

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

BRET BRAY, individually and on	)	
behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION FILE
v.	)	NO. _____
	)	
LATHEM TIME CO.,	)	Class Action
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

1. Defendant Lathem Time Corp. (“Lathem”) removes this action from the Superior Court of Cobb County, Georgia, to the U.S. District Court for the Northern District of Georgia, Atlanta Division. Subject matter jurisdiction exists under the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. § 1332(d)(2) and 28 U.S.C. § 1453(b). This supposed class action is subject to this Court’s jurisdiction under Section 1332(d)(2) because minimal diversity exists and according to Plaintiff’s theory of liability, if Lathem has any liability at all (which Lathem denies), it is “more likely than not” that the aggregate value of the putative class members’ claims exceeds \$5,000,000. *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 752 (11th Cir. 2010); *see also McDaniel v. Fifth Third Bank*, 568 Fed. Appx. 729, 732 (11th Cir. 2014) (“the case belongs in federal court” unless recovery

of an amount exceeding the jurisdictional minimum is “legally impossible”).

### **CLAIMS ASSERTED AND RELIEF SOUGHT**

2. Through his Class Action Complaint (the “Complaint”), Plaintiff Bret Bray (“Plaintiff”) purports to state statutory claims against Lathem under the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”) on behalf of himself and a putative class. Plaintiff alleges that, under BIPA, a private entity may not obtain biometrics from any individual unless that entity first: (a) informs the individual in writing of the specific purpose and length of term for which that biometric data is being collected, stored, and used; (b) publicly publishes written retention schedules and guidelines for the permanent destruction of the biometric data; and (c) receives a written release from the person for the collection of such biometric data. (Compl. ¶ 75.)

3. According to Plaintiff, “Lathem is a leading provider of human resource management software and services that’s best known for helping hundreds of thousands of businesses track employee time and process payroll.” (*Id.* ¶ 1.) He alleges that “when an employee first begins work at a company that uses one of Lathem’s biometric devices, they are required to have their facial geometry scanned in order to enroll them in the Lathem database,” (*Id.* ¶ 31), and that as an employee of a third party, Hixson Lumber Supply in Hillsboro, Illinois (“Hixson”),

he “was required to scan his facial geometry on a Lathem device each time he clocked in for work and clocked out of work,” (*Id.* ¶¶ 40, 41).

4. Plaintiff claims that Lathem “disregards [the purported BIPA] rights of Illinois citizens and unlawfully collects, stores, and uses their biometric data in violation of BIPA.” (*Id.* ¶ 11.) He further claims that Lathem violated BIPA by failing to: (a) inform him and the putative class members “of the specific purpose and length of time for which their facial geometry scans were being collected, stored, and used”; (b) obtain “a written release . . . to collect, store, or otherwise use his facial geometry scans”; and (c) “develop and adhere to a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified in BIPA” (*Id.* ¶ 11). Plaintiff also alleges that he “has continuously and repeatedly been exposed to the risks and harmful conditions created by [Lathem’s] violations of BIPA” (*Id.* ¶ 47).

5. Plaintiff seeks to bring his BIPA claim on behalf of a putative class defined as:

All individuals in the State of Illinois who had their facial geometry collected, captured, received, obtained, maintained, or stored by [Lathem] during the applicable statutory period. (*Id.* ¶ 55.)

6. Plaintiff seeks declaratory and injunctive relief, and statutory and other purported damages associated with Lathem’s alleged misconduct, plus costs

and attorneys' fees. (*Id.* ¶ 83.) In particular, he seeks statutory damages of \$5,000 for each willful and/or reckless violation of BIPA or, in the alternative, statutory damages of \$1,000 for each negligent violation. (*Id.*)

### **JURISDICTION UNDER 28 USC § 1332(d)(2)**

7. The Court also has jurisdiction over this case under CAFA.

8. CAFA gives the Court original jurisdiction over “any civil action”:  
(a) in which the “matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs”; and (b) which is a “class action” in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2). A “class action” is defined as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” *Id.* § 1332(d)(1)(B). To determine the amount in controversy under CAFA, the claims of the class members are aggregated. *Id.* § 1332(d)(6).

9. The jurisdictional requirements of 28 U.S.C. § 1332(d)(2) are satisfied here.

10. First, this lawsuit is a “class action,” in that Plaintiff seeks to bring BIPA claims on behalf of “[a]ll individuals in the State of Illinois who had their

facial geometry collected, captured, received, obtained, maintained, or stored by [Lathem] during the applicable statutory period. (Compl. ¶ 55.)

11. Second, the parties are at least minimally diverse for CAFA purposes. 28 U.S.C. § 1332(d)(2)(A); *see Cavalieri v. Avior Airlines C.A.*, 25 F.4th 843, 850 (11th Cir. 2022) (minimal diversity is achieved where “one member of the plaintiff class . . . [is] diverse from any one defendant”). Plaintiff is a citizen of Illinois (Compl. ¶ 13), and Lathem is a citizen of Georgia, where it is incorporated and has its principal—and only—places of business. (Declaration of Lance Whipple (“Whipple Decl.”), a copy of which is submitted herewith as **Exhibit A**, at ¶ 3.)

12. And third, according to Plaintiff’s allegations, the aggregate amount of the putative class members’ claims exceeds \$5,000,000. Lathem denies that it violated BIPA and that this case is appropriate for class treatment. Nevertheless, its records reflect that over 1,001 individuals working in Illinois used Lathem technology that Plaintiff claims violate BIPA at their places of employment, and that Plaintiff alone used a Lathem device 40 times in less than a month. (Whipple Decl. at ¶¶ 4–5.) Plaintiff alleges that each purported scan of individuals’ faces when they clocked in and out of work gave rise to multiple violations of BIPA, and that each such violation entitles the putative class members to either \$5,000 or \$1,000 of statutory damages. (*See* Compl. ¶¶ 11, 43, 47, 73, 83.) Federal courts in Illinois,

which regularly deal with BIPA claims, have found CAFA’s amount-in-controversy threshold satisfied based on similar “multiple violation” theories.<sup>1</sup> But even if each putative class member recovered for only one allegedly “reckless” violation of BIPA, the aggregate amount in controversy would exceed \$5,000,000 (1,001 x \$5,000 = \$5,005,000). *See Sosa v. Onfido, Inc.*, No. 20-CV-4247, 2022 WL 1211506, at \*2 n.3 (N.D. Ill. Apr. 25, 2022) (subject matter jurisdiction existed under CAFA where putative class was at least 501 individuals and the plaintiff, like Plaintiff here, alleged violations of “two subsections of BIPA, section 15(a) and section 15(b), and [sought] up to \$5,000 for each violation”). Thus, it is “more likely than not,” and certainly not “legally impossible,” that the aggregate value of the putative class’s claims exceeds \$5,000,000, and jurisdiction is proper.

### **PROCEDURE FOR REMOVAL**

13. Lathem was served with the Complaint in this matter on April 4, 2022. (Whipple Decl. ¶ 6). Lathem is filing this notice within 30 days of the date of service. This Notice of Removal, therefore, is timely under 28 U.S.C. § 1446(b).

