

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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IN RE UNITED STATES SUGAR,	:	
CORPORATION LITIGATION	:	Master File No.
	:	08-80101-CIV-MIDDLEBROOKS
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	x	

**ORDER PRELIMINARILY APPROVING SETTLEMENT**

THIS CAUSE comes before the Court on Plaintiff's Motion for Preliminary Approval of Settlement [DE 242] (the "Settlement") between the Plaintiffs Diallo Johnson, Linda Stanley, Mary Rafter and Miguel Maturana ("Plaintiffs") and Defendants William S. White, Robert H. Buker, Jr., John Butler, Ridgway H. White, Frederick Kirkpatrick, Roy E. Peterson, W. Archibald Piper, William H. Piper, Lloyd E. Reuss, Horace Wilkins, Gerard Bernard, Bank of America, N.A. (as successor to U.S. Trust, N.A.) and United States Sugar Corporation ("U.S. Sugar") (collectively the "Defendants" and collectively with the Plaintiffs, the "Parties") in the above-styled action (the "Action").<sup>1</sup> The Parties have entered into a Stipulation and Agreement of Settlement ("Stipulation") [DE 242-2], which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlements of the claims that were or could have been alleged in the Action (including the complaints styled In re United States Sugar Corporation Litigation, Case No. 08-80101-Civ-Middlebrooks, Johnson, et al v. United States Sugar Corporation, et al, Case No. 08-80101-Civ-

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<sup>1</sup> The Charles Stewart Mott Foundation, Claire Mott White, and the U.S. Sugar ESOP Committee are former defendants in the Action. Prior to the Settlement, the claims against the Charles Stewart Mott Foundation were dismissed with prejudice, the claims against Claire Mott White were abandoned, and the members of the ESOP Committee, other than Gerard Bernard, were never served and were dismissed without prejudice. The Charles Stewart Mott Foundation, Claire Mott White, and the U.S. Sugar ESOP Committee are Released Parties under the Settlement, and, along with any and all other Released Parties, are third party beneficiaries of the Settlement.

Middlebrooks, Matura v. United States Sugar Corporation, et al, Case No. 08-80711-Civ-Middlebrooks, Texton v. United States Sugar Corporation et al, Case No. 08-80778-Civ-Ryskamp, and Roland v. United States Sugar Corporation et al, Case No. 08-80780-Civ-Ryskamp) against all Defendants and all Released Parties, as defined in the Stipulation, such Settlement of this Action being on the merits and with prejudice upon the terms and conditions set forth in the Stipulation. Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Stipulation.

The Court, having read and considered preliminarily the instant motion and the Stipulation and accompanying documents to determine, among other things, whether to certify a class for settlement purposes and whether the Settlement is sufficient to warrant the issuance of notice to Class Members, having conducted a hearing on October 2, 2009, and the Parties to the Stipulation having consented to the entry of this Order, hereby **ORDERS, ADJUDGES AND DECREES** as follows:

**Jurisdiction.** The Court has jurisdiction over the subject matter of this Action and over all parties to this Action, including all Members of the Classes (as defined below).

**Class Definitions, Findings and Certification.** Based on the findings set forth herein, the Court PRELIMINARILY CERTIFIES, for settlement purposes only, two classes under Federal Rule of Civil Procedure 23(b): the Shareholder Class and the Participant Class (collectively, the "Classes" or the "settlement Classes"), defined as follows:

The "Shareholder Class" shall mean an opt-out class pursuant to Fed. R. Civ. P.

23(b)(3) consisting of all owners (to be defined by mutual agreement) of Class A common stock of U.S. Sugar during the period beginning August 4, 2005 and ending on September 24, 2009, including, but not limited to (1) Evercore Trust Company, N.A. (as successor to Bank of America, N.A., which succeeded U.S. Trust, N.A.) as Trustee for the United States Sugar Corporation Employee Stock Ownership Plan (the "ESOP") with regard to the ESOP's shares and on behalf of the participants to whose accounts such shares have been allocated and (2) the Charles Stewart Mott Foundation. Excluded from the Shareholder Class are William S. White, Ridgway White and John Butler and any trusts in which (1) William S. White is both the trustee and sole beneficiary; (2) Ridgway White is both the trustee and sole beneficiary; or (3) John Butler is both the trustee and sole beneficiary.

