

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

DANIEL METAGUE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WOODBOLT DISTRIBUTION, LLC, d/b/a
NUTRABOLT,

Defendant.

Case No: 8:20-cv-02186-PX

**DECLARATION OF NICHOLAS A. MIGLIACCIO IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

I, Nicholas A. Migliaccio, being competent to testify, make the following declaration based on my personal knowledge and, where stated, upon information and belief. I declare:

1. I am a partner in the law firm Migliaccio & Rathod LLP and am counsel of record for Plaintiff Daniel Metague and the Settlement Class in this matter. I submit this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement. Except as otherwise noted, I have personal knowledge of the facts stated below. If called on to do so, I could and would competently testify thereto.

Counsel Qualifications

2. I have been an attorney in practice for over twenty years and am one of the founding partners of Migliaccio & Rathod LLP, which is based in Washington D.C. with an office in San Francisco.

3. With my partner, Jason Rathod, I started our firm in 2016. Since then, M&R has helped secure several significant orders in class and collective action cases. Nearly all of M&R's cases fall in the category of complex civil litigation and include a number of class action cases pending across the country. For example, I was recently appointed to serve as interim co-lead class counsel in *In re: Practice Resources, LLC Data Security Breach Litigation*, Case No. 22-CV-0890 (N.D.N.Y.). I and my firm have also been appointed as Class Counsel in a number of noteworthy consumer protection, civil rights, environmental contamination, and wage theft cases. *See, e.g., Colgate, et al. v. JUUL*, No. 3:18-cv-02499-WHO (Dkt. 63) (appointing firm, along with one other firm, as interim lead counsel in putative nationwide class action against e-cigarette manufacturer JUUL, prior to formation of multidistrict litigation); *Stillman v. Staples*, Case No. 07-849 (D.N.J.) (served as a member of the trial team where the plaintiffs won a nearly \$2.5 million verdict against Staples for unpaid overtime on behalf after a six-week jury trial; after the verdict I served in a central role in the consolidated MDL litigation, which lasted nearly two years after the *Stillman* verdict and ultimately settled for \$42 million); *Valsartan N-Nitrosodimethylamine (NDMA) Products Liability Litigation*, MDL Case No: 1:19-md-02875-RBK-JS (D.N.J.) (appointed to the plaintiffs' steering committee and serve as co-chair of the medical monitoring committee in multi-district litigation arising from worldwide recalls of generic Valsartan that had been found to be contaminated with probable human carcinogens); *In re Chevrolet Bolt EV Battery Litigation*, Case No. 2:20-cv-13256-TGB-CI (E.D. Mich.) (appointed to plaintiffs' steering committee representing owners and lessees of Chevy Bolt vehicles alleging that a ubiquitous defect in lithium-batteries used in the electric vehicles risk catching fire).

4. The attorneys at M&R have litigated cases leading to recoveries of hundreds of millions of dollars for consumers, workers, and other victims of corporate misconduct. M&R has a track record of investing the time, energy, and resources necessary to develop cases which implicate significant economic, societal, and health concerns. *See, e.g., Hill v. Cty. of Montgomery*, No. 9:14-cv-00933 (BKS/DJS), 2018 U.S. Dist. LEXIS 140305, at *32 (N.D.N.Y. Aug. 20, 2018) (granting class certification in civil rights case for conditions of confinement and finding M&R adequate to represent the class; case ultimately settled for \$1 million on behalf of the class); *see also McDonald v. Franklin County, Ohio*, Case No. 2:13-cv-503 (S.D. Ohio) (served as class counsel and achieving a multi-million dollar settlement on behalf of the class).

5. M&R also has meaningful trial experience, including class and collective action trials. As detailed above, I served as a member of the trial team in a six-week collective action wage theft trial that resulted in a \$2.5 million plaintiffs' verdict. In *Helmer v. Goodyear Tire & Rubber Co.*, Civil Action No. 12-cv-00685-RBJMEH (D. Colo. Mar. 21, 2014), my partner, Jason Rathod, served on the trial team and, in connection with that role, deposed a key statistics expert and successfully had his testimony excluded, even though he had testified in dozens of class action cases without limitation. His trial experience prompted the American Association for Justice to select him as a panelist at a nationwide legal education program, *Trying the Class Action: Practical Tips from the Pros*.

