

No. 97-294 C
Filed: June 11, 1998

CARMEN MOCHIZUKI, et al.,

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Plaintiff,

* Civil Liberties Act of 1988;

* Internment during World War

v.

* II

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THE UNITED STATES,

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Defendant.

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Robin Toma, Los Angeles, CA, with Paul L. Mills, Fred Okrand, Mark D. Rosenbaum, Paul L. Hoffman, Manjusha Kulkarni, for plaintiffs.

Kathryn D. Ray, Washington, D.C., with whom were Vincent M. Garvey, Deputy Director, Federal Programs Branch, Civil Division, U.S. Department of Justice, for Defendant.

ORDER GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT

The court congratulates both the representatives of the United States and the representatives of the plaintiffs for reaching what the court considers a fair and moral settlement of this case. It reflects well on the moral integrity of our Nation. Settlements, unlike cases, may be much broader than the relief available in court. A judge is circumscribed by both the Constitution and the laws under which the claim is brought. A settlement is an independent agreement of the parties. When the United States is involved, as one of those parties, the court must defer to the representative of the United States as the best exponent of the interests of the United States. While the court may not substitute its judgment for what is in the best interests of the United States, the court is impelled to offer three comments. First, the settlement is not only a good settlement, but appears, preliminarily to be a very fair one. This is a very preliminary judgment in light of the tight time frame. Secondly, absent unusual circumstances, it would seem directly contrary to the statute's purpose and moral intent to include either citizens of the Empire of Japan at the time of the war or employees of the Empire of Japan during that same period. While the court does not condition its approval upon this issue for the reasons stated above, it does feel constrained to make this qualification in light of the strong position the court has taken favoring this settlement. Third, the court also has some concerns about the definition of internment in the agreement. If the parties believe it is adequate, then the court is satisfied. However, the court does not want to see this as a

potential source of litigative dispute in the future.

This matter came before the Court on the parties' Joint Motion for Preliminary Approval of Settlement Agreement. Having considered the Joint Motion and the Settlement Agreement, it is hereby ordered, that:

1. Pursuant to RCFC 23, the Court preliminarily certifies a class consisting of: persons who have not previously received payments under the Civil Liberties Act of 1988 from the Office of Redress Administration, United States Department of Justice, and who are (a) persons of Japanese ancestry who were living in Latin America before World War II and who were interned in the United States at any time during the period from December 7, 1941, to June 30, 1946; **OR** (b) persons who are the spouses, children or parents of persons who died after August 10, 1988, and who met the qualifications of (a) above;
2. Class members as described above shall have the opportunity to opt out of the class in the manner specified in the notices attached as Exhibits 1 and 2 to the parties' Joint Motion for Preliminary Approval of Settlement Agreement and Entry of Judgment;
3. The Court preliminarily approves the Settlement Agreement entered by the parties on June 10, 1998, as fair, reasonable, and adequate;
4. The Notice of Proposed Settlement of Class Action Lawsuit in the form attached as Exhibit 1 to the parties' Joint Motion for Preliminary Approval of Settlement Agreement and for Entry of Judgment is hereby approved. The Clerk of the Court is directed to execute the notice and to insert in the notice the date and location of the fairness hearing as set forth below. The Clerk shall deliver the executed notice to Kathryn Ray, United States Department of Justice, Post Office Box 883, Washington, D.C. 20044. With respect to copies of this notice that are translated into other languages, defendant shall insert the date and location of the fairness hearing, and the Clerk's signature is not required. Not later than twenty-five days after the Clerk's delivery of the notice, defendant shall mail the notice and attached forms to the last known addresses of all potential class members who have applied to the Office of Redress Administration for redress payments under the Civil Liberties Act of 1988, 50 U.S.C. §§ 1989b - 1989b-9;
5. The Notices of Proposed Settlement in Class Action Lawsuit Involving Latin American Japanese attached as Exhibits 2 and 3 to the parties' Joint Motion for Preliminary Approval of Settlement Agreement are hereby approved. Defendant is directed to cause these notices to be published and/or distributed in the manner prescribed in paragraphs 7 through 9 of the Settlement Agreement;
6. A hearing shall be held at the United States Court of Federal Claims at
3:00 p.m. EST, on November 17, 1998, to determine the reasonableness, adequacy and fairness of the Settlement Agreement and whether it should be approved by the Court;
7. Any potential class member who objects to approval of the Settlement Agreement must do so in the manner and within the time specified in the notices referenced in paragraphs 4 and 5 of this Order; and
8. It is hereby determined that the giving of notice as provided in paragraphs 4 and 5 above will constitute due and sufficient notice pursuant to the Settlement Agreement to all persons entitled to such notice.

LOREN A. SMITH

CHIEF JUDGE
