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Docket No. 20-16796

In the
UNITED STATES COURT OF APPEALS
For the
NINTH CIRCUIT

Michael R. Rattagan,
Plaintiff-Appellant,

vs.

Uber Technologies, Inc.,
Defendant-Appellee.

APPEAL FROM JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CASE No. 3:19-cv-01988-EMC
HON. EDWARD M. CHEN, UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **EXCERPTS OF RECORD - INDEX VOLUME** and **EXCERPTS OF RECORD VOLUMES 1 – 3** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 27, 2021.

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s/ Andrew A. August
Andrew A. August

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EXCERPTS OF RECORD – VOLUME ONE

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Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. [19-cv-01988-EMC](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS AND
DISMISSING CASE WITH
PREJUDICE**

Docket No. 67

I. INTRODUCTION

Michael Rattagan (“Plaintiff” or “Mr. Rattagan”) is a lawyer based in Argentina. Defendant is Uber Technologies, Inc. (“Uber Technologies” or “Defendant”). The operative complaint is Mr. Rattagan’s Third Amended Complaint, through which he asserts four causes of action—fraudulent concealment, negligence, breach of the implied covenant of good faith and fair dealing, aiding and abetting fraudulent concealment—stemming from allegations that Defendant Uber Technologies, Inc. retained him to provide legal support for the launch of new operations in Buenos Aires, proceeded without engaging his services, and subjected him to intense public backlash and ultimately criminal prosecution. Uber moves to dismiss the Third Amended Complaint with prejudice.

II. BACKGROUND

A. Factual Background

Plaintiff alleges as follows. Mr. Rattagan is “a prominent lawyer in Buenos Aires.” Third Amended Complaint (“TAC”) ¶ 1, Docket No. 64. In February 2013, Uber Technologies decided to expand its ride-hailing service into Buenos Aires and “used two of its [Dutch] subsidiaries to

1 hire Rattagan to reserve the name, form and register a local Buenos Aires entity, and provide legal
2 advice on the process.” *Id.* Uber Technologies “also directed the two entities to use Rattagan as
3 their formal legal representative and his business address as their local domicile.” *Id.* ¶ 2.

4 Mr. Rattagan alleges that the “Dutch entities were merely agents controlled by their
5 principal, [Uber Technologies], with respect to all substantive decisions, communications and
6 activities vis-à-vis Mr. Rattagan and the Rattagan firm.” *Id.* Moreover, Uber Technologies
7 “exercised such complete dominion and control over the Dutch entities that but for their existence,
8 [Uber Technologies] would have had to perform the identical ‘services’ provided by the Entities,”
9 such that “even in 2013, [Uber Technologies] as principal effectively hired Rattagan. As a result
10 of this agency/principal relationship, [Uber Technologies] is responsible for all of the actions of
11 the Dutch entities.” *Id.*

12 “2014 was a period of relative inactivity between the Dutch entities and Rattagan.
13 Beginning in early 2015, however, the situation changed dramatically.” *Id.* ¶ 3. Mr. Rattagan
14 alleges that Uber Technologies’ efforts to launch operations in Buenos Aires accelerated at that
15 time, and that Uber Technologies itself—rather than the Dutch subsidiaries—“hired Rattagan to
16 provide a slew of new legal services and advice regarding the formation of multiple Argentine
17 entities that would enable UTI to provide Uber Ridesharing in Argentina.” *Id.* In support of that
18 contention, Mr. Rattagan alleges that all of the directives about the scope of his work “came
19 directly from [Uber Technologies’] legal department in San Francisco” and that all his work
20 product was provided directly to that same department. *Id.* He contends that a direct attorney-
21 client relationship was established between himself and Uber Technologies by February 2015. *Id.*

22 Several months later, toward the end of 2015, Uber began to plan the specifics of its launch
23 in Buenos Aires. *Id.* ¶ 4. However, it concealed that fact and its planning process (which
24 involved hiring a different attorney and a public relations firm and holding meetings with
25 government officials in Argentina) from Mr. Rattagan. *Id.* When Uber ridesharing officially
26 launched in April 2016, Mr. Rattagan contends that it did so “without first removing Rattagan
27 from harm’s way, . . . [and] knowing that it was doing so in blatant disregard of the local
28 government’s warnings that it would be unlawful.” *Id.* ¶¶ 5, 6. The company launched without

“any prior notice or forewarning to Rattagan” and with “absolute certainty” that the launch “would be met with [and] immediate and adverse reaction.” *Id.* ¶ 6.

