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Juul Loses Bid To Arbitrate Canvassers' Wage Class Action

By **Jon Steingart**

Law360 (August 13, 2020, 8:08 PM EDT) -- Juul can't arbitrate a wage-and-hour lawsuit filed by canvassers for its unsuccessful 2019 bid to legalize e-cigarettes in San Francisco, a California federal judge has ruled, finding that the agreements the workers signed weren't broad enough to cover their claims.

U.S. District Judge Haywood S. Gilliam Jr. on Wednesday denied motions to compel arbitration filed by Juul and the companies that ran the campaign on its behalf. Although those companies had argued that their contracts required arbitration of disputes, Judge Gilliam found that the pacts weren't broad enough to encompass the canvassers' class action alleging minimum wage, overtime, expense reimbursement and meal-break violations under the California labor code.

"Without question, defendants could have drafted the arbitration provision to cover labor code misclassification causes of action by, for example, expressly providing for arbitration of disputes or claims arising out of, or related to, plaintiffs' employment, or of all labor code claims," Judge Gilliam said. "Instead, defendants drafted a narrow clause that only covers 'disputes over the terms of' the [agreement]."

Although the workers' claims survived the bid to compel arbitration, the judge said they still need to prove that they were misclassified as independent contractors under the state labor code.

Aaron Kaufmann, an attorney for the three campaign workers who filed the suit and plan to seek class certification, said the decision highlights the importance of how an arbitration agreement is phrased, particularly in California.

"The clause they wrote for arbitration is a classic narrow arbitration clause," Kaufmann told Law360. "When we raise wage and hour claims, they arise from statute and not from contract. The arbitration agreement only covered claims arising from the agreement, so these claims fall outside."

The former canvassers filed suit in March against Juul, its Coalition for Reasonable Vaping Regulation and Long Ying International Inc., a political consulting firm that managed the 2019 campaign against Proposition C. Prop C, if approved by voters, would have repealed a new San Francisco law that banned e-cigarettes in the city.

Proposition C failed with only 18% voting yes, city election results show.

Juul and Long Ying didn't immediately respond to requests for comment. An email to a CRVR spokesperson was returned as undeliverable. Attorneys representing each of the organizations didn't immediately respond to requests for comment.

The workers are represented by Aaron Kaufmann and Giselle Olmedo of Leonard Cardner LLP, and Carole Vigne and George Warner of Legal Aid at Work.

Juul is represented by Eileen Ridley, Jason Wu and Kaleb Berhe of Foley Lardner LLP.

The Coalition for Reasonable Vaping Regulation is represented by Bradley Hertz and James Sutton of

the Sutton Law Firm.

Long Ying is represented by Edwin Prather and Sybil Renick of Prather Law Offices.

The case is *Bautista et al. v. Juul Labs Inc. et al.*, case number 4:20-cv-01613, in the U.S. District Court for the Northern District of California.

--Editing by Jack Karp.

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