

FEB 10 2023

Clerk of the Superior Court  
By: R. Cersosimo, Deputy

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **IN AND FOR THE COUNTY OF SAN DIEGO**

16 LAVARSHA WILLIAMS, individually and on  
17 behalf of all others similarly situated,  
18 Plaintiff,

19 v.

20 ESURANCE PROPERTY AND CASUALTY  
21 INSURANCE COMPANY,

22 Defendant.

Case No. 37-2021-00039100-CU-BC-CTL

CLASS ACTION

**Final Order**

Judge: Richard W. Whitney

Hearing Date: February 10, 2023 at 10:30 a.m. PT

1 **FINAL ORDER APPROVING SETTLEMENT**

2 The Court preliminarily approved the class settlement in this case on October 4, 2022.  
3 Since that time, the parties have completed the notice process and now seek final approval of the  
4 Class Action Settlement Agreement. Through a motion for final approval of class settlement and  
5 motion for assessment of fees and costs, they seek, among other things, that the Court (1) grant  
6 final certification of the Settlement Class, for settlement purposes only; (2) approve the Class  
7 Action Settlement Agreement as fair, reasonable, and adequate; (3) rule that the notice process was  
8 reasonable and the best practicable under the circumstances, and (4) approve Plaintiff's request for  
9 payment of attorneys' fees and costs and an Incentive Award to Named Plaintiff (not to exceed the  
10 amounts set forth below). A hearing was held on the motions on February 10, 2023. For the reasons  
11 stated below, the motions are granted.  
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14 On February 10, 2023, the matter of the Court's final approval of the Class Action  
15 Settlement Agreement submitted on February 3, 2023, by the Motion for Order Approving  
16 Settlement and Motion for Approval of Attorney's Fees and Incentive Award, came before the  
17 Court for consideration. Appearing on behalf of Plaintiff and the Settlement Class were Scott  
18 Edelsberg ("Class Counsel") and Edmund A. Normand. Appearing on behalf of Defendant was  
19 counsel from the firm of Cozen O'Connor.  
20

21 WHEREAS, the Named Plaintiff, Lavarsha Williams, on behalf of herself and the proposed  
22 Settlement Class, and Esurance Property and Casualty Insurance Company ("Esurance" or  
23 "Defendant"), have executed and filed a Class Action Settlement Agreement with the Court on July  
24 8, 2022; and

25 WHEREAS, all capitalized terms used herein shall have the same meaning as set forth in  
26 the Agreement and are hereby incorporated by reference; and  
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1           WHEREAS, the Court, on October 4, 2022, entered the Order Preliminarily Approving  
2 Settlement and Directing Notice to the Class (“Preliminary Approval Order”), preliminarily  
3 approving the Proposed Settlement and conditionally certifying this Action, for settlement purposes  
4 only, as a class action; and

5           WHEREAS, Lavarsha Williams was approved in the Preliminary Approval Order as the  
6 Class Representative; and

7           WHEREAS, the Court, as part of its Preliminary Approval Order, directed that a plan for  
8 disseminating notice of the Settlement (“Notice Plan”) be implemented, and scheduled a hearing to  
9 be held on February 10, 2023, to determine whether the Proposed Settlement should be finally  
10 approved as fair, reasonable and adequate; and

11           WHEREAS, Esurance and Class Counsel have satisfactorily demonstrated to the Court that  
12 the Notice Plan was followed; and

13           WHEREAS, a final approval hearing was held on February 10, 2023, at which all interested  
14 persons were given an opportunity to be heard, and all objections to the Settlement, if any, were  
15 duly considered. There were no objectors and nobody opted out from the proposed settlement.