14. Removal to this Court is proper because the U.S. District Court for the

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<sup>1</sup> *See, e.g., Peatry v. Bimbo Bakeries USA, Inc.*, 393 F. Supp. 3d 766, 769 (N.D. Ill. 2019) (holding that CAFA’s \$5,000,000 jurisdictional threshold was met because “[plaintiff’s] complaint and BIPA together can plausibly be read to suggest that a violation of at least some of the BIPA provisions at issue allegedly occurred every time [plaintiff] and the putative class members clocked in and out of work”).

Northern District of Georgia, Atlanta Division is the District Court of the United States for the district and division embracing the Superior Court of Cobb County, Georgia. 28 U.S.C. § 93(a)(1).

15. A copy of all process, pleadings and orders served upon Lathem are attached as **Exhibit B** in accordance with 28 U.S.C. § 1446(a).

16. Lathem is filing notice of the removal of this action with the Superior Court of Cobb County, Georgia in accordance with 28 U.S.C. § 1446(d).

Respectfully submitted this 3rd day of May, 2022.

/s/ Nicholas P. Panayotopoulos  
Nicholas P. Panayotopoulos  
Georgia Bar No. 560679  
Weinberg, Wheeler, Hudgins, Gunn  
& Dial, LLC  
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*Attorneys for Defendant Lathem Time  
Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of May, 2022, I electronically filed the foregoing Notice of Removal with the Clerk of Court using the CM/ECF system. The document was served on the following attorneys via e-mail, addressed as follows:

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/s/ Nicholas P. Panayotopoulos  
Nicholas P. Panayotopoulos  
Georgia Bar No. 560679  
*Attorney for Defendant Lathem Time Corp.*



# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

BRET BRAY, individually and on )  
behalf of all others similarly situated )

Plaintiff, )

v. )

LATHEM TIME CO., )

Defendant. )

**DECLARATION OF LANCE WHIPPLE**

STATE OF GEORGIA )

) ss:

COUNTY OF FULTON )

I, Lance Whipple, under penalty of perjury and in accordance with the requirements of 28 U.S.C. § 1746, hereby declare and state as follows:

1. I am over the age of 18, have personal knowledge of the facts set forth herein, and could testify competently to them if called upon to do so.

2. I am Vice President, Sales & Marketing for Defendant Lathem Time Corp. (“Lathem”),<sup>1</sup> a position that I have held for over 20 years, and I offer this Declaration in support of Lathem’s Notice of Removal in the above-captioned case.

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<sup>1</sup> Lathem, a corporation, is misidentified as a “company” in the case caption.

3. Lathem is incorporated and headquartered in the State of Georgia. All of its facilities are located in Georgia, and it has no offices or other facilities in any other state.

4. I understand that Plaintiff Bret Bray alleges that he was previously employed by Hixson Lumber Supply in Hillsboro, Illinois, and that he was required to scan his facial geometry on a Lathem device each time he clocked in and out of work. (Compl. ¶¶ 40, 41, 43.) According to Lathem's records, which I have reviewed, Mr. Bray used a Lathem timekeeping device 40 times between February 19, 2019 and March 15, 2019.

5. Lathem's records further reflect that over 1,001 individuals working in Illinois used Lathem technology that Plaintiff claims violates the Illinois Biometric Information Privacy Act at their places of employment.

6. Lathem was served with the Class Action Complaint in this matter on April 4, 2022.

FURTHER DECLARANT SAYETH NOT.

  
Lance Whipple

Executed by Declarant on April 29, 2022

# **EXHIBIT B**

SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA

ID# 2020-0042096-CV  
EFILED IN OFFICE  
CLERK OF SUPERIOR COURT  
COBB COUNTY, GEORGIA  
**20102248**  
Reuben M. Green - 51  
APR 06, 2020 12:06 PM

*Rebecca Keaton*  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

CIVIL ACTION NUMBER 20102248

\$214.00 COST PAID

Bray, Brett

PLAINTIFF

VS.

Lathem Time Corporation

DEFENDANT

SUMMONS

TO: LATHEM TIME CORPORATION

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiff's attorney, whose name and address is:

**Craig Goodmark**  
**Goodmark Law Firm**  
**1425 A Dutch Valley Place**  
**ATLANTA, Georgia 30324**

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This 6th day of April, 2020.

Clerk of Superior Court



*Rebecca Keaton*

Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

ID# 2020-0042098-CV  
EFILED IN OFFICE  
CLERK OF SUPERIOR COURT  
COBB COUNTY, GEORGIA  
**20102248**  
Reuben M. Green - 51  
APR 06, 2020 12:06 PM

DISCLOSURE STATEMENT  
CLERK OF SUPERIOR COURT

CASE NUMBER 20102248

  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

**Bray, Brett**

Plaintiff

Vs.

**Lathem Time Corporation**

Defendant

TYPE OF ACTION

- Divorce without Agreement Attached
- Divorce with Agreement Attached
- Domestic Relations
- Damages Arising out of Contract
- Damages Arising out of Tort
- Condemnation
- Equity
- Zoning – County Ordinance Violations (i.e., Injunctive Relief-Zoning)
- Zoning Appeals (denovo)
- Appeal, Including denovo appeal – excluding Zoning
- URESA
- Name Change
- Other
- Recusal
- Adoption

PREVIOUS RELATED CASES

Does this case involve substantially the same parties, or substantially the same subject matter, or substantially the same factual issues, as any other case filed in this court (Whether pending simultaneously or not)?


- NO
- YES – If yes, please fill out the following:
  1. Case # \_\_\_\_\_
  2. Parties \_\_\_\_\_
  3. Assigned Judge \_\_\_\_\_
  4. Is this case still pending?  Yes  No
  5. Brief description of similarities:

/s/ Goodmark, Craig

Attorney or Party Filing Suit

ID# 2020-0042095-CV  
FILED IN OFFICE  
CLERK OF SUPERIOR COURT  
COBB COUNTY, GEORGIA  
**20102248**  
Reuben M. Green - 51  
APR 06, 2020 12:06 PM

**IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA**

  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

**BRET BRAY, individually and on behalf of** )  
**all others similarly situated,** )  
 )  
**Plaintiffs,** )  
 ) **Case No.**  
**v.** )  
 )  
**LATHEM TIME CO.,** )  
 )  
**Defendant.** )

**CLASS ACTION COMPLAINT**

Plaintiff Bret Bray (“Plaintiff”), by and through his attorneys, individually and on behalf of all others similarly situated (the “Class”), bring the following Class Action Complaint (“Complaint”) pursuant to O.C.G.A. 9-11-23, against Lathem Time Co. (“Lathem” or “Defendant”), its subsidiaries and affiliates, to redress and curtail Defendant’s unlawful collection, use, and storage of Plaintiff’s and the Class’ sensitive biometric data under the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* Plaintiff initially filed this case against Defendant in the Circuit Court of Montgomery County, Illinois, on April 22, 2019. Defendant timely removed the Montgomery County, Illinois action to the District Court for the Central District of Illinois on June 18, 2019. The Central District dismissed Plaintiff’s case on March 30, 2020 for lack of personal jurisdiction over Defendant. Plaintiff now brings this action in Defendant’s home state. Plaintiff alleges as follows upon personal knowledge as to himself, his own

acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

### NATURE OF THE ACTION

1. Defendant Lathem is a leading provider of human resource management software and services that's best known for helping hundreds of thousands of businesses track employee time and process payroll.