The "Participant Class" shall mean a non-opt-out class pursuant to Fed. R. Civ. P. 23(b)(1) consisting of all participants and beneficiaries of the ESOP during the period beginning on January 31, 2002 and ending on September 24, 2009. Excluded from the Participant Class are Gerard A. Bernard and Robert H. Buker, Jr.

The Court preliminarily finds, for the purposes of Settlement only, that the prerequisites of a class action under Fed. R. Civ. P. 23(b)(3) have been satisfied for the Shareholder Class in that:

(a) the number of class members in the Shareholder Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the members of the Shareholder Class; (c) the claims of the Class Representative are typical of the claims of the Shareholder Class she seeks to represent; (d) the Class Representative will fairly and adequately represent the interests of the Shareholder Class; (e) the questions of fact and law common to the members of the Shareholder Class predominate over any questions affecting only individual members of the Shareholder Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy. For purposes of the Settlement only, Lead Plaintiff Mary Rafter is preliminarily certified, pursuant to Fed. R. Civ. P. 23, as Class Representative for the Shareholder Class.

The Court further preliminarily finds, for the purposes of Settlement only, that the

prerequisites of a class action under Fed. R. Civ. P. 23(b)(1) have been satisfied for the Participant Class in that: (a) the number of class members in the Participant Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the members of the Participant Class; (c) the claims of the Class Representatives are typical of the claims of the Participant Class they seek to represent; (d) the Class Representatives will fairly and adequately represent the interests of the Participant Class; and (e) prosecution of separate actions by individual members of the Participant Class would create a risk of: (i) inconsistent or varying adjudications as to individual class members, that would establish incompatible standards of conduct for the parties opposing the claims asserted in the Action; or (ii) adjudications as to individual class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those persons' ability to protect their interests. As a non-opt-out class action under Fed. R. Civ. P. 23(a) and 23(b)(1), all Members of the Participant Class shall be bound by any final judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed. For purposes of the Settlement only, Lead Plaintiffs Diallo Johnson, Linda Stanley, and Miguel Maturana are preliminarily certified, pursuant to Fed. R. Civ. P. 23, as Class Representatives for the Participant Class.

As is required by Fed. R. Civ. P. 23(g), the Court has considered: (i) the work that Plaintiffs' Lead Counsel, the Colson Hicks Eidson law firm ("Lead Counsel"), has done in identifying or investigating potential claims in this action; (ii) Lead Counsel's and Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this action; (iii) Lead Counsel's and Class Counsel's knowledge of the applicable law; and (iv) the resources Class

Counsel and Lead Counsel have committed to representing the Classes and investigating the claims at issue. Based on these factors, the Court finds that Class Counsel has and will continue to represent fairly and adequately the interests of the Classes. Accordingly, pursuant to Fed. R. Civ. P. 23(g)(2), the Court preliminarily designates Lead Counsel as lead class counsel with respect to the Classes in this action.

**Preliminary Approval of Settlement.** The Settlement documented in the Stipulation is hereby PRELIMINARILY APPROVED, as the Court preliminarily finds that (a) the proposed Settlement resulted from arm's-length negotiations; (b) the Stipulation was executed only after Class Counsel had researched and investigated multiple legal and factual issues pertaining to Plaintiffs' claims; (c) there is a genuine controversy between the Parties involving Defendants' compliance with the fiduciary requirements of ERISA and Delaware corporate law; (d) the Settlement appears on its face to be within a reasonable range that is fair, reasonable, and adequate; and (e) the Settlement evidenced by the Stipulation is sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the Settlement to the Classes.

**Class Notice.** The Court hereby APPROVES the form and content of the Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing (the "Class Notice") annexed hereto as Exhibit 1, finding that it fairly and adequately: (1) describes the terms and effect of the Stipulation and of the Settlement, (2) gives notice to the Classes of the time and place of the Fairness Hearing, and (3) describes how the recipients of the Class Notice may object to approval of the Settlement.

The Court finds further that the Class Notice and notice methodology implemented pursuant to the Stipulation (i) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Fairness Hearing, (ii) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to notice and (iii) meets all applicable requirements of Fed. R. Civ. P. 23(e)(B) and 23(c)(2)(B) and any other applicable law.

**Class Member Information Necessary for Class Notice to be Mailed.** Within fourteen (14) calendar days from the date of this Order, Defendant U.S. Sugar shall provide all necessary information, including but not limited to names and last known addresses, to the Claims Administrator to permit the Claims Administrator to cause the Class Notice to be mailed in accordance with the following paragraph.