16           NOW, THEREFORE, the Court, having read and considered all submissions made in  
17 connection with the Proposed Settlement, and having reviewed and considered the files and records  
18 herein, finds and concludes as follows:

19           1. The Complaint filed in this Action alleges that Esurance, in making Total Loss Payments  
20 on first-party insurance claims for automobile physical damage constituting a total loss of the  
21 insured vehicles, under California automobile insurance policies issued by Esurance, improperly  
22 failed to include as part of the Actual Cash Value owed under the policy the Full Sales Tax and/or  
23 Title and Tag Transfer Fees.  
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1           2. As part of the Preliminary Approval Order, the Court certified the Settlement Class, for  
2 settlement purposes only, defined as follows:

3                   All California policyholders who were insured for private-passenger auto  
4 physical damage coverage by Esurance who suffered a first-party loss of a  
5 covered vehicle at any time during the Class Period, whose claims were  
6 adjusted by Esurance as a total-loss claim, and whose claim resulted in a Total  
Loss Claim Payment by Esurance, and who were not paid Full Sales Tax, or  
registration or title or other fees incidental to transfer of ownership (“Fees”)

7           3. The Court hereby affirms this definition of the Settlement Class for purposes of this Final  
8 Judgment.

9           4. At the Preliminary Approval Hearing, the Court appointed Epiq as Settlement  
10 Administrator. The Court hereby reaffirms that appointment and orders that none of the Parties will  
11 be responsible for any acts or failures to act by the Settlement Administrator.  
12

13           5. The Court after hearing on proposed final approval of settlement determines that the  
14 proposed settlement is fair to the Settlement Class Members. The Court certifies the Settlement  
15 Class in this Action, for settlement purposes only, under Rule 3.769 “Settlement of class actions,”  
16 and, in so doing, finds that, for settlement purposes only, the requirements, in the context of a class  
17 action settlement, for maintaining a class action have been met in particular because: (1) the  
18 Settlement Class is so numerous that joinder of all members is impracticable; (2) there are  
19 questions of law or fact common to the Settlement Class; (3) the claims or defenses of the Named  
20 Plaintiff are typical of the claims or defenses of the Settlement Class; and (4) the Named Plaintiff  
21 and Class Counsel will fairly and adequately protect the interests of the Settlement Class. —  
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23           6. The Named Plaintiff and Esurance have entered into the Agreement, which has been filed  
24 with the Court. The Agreement provides for the Settlement of this Action with Esurance on behalf  
25 of the Named Plaintiff and the Settlement Class Members, subject to approval by the Court of its  
26 terms. The Court scheduled a hearing to consider the approval of the Settlement and directed that  
27 the Class Notice be disseminated in accordance with the terms of the Preliminary Approval Order.  
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1           7. In accordance with the terms of the Settlement and the Preliminary Approval Order, the  
2 parties implemented the Notice Plan approved by the Court. Esurance's counsel and Class Counsel  
3 have confirmed to the Court that the Parties complied with the Notice Plan.

4           8. The Court hereby finds that the Notice Plan and the Class Notice constituted the best  
5 notice practicable under the circumstances, and constituted valid, due, and sufficient notice to  
6 members of the Settlement Class. Specifically, the Court finds that the Notice, the Settlement  
7 website, and the notice methodology implemented pursuant to the Agreement (i) constituted the  
8 best practicable notice under the circumstances; (ii) were reasonably calculated to apprise potential  
9 Settlement Class Members of the pendency of the Action, their right to object to or exclude  
10 themselves from the Proposed Settlement, and to appear at the Final Approval Hearing; and (iii)  
11 were reasonable and constitute due, adequate, and sufficient notice to all Persons entitled to receive  
12 notice.  
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14           9. The Named Plaintiff has applied to the Court for final approval of the terms of the  
15 Proposed Settlement. Pursuant to the Class Notice, a hearing was held before this Court on  
16 February 10, 2023, to determine whether the Proposed Settlement of the Action should be finally  
17 approved as fair, reasonable, and adequate, and whether the Final Judgment approving the  
18 Settlement and dismissing all claims in the Action on the merits, with prejudice and without leave  
19 to amend, should be entered.  
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21           10. The Court hereby finds that approval of the Agreement and the Settlement embodied  
22 therein will result in substantial savings of time and money to the Court and the litigants and will  
23 further the interests of justice.  
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25           11. The Court hereby finds that the Proposed Settlement is the result of good faith arm's  
26 length negotiations by the Parties thereto, and is fair, reasonable, and adequate. The Court finds the  
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1 settlement to be fair to settlement class members pursuant to California Rule of Civil Procedure  
2 3.679(g).