6. M&R also brings relevant experience beyond that gained in the courtroom. For example, my partner, Jason Rathod, has published two law review articles about private enforcement and aggregate litigation, one of which was cited in a proposed rule by the Consumer Financial Protection Bureau ("CFPB") to prohibit class action waivers in arbitration agreements in consumer contracts. *See* CFPB, 12 CFR Part 1040, n. 611,

https://files.consumerfinance.gov/f/documents/201707_cfpb_Arbitration-Agreements-Rule.pdf.

Attached hereto as **Exhibit 1** is a true and correct copy of the firm resume detailing additional experience.

Initial Investigation

7. This is a putative class action brought by Plaintiff Metague (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated (the “Settlement Class”), arising out of Defendant’s sale of allegedly mislabeled nutritional supplements.

8. My firm and co-counsel vigorously and aggressively gathered all information available regarding the Products at issue. We conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive informal discovery, including independent laboratory testing, and extensive consultation with an expert.

Procedural Posture

9. After an initial investigation, On July 28, 2020, Plaintiff Metague filed a Class Action Complaint in the United States District Court for the District of Maryland against Woodbolt Distribution, LLC, d/b/a Nutrabort (hereinafter referred to as “Defendant,” “Woodbolt” and/or “Defendant Woodbolt”) alleging claims for fraudulent concealment and omission, breach of implied warranties, equitable injunctive and declaratory relief, violations of Maryland Consumer Protection Act (“MCPA”), violations of the unfair and unlawful prongs of unfair and deceptive trade practices statutes for thirty-two other states and the District of Columbia, and unjust enrichment. Plaintiff sought to pursue these claims on behalf of himself and all purchasers of Defendant’s nutritional supplements containing branched-chain amino

acids (hereinafter referred to as “BCAAs”) called “XTEND®” (hereinafter “XTEND” and/or “the Products”).

10. Plaintiff alleged that, in its advertising, Defendant made a series of material representations about the caloric content of XTEND. Specifically, Plaintiff alleges that the XTEND products (a) were labeled as “0 calories” per serving that Plaintiff alleges are not “0 calories,” and (b) Woodbolt continued to sell its products with misleading labels despite knowing the inaccuracy of such statements. Plaintiff alleged that these representations were propagated through various media, including Woodbolt’s website, advertisements, packages, and labels. Plaintiff alleges that this advertising was false and misleading. Defendant denies all of Plaintiff’s Allegations and maintains that its marketing, advertising, and labelling has been accurate at all times and compliant with the regulations that govern the labelling of dietary supplements under the Food, Drug, and Cosmetic Act (hereinafter referred to as “FDCA”).

11. On December 14, 2020, Woodbolt moved to dismiss the Complaint. Specifically, Defendant argued that (a) the Court should dismiss the Complaint because the Food and Drug Administration (hereinafter referred to as “FDA”) has primary jurisdiction over Plaintiff’s claims, (b) the Plaintiff’s claims were preempted by the FDCA, and (c) the Court should stay the case pending the FDA’s decision on the Complaint’s core contention. Plaintiff opposed Defendant’s Motion to Dismiss

12. In response to Defendant’s Motion to Dismiss, on January 28, 2021, Plaintiff filed an Amended Complaint to supplement the facts and add a common law breach of express warranty claim. Subsequently, on February 26, 2021, Woodbolt moved to dismiss the Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b). On June 16, 2021, the Court entered an Order granting in part and denying in part Defendant’s Motion to Dismiss. On

July 8, 2021, Defendant filed a motion for reconsideration of the Court's June 16, 2021 Order. That motion is still pending.

The Class Settlement

History of Negotiations

13. Prior to the mediation, the Parties exchanged informal and confirmatory discovery to allow for meaningful evaluation of the claims and to better inform the parties in preparation of mediation. The discovery produced by Defendant included information about the Products at issue and Class size, allowing M&R to fully evaluate the strengths and weaknesses of Plaintiff's case and to effectively conduct settlement negotiations.

14. The mediation was held on September 28, 2021, conducted by mediator Honorable Jose L. Linares, U.S.D.J. (Ret.) of McCarter & English LLP. The parties did not reach a settlement at that time.

15. After months of shuttle diplomacy conducted by Judge Linares, the Parties reached a settlement in principle. It took many months of arduous negotiation thereafter to finalize the term sheet memorializing the terms of the settlement. It took many months of arduous negotiation thereafter to negotiate the myriad of details regarding the Settlement, circulating drafts back and forth of the Settlement Agreement and its many exhibits.