2. To help make employee time and attendance tracking more accurate, Lathem encourages its customers to use biometric-based time clocks, which use an employee's biometrics to punch in and out of work, instead of key fobs, identification numbers, or cards.

3. Unlike ID badges or time cards – which can be changed or replaced if stolen or compromised – facial biometrics are unique, permanent biometric identifiers associated with each employee. This exposes employees who are required to use Lathem devices as a condition of their employment to serious and irreversible privacy risks. For example, if a database containing facial biometric data or other sensitive, proprietary biometric data is hacked, breached, or otherwise exposed – like in the recent Yahoo, eBay, Google, Equifax, Uber, Panera, Whole Foods, Chipotle, Trump Hotels, Facebook/Cambridge Analytica, and Marriott data breaches or misuses – employees have no means by which to prevent identity theft, unauthorized tracking or other unlawful or improper use of this highly personal and private information.

4. In 2015, a data breach at the United States Office of Personnel Management exposed the personal identification information, including biometric data, of over 21.5



million federal employees, contractors, and job applicants. U.S. Off. of Personnel Mgmt., *Cybersecurity Incidents* (2018), available at [www.opm.gov/cybersecurity/cybersecurity-incidents](http://www.opm.gov/cybersecurity/cybersecurity-incidents).

5. An illegal market already exists for biometric data. Hackers and identity thieves have targeted Aadhaar, the largest biometric database in the world, which contains the personal and biometric data – including fingerprints, iris scans, and a facial photograph – of over a billion Indian citizens. See Vidhi Doshi, *A Security Breach in India Has Left a Billion People at Risk of Identity Theft*, *The Washington Post* (Jan. 4, 2018), available at [https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm\\_term=.b3c70259f138](https://www.washingtonpost.com/news/worldviews/wp/2018/01/04/a-security-breach-in-india-has-left-a-billion-people-at-risk-of-identity-theft/?utm_term=.b3c70259f138).

6. In January 2018, an Indian newspaper reported that the information housed in Aadhaar was available for purchase for less than \$8 and in as little as 10 minutes. Rachna Khaira, *Rs 500, 10 Minutes, and You Have Access to Billion Aadhaar Details*, *The Tribune* (Jan. 4, 2018), available at <http://www.tribuneindia.com/news/nation/rs-500-10-minutes-and-you-have-accessto-billion-aadhaar-details/523361.html>.

7. In August 2019 it was widely reported that Suprema, a security company responsible for a web-based biometrics lock system that uses fingerprints and facial geometry scans in 1.5 million locations around the world, maintained biometric data and other personal information on a publicly accessible, unencrypted database. *Major Breach Found in Biometrics System Used by Banks, UK police and Defence Firms*, *The Guardian* (Aug. 14, 2019), available at

<https://www.theguardian.com/technology/2019/aug/14/major-breach-found-in-biometrics-system-used-by-banks-uk-police-and-defence-firms>.

8. In the United States, law enforcement, including the Federal Bureau of Investigation and Immigration and Customs Enforcement, have attempted to turn states' Department of Motor Vehicles databases into biometric data goldmines, using facial recognition technology to scan the faces of thousands of citizens, all without their notice or consent. Drew Harwell, *FBI, ICE Find State Driver's License Photos Are a Gold Mine for Facial-Recognition Searches*, The Washington Post (July 7, 2019), available at [https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/?noredirect=on&utm\\_term=.da9afb2472a9](https://www.washingtonpost.com/technology/2019/07/07/fbi-ice-find-state-drivers-license-photos-are-gold-mine-facial-recognition-searches/?noredirect=on&utm_term=.da9afb2472a9).

9. This practice has been criticized by lawmakers. Some states, including Illinois, have refused to comply with law enforcement's invasive requests. *State Denying Facial Recognition Requests*, Jacksonville Journal-Courier (July 9, 2019), available at <https://www.myjournalcourier.com/news/article/State-denying-facial-recognition-requests-14081967.php>.

10. Recognizing the need to protect its citizens from situations like these, Illinois enacted the Biometric Information Privacy Act, 740 ILCS 14/1, et seq. ("BIPA"), specifically to regulate companies that collect and store Illinois citizens' biometrics, such as facial biometrics.

11. Notwithstanding the clear and unequivocal requirements of the law, Defendant disregards the statutorily protected privacy rights of Illinois citizens and

unlawfully collects, stores, and uses their biometric data in violation of BIPA. Specifically, Defendant violated and continues to violate BIPA because it did not and continues not to:

- a. Properly inform Plaintiff and others similarly situated in writing of the specific purpose and length of time for which their facial geometry scans were being collected, stored, and used, as required by BIPA;
  - b. Receive a written release from Plaintiff and others similarly situated to collect, store, or otherwise use his facial geometry scans, as required by BIPA.
  - c. Develop and adhere to a publicly available retention schedule and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' facial geometry scans, as required by BIPA.
12. Accordingly, this Complaint seeks an Order: (1) declaring that Defendant's conduct violates BIPA; (2) requiring Defendant to cease the unlawful activities discussed herein; and (3) awarding liquidated damages to Plaintiff and the proposed class.

### **PARTIES**

13. Plaintiff Bret Bray is a natural person and a citizen in the State of Illinois.

14. Defendant Lathem is a corporation organized and existing under the laws of the State of Georgia.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over Defendant because it is established and headquartered in the State of Georgia.

16. Pursuant to O.C.G.A. §14-3-510, venue is proper because Defendant conducts business in this State, Defendant conducts business transactions in this County, and Defendant is headquartered in this County.

## FACTUAL BACKGROUND

### I. The Biometric Information Privacy Act.

17. Major national corporations started using Chicago and other locations in Illinois in the early 2000s to test “new applications of biometric-facilitated financial transactions, including facial-scan technologies at grocery stores, gas stations, and school cafeterias.” 740 ILCS 14/5(c). Given its relative infancy, an overwhelming portion of the public became weary of this then-growing yet unregulated technology. *See* 740 ILCS 14/5.

18. In late 2007, a biometrics company called Pay by Touch, which provided major retailers throughout the State of Illinois with fingerprint scanners to facilitate consumer transactions, filed for bankruptcy. The bankruptcy was alarming to the Illinois legislature because there was suddenly a serious risk that millions of fingerprint records – which, similar to other unique biometric identifiers, can be linked to people’s sensitive financial and personal data – could now be sold, distributed, or otherwise shared through the bankruptcy proceedings without adequate protections for Illinois citizens. The bankruptcy also highlighted the fact that most consumers who used the company’s fingerprint scanners were completely unaware the scanners were not transmitting fingerprint data to the retailer who deployed the scanner, but rather to the now-bankrupt company, and that their unique biometric identifiers could now be sold to unknown third parties.

