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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LEO WELTMAN,

Plaintiff,

vs.

ORTHO MATTRESS, INC.,

Defendant.


CASE NO. 08CV0840 JM(WMc)

ORDER DENYING MOTION TO
CONSOLIDATE WITHOUT
PREJUDICE

Plaintiff, on behalf of himself and all persons similarly situated, moves to consolidate the above identified action with a related action, Thomas v. Ortho Mattress, Inc., Case No. 09cv0975 JM(WMc). The only Defendant in both actions, Ortho Mattress Inc., does not oppose the motion to consolidate but requests a 90 day extension of time to complete discovery. The court denies the motion to consolidate without prejudice because Thomas seeks to represent a class of employees including both Salespersons and Store Managers whereas Weltman seeks to represent a class consisting of Salespersons only. As the two actions seek to represent two different classes, the motion is denied without prejudice. Plaintiffs may renew the motion to consolidate following a hearing on class certification.

IT IS SO ORDERED.

DATED: August 6, 2009



Hon. Jeffrey T. Miller
United States District Judge

cc: All parties