged sexual harassment independent of the General Counsel. If any person associated or affiliated with the General Counsel or outside legal counsel contacts any person who has filed a report or complaint of sexual harassment or is a witness to such conduct, that person must disclose, prior to engaging in any discussions with the complainant or witness, (1) that they are calling on behalf of the General Counsel's office; (2) that the person represents the interests of USSA and is there to protect the interests of the company; and (3) any additional disclosures required by the ethical rules pertaining to communications with individuals whose interests may be adverse to those of USSA.

19. For the duration of the Decree, the Coordinator shall retain copies of the documents identified in Paragraph 18 above.

20. USSA shall provide the following written reports to the Commission:

a. Initial Report. Within one hundred eighty (180) days after the Effective Date, USSA shall submit to the Commission an initial report which contains:

1. A copy of the description required under Paragraph 15;
2. A copy of any supplements to policies under Paragraph 14(a);
3. A summary of the procedures and record keeping methods developed by the Coordinator for handling, tracking, and monitoring of complaints of discrimination and retaliation; and
4. A statement confirming that all persons have received the description required under Paragraph 15.

b. USSA shall also provide the following reports to the Commission

annually throughout the term of this Decree:

1. A list of the names and positions of employment of each employee who attended each training required or provided under this Decree during the previous year, classified by the date and type of training (supervisory employees versus hourly employees);

2. A list of the names and positions of each employee who failed to attend the training, the reason training was not attended, and written confirmation that those employees were or will be trained within thirty (30) days of the missed training; and

3. Any revisions to the sex discrimination, harassment, and retaliation policies.

4. A list of all sexual harassment and related retaliation charges filed by female employees or former employees since the submission of the immediately preceding report.

21. USSA shall not volunteer, directly or indirectly to any employer or potential employer of Plaintiff-Intervenors any of the facts or circumstances related to the underlying charges of discrimination against USSA, or the lawsuit resulting from the charges of discrimination filed by the EEOC or Plaintiff-Intervenors, or any of the events relating to Plaintiff-Intervenors' participation in the litigation of this matter. If a potential employer should ask USSA about the lawsuit or the Plaintiff-Intervenor's participation in the litigation, USSA will say only that the matter was settled on terms that are confidential.

#### **F. POSTING OF NOTICE**

22. Within sixty (60) business days after entry of the Consent Decree, USSA

shall post 8½-inch-by-11-inch sized copies of the Notice attached as Exhibit A to the Consent Decree on all bulletin boards regularly used by USSA for posting official announcements, government posters, notices of employment policy or practice changes to employees at all facilities in the State of Alabama.

23. USSA shall send a copy of the signed Notice, and an indication of the date(s) and location(s) of its posting, to the attention of the Regional Attorney of the Commission's Birmingham District Office, at the address set forth above, within ten (10) days of the posting.

24. USSA shall take all reasonable steps to ensure that the posting is not altered, defaced, covered by any other material, or removed. Should the posted copy become altered, defaced, covered or removed, or become otherwise illegible, USSA shall re-post promptly a legible copy in the same manner as heretofore specified. The posted Notice shall be the same type, style and size as the printing on Exhibit A and shall bear the signature of the General Counsel of USSA.

#### **G. DISPUTE RESOLUTION**

25. In the event any party to the Consent Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other parties of the alleged non-compliance. Said notification shall be made within fifteen (15) business days of discovery of the alleged non-compliance. After service of the notice, the parties shall schedule a telephone or in-person meeting to attempt to resolve the dispute. Absent a showing that the delay will cause irreparable harm, a party shall have ten (10) business days to attempt to resolve or cure the alleged breach. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute which may arise. After ten (10) business days

have passed without resolution or agreement to extend the time further, any party may petition this Court for compliance with this Decree. Should the Court determine that a party has not complied with the terms of this Consent Decree, appropriate relief, including injunctive relief, extension of the Consent Decree for such period as may be necessary to remedy its non-compliance, attorneys' fees and costs, may be ordered.

**H. COSTS AND ATTORNEY FEES**

26. Each party shall bear its own attorney's fees and costs.

27. The parties agree to the entry of the Consent Decree subject to final approval by the Court.

Done the 31st day of May, 2011.

  
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**ABDUL K. KALLON**  
UNITED STATES DISTRICT JUDGE

ATTORNEYS FOR THE  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION:

/s/ C. Emanuel Smith  
C. EMANUEL SMITH (MS Bar No.: 7473)  
Regional Attorney

/s/ Julie Bean  
JULIE BEAN (D.C. Bar No.: 433292)  
Supervisory Trial Attorney

/s/ Charles E. Guerrier  
CHARLES E. GUERRIER (OH 0023546)  
Senior Trial Attorney

ATTORNEYS FOR DEFENDANT U.S.  
SECURITY ASSOCIATES, INC.

/s/ Patricia G. Griffith  
PATRICIA G. GRIFFITH  
Ford & Harrison LLP

**EXHIBIT 1**

**NOTICE TO ALL U.S. SECURITY ASSOCIATES EMPLOYEES**

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq., as amended, (“Title VII”), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion, or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The Commission or EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

The EEOC has alleged that USSA’s working environment in Alabama was hostile to female employees, in violation of Title VII of the Civil Rights Act of 1964 (“Title VII”). USSA denied these allegations.

To resolve the case, USSA and the Commission have entered into a Consent Decree which provides, among other things, that USSA: (1) will not discriminate on the basis of sex; (2) will maintain records of all complaints of sexual harassment; (3) will promptly investigate and resolve allegations of sexual harassment; (4) will require supervisors and managers to address allegations of sexual harassment; (5) will implement strong anti-harassment policies and procedures; (6) will hold supervisors and managers accountable for not complying with sexual harassment policies and procedures; and (7) will train all employees on preventing and addressing sexual harassment. USSA agrees that it will not retaliate against any person because she or he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination or participated in any Title VII proceeding.

If you believe you have been discriminated against, you may contact the EEOC at (205) 212-2000. The EEOC charges no fees and has employees who speak languages other than English.

**This Notice must remain posted for the duration of the Consent Decree and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, COMMISSION Birmingham District Office, Ridge Park Place, Suite 2000, 1130 – 22<sup>nd</sup> Street South, Birmingham, Alabama 35205.**

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GENERAL COUNSEL , U.S. SECURITY ASSOCIATES