19. Recognizing the “very serious need [for] protections for the citizens of Illinois when it [came to their] biometric information,” Illinois enacted BIPA in 2008. *See* Illinois House Transcript, 2008 Reg. Sess. No. 276; 740 ILCS 14/5.

20. Additionally, to ensure compliance, BIPA provides that, for each violation, the prevailing party may recover \$1,000 or actual damages, whichever is greater, for negligent violations and \$5,000, or actual damages, whichever is greater, for intentional or reckless violations. 740 ILCS 14/20.

21. BIPA is an informed consent statute which achieves its goal by making it unlawful for a company to, among other things: collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information, unless it first:

- 1) Informs the subject in writing that a biometric identifier or biometric information is being collected, stored and used;
- 2) Informs the subject in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; and
- 3) Receives a written release executed by the subject of the biometric identifier or biometric information.

*See* 740 ILCS 14/15(b).

22. BIPA specifically applies Defendant's collection of Illinois Citizens' biometrics within the State of Illinois. BIPA defines a "written release" specifically "in the context of employment [as] a release executed by an employee as a condition of employment." 740 ILCS 14/10.

23. Biometric identifiers include retina and iris scans, voiceprints, scans of hand geometry and fingerprints, and – most importantly here – facial geometry. *See* 740 ILCS 14/10. Biometric information is separately defined to include any information based on an individual's biometric identifier that is used to identify an individual. *Id.*

24. BIPA also establishes standards for how companies must handle Illinois citizens' biometric identifiers and biometric information. *See, e.g.*, 740 ILCS 14/15(c)-(d).

25. BIPA also prohibits selling, leasing, trading, or otherwise profiting from a person's biometric identifiers or biometric information (740 ILCS 14/15(c)) and requires companies to develop and comply with a written policy – made available to the public – establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting such identifiers or information has been satisfied or within three years of the individual's last interaction with the company, whichever occurs first. 740 ILCS 14/15(a).

26. The Illinois legislature enacted BIPA due to the increasing use of biometric data in financial and security settings, the general public's hesitation to use biometric information, and – most significantly – the unknown ramifications of biometric technology. Biometrics are biologically unique to the individual and, once compromised, an individual is at heightened risk for identity theft and left without any recourse. Biometric data, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

27. BIPA provides individuals with a private right of action, protecting their right to privacy regarding their biometrics as well as protecting their rights to know the precise nature for which their biometrics are used and how they are being stored and ultimately destroyed. Unlike other statutes that only create a right of action if there is a qualifying data breach, BIPA strictly regulates the manner in which entities may collect, store, and use, biometrics and creates a private right of action for lack of statutory compliance.

28. Plaintiff, like the Illinois legislature, recognizes how imperative it is to keep biometric information secure. Biometric information, unlike other personal identifiers such as a social security number, cannot be changed or replaced if hacked or stolen.

## **II. Defendant Violates the Biometric Information Privacy Act.**

29. By the time BIPA passed through the Illinois legislature in mid-2008, most companies who had experimented using biometric data as an authentication method stopped doing so.

30. However, Defendant failed to take note of the shift in Illinois law governing the collection and use of biometric data. As a result, Defendant continues to collect, store, and use Illinois Citizens' biometric data in violation of BIPA.

31. Specifically, when an employee first begins work at a company that uses one of Lathem's biometric devices, they are required to have their facial geometry scanned in order to enroll them in the Lathem database.

32. In those instances, Lathem fails to inform the employees that Lathem is collecting, storing, or using their sensitive biometric data, or the extent of the purposes for which it collects their sensitive biometric data.

33. Upon information and belief, Defendant failed and continues to fail to develop and adhere to a written, publicly-available policy identifying its retention schedule and guidelines for permanently destroying collected biometric data when the initial purpose for collecting or obtaining their biometrics is no longer relevant, as required by BIPA.

34. Upon information and belief, Defendant failed and continues to fail to inform users of the purposes and duration for which it collects their sensitive biometric data; and

fails to obtain written releases from Illinois citizens before collecting their facial geometry data.

35. In addition, Lathem profits from the use of employees' biometric data. For instance, Lathem markets its biometric time clocks to employers as superior options to traditional time clocks, which can be used in a way to facilitate time theft. By marketing its clocks in this manner, Lathem obtains a competitive advantage over other time clock companies and secures profits from its use of biometric data, all while failing to comply with the minimum requirements for handling employees' biometric data established by BIPA.

36. The Pay by Touch bankruptcy, which triggered the passage of BIPA, highlights why such conduct – where individuals are aware that they are providing a scan of their facial geometry but are not aware to whom or for what purposes they are doing so – is dangerous. This bankruptcy spurred Illinois citizens and legislators into realizing that it is crucial for individuals to understand when providing biometric data such as facial geometry data derived therefrom, who exactly is collecting their biometric data, where it will be transmitted, for what purposes it will be transmitted, and for how long.

37. Remarkably, Defendant has created the same situation that Pay by Touch did by assembling a database of biometric data through broadly deployed facial recognition scanners, but failing to comply with the law specifically designed to protect individuals whose biometrics are collected in these circumstances. Defendant disregards these obligations and Illinois citizens' statutory rights and instead unlawfully collects, stores, and



uses citizens' biometric identifiers and information without ever receiving the individual's informed written consent required by BIPA.

38. Upon information and belief, Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and other similarly-situated individuals' biometric data and has not and will not destroy Plaintiff's and other similarly-situated individuals' biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with each company.

39. By and through the actions detailed above, Defendant disregarded Plaintiff's and other similarly-situated individuals' legal rights in violation of BIPA.

### **III. Plaintiff Bret Bray's Experience.**

40. Plaintiff Bret Bray was hired by Hixon Lumber Supply located in Hillsboro, Illinois in January 2019 and worked there until March 2019.

41. As a condition of employment with Hixon, Bray was required to scan his facial geometry using a Lathem device so his employer could track his time.

42. Lathem subsequently stored Bray's facial biometric data in its database(s).

43. Bray was required to scan his facial geometry on a Lathem device each time he clocked in for work and clocked out of work.

44. Bray has never been informed of the specific limited purposes or length of time for which Defendant collected, stored, and/or used his biometric data.

45. Bray is unaware of any biometric data retention policy developed by Defendant, nor has he ever been informed whether Defendant will ever permanently delete his biometric data.

46. Bray has never been provided with nor ever signed a written release allowing Defendant to collect, store, or use his biometric data.

47. Bray has continuously and repeatedly been exposed to the risks and harmful conditions created by Defendant's violations of BIPA alleged herein.

48. No amount of time or money can compensate Bray if his biometric data is compromised by the lax procedures through which Defendant captured, stored, or used his and other similarly-situated individuals' biometrics. Moreover, Bray would not have provided his biometric data to Defendant if he had known that Defendant would retain such information for an indefinite period of time without his consent.

