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

JASON CRANE,

Plaintiff,

v.

JELD-WEN, INC.,

Defendant.

Case No. 3:17-cv-00455-L-WVG

**CLASS ACTION**

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

Pending before the Court in this putative class action alleging, among other claims, violations of California Labor Code provisions regarding wages and hours, is Plaintiff's motion to preliminarily approval of class action settlement. The motion is denied without prejudice for the following reasons:

1. Plaintiff seeks certification of a class action for purposes of settlement. Although the fact of settlement is relevant to the class certification analysis, certification must nonetheless meet Rule 23(a) and (b)(3) requirements, with not lesser but *heightened* attention:

1 Confronted with a request for settlement-only class certification, a  
2 district court need not inquire whether the case, if tried, would present  
3 intractable management problems, *see* Fed. Rule Civ. Proc.  
4 23(b)(3)(D), for the proposal is that there be no trial. But other  
5 specifications of the Rule -- those designed to protect absentees by  
6 blocking unwarranted or overbroad class definitions -- *demand*  
7 *undiluted, even heightened, attention in the settlement context*. Such  
8 attention is of vital importance, for a court asked to certify a  
9 settlement class will lack the opportunity, present when a case is  
10 litigated, to adjust the class, informed by the proceedings as they  
11 unfold.

12 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (citation and footnote  
13 omitted, emphasis added); *see also id.* at 620-27.

14 Plaintiff provided insufficient information to support findings of  
15 commonality under Rule 23(a)(2) and that questions of law or fact common to the  
16 class members predominate over any questions affecting only individual class  
17 members, as required by Rule 23(b)(3). For example, Plaintiff concedes that  
18 Defendant's written policies complied with the law, and that inquiry into violations  
19 would be individualized rather than class-wide. (*See* doc. no. 31-1 (Pl's Mem. of  
20 P.&A.) at 22-23.<sup>1</sup>)

21 2. Plaintiff seeks preliminary approval of settlement pursuant to Rule  
22 23(e); however, he provided insufficient information to consider the settlement in  
23 light of the factors outlined in *Staton v. Boeing Co.*, 327 F.3d 938, 959-60 (9th Cir.  
24 2003).

25 First, it is unclear why the claim for failure to pay all wages upon  
26 termination, which is alleged in the first amended complaint and covered by the  
27 release in the settlement agreement, is not included in a sub-class of employees  
28 terminated during the class period. It is also unclear why there is no provision for  
such employees to be compensated from the settlement for this violation. Based  
on the information provided in Plaintiff's motion, the Court cannot conclude that

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<sup>1</sup> Page numbers are assigned by the Court's ECF system.

1 under the proposed settlement the class members would be treated fairly relative to  
2 each other, as the proposed class lumps all members in one class.

3 Second, Plaintiff has not provided sufficient information to evaluate the  
4 fairness and adequacy of the settlement. If Plaintiff renews this motion, he must  
5 state the range of possible recovery and average recovery per class member,  
6 assuming that all class members make a claim against the proposed settlement  
7 fund.

8 3. Insufficient information is provided to support appointment of  
9 Phoenix Settlement Administrators.

10 4. It is unclear whether there was timely compliance with California  
11 Labor Code § 2699(1)(2).

12 Accordingly, Plaintiff's motion is denied without prejudice to re-filing after  
13 curing the foregoing defects.

14 **IT IS SO ORDERED.**

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16 Dated: September 17, 2018

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18 Hon. M. James Lorenz  
19 United States District Judge

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