16. The Settlement is the result of prolonged arm's length negotiations, including numerous telephone and video conferences, as well as emails directly exchanged between experienced counsel who had a comprehensive understanding of the strengths and weaknesses of each party's claims and defenses. Moreover, the Settlement was reached only after M&R analyzed information provided by Defendant in informal and confirmatory discovery and performed other research and investigation.

17. While the negotiations between Plaintiff's counsel and Defendant's counsel were always collegial, cordial, and professional, there is no doubt that they were adversarial in nature, with both sides forcefully advocating the position of their respective clients.

Notice

18. Plaintiff also obtained competitive bids from various experienced settlement administrators and thereafter interviewed numerous settlement administrators. With Defendant's input and approval, Plaintiff elected Kroll Settlement Administration LLC ("Kroll") to act as the Settlement Administrator, subject to the Court's approval. Kroll has estimated that the cost of the notice and settlement administration will be \$268,485. Kroll has detailed the notice and administration plans for this proposed settlement in separate declarations that accompany this filing.

Service Awards, Fees, and Costs

19. The Settlement allows Class Counsel to make an application to the Court for an award of reasonable attorneys' fees, costs, and expenses from the \$3,000,000 common fund.

20. The Parties did not discuss payment of attorneys' fees, costs, expenses, and service award until after the substantive terms of the settlement had been agreed upon.

21. Plaintiff's counsel intends to apply for an attorneys' fee and costs award of one-third of the common fund (\$1,000,000), subject to Court approval. Plaintiff's counsel also intends to seek a service award for Plaintiff Metague in the amount of \$7,500.00 for his services rendered on behalf of the Settlement Class, subject to Court approval.

22. The Service Award is meant to recognize Plaintiff Metague for his significant efforts on behalf of the Settlement Class, including providing information for pleadings and settlement discussions, informal discovery responses, engaging with Class Counsel regarding the

litigation, participating in the settlement negotiations via email, and approving the proposed Settlement terms.

23. In my opinion, I believe the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiff and the Settlement Class Members.

24. My years of experience representing individuals in complex class actions contributed to an awareness of Plaintiff's settlement leverage, as well as the needs of Plaintiff and the proposed Settlement Class. I am aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals. It is my individual opinion, based on my experience, that the Settlement provides significant relief to the Settlement Class Members and warrants the Court's preliminary approval.

25. I believe this Settlement is a positive resolution for the Settlement Class and falls comfortably within the range of reasonableness and represents a fair and reasonable discount from potential recovery. It is also my considered opinion that the Claim Form, Post Card Notice, and Long Form Notice accurately and plainly explain the Settlement Benefits and how to obtain them, offer a clear opportunity for members of the Settlement Class to exclude themselves if they so choose, and provide a mechanism for the Settlement Class to share their opinions about the Settlement with the Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 20th day of January 2023 at Washington D.C.

/s/ Nicholas A. Migliaccio
Nicholas A. Migliaccio, Esq.

Migliaccio & Rathod LLP
412 H St. NE
Washington DC 20002
Phone: (202) 470-3520
Email: nmigliaccio@classlawdc.com

Exhibit 1



SUMMARY

The attorneys at Migliaccio & Rathod LLP (“M&R”) have decades of experience in complex civil litigation and have successfully prosecuted a number of noteworthy consumer protection, environmental contamination, civil rights, privacy, and wage theft. The firm’s attorneys, located in Washington D.C. and California, focus primarily on class or collective actions and take all of their cases on a contingent basis. The attorneys at the firm have litigated cases leading to recoveries of hundreds of millions of dollars in recoveries for consumers, workers, and other victims of corporate misconduct. M&R has a track record of investing the time, energy, and resources necessary to develop cases which implicate significant economic, societal, and health concerns.