49. A showing of actual damages is not necessary in order to state a claim under BIPA. *See Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 40 (“[A]n individual need not allege some actual injury or adverse effect, beyond violation of his or her rights under the Act, in order to qualify as an “aggrieved” person and be entitled to seek liquidated damages and injunctive relief pursuant to the Act”). Nonetheless, Bray has been aggrieved because he suffered an injury-in-fact based on Defendant's violations of his legal rights. Defendant intentionally interfered with Bray's right to control his own sensitive biometric data. Additionally, Bray suffered an invasion of a legally protected interest when Defendant secured his personal and private biometric data at a time when it had no right to

do so, a gross invasion of his right to privacy. BIPA protects citizens like Bray from this precise conduct.

50. Pursuant to 740 ILCS 14/15(b), Bray was entitled to receive certain information prior to Defendant securing his biometric data; namely, information advising him of the specific limited purpose(s) and length of time for which Defendant to collect, store, and use his private biometric data; information regarding Defendant's biometric retention policy; and, a written release allowing Defendant to collect, store, and use his private biometric data.

51. Bray has plausibly inferred actual and ongoing harm in the form of monetary damages for the value of the collection and retention of his biometric data; in the form of monetary damages by not obtaining additional compensation as a result of being denied access to material information about Defendant's policies and practices; in the form of interference with his right to control his confidential biometric data; and, in the form of the continuous and ongoing exposure to substantial and irreversible loss of privacy.

52. As Bray is not required to allege or prove actual damages in order to state a claim under BIPA, he seeks statutory damages under BIPA as compensation for the injuries caused by Defendant. *Rosenbach*, 2019 IL 123186, ¶ 40.

### **CLASS ALLEGATIONS**

53. Pursuant to the Georgia Code of Civil Procedure, O.C.G.A. 9-11-23, Plaintiff brings claims on his own behalf and as representatives of all other similarly-situated individuals pursuant to BIPA, 740 ILCS 14/1, *et seq.*, to recover statutory penalties, prejudgment interest, attorneys' fees and costs, and other damages owed.

54. As discussed supra, Section 14/15(b) of BIPA prohibits a company from, among other things, collecting, capturing, purchasing, receiving through trade, or otherwise obtaining a person's or a customer's biometric identifiers or biometric information, unless it first (1) informs the individual in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the individual in writing of the specific purpose and length of time for which a biometric identifier or biometric information is being collected, stored, and used; and (3) receives a written release executed by the subject of the biometric identifier or biometric information. 740 ILCS § 14/15.

55. Plaintiff seeks class certification under O.C.G.A. 9-11-23 for the following class of similarly-situated Illinois citizens under BIPA:

All individuals in the State of Illinois who had their facial geometry collected, captured, received, obtained, maintained, or stored by Defendant during the applicable statutory period.

56. This action is properly maintained as a class action under O.C.G.A. 9-11-23 because:

- A. The class is so numerous that joinder of all members is impracticable;
- B. There are questions of law or fact that are common to the class;
- C. The claims of Plaintiff are typical of the claims of the class; and,
- D. Plaintiff will fairly and adequately protect the interests of the class.

**Numerosity**

57. The total number of putative class members exceeds fifty (50) individuals. The exact number of class members can easily be determined from Lathem records.

**Commonality**

58. There is a well-defined commonality of interest in the substantial questions of law and fact concerning and affecting the Class in that Plaintiff and all members of the Class have been harmed by Defendant's failure to comply with BIPA. The common questions of law and fact include, but are not limited to the following:

- A. Whether Defendant collected, captured or otherwise obtained Plaintiff's biometric identifiers or biometric information;
- B. Whether Defendant properly informed Plaintiff of its purposes for collecting, using, and storing his biometric identifiers or biometric information;
- C. Whether Defendant obtained a written release (as defined in 740 ILCS 14/10) to collect, use, and store Plaintiff's biometric identifiers or biometric information;
- D. Whether Defendant sold, leased, traded, or otherwise profited from Plaintiff's biometric identifiers or biometric information;
- E. Whether Defendant developed a written policy, made available to the public, establishing a retention schedule and guidelines for permanently destroying biometric identifiers and biometric information when the initial purpose for collecting or obtaining such identifiers or information has been satisfied or within three years of their last interaction with the individual, whichever occurs first;
- F. Whether Defendant complies with any such written policy (if one exists);
- G. Whether Defendant used Plaintiff's facial biometrics to identify him;
- H. Whether Defendant's violations of BIPA have raised a material risk that Plaintiff's biometric data will be unlawfully accessed by third parties;
- I. Whether the violations of BIPA were committed negligently; and
- J. Whether the violations of BIPA were committed intentionally and/or

recklessly.

59. Plaintiff anticipates that Defendant will raise defenses that are common to the class.

#### **Adequacy**

60. Plaintiff will fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest between Plaintiff and class members. Plaintiff, moreover, has retained experienced counsel who are competent in the prosecution of complex litigation and who have extensive experience acting as class counsel.

#### **Typicality**

61. The claims asserted by Plaintiff are typical of the class members he seeks to represent. Plaintiff has the same interests and suffers from the same unlawful practices as the class members.

62. Upon information and belief, there are no other class members who have an interest individually controlling the prosecution of his or her individual claims, especially in light of the relatively small value of each claim and the difficulties involved in bringing individual litigation against an out of state Defendant. However, if any such class member should become known, he or she can “opt out” of this action.

#### **Predominance and Superiority**

63. The common questions identified above predominate over any individual issues, which will relate solely to the quantum of relief due to individual class members. A class action is superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impracticable. Class action

treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually. Moreover, as the damages suffered by each class member are relatively small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it difficult for individual class members to vindicate their claims.

64. Additionally, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially more than if claims are treated as a class action. Prosecution of separate actions by individual class members would create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant and/or substantially impair or impede the ability of class members to protect their interests. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

**FIRST CAUSE OF ACTION**  
**Violation of 740 ILCS § 14/15(a): Failure to Institute, Maintain and Adhere to**  
**Publicly Available Retention Schedule**

65. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

66. BIPA mandates that companies in possession of biometric data establish and maintain a satisfactory biometric data retention – and, importantly, deletion – policy. Specifically, those companies must: (i) make publicly available a written policy establishing a retention schedule and guidelines for permanent deletion of biometric data

(at most three years after the company's last interaction with the individual); and (ii) actually adhere to that retention schedule and actually delete the biometric information. *See* 740 ILCS § 14/15(a).

67. Defendant fails to comply with these BIPA mandates.

68. Defendant Lathem is a Georgia corporation that conducts business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

69. Plaintiff and the Class are individuals who have had their "biometric identifiers" collected by Defendant (in the form of their facial geometry), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

70. Plaintiff's and the Class's biometric identifiers were used to identify them and, therefore, constitute "biometric information" as defined by BIPA. *See* 740 ILCS § 14/10.

71. Defendant failed to develop and adhere to a publicly available retention schedule or guidelines for permanently destroying biometric identifiers and biometric information as specified by BIPA. *See* 740 ILCS § 14/15(a).

72. Defendant lacks retention schedules and guidelines for permanently destroying Plaintiff's and the Class's biometric data and has not and will not destroy Plaintiff's and the Class's biometric data when the initial purpose for collecting or obtaining such data has been satisfied or within three years of the individual's last interaction with the company.

73. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the



Class by requiring Defendant to comply with BIPA's requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3) statutory damages of \$5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

### **SECOND CAUSE OF ACTION**

#### **Violation of 740 ILCS § 14/15(b): Failure to Obtain Informed Written Consent and Release Before Obtaining Biometric Identifiers or Information**

74. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

75. BIPA requires companies to obtain informed written consent from employees before acquiring their biometric data. Specifically, BIPA makes it unlawful for any private entity to "collect, capture, purchase, receive through trade, or otherwise obtain a person's or a customer's biometric identifiers or biometric information unless [the entity] first: (1) informs the subject...in writing that a biometric identifier or biometric information is being collected or stored; (2) informs the subject...in writing of the specific purpose and length of term for which a biometric identifier or biometric information is being collected, stored, and used; *and* (3) receives a written release executed by the subject of the biometric identifier or biometric information..." 740 ILCS 14/15(b) (emphasis added).

76. Defendant fails to comply with these BIPA mandates.

77. Defendant Lathem is a Georgia corporation that conducts business in Illinois and thus qualifies as a "private entity" under BIPA. *See* 740 ILCS § 14/10.

78. Plaintiff and the Class are individuals who have had their “biometric identifiers” collected by Defendant (in the form of their facial geometry), as explained in detail in Sections II and III, *supra*. *See* 740 ILCS § 14/10.

79. Plaintiff’s and the Class’s biometric identifiers were used to identify them and, therefore, constitute “biometric information” as defined by BIPA. *See* 740 ILCS § 14/10.

80. Defendant systematically and automatically collected, used, and stored Plaintiff’s biometric identifiers and/or biometric information without first obtaining the written release required by 740 ILCS 14/15(b)(3).

81. Defendant did not inform Plaintiff in writing that his biometric identifiers and/or biometric information were being collected, stored and used, nor did Defendant inform Plaintiff in writing of the specific purpose and length of term for which his biometric identifiers and/or biometric information were being collected, stored, and used as required by 740 ILCS 14/15(b)(1)- (2).

82. By collecting, storing, and using Plaintiff’s and the Class’s biometric identifiers and biometric information as described herein, Defendant violated Plaintiff’s and the Class’s rights to privacy in their biometric identifiers or biometric information as set forth in BIPA. *See* 740 ILCS 14/1, *et seq.*

83. On behalf of himself and the Class, Plaintiff seeks: (1) declaratory relief; (2) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with BIPA’s requirements for the collection, storage, and use of biometric identifiers and biometric information as described herein; (3)

statutory damages of \$5,000 for each willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for each negligent violation of BIPA pursuant to 740 ILCS 14/20(1); and (4) reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3).

### **PRAYER FOR RELIEF**

Wherefore, Plaintiff Bret Bray respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Bret Bray as Class Representative, and appointing Stephan Zouras, LLP as Class Counsel;
- B. Declaring that Defendant's actions, as set forth above, violate BIPA;
- C. Awarding statutory damages of \$5,000 for *each* willful and/or reckless violation of BIPA pursuant to 740 ILCS 14/20(2) or, in the alternative, statutory damages of \$1,000 for *each* negligent violation of BIPA pursuant to 740 ILCS 14/20(1);
- D. Declaring that Defendant's actions, as set forth above, were intentional or reckless;
- E. Declaring that Defendant's actions, as set forth above, were negligent;
- F. Awarding injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including an Order requiring Defendant to collect, store, and use biometric identifiers and/or biometric information in compliance with BIPA;
- G. Awarding Plaintiff and the Class his reasonable attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS 14/20(3);
- H. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;
- I. Provide such further relief as the Court deems just and equitable.

DATED: This the 6<sup>th</sup> day of April, 2020.

Respectfully Submitted,

/s/ Gerald Weber

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*\*pro hac vice* forthcoming

ID# 2020-0042097-CV  
 EFILED IN OFFICE  
 CLERK OF SUPERIOR COURT  
 COBB COUNTY, GEORGIA  
**20102248**  
 Reuben M. Green - 51  
 APR 06, 2020 12:06 PM  
*Colleen Keaton*  
 Colleen Keaton, Clerk of Superior Court  
 Cobb County, Georgia

**General Civil and Domestic Relations Case Filing Information Form**

Superior or  State Court of Cobb County

<b>For Clerk Use Only</b>	
Date Filed <u>04-06-2020</u> MM-DD-YYYY	Case Number <u>20102248</u>

**Plaintiff(s)**

Pray, Brett

Last	First	Middle I.	Suffix	Prefix

**Defendant(s)**

Latham Time Corporation

Last	First	Middle I.	Suffix	Prefix

Plaintiff's Attorney Goodmark, Craig Bar Number 201426 Self-Represented

Check one case type and, if applicable, one sub-type in one box.

- General Civil Cases**
- Automobile Tort
  - Civil Appeal
  - Contract
  - Contempt/Modification/Other Post-Judgment
  - Garnishment
  - General Tort
  - Habeas Corpus
  - Injunction/Mandamus/Other Writ
  - Landlord/Tenant
  - Medical Malpractice Tort
  - Product Liability Tort
  - Real Property
  - Restraining Petition
  - Other General Civil

- Domestic Relations Cases**
- Adoption
  - Contempt
  - Non-payment of child support, medical support, or alimony
  - Dissolution/Divorce/Separate Maintenance/Alimony
  - Family Violence Petition
  - Modification
  - Custody/Parenting Time/Visitation
  - Paternity/Legitimation
  - Support – IV-D
  - Support – Private (non-IV-D)
  - Other Domestic Relations

Check if the action is related to another action(s) pending or previously pending in this court involving some or all of the same parties, subject matter, or factual issues. If so, provide a case number for each.

\_\_\_\_\_ Case Number \_\_\_\_\_ Case Number

I hereby certify that the documents in this filing, including attachments and exhibits, satisfy the requirements for redaction of personal or confidential information in O.C.G.A. § 9-11-7.1.

Is a foreign language or sign-language interpreter needed in this case? If so, provide the language(s) required.  
 \_\_\_\_\_ Language(s) Required

Do you or your client need any disability accommodations? If so, please describe the accommodation request.  
 \_\_\_\_\_

**IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA**

*Rebecca Keaton*  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

**BRET BRAY,**  
Plaintiff,

\*  
\*  
\*  
\*  
\*  
\*  
\*

**CIVIL ACTION FILE NO.**

v.

20-1-02248-51


**LATHEM TIME CO.,**  
Defendant.

**ORDER TO PERFECT SERVICE WITHIN SIXTY DAYS OR  
DISMISS FOR WANT OF PROSECUTION**

Due to the COVID-19 pandemic, case deadlines were tolled during the Judicial Emergency. The Second Order Extending Judicial Emergency issued by the Georgia Supreme Court provides for the reestablishment of deadlines on a case by case basis. It being apparent to the Court that this case was filed on April 6, 2020, and service on Respondent herein has not been perfected, this Court **ORDERS** that Petitioner perfect service within sixty (60) days from the day this Order is signed or this matter shall be dismissed without prejudice.

If the parties object to the reestablishment of said deadlines, they shall provide written notice to the court, copying the other party, with the grounds for the objection no later than July 20, 2020 at 5 p.m.

