

S272113**General Docket****United States Court of Appeals for the Ninth Circuit****Court of Appeals Docket #:** 20-16796**Docketed:** 09/17/2020**Nature of Suit:** 4370 Other Fraud**Termed:** 12/06/2021

Michael Rattagan v. Uber Technologies, Inc.

Appeal From: U.S. District Court for Northern California, San Francisco**Fee Status:** Paid**Case Type Information:**

- 1) civil
- 2) private
- 3) null

Originating Court Information:**District:** 0971-3 : 3:19-cv-01988-EMC**Court Reporter:** Jo Ann Bryce**Trial Judge:** Edward M. Chen, District Judge**Date Filed:** 04/12/2019**Date Order/Judgment:**

08/19/2020

Date Order/Judgment EOD:

09/19/2020

Date NOA Filed:

09/16/2020

Date Rec'd COA:

09/16/2020

Prior Cases:

None

Current Cases:

None

MICHAEL R. RATTAGAN
Plaintiff – Appellant,

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v.

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Defendant – Appellee,

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MICHAEL R. RATTAGAN,

Plaintiff – Appellant,

v.

UBER TECHNOLOGIES, INC.,

Defendant – Appellee.

- 09/17/2020 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Appellant Michael R. Rattagan Mediation Questionnaire due on 09/24/2020. Transcript ordered by 10/16/2020. Transcript due 11/16/2020. Appellant Michael R. Rattagan opening brief due 12/28/2020. Appellee Uber Technologies, Inc. answering brief due 01/27/2021. Appellant's optional reply brief is due 21 days after service of the answering brief. [11827453] (JBS) [Entered: 09/17/2020 10:51 AM]
- 09/24/2020 2 Filed (ECF) Appellant Michael R. Rattagan Mediation Questionnaire. Date of service: 09/24/2020. [11835570] [20-16796] (Cohoe, Jill) [Entered: 09/24/2020 11:35 AM]
- 09/24/2020 3 The Mediation Questionnaire for this case was filed on 09/24/2020. To submit pertinent **confidential** information directly to the Circuit Mediators, please use the following **link**. Confidential submissions may include any information relevant to mediation of the case and settlement potential, including, but not limited to, settlement history, ongoing or potential settlement discussions, non-litigated party related issues, other pending actions, and timing considerations that may impact mediation efforts.[11835651]. [20-16796] (AD) [Entered: 09/24/2020 12:44 PM]
- 10/01/2020 4 MEDIATION CONFERENCE SCHEDULED – DIAL-IN Assessment Conference, 10/08/2020, 11:00 a.m. PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [11843860] (BLS) [Entered: 10/01/2020 12:29 PM]
- 10/06/2020 5 Filed (ECF) notice of appearance of Amy Heath (Covington & Burling LLP, Salesforce Tower, 415 Mission Street, Suite 5400, San Francisco, CA 94105-2533, Telephone: (415) 591-6000, Fax: (415) 591-6091, Email: AHeath@cov.com) for Appellee Uber Technologies, Inc.. Date of service: 10/06/2020. (Party was previously proceeding with counsel.) [11849437] [20-16796] (Heath, Amy) [Entered: 10/06/2020 02:18 PM]
- 10/06/2020 6 Added Attorney(s) Amy Heath for party(s) Appellee Uber Technologies, Inc., in case 20-16796. [11849452] (NAC) [Entered: 10/06/2020 02:20 PM]
- 10/07/2020 7 MEDIATION CONFERENCE RESCHEDULED – DIAL-IN Assessment Conference, 10/09/2020, 2:00 p.m. Pacific Time. (originally scheduled on 10/08/2020). [11850250] (BLS) [Entered: 10/07/2020 09:26 AM]
- 10/22/2020 8 MEDIATION ORDER FILED: This case is RELEASED from the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant settlement discussions while the appeal is pending. [11869327] (BLS) [Entered: 10/22/2020 07:32 PM]
- 12/21/2020 9 Filed (ECF) Streamlined request for extension of time to file Opening Brief by Appellant Michael R. Rattagan. New requested due date is 01/27/2021. [11934397] [20-16796] (August, Andrew) [Entered: 12/21/2020 09:39 AM]
- 12/21/2020 10 **Streamlined request [9] by Appellant Michael R. Rattagan to extend time to file the brief is approved. Amended briefing schedule: Appellant Michael R. Rattagan opening brief due 01/27/2021. Appellee Uber Technologies, Inc. answering brief due 02/26/2021. The optional reply brief is due 21 days from the date of service of the answering brief.** [11934499] (JN) [Entered: 12/21/2020 10:02 AM]
- 01/27/2021 11 ~~STRICKEN PER ORDER [17] Submitted (ECF) Opening Brief for review. Submitted by Appellant Michael R. Rattagan. Date of service: 01/27/2021.~~ [11983920] [20-16796] (August, Andrew) [Entered: 01/27/2021 05:52 PM]
- 01/27/2021 12 Submitted (ECF) excerpts of record. Submitted by Appellant Michael R. Rattagan. Date of service: 01/27/2021. [11983937] [20-16796]--[COURT UPDATE: Attached corrected excerpts. 02/01/2021 by SML] (August, Andrew) [Entered: 01/27/2021 06:27 PM]

