

Sean Wieber Discusses the Rise of Illinois BIPA Cases in the Northern District of California

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Winston & Strawn Litigation Partner Sean Wieber was quoted in *The Recorder's* article "[Is California a Better Venue for BIPA Litigation Than Illinois?](#)" The article discusses an increase in Illinois Biometric Information Privacy Act (BIPA) cases that are landing in the Northern District of California. The uptick follows Facebook's proposed \$550 million class action settlement over alleged violations of the out-of-state legislation. Since the settlement, two additional proposed BIPA class actions are pending in the district over the company's use of facial recognition technology in its Google Photos product.

Sean notes that The Northern District of California could present fewer jurisdictional hoops for lawyers to jump through in general. Sean points out that in [Rivera v. Google](#), a 2018 BIPA case against Google over the same photo app in the Northern District of Illinois the judge ruled the court did not have jurisdiction to hear the case, since the plaintiffs did not allege the "concrete injuries" necessary to establish Article III standing. In California, plaintiffs don't have to worry about being bounced back to state court, since the U.S. Court of Appeals for the Ninth Circuit [ruled in the Facebook case](#) that a violation of the BIPA statute and the creation and retention of a face template "for all time" is enough harm to trigger standing.

When tech companies such as Google are sued in their home state, where they're subject to general jurisdiction, "you're actually removing what I think is a potential expensive fight over venue," he said.

Plus, the Northern District of Illinois and the U.S. Court of Appeals for the Seventh Circuit are known to be sticklers when it comes to jurisdiction. In [a decision](#) earlier this month, Seventh Circuit Chief Judge Diane Wood said that the court is "proud to have a reputation as a jurisdictional hawk."

However, if plaintiffs sue in California, not only do they bypass the Article III standing issue, they can also avoid a "metaphysical fight over whether a substantial portion of the BIPA violation actually occurred in Illinois," he said.

Sean focuses his practice on a variety of complex commercial and class action litigation matters. As Co-Chair of Winston's Regulated Personal Information (RPI) practice group, Sean has significant experience advising clients on consumer and privacy-related class action matters under various federal and state laws that are primarily enforced through private right of action, such as the Telephone Consumer Protection Act (TCPA), the Biometric Information Privacy Act (BIPA) and the California Consumer Privacy Act (CCPA). He is also the Chair of the firm's TCPA and BIPA litigation practices.

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