NOTABLE MATTERS AND SUCCESSES

- *Snodgrass v. Bob Evans*, Case No. 2:12-cv-768 (S.D. Ohio). Represented Bob Evans’ Assistant Managers in a case alleging that Bob Evans, a restaurant chain with hundreds of locations predominantly in the Midwest, had misclassified its Assistant Managers as exempt from federal and state overtime laws. After a landmark ruling on the application of the so-called “fluctuating workweek” method of payment, the lawsuit settled for \$16.5 million. The gross recovery per class member was approximately \$6,380. In issuing its order approving the settlement, the court took special note of the “competence of class counsel in prosecuting this complex litigation.”
- *Corbin v. CFRA, LLC*, Case No. 1:15-cv-00405 (M.D.N.C.). Represented 1,520 servers in collective action against major IHOP franchise for wage theft violations, culminating in \$1.725 million settlement.
- *Craig v. Rite Aid*, Case No. 4:08-CV-2317 (M.D. Pa.). Represented Rite Aid Assistant Managers in a case alleging that Rite Aid had misclassified its Assistant Managers as exempt from federal and state overtime laws. Plaintiffs alleged that their primary duties involved manual labor such as loading and unloading boxes, stocking shelves, cashiering and other duties which are not exempt under federal and state overtime laws. After extensive litigation, the case settled for \$20.9 million, covering over 1,900 current and former assistant store managers. In issuing its order approving the settlement, the court stated that the settlement “represents an excellent and optimal settlement award for the Class Members” resulting from “diligent, exhaustive, and well-informed negotiations.”
- *Peppler, et al. v. Postmates, Inc.*, Case No. 2015 CA 006560 (D.C. Sup. Ct.) and *Singer, et al. v. Postmates, Inc.*, 4:15-cv-01284-JSW (N.D. Cal.). Represented plaintiffs in a wage theft class action against application-based courier startup company, alleging that the couriers were misclassified as independent contractors. M&R was named class counsel in the settlement agreement providing for \$8.75 million in relief to a nationwide class.



- *Bland v. Calfrac Well Services*, Case No. 2:12-cv-01407 (W.D. Pa.). Represented oil field workers in a nationwide collective and class action lawsuit against Defendant Calfrac Well Services for its alleged failure to properly pay overtime to its field operators. After extensive litigation, the case settled for \$6 million, which provided a gross recovery per class member of between \$250 and approximately \$11,500.
- *Nelson v. Sabre Companies LLC*, Case No. 1:15-cv-0314 (N.D.N.Y.). M&R was lead counsel in this nationwide collective action that settled for \$2.1 million on behalf of oil and gas workers for unpaid overtime.
- *Stillman v. Staples*, Case No. 07-849 (D.N.J.). Represented Staples Assistant Managers in Fair Labor Standards Act claims for unpaid overtime. Served as a member of the trial team where the plaintiffs won a nearly \$2.5 million verdict against Staples for unpaid overtime on behalf of 342 sales managers after a six-week jury trial. After the verdict, nearly a dozen wage and hour cases against Staples from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which lasted nearly two years after the *Stillman* verdict. The consolidated litigation ultimately settled for \$42 million.
- *Fischer et al v. Kmart Corp. et al.*, Case No. 3:13-cv-04116 (D.N.J.). Represented Kmart assistant managers for Fair Labor Standards Act and parallel state law claims in nationwide litigation and arbitrations, culminating in \$3.8 million settlement.
- *Camara v Mastro's Restaurants LLC*, Case No. 1:18-cv-00724 (D.D.C.). Represented steakhouse servers in nationwide collective action suit alleging minimum wage violations as a result of alleged illegal tip sharing policy. The suit settled for nearly \$700,000.
- *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 535 (6th Cir. 2012). Represented classes of insureds against several major insurance companies for the failure to use technological advances in verifying the addresses of insureds, leading to overcharges. Litigation culminated in several multi-million dollar settlements.
- *Matthews v. TCL Communications et al.*, Case No. 3:17-cv-95 (W.D.N.C.). Represented plaintiffs in a class action brought on behalf of purchasers of Alcatel OneTouch Idol 3 smartphones who alleged that a firmware update removed Band 12 LTE functionality from their phones, greatly reducing their functionality. Served as Court-appointed class counsel in a class action settlement which provided class members with either the reinstatement of Band 12 LTE functionality on their phones, or new phones with LTE Band 12 functionality.
- *In re: JUUL Labs, Inc. Products Litigation*, Case No. 3:18-cv-02499 (N.D. Cal.) M&R was appointed as co-lead interim class counsel prior to formation of an MDL in action brought on behalf of a nationwide class arising from marketing and sale of electronic cigarettes by JUUL, the world's largest e-cigarette manufacturer.