**Claims Administrator to Send Class Notice.** Within ten (10) business days of the date it receives from U.S. Sugar the Class Member information necessary for mailing the Class Notice, the Garden City Group, Inc., as the Claims Administrator for this Settlement (the "Claims Administrator"), shall cause the Class Notice, substantially in the form annexed hereto, to be mailed by first class mail, postage prepaid, to all Shareholder Class Members and Participant Class Members who can be identified with reasonable effort.

The Claims Administrator shall use reasonable efforts to give notice to nominee owners of U.S. Sugar stock. Such nominee owners are directed to forward copies of the Class Notice to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of

the beneficial owners, and the Claims Administrator is ordered to send the Class Notice promptly to such beneficial owners. Additional copies of the Class Notice shall be made available to any record holder requesting such for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed by U.S. Sugar, upon receipt from the Claims Administrator of a request for reimbursement and proper documentation, for the reasonable expense of sending the Class Notice to beneficial owners.

The Claims Administrator shall, at or before the Fairness Hearing, file with the Court proof of mailing of the Class Notice.

**Compliance with Class Action Fairness Act.** Defendant U.S. Sugar shall, on or before ten (10) days prior to the Fairness Hearing, file with the Court proof of compliance with the Class Action Fairness Act of 2005, as specified in 28 U.S.C. § 1715 and paragraph 42 of the Stipulation.

**Shareholder Class Opt-Out Mechanism.** Putative Class Members belonging to the Shareholder Class shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Shareholder Class in a timely and proper manner, as hereinafter provided. A Shareholder Class Member wishing to make an exclusion request shall mail the exclusion request in written form by first class mail to the Claims Administrator at the address below, so as to be received by the Claims Administrator within forty-five (45) calendar days of the mailing of the Class Notice:

**United States Sugar Corporation Litigation  
c/o The Garden City Group, Inc.  
PO Box 9000 #6508**

**Merrick, NY 11566-9000.**

The request for exclusion must state: the name of the person or entity requesting an exclusion, their address and telephone number, and the amount of U.S. Sugar shares owned. The exclusion request must be signed by the individual or authorized representative of the entity requesting an exclusion. A request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise allowed by the Court.

**Other Comments/Objections to Settlement.** "Objector" shall mean any member of either of the settlement Classes who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation contained within the Stipulation, to any term of the Stipulation, or to the proposed award of attorney's fees and expenses. The Court will consider such comments and/or objections only if such comment or objection and any papers, law and/or evidence in support thereof, within forty-five (45) calendar days of the mailing of Class Notice, is both (i) filed in writing with the Clerk of Court (Attention: Clerk of the United States District Court for the Southern District of Florida, West Palm Beach Division, 701 Clematis Street Room 402, West Palm Beach, Florida 33401), and (ii) served by mail to all Lead Counsel for the Parties set forth in Appendix 1 hereto. If an Objector intends to appear at the Fairness Hearing, such Objector must, in his or her written comments/objections, identify every witness (if any) that may be called to testify and every exhibit that may be introduced into evidence at the Fairness Hearing.

Any member of either of the settlement Classes or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement and any untimely objection shall

be barred.

The Parties shall file a response to any Objector no later than five (5) business days before the Fairness Hearing. The Parties' Counsel shall promptly furnish each other with copies of any and all comments/objections that come into their possession.

**Fairness Hearing.** A fairness hearing pursuant to Fed. R. Civ. P. 23(e) (the "Fairness Hearing") is hereby SCHEDULED to be held before this Court on the 4<sup>th</sup> day of January 2010 at 10:00 a.m. in Courtroom 7 at the United States Courthouse, 701 Clematis Street, West Palm Beach, Florida 33401, to determine finally, among other things:

Whether the Settlement should be approved as fair, reasonable, and adequate;

Whether the Classes satisfy the requirements of Fed. R. Civ. P. 23, and should be finally certified as preliminarily found by the Court;

Whether this Action should be dismissed with prejudice pursuant to the terms of the Stipulation;

Whether the Final Approval Order attached to the Stipulation should be entered and whether the Released Parties should be released of and from the Released Claims for Settlement Payment, and the Released Claims for Additional Settlement Payment (if the Additional Settlement Payment is made), as provided in the Stipulation;

Whether Class Counsel adequately represented the Classes for purposes of entering into and implementing the Stipulation as required by Fed. R. Civ. P. 23(g) and as preliminarily found by the Court;