- 02/01/2021 13 Filed (ECF) Appellant Michael R. Rattagan Motion to file substitute or corrected brief. Date of service: 02/01/2021. [11987656] [20-16796] (August, Andrew) [Entered: 02/01/2021 10:14 AM]
- 02/01/2021 14 Submitted (ECF) Opening Brief for review. Submitted by Appellant Michael R. Rattagan. Date of service: 02/01/2021. [11987661] [20-16796] (August, Andrew) [Entered: 02/01/2021 10:17 AM]
- 02/05/2021 15 Filed (ECF) Streamlined request for extension of time to file Answering Brief by Appellee Uber Technologies, Inc.. New requested due date is 03/29/2021. [11994266] [20-16796] (Heath, Amy) [Entered: 02/05/2021 11:47 AM]
- 02/05/2021 16 **Streamlined request [15] by Appellee Uber Technologies, Inc. to extend time to file the brief is approved. Amended briefing schedule: Appellee Uber Technologies, Inc. answering brief due 03/29/2021. The optional reply brief is due 21 days from the date of service of the answering brief.** [11994498] (JN) [Entered: 02/05/2021 01:41 PM]
- 02/24/2021 17 Filed clerk order (Deputy Clerk: LKK): Appellant's motion (Docket Entry No. [13]) for leave to file a corrected opening brief is granted. The Clerk will strike the opening brief submitted at Docket Entry No. [11] and file the corrected opening brief submitted at Docket Entry No. [14] . The answering brief remains due March 29, 2021. The optional reply brief is due within 21 days after service of the answering brief. [12015893] (RT) [Entered: 02/24/2021 04:38 PM]
- 03/29/2021 18 Submitted (ECF) Answering Brief for review. Submitted by Appellee Uber Technologies, Inc.. Date of service: 03/29/2021. [12057408] [20-16796] (Shin, Clara) [Entered: 03/29/2021 06:46 PM]
- 03/29/2021 19 Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Uber Technologies, Inc.. Date of service: 03/29/2021. [12057414] [20-16796] (Shin, Clara) [Entered: 03/29/2021 06:54 PM]
- 03/30/2021 20 Filed clerk order: The opening brief [14] submitted by Michael R. Rattagan is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: blue. The excerpts of record [12] submitted by Michael R. Rattagan are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12058239] (SML) [Entered: 03/30/2021 12:38 PM]
- 03/30/2021 21 Filed clerk order: The answering brief [18] submitted by Uber Technologies, Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: red. The supplemental excerpts of record [19] submitted by Uber Technologies, Inc. are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [12058244] (SML) [Entered: 03/30/2021 12:44 PM]
- 03/31/2021 22 Filed (ECF) Streamlined request for extension of time to file Reply Brief by Appellant Michael R. Rattagan. New requested due date is 05/19/2021. [12060018] [20-16796] (August, Andrew) [Entered: 03/31/2021 04:28 PM]
- 03/31/2021 23 **Streamlined request [22] by Appellant Michael R. Rattagan to extend time to file the brief is approved. Amended briefing schedule: the optional reply brief is due 05/19/2021.** [12060087] (DLM) [Entered: 03/31/2021 04:55 PM]
- 04/01/2021 24 Received 4 paper copies of excerpts of record [12] in 3 volume(s) and index volume filed by Appellant Michael R. Rattagan. [12061077] (LA) [Entered: 04/01/2021 03:14 PM]
- 04/01/2021 25 Received 7 paper copies of Opening Brief [14] filed by Michael R. Rattagan. [12061313] (SD) [Entered: 04/01/2021 05:40 PM]