Mr. Rattagan alleges:

The response to UTI’s Uber Ridesharing launch was swift and predictable: thousands of local taxi drivers stormed both the local government transportation offices and Rattagan’s law offices in protest. Within a couple of days, law enforcement authorities targeted the only public faces of Uber in Argentina: Rattagan and his colleagues who he had introduced to UTI to be interim managers of the then “in formation” local entity (after formation, UTI was to substitute permanent managers in their place). Buenos Aries police raided their offices and homes, they were vilified in the media and subjected to scorn and ridicule in social and professional gatherings. In 2017, after the authorities completed their investigation of UTI’s launch, they summoned Mr. Rattagan to the local prosecutor where he was fingerprinted, had his mug shots taken and was charged with various crimes, including aggravated tax evasion.

Id. ¶ 7. Although Uber Technologies had been paying Mr. Rattagan’s criminal defense fees related to his prosecution for aggravated tax evasion, it ceased doing so when he filed this lawsuit. *Id.* ¶ 8.

B. Procedural Background

In his original complaint, Mr. Rattagan named three Uber entities as defendants: the U.S.-based Uber Technologies, Inc. as well as Uber International, BV (“UIBV”) and Uber International Holdings, BV (“UIHBV”), companies formed under the laws of the Netherlands with their principal place of business in Amsterdam. Docket No. 1 ¶ 5. (UIBV and UIHBV are hereinafter collectively referred to as the “Uber International Entities” or the “international Uber entities.”) He alleged that “[Uber Technologies] controls UIBV and UIHBV, and [Uber Technologies] directed and authorized all of UIBV’s and UIHBV’s operational decisions . . . from Uber [Technologies]’ San Francisco headquarters.” *Id.* The complaint explained that Mr. Rattagan was hired as the “legal representative of certain Uber subsidiaries in [Argentina],” *id.* ¶ 1, apparently referring to the Uber International Entities which became foreign shareholders (“Shareholders”) of the Argentinian Subsidiary, Docket No. 1 ¶¶ 14–15. However, the remainder of the allegations in that complaint were directed simply at “Uber” generally, without differentiation between the three entities.

1 Shortly after Mr. Rattagan initiated this suit, the three Uber entities notified his counsel of
2 their belief that that the complaint contained a “fatal jurisdictional defect,” namely that “[d]iversity
3 jurisdiction does not encompass a foreign plaintiff, such as Mr. Rattagan, suing foreign
4 defendants,” such as the Uber International Entities. Sanctions Mot. at 2; *see* Docket No. 27-1 ¶ 8.

5 Mr. Rattagan thereafter filed a First Amended Complaint (“FAC”), removing the Uber
6 International Entities as defendants and redefining “Uber” to mean only Uber Technologies. FAC
7 at 1. Otherwise, the FAC was largely unchanged from the original complaint with one exception –
8 Mr. Rattagan had removed the part of the original complaint that explained “Uber International,
9 BV (‘UIBV’) is a company formed under the laws of the Netherlands with its principal place of
10 business in Amsterdam. Uber International Holdings, BV (‘UIHBV’) is a company formed under
11 the laws of the Netherlands with its principal place of business in Amsterdam. On information
12 and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and
13 UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.” Docket
14 No. 1, ¶ 5; Docket No. 15, ¶ 5. The import of the amendment was that all of the allegations
15 previously directed at the three Uber entities collectively were now asserted solely against Uber
16 Technologies.