- *Brown et al. v. Hyundai Motor America, et ano.*, Case No. 2:18-cv-11249 (D.N.J.) M&R was appointed co-lead class counsel in an action brought arising from Hyundai's alleged manufacture, design, marketing and sale of vehicles with a piston-slap defect. The case settled on a class-action basis, and class members were provided with an extended warranty, and reimbursement of expenses.
- *Wheeler et al. v. Lenovo (United States) Inc.*, Case No. 13-0007150 (D.C. Sup. Ct.) and *Kacsuta v. Lenovo (United States), Inc.*, Case No. 13-00316 (C.D. Cal.). Represented plaintiffs in a class action brought on behalf of purchasers of Lenovo laptops that suffered from Wi-Fi connectivity problems. Served among the Court-appointed class counsel in a nationwide settlement where Lenovo agreed to refund \$100 cash or issue a \$250 voucher (which required no purchase to use) to owners of the laptops.
- *Valsartan N-Nitrosodimethylamine (NDMA) Products Liability Litigation*, MDL Case No: 1:19-md-02875-RBK-JS (D.N.J.). Represent plaintiffs in multi-district litigation arising from worldwide recalls of generic Valsartan that had been found to be contaminated with probable human carcinogens. M&R was appointed to the Plaintiffs' Steering Committee and serves as co-chair of the medical monitoring committee.
- *Adeli v. Silverstar Automotive, Inc.*, Case No. 5:17-cv-05224 (W.D. Ark.). M&R was co-lead trial counsel in this individual consumer fraud suit for economic losses that resulted in a trial verdict of over \$5.8 million, the vast majority of which was in punitive damages (judgment later reduced to \$533,622, inclusive of a reduced but sizable punitive damages amount, which was affirmed by the Eighth Circuit Court of Appeals).
- *Fath et al. v. Honda North America, Inc.*, Case No. 0:18-cv-01549 (D. Minn.). M&R served on the Plaintiff Steering Committee in this nationwide action arising from Honda's alleged manufacture, design, marketing and sale of vehicles with a fuel dilution defect. The case settled on a class-action basis, and class members were provided with an extended warranty, reimbursement of expenses, and a product update where applicable.
- *Hill v. County of Montgomery et al.*, Case No.: 9:14-cv-00933 (N.D.N.Y.). M&R serves as co-lead counsel in this conditions of confinement civil rights class action for the alleged provision of insufficient sustenance in the Montgomery County Jail in upstate New York. After years of litigation, the case settled on a class action basis for \$1,000,000, providing significant relief to the class of inmates and detainees. The Court has granted preliminary approval of the settlement and final approval is still pending.
- *Beture v. Samsung Electronics America*, Case No. 17-cv-05757 (D.N.J.). M&R was appointed as co-lead interim class counsel in action brought on behalf of a nationwide class arising from a hardware defect affecting hundreds of thousands of Samsung Galaxy Note 4 smartphones.



- *McFadden et al. v. Microsoft Corporation*, Case No. 2:20-cv-00640 (W.D. Wash.) M&R was appointed as co-lead interim class counsel in an action brought on behalf of a nationwide class arising from a hardware defect affecting Microsoft X-Box video game controllers.
- *Restaino et al. v. Mario Badescu, Inc.*, Case No. MID-L-5830-14 (N.J. Super. Ct.). Represented 36 individuals who had become physically addicted to undisclosed corticosteroids in a purportedly botanical face cream, and sought damages for personal injuries arising from the symptoms of topical steroid withdrawal. After three years of litigation, the case settled for significant relief to the plaintiffs.
- *Walsh et al. v. Globalstar, Inc.*, Case No. 3:07-cv-01941 (N.D. Cal.), represented Globalstar satellite telephone service customers who brought claims that Globalstar knew that it was experiencing failures in its satellite constellation and its satellite service was rapidly deteriorating and was no longer useful for its intended purpose, yet failed to disclose this information to its potential and existing customers. Served as Court-appointed class counsel in a nationwide settlement that provided an assortment of benefit options, including, but not limited to, monetary account credits, free minutes, or cash back for returned equipment.
- *Delandro v. County of Allegheny*, Case No. 06-927 (W.D. Pa.). Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for \$3 million.
- *Nnadili v. Chevron*, Case No. 02-1620 (D.D.C.). Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by Chevron. The plaintiffs, who resided in over 200 properties in the Riggs Park neighborhood of Northeast Washington, D.C., alleged that Chevron's contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. The United States Environmental Protection Agency conducted an extensive investigation into the contamination. After approximately five years of litigation, the case settled for \$6.2 million.
- *Ousmane v. City of New York*, Case No. 402648/04 (NY Sup. Ct.). Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over \$1 million.
- *In re National Security Agency Telecommunications Records Litigation*, Case No. 3:06-md-01791 (N.D. Cal.). Represented Sprint subscribers in privacy suit against telecom companies to enjoin the alleged disclosure to the National Security Agency of telephone calling records. Appointed, with co-counsel, interim lead counsel for the Sprint subscriber class in the MDL proceedings. The litigation was ultimately dismissed after Congress granted retroactive immunity to the telecom companies.