- 04/02/2021 26 Received 3 paper copies of supplemental excerpts of record [19] in 2 volume(s) and index volume filed by Appellee Uber Technologies, Inc. [12062206] (LA) [Entered: 04/02/2021 02:03 PM]
- 04/02/2021 27 Received 6 paper copies of Answering Brief [18] filed by Uber Technologies, Inc.. [12062468] (SD) [Entered: 04/02/2021 03:27 PM]
- 05/07/2021 28 This case is being considered for an upcoming oral argument calendar in San Francisco
- Please review the San Francisco sitting dates for September 2021 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation).[12105778]. [20-16796] (KS) [Entered: 05/07/2021 11:41 AM]
- 05/12/2021 29 Filed (ECF) Attorney Mr. Jeffrey Michael Davidson, Esquire for Appellee Uber Technologies, Inc. response to notice for case being considered for oral argument. Date of service: 05/12/2021. [12110666] [20-16796] (Davidson, Jeffrey) [Entered: 05/12/2021 01:06 PM]
- 05/19/2021 30 Submitted (ECF) Reply Brief for review. Submitted by Appellant Michael R. Rattagan. Date of service: 05/19/2021. [12118879] [20-16796] (August, Andrew) [Entered: 05/19/2021 06:58 PM]
- 05/21/2021 31 Filed clerk order: The reply brief [30] submitted by Michael R. Rattagan is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be submitted to the principal office of the Clerk. [12121015] (SML) [Entered: 05/21/2021 12:14 PM]
- 05/26/2021 32 Received 6 paper copies of Reply Brief [30] filed by Michael R. Rattagan. [12125584] (SD) [Entered: 05/26/2021 02:19 PM]
- 06/07/2021 33 This case is being considered for an upcoming oral argument calendar in San Francisco.
- Please review the San Francisco sitting dates for October 2021 and the 2 subsequent sitting months in that location at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please file **Form 32 within 3 business days of this notice** using the CM/ECF filing type **Response to Case Being Considered for Oral Argument**. Please follow the form's instructions carefully.
- When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
- If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter **within 3 business days of this notice**, using CM/ECF (**Type of Document:** Correspondence to Court; **Subject:** request for mediation). [12135453] (KJC) [Entered: 06/07/2021 10:06 AM]

08/08/2021 34 Notice of Oral Argument on Thursday, October 21, 2021 – 09:30 A.M. – Courtroom 3 – Scheduled Location: San Francisco CA.
The hearing time is the local time zone at the scheduled hearing location.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you will have the option to appear in person at the Courthouse or remotely by video. At this time, an election to appear remotely by video will not require a motion. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a motion requesting permission to do so.

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **[ACKNOWLEDGMENT OF HEARING NOTICE](#)** filing type in CM/ECF no later than 21 days before Thursday, October 21, 2021. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12194905]. [20-16796] (KS) [Entered: 08/08/2021 06:17 AM]

08/09/2021 35 Filed (ECF) Acknowledgment of hearing notice by Attorney Andrew A. August for Appellant Michael R. Rattagan. Hearing in San Francisco on 10/21/2021 at 09:30 A.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 08/09/2021. [12194991] [20-16796] (August, Andrew) [Entered: 08/09/2021 07:53 AM]

09/27/2021 36 Notice of Oral Argument on Thursday, October 21, 2021 – 11:00 A.M. – Courtroom 3 – Scheduled Location: San Francisco CA.
The hearing time is the local time zone at the scheduled hearing location.