Whether the proposed Plan of Allocation of the Settlement Fund and Additional Settlement Fund is fair, reasonable and adequate and should be approved by the Court;

Whether the Settlement has been negotiated at arm's length by Plaintiffs' Class Counsel on behalf of the Classes, whether Plaintiffs have acted independently, whether Plaintiffs' interests are consistent with and not in conflict with the interests of the Classes and whether the negotiations and consummation of the Settlement by Plaintiffs on behalf of the Classes does not constitute a "prohibited transaction" as

defined by ERISA §§ 406(a) or (b) and/or qualify for a class exemption from the prohibited transaction rules, including Prohibited Transaction Exemption 2003-39;

Whether the payment and distribution of the Settlement Payment and Additional Settlement Payment to the ESOP on behalf of the Participant Class, as allocated in the Plan of Allocation set forth in the Stipulation, is/are a "restorative payment" as defined in IRS Revenue Ruling 2002-45;

Whether the application for attorney's fees and expenses to be filed by Plaintiffs' Class Counsel should be approved;

Whether Plaintiffs Johnson, Stanley, Maturana and Rafter should receive class representative awards in light of their assistance in prosecuting this Action;

Whether the Proposed Settlement complies with the Class Action Fairness Act; and

Any other matters as the Court may deem necessary or appropriate for approval of the Settlement.

Class Counsel shall file a motion for final approval of the Settlement at least ten (10) calendar days before the date of the Fairness Hearing.

**Appearance at Fairness Hearing.** Any Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear" setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above and file it with the Court within forty-five (45) calendar days of the mailing of Class Notice. Any person who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

Attendance by Class Members and Objectors at the Fairness Hearing is not necessary, and Class Members need not appear at the hearing or take any other action to indicate their approval.

**Fees and Expenses Incurred by the Independent Fiduciary.** The Court understands that the U.S. Sugar ESOP Committee has retained or will retain an Independent Fiduciary for the purpose of evaluating the Settlement to determine whether to authorize the Settlement on behalf of the ESOP. U.S. Sugar has caused or will cause to be paid all fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professional retained or employed by the Independent Fiduciary) in the course of evaluating and authorizing the Settlement on behalf of the ESOP.

**Application for Attorney's Fees.** Any application by Class Counsel for attorney's fees and reimbursement of expenses, and all papers in support thereof, shall be filed with the Court and served on all counsel of record not less than ten (10) calendar days before the Fairness Hearing.

**Injunction.** Pending final determination of whether the Settlement should be approved, all Class Members and all present or former officers, directors, agents, attorneys, representatives, trustees, shareholders, parents, affiliates, subsidiaries, general or limited partners, heirs, executors, administrators, successors and assigns thereof, are each hereby BARRED AND ENJOINED from instituting, commencing or prosecuting any action or proceeding in any other court or forum (including, but not limited to, in arbitration) involving any claim which has been or could have been asserted in the Action or any other claim arising out of or in any way related to any acts, facts,

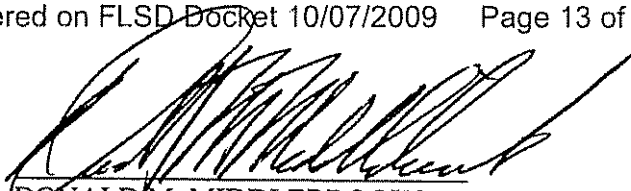
transactions, representations, omissions or other subject matter set forth, alleged, embraced or otherwise referred to in the Action and Stipulation.

**Termination of Settlement.** If the Settlement is terminated in accordance with the terms of the Stipulation or does not become Final for any other reason, this Order and all Class Findings shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately prior to the execution of the Stipulation.

**Use of Order.** In the event this Order becomes of no force or effect, no part of it shall be introduced into evidence or construed/used as an admission, concession, or declaration by or against the Released Parties of any fault, wrongdoing, breach, or liability, nor shall the Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the settlement Classes that their claims lack merit or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

**Jurisdiction Retained.** The Court retains jurisdiction over the Action to consider all further applications arising out of or connected with the proposed Settlement, and reserves the right to continue the Fairness Hearing without further written notice and/or to approve the Stipulation with modifications and without further notice other than to counsel for the Parties to the Stipulation.

DONE AND ORDERED in chambers in West Palm Beach, Florida, this 2nd day of October 2009.



DONALD M. MIDDLEBROOKS  
UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record

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# **EXHIBIT**

**1 - A**