17 Uber Technologies attacked Rattagan’s FAC in two ways. First, it moved for sanctions
18 against Rattagan, contending that his claims were based on a factual premise—that there was an
19 attorney-client and contractual relationship between Rattagan and Uber Technologies—that was
20 false, because it was Uber’s international subsidiaries that retained and contracted with Rattagan.
21 *See* Docket No. 27. Second, Uber Technologies moved to dismiss the FAC under Rule 12(b)(6),
22 arguing that even taking Rattagan’s allegations as true, they failed to state a claim. *See* Docket
23 No. 23. The Court did not reach the merits of Uber’s Motion to Dismiss the FAC because it
24 agreed that “Rattagan presented the Court with a complaint that was inaccurate and misleading.”
25 *See* Docket No. 36 at 8. Rather than advancing a legal theory pursuant to which Uber
26 Technologies “was somehow legally responsible based on its indirect control over Uber
27 International Entities with whom Mr. Rattagan contracted (whether via an alter ego or other
28 theory),” the Court found that “Mr. Rattagan deleted that allegation and worded the FAC so as to

1 imply a direct relationship with Uber Technologies.” *Id.* The Court granted Uber Technologies’
 2 Motion for Sanctions after concluding that the company had met its burden to show that the
 3 complaint was “factually baseless from an objective perspective.” *Id.* Mr. Rattagan was permitted
 4 leave to amend. *Id.* at 10.

5 Mr. Rattagan then filed a Second Amended Complaint on September 18, 2019. *See*
 6 Docket No. 38. But just one day prior to Uber Technologies’ deadline to file a motion to dismiss,
 7 Mr. Rattagan’s counsel filed a motion to withdraw as attorney. *See* Docket No. 46. The Court
 8 extended Uber Technologies’ deadline to respond to the Second Amended Complaint, and, after
 9 replacement counsel was identified, the Court granted Mr. Rattagan’s attorney’s motion to
 10 withdraw in January 2020. *See* Docket Nos. 48, 51. In February, Mr. Rattagan’s new counsel
 11 sought leave to file a Third Amended Complaint. *See* Docket No. 54. Uber Technologies
 12 opposed, but the Court—relying on the Ninth Circuit’s guidance that Rule 15 should be applied
 13 with “extreme liberality”—granted Mr. Rattagan’s motion for leave to file a Third Amended
 14 Complaint. *See* Docket No. 63. On June 19, 2020, Uber Technologies filed a Motion to Dismiss
 15 the Third Amended Complaint. *See* Docket No. 67 (“MTD”). Briefing completed on July 30,
 16 2020, and a hearing took place by Zoom on August 13, 2020. *See* Docket Nos. 67, 71.

17 **III. DISCUSSION**

18 **A. Legal Standard**

19 Under Rule 12(b)(6), a party may move to dismiss a complaint that fails to state a claim
 20 upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). In considering such a motion, a
 21 court must accept all allegations of material fact as true and construe them in the light most
 22 favorable to the nonmoving party, although “conclusory allegations of law and unwarranted
 23 inferences are insufficient to avoid a Fed. R. Civ. P. 12(b)(6) dismissal.” *Cousins v. Lockyer*, 568
 24 F.3d 1063, 1067 (9th Cir. 2009). While “a complaint need not contain detailed factual
 25 allegations,” “it must plead ‘enough facts to state a claim to relief that is plausible on its face.’”
 26 *Id.* at 1067–68. “A claim has facial plausibility when the plaintiff pleads factual content that
 27 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
 28 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atl. Corp. v. Twombly*, 550

1 U.S. 544, 556 (2007). “The plausibility standard is not akin to a ‘probability requirement,’ but it
2 asks for more than sheer possibility that a defendant acted unlawfully.” *Iqbal*, 556 U.S. at 678.

3 B. Discussion

4 Uber challenges the four counts asserted in Mr. Rattagan’s Third Amended Complaint on
5 several grounds. Because the Court concludes that two grounds (the statute of limitations and the
6 economic loss doctrine) dispose of all of Mr. Rattagan’s claims, it does not address the alternative
7 grounds for dismissal advanced by Uber Technologies.