View the Oral Argument Calendar for your case [here](#).

NOTE: Although your case is currently scheduled for oral argument, the panel may decide to submit the case on the briefs instead. *See* Fed. R. App. P. 34. Absent further order of the court, if the court does determine that oral argument is required in this case, you may have the option to appear in person at the Courthouse or remotely by video. Check [here](#) for updates on the status of reopening as the hearing date approaches. At this time, even when in person hearings resume, an election to appear remotely by video will not require a motion. The court expects and supports the fact that some attorneys and some judges will continue to appear remotely. If the panel determines that it will hold oral argument in your case, the Clerk's Office will contact you directly at least two weeks before the set argument date to review any requirements for in person appearance or to make any necessary arrangements for remote appearance.

Please note however that if you do elect to appear remotely, the court **strongly prefers** video over telephone appearance. Therefore, if you wish to appear remotely by telephone you will need to file a

motion requesting permission to do so.

Be sure to review the GUIDELINES for important information about your hearing, including when to be available (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

If you are the specific attorney or self-represented party who will be arguing, use the **ACKNOWLEDGMENT OF HEARING NOTICE** filing type in CM/ECF no later than 21 days before Thursday, October 21, 2021. No form or other attachment is required. If you will not be arguing, do not file an acknowledgment of hearing notice.[12240330]. [20-16796] (KS) [Entered: 09/27/2021 03:08 PM]

- 09/27/2021 37 Filed (ECF) Acknowledgment of hearing notice by Attorney Mr. Jeffrey Michael Davidson, Esquire for Appellee Uber Technologies, Inc.. Hearing in San Francisco on 10/21/2021 at 11:00 A.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 09/27/2021. [12240538] [20-16796] (Davidson, Jeffrey) [Entered: 09/27/2021 04:03 PM]
- 09/27/2021 38 Filed (ECF) Acknowledgment of hearing notice by Attorney Andrew A. August for Appellant Michael R. Rattagan. Hearing in San Francisco on 10/21/2021 at 11:00 A.M. (Courtroom: Courtroom 3). Filer sharing argument time: No. (Argument minutes: 15.) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 09/27/2021. [12240697] [20-16796] (August, Andrew) [Entered: 09/27/2021 04:55 PM]
- 10/21/2021 39 ARGUED AND SUBMITTED TO J. CLIFFORD WALLACE, MARY H. MURGUIA and MORGAN B. CHRISTEN. [12264545] (BY) [Entered: 10/21/2021 01:17 PM]
- 10/21/2021 40 Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/>
[12276755] (TG) [Entered: 11/03/2021 09:33 AM]
- 12/06/2021 41 Order filed for PUBLICATION (MARY H. MURGUIA, J. CLIFFORD WALLACE and MORGAN B. CHRISTEN) We respectfully certify the following question to the California Supreme Court: (SEE ORDER FOR FULL TEXT). The Clerk shall forward an original and ten certified copies of this certification order, under official seal, to the California Supreme Court. Cal. R. Ct. 8.548(d). The Clerk is also ordered to transmit copies of all relevant briefs, as well as any additional record materials requested by the California Supreme Court. Cal. R. Ct. 8.548(c). Submission of this appeal for decision is vacated and deferred pending the California Supreme Court's final response to this certification order. The Clerk is directed to administratively close this docket, pending further order. The parties shall notify the Clerk of this court within fourteen days of the California Supreme Court's acceptance or rejection of certification, and again, if certification is accepted, within fourteen days of the California Supreme Court's issuance of a decision. QUESTION CERTIFIED; PROCEEDINGS STAYED. [12306053] (AKM) [Entered: 12/06/2021 08:19 AM]