3 NOW, THEREFORE, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED,  
4 ADJUDGED AND DECREED THAT:

5 12. The Court possesses jurisdiction over the subject matter of this Action, the Named  
6 Plaintiff, the Settlement Class Members, Esurance, and the Released Persons, and has subject  
7 matter jurisdiction to approve the Agreement and all Exhibits thereto.  
8

9 13. No Settlement Class Member filed a timely request for exclusion. No Settlement Class  
10 Member objected to the settlement. All Settlement Class Members are therefore bound by this  
11 Order and by the Agreement and the Settlement embodied therein, including the Release.  
12

13 14. All provisions and terms of the Settlement are hereby found to be fair, reasonable and  
14 adequate as to the Settlement Class Members and the Named Plaintiff, and all provisions and terms  
15 of the Settlement are hereby finally approved in all respects.

16 15. The Parties are hereby directed to consummate the Settlement in accordance with the  
17 Agreement.

18 16. The Class Claims in this Action are dismissed in their entirety, on the merits, with  
19 prejudice and without leave to amend, and the Named Plaintiff and all members of the Settlement  
20 Class and their respective heirs, estates, trustees, executors, administrators, principals,  
21 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through  
22 them or acting or purporting to act for them or on their behalf, regardless of whether they have  
23 submitted a Claim Form or Electronic Claim Form, and regardless of whether they have received  
24 actual notice of the Proposed Settlement, have conclusively compromised, settled, discharged, and  
25 released all Released Claims against Defendant and the Released Persons, and will be bound by the  
26 Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever  
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1 discharged, to the fullest extent permitted by law all Released Persons from all Released Claims,  
2 and agree not to institute, maintain, or assert any claims against the Released Persons on the  
3 Released Claims.

4 18. As of the Effective Date, by operation of the entry of the Final Judgment, each  
5 Settlement Class Member shall be deemed to have fully released, waived, relinquished and  
6 discharged, to the extent permitted by law, all Released Claims and Unknown Claims that the  
7 Settlement Class Members may have against all the Released Persons.  
8

9 19. "Released Claims" means and includes any and all known and Unknown Claims, rights,  
10 demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex*  
11 *contractu* or *ex delicto*, debts, liens, liabilities, interest, costs, expenses, attorneys' fees, losses or  
12 damages (whether actual, contractual or treble) statutory, common law or equitable, including but  
13 not limited to breach of contract, bad faith, or extracontractual claims, and claims for punitive or  
14 exemplary damages, or prejudgment or post judgment interest, arising from or relating in any way  
15 to Total Loss Payments for Sales Tax and/or Title and Tag Transfer Fees made to a Settlement  
16 Class Member during the Class Period, based on any legal theory whatsoever; and any claims  
17 regarding Sales Tax and/or Title and Tag Transfer Fees which have been alleged or which could  
18 have been alleged or which could have been alleged by the Named Plaintiff in the Action on behalf  
19 of herself and/or on behalf of the Class, to the full extent of *res judicata* and/or claim preclusion  
20 protections. Released Claims do not include any claim for enforcement of the contemplated  
21 Settlement Agreement and/or Final Order and Judgment.  
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24 20. "Released Persons" means (a) Esurance Property and Casualty Insurance Company; (b)  
25 all past, present and future officers, directors, agents, attorneys, employees, stockholders,  
26 successors, assigns, insurers, reinsurers, excess insurers, independent contractors, and legal  
27 representatives of Esurance; and (c) all of the heirs, estates, successors, assigns, divisions and legal  
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1 representatives of any of the entities or Persons listed in this Paragraph.