**SO ORDERED**, this the 2 day of July, 2020.

  
\_\_\_\_\_  
REUBEN M. GREEN  
CHIEF JUDGE, SUPERIOR COURT  
COBB JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served via PeachCourt to parties indicated with an email address, and via USPS with sufficient postage affixed thereto to the parties indicated with a mailing address the following:

Gerald Weber  
[wgerryweber@gmail.com](mailto:wgerryweber@gmail.com)

Craig Goodmark  
[cgoodmark@gmail.com](mailto:cgoodmark@gmail.com)

Ryan F. Stephan  
[rstephan@stephanzouras.com](mailto:rstephan@stephanzouras.com)  
[hjenkins@stephanzouras.com](mailto:hjenkins@stephanzouras.com)

Brandon Wise  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

This 6 day of July, 2020.

/s/ Laura Myler  
Laura L. Myler,  
Staff Attorney to  
Chief Judge Reuben M. Green

**IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA**

  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

**BRET BRAY, individually and on behalf of )  
all others similarly situated, )  
)  
Plaintiffs, )  
)  
v. )  
)  
LATHEM TIME CO., )  
)  
Defendant. )**

**Case No. 20102248**

**COMBINED MOTION FOR EXTENSION OF TIME TO EFFECTUATE  
SERVICE AND MOTION TO CONTINUE SHOW CAUSE HEARING**

Plaintiff Bret Bray (“Plaintiff”), by and through his attorneys, individually and on behalf of all others similarly situated (the “Class”), move this Court for an extension effectuate service on Defendant Lathem Time Co. (“Defendant”) and further move for a continuance of the Show Cause Hearing currently set for August 31, 2020. In support of this motion, Plaintiff states as follows:

1. This matter was filed on April 6, 2020.
2. A summons was issued for service on April 6, 2020.
3. The Cobb County Sheriff’s Department attempted service multiple times.

See, Ex. 1, Summons Returned Non-Est.

4. Upon information and belief, during the time that multiple attempts were made to serve Defendant, the business may have been shut down or closed due to the COVID-19 pandemic.



5. On or about June 9, 2020, a process server engaged by Plaintiff again attempted service on Defendant.

6. After attempting service on June 9, 2020, the process server was unable to effectuate service, although he reported to Plaintiff's Counsel that:

- a. Defendant's information was listed on the building directory;
- b. The door to Defendant's office was locked and the lights were off;
- c. No one answered the doorbell for Defendant;
- d. Defendant's office did not appear abandoned, only closed.

Affidavit of Jeff Doblner, attached hereto as Exhibit 2.

7. On June 12, 2020, the process server attempted service at a production facility believed to be owned by Defendant. The process server found that the production center had been abandoned and that the property was for sale. In an attempt to locate Defendant, the process server called Defendant's main telephone line, and spoke to a sales representative. Defendant's representative indicated that everyone at the Galleria location is working remotely, but that Defendant is still taking orders. Further, the process server reported that the Galleria location still had (viewable through the window) a candy dish, a sign-in book, and furniture.

8. Plaintiff has made diligent attempts to serve Defendant, in that Plaintiff has engaged the Sheriff's Department and a private process server to effectuate service on Defendant.

9. Both the Sheriff's Department and a private process server were unable to effectuate service after multiple attempts, each.

10. Plaintiff and his Counsel believe that this is due to the shutdown caused by the COVID-19 pandemic.

11. In an effort obtain service through prior counsel, Plaintiff's Counsel contacted Defendant's prior counsel. Defendant's prior counsel responded that "We are not authorized to accept service."

12. At this time, Plaintiff respectfully requests an extension of time to effectuate service. Plaintiff will continue to work with a process server to effectuate service on Defendant.

13. Additionally, Plaintiff respectfully requests that the Show Cause order directing service be completed by August 31, 2020 be continued generally, as Plaintiff is continuing to attempt to effectuate service on Defendant.

14. Finally, Plaintiff respectfully requests that he be granted leave to effectuate service through alternative methods, including mail via a third-party carrier and posting at Defendant's place of business. Pursuant to O.C.G.A. § 9-11-4(j) "the court may prescribe service according to the exigencies of each case, consistent with the Constitution." Here, Defendant appears to be operating remotely. In sending the Complaint and service documents via Third-Party Carrier, the Parties will have a record of when and where the documents are delivered. In utilizing posting, if Defendant's employees visit the office, the documents will be posted on the front door in a clearly visible location.

15. These two methods of alternative service take into account the Defendant's apparent remote work and the exigencies of this case, and also comport with Defendant's Constitutional rights.

WHEREFORE, Plaintiff respectfully requests that:

1. This motion be granted;
2. The time to effectuate service be extended to September 30, 2020;
3. The Show Cause order be continued generally,
4. Plaintiff be authorized to serve Defendant through alternative service, including mail via third-party carrier (FedEx) and posting the Complaint and Summons on Defendant's office door.

DATED: This the 31<sup>st</sup> day of August, 2020.

Respectfully Submitted,

/s/ Gerald Weber

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314-833-4827  
bwise@pwcklegal.com

*\*pro hac vice forthcoming*

COPY

EXHIBIT 1

KEEP

SHERIFF'S ENTRY OF SERVICE

Civil Action No. 20102248

Superior Court [X] Magistrate Court [ ]
State Court [ ] Probate Court [ ]
Juvenile Court [ ]

Date Filed

Georgia, COBB COUNTY

Attorney's Address Goodmark, Craig
Goodmark Law Firm
1425 A Dutch Valley Place
ATLANTA, Georgia 30324

Bray, Brett

Plaintiff

Name and Address of Party to be Served.
Lathem Time Corporation

Lathem Time Corporation VS.

Defendant

200 Galleria Parkway Suite 330

Atlanta, Georgia 30339

Garnishee

SHERIFF'S ENTRY OF SERVICE

PERSONAL

[ ] I have this day served the defendant personally with a copy of the within action and summons.

NOTORIOUS

I have this day served the defendant by leaving a copy of the action and summons at his most notorious place of abode in this County.

[ ] Delivered same into hands of described as follows: age, about years; weight pounds; height, about feet and inches, domiciled at the residence of defendant.

CORPORATION

[ ] Served the defendant a corporation by leaving a copy of the within action and summons with in charge of the office and place of doing business of said Corporation in the County.

TACK & MAIL

[ ] I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of the same in the United States Mail, first class in an envelope property address to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons.

NONEST

[X] Diligent search made and defendant LATHEM TIME - multiple attempts not to be found in the jurisdiction of this court. No contact

This 21 day of APRIL, 20 22

COSTRANS 16045 Deputy

STATE OF GEORGIA

**BRET BRAY, individually and on behalf )  
of all others similarly situated, )**

**Plaintiffs, )**

**v. )**

**LATHEM TIME CO., )**

**Defendant. )**

**Case No. 20102248**

**AFFIDAVIT OF JEFF DOBLIER**

NOW COMES JEFF DOBLIER, and, after being duly sworn, herein states and declares the following:

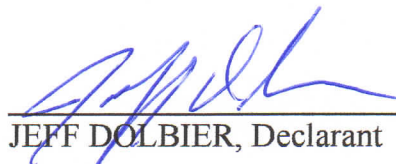
1. I give this declaration based upon my own personal knowledge.
2. I am an adult citizen of the United States. I am competent to testify as set out herein.
3. On or about June 9, 2020, I attempted service on Defendant.
4. I was unable to effectuate service although:
  - a. Defendant's information was listed on the building directory;
  - b. The door to Defendant's office was locked and the lights were off;
  - c. No one answered the doorbell for Defendant;
  - d. Defendant's office did not appear abandoned, only closed.