ATTORNEYS

Nicholas A. Migliaccio

Nicholas Migliaccio has been practicing for over 16 years and litigates across the firm's practice areas. He has successfully prosecuted numerous noteworthy class and mass action cases over the course of his career, and has been appointed class counsel in both litigation and settlement classes. He has been recognized by his peers as a Superlawyer in 2016 - 2021.

Mr. Migliaccio graduated from the State University of New York at Binghamton in 1997 (B.A., *cum laude* in Environmental Studies and Philosophy) and received his law degree from Georgetown University Law Center in 2001, where he was an Editor of the Georgetown International Environmental Law Review.

Notable Cases Include:

- Represented assistant managers in a Fair Labor Standards Act misclassification case and served as a member of the trial team for a six-week jury trial that resulted in a \$2.5 plaintiffs' verdict. After the verdict, nearly a dozen wage and hour cases against the defendant from across the country were consolidated in a multi-district litigation. Served in a central role in the consolidated litigation, which ultimately settled for \$42 million.
- Represented worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a \$16.5 million settlement
- Represented worker class in wage theft rate miscalculation case against multinational fracking company, resulting in \$6 million settlement
- Represented plaintiffs in a consumer class in defective laptop case against multinational computer manufacturer, resulting in a nationwide settlement where defendant agreed to refund \$100 cash or issue a \$250 voucher (which required no purchase to use) to owners of the laptops.
- Represented pre-trial detainees who were subjected to unlawful strip searches prior to their admission at Allegheny County Jail, located in Pittsburgh, PA. After winning class certification, partial summary judgment on liability, and an injunction, the case settled for \$3 million.
- Represented owners and residents of properties in the District of Columbia that were contaminated with gasoline constituents from leaking underground storage tanks that were installed by a major oil company. The plaintiffs alleged that the contamination interfered with the use and enjoyment of their property, impacted their property values, constituted a trespass on their land, and caused fear and emotional distress. After extensive litigation, the case settled for \$6.2 million.
- Represented New York City street vendors in a pro bono class action suit against the City of New York for excessive fines and helped secure a settlement with a value of over \$1 million.



- Appointed to leadership in recent major data breach cases involving hospitals and health records, including in *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 0:21-cv-01210 (D. Minn.) and in *In re Eskenazi Health Data Incident Litigation*, No. 49D01-2111-PL-038870 (Ind. Sup. Ct.)

Admissions:

- New York
- Washington, D.C.
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States District Court for the District of Colorado
- United States District Court for the District of Columbia
- United States District Court for the District of Maryland
- United States District Court for the Eastern District of Michigan
- United States District Court for the Eastern District of New York
- United States District Court for the Northern District of New York
- United States District Court for the Southern District of New York
- United States District Court for the Western District of New York
- United States District Court for the Western District of Pennsylvania

Education:

- Georgetown University Law Center, J.D., 2001
- State University of New York at Binghamton, BA, 1997

Publications and Speaking Engagements:

- Co-authored “Environmental Contamination Treatise: Overview of the Litigation Process,” in R. Simons, Ph.D, *When Bad Things Happen to Good Property* (Environmental Law Institute, 2005).
- Presentation on *The Motor Carrier Act Exception to the FLSA’s Overtime Provisions - 13(b)(1) and the SAFETEA-LU Amendments*, Worker’s Injury Litigation Group / Ohio Association of Justice Meeting, Winter 2014.
- Presentation on *Litigating Fair Labor Standards Act Collective Action Cases*, Worker’s Injury Litigation Group / Ohio Association of Justice Convention, Fall 2011.

Awards:

- SuperLawyers, 2016, 2017, 2018, 2019, 2020, and 2021



Jason S. Rathod

Jason S. Rathod is a founding partner of Migliaccio & Rathod LLP and regarded as one of the most accomplished plaintiff-side class action lawyers under the age of 40, particularly in the areas of consumer protection and defective products. Mr. Rathod has been appointed to leadership teams in some of the most high-profile cases in the country, including in *In re Chevrolet Bolt EV Battery Litigation* in which owners and lessees of Chevy Bolt vehicles allege that a ubiquitous defect in lithium-batteries used in the electric vehicles risk catching fire. In *In Re: Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Products Litigation*, he is among a small group of lawyers appointed to the Plaintiffs' Steering Committee and serves as the co-chair of the Science and Experts Committee. Mr. Rathod has been quoted in the national press, including in *The Wall Street Journal* and *Washington Post*. In addition to his consumer protection work, Mr. Rathod also prosecutes data privacy, wage theft, civil rights, and environmental protection cases.