2 21. "Unknown Claims" means any claims arising out of facts found hereafter to be other  
3 than or different from facts now known or believed to be true, relating to any matter covered by  
4 this Agreement.

5 22. It is hereby determined that the Notice Plan and the Class Notice constituted the best  
6 notice practicable under the circumstances to all members of the Settlement Class, and is therefore  
7 finally approved as reasonable. Due and adequate notice of the pendency of this Action and of the  
8 Settlement has been provided to all the Settlement Class Members, and this Court hereby finds that  
9 the Class Notice complied fully with the requirements of due process, the California Rules of  
10 Court, and all other applicable laws.

11 23. The Agreement, the Settlement and this Final Judgment, and any proceedings taken  
12 pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence  
13 of, a presumption, concession, or an admission by any Party of liability or of the certifiability of a  
14 litigation class, or as precedent of any kind in any other proceeding; provided, however, that  
15 reference may be made to the Agreement and the Settlement provided for herein in such  
16 proceedings as may be necessary to effectuate the provisions of the Agreement.

17 24. The Court has considered the request for a Class Representative award, and hereby  
18 approves and awards the Named Plaintiff an Incentive Award in the amount of \$5,000.00 to be  
19 paid by Esurance.

20 25. The Court has considered Class Counsel's request for an Attorneys' Fees award for the  
21 prosecution of this action, and hereby makes an Attorneys' Fees and costs award in the amount of  
22 \$125,000.00 to be paid by Esurance.

23 26. The Court authorizes the Parties, without further approval from the Court, to agree to  
24 and adopt such amendments, modifications, and expansions of the Agreement and all Exhibits  
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1 thereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii)  
2 do not reduce or limit any rights of Settlement Class Members.

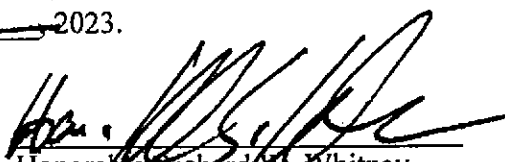
3 27. Any Party to the Agreement, the Settlement Administrator, counsel in any capacity in  
4 which they may act under the authority of the Agreement, and any employees, representatives, or  
5 agents of such Persons or entities shall not be liable for anything done or omitted in connection  
6 with the Agreement and/or the claims administration process.  
7

8 28. This Final Judgment is a final order in the Action within the meaning and for the  
9 purposes of the applicable rules of the Court as to all claims among Esurance on the one hand, and  
10 the Named Plaintiff, Class Representative, and all Settlement Class Members, on the other, and  
11 there is no just reason to delay enforcement or appeal.

12 29. The Clerk of Court is directed to enter a judgment of dismissal. Pursuant to California  
13 Rule of Civil Procedure 3.769(h) the judgment includes a provision that the Court shall retain  
14 jurisdiction over the Parties to enforce the terms of the judgment. The court may not enter an order  
15 dismissing the action at the same time as, or after, entry of judgment as it retains jurisdiction to  
16 enforce the settlement. *Id.*  
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18 30. Without in any way affecting the finality of this Final Judgment, this Court shall retain  
19 continuing jurisdiction over this Action for purposes of: (a) enforcing this Final Judgment, the  
20 Agreement and the Settlement; (b) hearing and determining any application by any Party to the  
21 Settlement for a settlement bar order; and (c) any other matters related or ancillary to any of the  
22 foregoing.  
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24 DONE AND ORDERED in chambers in SAN DIEGO COUNTY Superior Court of  
25 California, this 2-10 day of \_\_\_\_\_ 2023.

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28 Honorable Richard W. Whitney  
Judge Of The Superior Court