5. On June 12, 2020, I again attempted service at a production facility believed to be owned by Defendant.
6. I found that the production center had been abandoned and that the property was for sale. In an attempt to locate Defendant, I called Defendant's main telephone line, and spoke to a sales representative. Defendant's representative indicated to me that everyone at the Galleria location is working remotely, but that Defendant is still taking orders.
7. I returned to Defendant's registered place of business at the Galleria location and could see through the window a candy dish, a sign-in book, and furniture.

FURTHER AFFIANT SAYETH NAUGHT.

This 28<sup>th</sup> day of August, 2020.

The Affiant certifies that this declaration is true and correct upon pain and penalty of perjury. *See*, 20 U.S.C. § 1746.

  
\_\_\_\_\_  
JEFF DOLBIER, Declarant

**IN THE SUPERIOR COURT OF COBB COUNTY  
STATE OF GEORGIA**

  
Rebecca Keaton, Clerk of Superior Court  
Cobb County, Georgia

**BRET BRAY,  
Plaintiff,**

\*  
\*  
\*  
\*  
\*  
\*  
\*

**CIVIL ACTION FILE NO.**

**v.**

20-1-02248-51

**LATHEM TIME CO.,  
Defendant.**

**ORDER ON MOTION FOR EXTENSION OF TIME TO EFFECUTATE SERVICE**

This matter comes before the Court on Plaintiff Bret Bray’s Motion for Extension of Time to Effectuate Service and Motion to Continue Show Cause Hearing filed on August 31, 2020 in which Plaintiff seeks to extend the time to perfect service. This matter was filed on April 6, 2020 during the pendency of the Statewide Judicial Emergency due to the COVID-19 pandemic. Pursuant to the Second Order Extending Statewide Judicial Emergency issued by the Georgia Supreme Court, this Court reestablished deadlines which were tolled by operation of the Judicial Emergency. Said Order was entered on June 2, 2020 and provided the parties a deadline of July 20, 2020 to object to the reestablishment of deadlines. In addition, the July 2, 2020 Order required Plaintiff to perfect service within sixty days.

Plaintiff has requested an extension through the end of September 2020 to perfect service. Plaintiff also seeks to perfect service by pursuant to O.C.G.A. § 9-11-4(j)’s provision allowing alternative service by mailing the Complaint and Summons via a “third-party carrier”, such as FedEx.


Plaintiff’s request to extend service is **GRANTED**. Plaintiff shall have ninety days from the date of this order to perfect service on Defendant herein.

Plaintiff’s request to perfect service via a third-party carrier is **DENIED**. “This Code section allows for alternative methods of service in situations where there are other, applicable



statutes besides O.C.G.A. § 9-11-4 that provide for service; or where the provisions for service are unclear. It does not allow inapplicable service provisions ... to apply where they do not.” In re C.S., 282 Ga. 7, 8 (2007). Moreover, “O.C.G.A. § 9-11-4(j) expressly provides that the methods of service set forth in § 9-11-4 are cumulative and that whenever a statute provides for another method of service, service may be made under circumstances and in the manner prescribed by that statute.” U.S. Bank Nat. Ass’n v Kho & Lee, LLC, 614 Fed. Appx. 985, 987 (11th Cir. 2015) (internal punctuation and citation omitted). Plaintiff does not argue that another statute authorizes service nor do they cite a statute that allows for service by a third-party carrier. Therefore, service shall be perfected by one of the ways specified by O.C.G.A. § 9-11-4.

**SO ORDERED**, this the 11 day of September, 2020.

  
REUBEN M. GREEN  
CHIEF JUDGE, SUPERIOR COURT  
COBB JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served via PeachCourt to parties indicated with an email address, and via USPS with sufficient postage affixed thereto to the parties indicated with a mailing address the following:

Gerald Weber  
[wgerryweber@gmail.com](mailto:wgerryweber@gmail.com)

Craig Goodmark  
[cgoodmark@gmail.com](mailto:cgoodmark@gmail.com)

Ryan F. Stephan  
[rstephan@stephanzouras.com](mailto:rstephan@stephanzouras.com)  
[hjenkins@stephanzouras.com](mailto:hjenkins@stephanzouras.com)

Brandon Wise  
[bwise@pwcklegal.com](mailto:bwise@pwcklegal.com)

This 14 day of September, 2020.

/s/ Laura Myler  
Laura L. Myler,  
Staff Attorney to  
Chief Judge Reuben M. Green

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**

BRET BRAY, individually and on behalf of all others similarly situated

**DEFENDANT(S)**

LATHEM TIME CO.

**(b) COUNTY OF RESIDENCE OF FIRST LISTED**

PLAINTIFF Montgomery County, Ill.  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED**

DEFENDANT \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS** (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Craig Goodmark, Goodmark Law Firm, 1425 A Dutch Valley Place, Atlanta, Ga, 30324, (404) 719-4848, cgoodmark@gmail.com; Gerald Weber, Law Offices of Gerry Weber, PO Box 5391, Atlanta, Ga, 31107, (404) 522-0507, wgerryweber@gmail.com

**ATTORNEYS** (IF KNOWN)

Nicholas P. Panayotopoulos, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, 3344 Peachtree Rd, NE, Ste 2400 Atlanta, Ga, 30326, (404) 876-2700, npanayo@wwhgd.com

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 2 U.S. GOVERNMENT DEFENDANT
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- | PLF                                   | DEF                        |   | PLF                        | DEF                                   |   |
|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|---|
| <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE                   | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE     |
| <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE                | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            | FOREIGN NATION  |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION - TRANSFER
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- 8 MULTIDISTRICT LITIGATION - DIRECT FILE

**V. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Plaintiff alleges violations of the Illinois Biometric information Privacy Act ("BIPA"), 740 ILCS 14/1, et seq. Jurisdiction is proper under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) and § 1453(d)(2).

**(IF COMPLEX, CHECK REASON BELOW)**

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ MAG. JUDGE (IFP) \_\_\_\_\_  
 JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_ (Referral) NATURE OF SUIT \_\_\_\_\_ CAUSE OF ACTION \_\_\_\_\_

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EML. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK
- 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 485 TELEPHONE CONSUMER PROTECTION ACT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT 899
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_
- JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

**CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)**

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

*Nick Panayotopoulos*  
SIGNATURE OF ATTORNEY OF RECORD

5/3/2022

DATE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lathem Time Co. Violated Illinois Privacy Law by Collecting Workers' Facial Scans, Lawsuit Alleges](#)

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