

Class Action Plaintiff Sent Packing After Winston Secures Enforcement of Binance's Terms of Use

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A Winston team secured a decisive victory for a major cryptocurrency exchange (and provided a potential roadmap for other online businesses seeking to enforce arbitration clauses in their terms of service) this week when a federal judge granted a motion to compel arbitration.

On September 11, 2023, Plaintiff Candice Wilhelm filed a putative class action in the Circuit Court of Cook County on behalf of all Illinois users who had created an account on Binance.US—a major cryptocurrency trading platform—in the five years preceding the suit. Wilhelm alleged that as part of the sign-up process, Binance.US and its parent company, BAM Trading Services, Inc., conducted facial scans of the users to verify their identities, in violation of certain provisions of the restrictive Illinois Biometric Information Privacy Act (BIPA). Wilhelm sought statutory damages of up to \$5,000 per violation for each Illinois Binance.US users.

Winston removed the action to the Northern District of Illinois and moved to compel arbitration based on Binance.US's Terms of Use, which contained a mandatory arbitration clause for any dispute arising out of an individual's use of the website. Wilhelm responded by generally stating that she had no recollection of seeing the terms and that she did not agree to the arbitration provision.

The court accepted Winston's arguments virtually wholesale, enforced the Terms of Use, and compelled arbitration. The court's clear opinion offers strong support for other online businesses seeking to enforce their Terms of Use—particularly as to arbitration provisions.

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