

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 08 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JIMMY KUANG,

Plaintiff-Appellant,

v.

BEL AIR MART, a California corporation
and DOES, 1 to 50, inclusive,

Defendants-Appellees.

No. 16-16956

D.C. No.

2:15-cv-00160-JAM-EFB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Argued and Submitted December 4, 2017
San Francisco, California

Before: M. SMITH and IKUTA, Circuit Judges, and BATES,** Senior District
Judge.

Jimmy Kuang appeals the district court's order granting Bel Air Mart's
motion for summary judgment. We have jurisdiction under 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable John D. Bates, Senior United States District Judge for
the District of Columbia, sitting by designation.

Even if Kuang's declaration and attachments were admissible, the district court did not err in dismissing Kuang's claim for breach of the Collective Bargaining Agreement (CBA), because Kuang failed to exhaust the grievance procedures required by the CBA. *See Vaca v. Sipes*, 386 U.S. 171, 184 (1967). Because Kuang informed the district court, both orally and in his written submissions, that he waived the argument that his failure to exhaust was excused due to the union's breach of its duty of fair representation, this argument is waived on appeal and we do not reach it. *See Blaisdell v. Frappiea*, 729 F.3d 1237, 1241–42 (9th Cir. 2013). Because Kuang waived his hybrid claim, we do not reach his remaining arguments.

AFFIRMED.