Mr. Rathod has been recognized as a leader in his field beyond the courtroom. He is the author of several published works, including a law review article on aggregate litigation in poor countries. Another recent law review article that he co-authored, comparing public and private enforcement in the United State and Europe, was cited by the Consumer Financial Protection Bureau in its proposed rule prohibiting class action waivers in the fine print of consumer contracts.

Mr. Rathod graduated from Grinnell College in 2006 (B.A. with honors in Political Science and Religious Studies). After college, he traveled to Fiji, Mauritius, South Africa, Trinidad & Tobago, Guyana, and Suriname on a Watson Fellowship, studying the Indian Diaspora. He graduated law school from the Duke University School of Law in 2010, where he was an Articles Editor of the Duke Law Journal. In law school, he also worked for the Self-Employed Women's Association in Ahmedabad, India on behalf of street vendors seeking an injunction against the city government for unlawful harassment and evictions.

Notable Cases Include:

- Representing consumer classes in insurance overcharge cases, including by drafting appellate briefs about the propriety of class certification. The Sixth Circuit Court of Appeals affirmed order for the classes 3-0, leading to several multi-million-dollar settlements;
- Representing consumer in consumer fraud trial for economic losses that resulted in verdict for the Plaintiff on all counts and a multimillion dollar punitive damages award (later reduced on remittitur, but still totaling in the hundreds of thousands of dollars and representing a 25:1 ratio of punitive to economic damages);
- Representing consumer class of laptop purchasers against multinational corporation in nationwide class action settlement valued at over \$16 million;



- Representing consumer class of vehicle purchasers and lessees in nationwide class action settlement, following allegations of engine defect;
- Representing consumer class of vehicle purchasers and lessees in nationwide class action settlement, alleging oil dilution defect;
- Representing consumer classes in two cases in D.C. Superior Court arising from the alleged unlawful repossession of vehicles, resulting in classwide settlements with significant pro rata payments and injunctive relief, including debt relief;
- Representing consumer class at trial in product defect class action;
- Representing worker class in wage theft assistant manager misclassification case against national restaurant chain that culminated in a \$16.5 million settlement;
- Representing worker class and collective against multinational startup company for independent contractor misclassification claims, resulting in \$8.75 million settlement;
- Representing worker class in wage theft rate miscalculation case against multinational fracking company, resulting in \$6 million settlement;
- Representing over 1,500 servers in multistate collective action, resulting in \$1.72 million settlement;
- Representing consumer class in defective laptop case against multinational computer manufacturer; and
- Representing consumer class in defective construction case against multinational home builder, drafting key briefs leading to class certification and maintenance of suit in court, rather than arbitration.
- Appointed to leadership in recent major data breach cases involving hospitals and health records, including in *In re Netgain Technology, LLC, Consumer Data Breach Litigation*, No. 0:21-cv-01210 (D. Minn.) and in *In re Eskenazi Health Data Incident Litigation*, No. 49D01-2111-PL-038870 (Ind. Sup. Ct.)

Education:

- Duke University School of Law, J.D. 2010
- Grinnell College, B.A., 2006

Admissions:

- Illinois
- Washington, D.C.
- United States Court of Appeals for the District of Columbia Circuit
- United States Court of Appeals for the Second Circuit
- United States Court of Appeals for the Third Circuit
- United States Court of Appeals for the Fourth Circuit
- United States Court of Appeals for the Eighth Circuit
- United States District Court for the District of Columbia
- United States District Court for the District of Maryland
- United States District Court for the District of Nebraska
- United States District Court for the Northern District of Illinois



- United States District Court for the Western District of Pennsylvania
- United States District Court for the District of Colorado
- United States District Court for the Eastern District of Michigan
- United States District Court for the Western District of Michigan

Publications and Speaking Engagements:

- *Arbitration Tactics and Strategy* (July 2020) (CLE presentation), American Association for Justice (“AAJ”)
- *Fighting for Food Policy Progress Across Legal Arenas* (panelist), Food Systems Virtual Summit with CUNY Urban Food Policy Institute (April 2020)
- *Human Capital and Fragmentation* (Nov. 15, 2019) (panelist), ClassCrits Conference
- *Plaintiffs, Procedure & Power* (Nov. 3, 2018) (panelist), ClassCrits Conference
- *DNA Barcoding analysis of seafood accuracy in Washington, D.C. restaurants*, PeerJ (April 25, 2017) (co-authored)
- *The Arc and Architecture of Private Enforcement Regimes in the United States and Europe: A View Across the Atlantic*, 14 U.N.H. L. Rev. 303 (2016) (co-authored)
- *Trying the Class Action: Practical Tips from the Pros* (AAJ) (June 4, 2015) (panelist)
- *Emerging Markets, Vanishing Accountability: How Populations in Poor Countries Can Use Aggregate Litigation to Vindicate Their Rights*, 24 Transnat’l L. & Contemp. Probs. 69 (2014)
- *Note: Not Peace, But a Sword: Navy v. Egan and the Case Against Judicial Abdication in Foreign Affairs*, 59 Duke L.J. 595 (2009)

Awards

- SuperLawyers Rising Stars, 2017, 2018, 2019, 2020, 2021, and 2022



Mark Patronella

Mark Patronella is an Associate at the firm and litigates class actions across the firm's practice areas. He takes particular pride in helping consumers obtain fair compensation for predatory behavior on the part of large corporations.

Mr. Patronella has been recognized for his considerable commitment to pro bono practice. He dedicated well over one thousand hours to representing asylum-seekers, tenants facing eviction, and environmental initiatives.

Mr. Patronella graduated magna cum laude from Drew University in 2015 (B.A. with honors in Economics). He graduated law school from Duke University School of Law in 2018, where he was a Staff Editor of the Duke Environmental Law and Policy Forum and served as a teaching assistant for an environmental law course. Throughout law school, he provided legal services for a number of local and national environmental organizations.

Education:

- Duke University School of Law, J.D., 2018
- Drew University, B.A., 2015

Admissions:

- New Jersey
- Washington D.C.
- United States District Court for the Southern District of Texas
- United States District Court for the Eastern District of Texas



Tyler Bean

Tyler Bean specializes in data breach and privacy, defective product, and other types of consumer class action litigation across the Firm's areas of practice. Mr. Bean is experienced in all aspects of complex litigation and assists the Firm in litigating numerous class actions from inception through discovery and court approved settlement.

Mr. Bean graduated from the University of Oklahoma College of Law, where he served as Editor for the Oil and Gas, Natural Resources, and Energy Law Journal and was named to the Dean's List. While in law school, Mr. Bean also completed the University of Oklahoma's pro bono and public service work pledge, volunteering much of his time as a law student to serving in his community.

Before joining Migliaccio & Rathod, Mr. Bean worked as in-house counsel for a national privately held company. Following his time in-house, he joined a boutique commercial litigation firm in Oklahoma City where he played a significant role in the prosecution and settlement of numerous data breach and privacy and other consumer protection matters, representing consumer and employee classes against large companies in state and federal courts across the country.

Tyler is currently a member of the Oklahoma Bar Association, the American Bar Association, the Federal Bar Association, and the International Association of Privacy Professionals.

Education:

- University of Oklahoma College of Law, J.D. 2019
- University of Oklahoma Michael F. Price College of Business, B.A., 2015

Admissions:

- Oklahoma
- Washington, D.C. (pending)
- United States District Court for the Western District of Oklahoma
- United States District Court for the Northern District of Oklahoma



Eugenie Montague

Eugenie Montague is Of Counsel to the firm and litigates cases across the firm's areas of practice including in consumer protection, data breach, and wage theft class actions.

Education:

- Duke University School of Law, J.D. 2009
- UC Irvine, Master of Fine Arts, Fiction, 2010
- Colby College, B.A.

Admissions:

- California



Bryan Faubus

Bryan Faubus is Counsel to the firm and litigates cases across the firm’s areas of practice including in consumer protection, data breach, and wage theft class actions.

Mr. Faubus received a B.A. in Urban Studies, with Honors, from the University of Texas at Austin in 2005, and a J.D., *cum laude*, from Duke University School of Law, where he was the Online Editor of the Duke Law Journal. Mr. Faubus authored *Narrowing the Bankruptcy Safe Harbor for Derivatives to Combat Systemic Risk*, 59 DUKE L.J. 801 (2010). Prior to joining Migliaccio & Rathod LLP, he practiced commercial litigation and real estate law at two large, international law firms and securities, antitrust, and consumer protection law at a California-based plaintiff’s law firm.

Education:

- Duke University School of Law, J.D. 2010
- University of Texas – Austin, B.A. 2005

Admissions:

- New York