8 1. Counts Two and Three Are Time-Barred

9 Uber contends that Mr. Rattagan’s claim for negligence (Count Two) and breach of the
10 implied covenant of good faith and fair dealing (Count Three) are time-barred. *See* MTD at 9.
11 Claims for negligence are subject to a two-year statute of limitations. *See* Cal. Civ. Proc. Code §
12 335.1. Where a breach of the implied covenant of good faith and fair dealing is based on an oral
13 or implied contract, as is Mr. Rattagan’s alleged contract with Uber Technologies,¹ it is also
14 subject to a two-year limitations period. *See* Cal. Civ. P. Code § 335.1; *see also Leon v. Wells*
15 *Fargo Bank, N.A.*, No. 17-CV-03371-BLF, 2018 WL 3474182, at *3 (N.D. Cal. July 19, 2018).
16 “The statute of limitations usually commences when a cause of action ‘accrues,’ and it is generally
17 said that ‘an action accrues on the date of injury.’ Alternatively, it is often stated that the statute
18 commences ‘upon the occurrence of the last element essential to the cause of action.’” *Vaca v.*
19 *Wachovia Mortg. Corp.*, 198 Cal. App. 4th 737, 743 (2011) (quoting *Bernson v. Browning–Ferris*
20 *Industries*, 7 Cal. 4th 926, 931 (1994)).

21 The parties here agree that the statute of limitations began to run when Rattagan suffered
22 injury from Uber’s alleged actions. They disagree, however, as to when the operative injury
23 occurred. In Uber Technologies’ telling, Rattagan’s claims accrued “on April 15, 2016, the date
24 on which Rattagan alleges that Uber’s purported misconduct first injured him,” *i.e.*, when
25 Argentine authorities raided his offices. MTD at 10 (citing TAC ¶¶ 68–69). This would mean that
26 the claims expired on April 15, 2018 (prior to the filing of this lawsuit on April 12, 2019). Mr.

27
28 ¹ Mr. Rattagan’s TAC states that there was “never a formal written engagement agreement” for the
services that he allegedly provided to Uber Technologies. TAC ¶ 37.

Rattagan, on the other hand, asserts that the operative injury did not occur until November 2017, when he was arrested for aggravated tax evasion. Opp. at 14.

Under California law, “the limitations period starts to run when the plaintiff suffers actual and appreciable harm, however uncertain in amount.” *Crowley v. Peterson*, 206 F. Supp. 2d 1038, 1042 (C.D. Cal. 2002) (citing *Davies v. Krasna*, 14 Cal. 3d 502, 514 (1975)). Specifically, “[i]t is uncertainty as to the *fact* of damage, rather than to its *amount*, which negates the existence of a cause of action.” *Id.* (citing *Walker v. Pac. Indem. Co.*, 6 Cal. Rptr. 924, 926 (Cal. Ct. App. 1960)) (emphasis added). “The California courts have not expressly defined the phrase ‘actual and appreciable harm.’” *Id.* However, even cases relied upon by Mr. Rattagan have concluded that “[r]ead in context . . . *Davies*’s ‘actual and appreciable harm’ test should be seen as simply a restatement of the traditional rule that a cause of action for negligence is complete and the statute begins to run when the plaintiff suffers *any compensable injury*.” *Id.* at 1044 (emphasis added); *see also id.* at 1045 (“Most of the California decisions since *Davies* have interpreted ‘actual and appreciable harm’ as synonymous with ‘actionable’ or ‘compensable’ harm.”).² Under *Davies*, the statute of limitations runs when “events have developed to a point where plaintiff is entitled to a legal remedy, not merely a symbolic judgment such as an award of nominal damages.” *Davies*, 14

² *Crowley* identifies *DeRose v. Carswell*, 196 Cal. App. 3d 1011 (1987) as one of the “few cases since *Davies* [to] have suggested that the actual and appreciable harm test requires something more than a showing of any compensable harm.” *Crowley*, 206 F. Supp. 2d at 1045. However, it found *DeRose*’s analysis of *Davies* “not persuasive” and declined to follow its conclusion. *Id.* at 1046. In reaching that conclusion, the *Crowley* court first noted that “the entire discussion of *Davies* [by the *DeRose* court] was dicta” because although the *DeRose* court discussed whether an injury had to be “significant enough to justify a lawsuit” in order to run the statute of limitations, the *DeRose* court concluded that the plaintiff’s injury *was* sufficiently significant; thus, its discussion of whether such significance was *necessary* was dicta. *Crowley*, 206 F. Supp. 2d at 1046. Second, the *Crowley* court noted that “the *DeRose* Court provided no authority to support its view that ‘nominal’ could not reasonably be interpreted as meaning one dollar,” but instead means “too insignificant to justify a lawsuit.” *Id.* at 1046, 1047.

Crowley also notes that only two other case have followed *DeRose*’s interpretation of *Davies*. *Id.* at 1046 n.7 (citing *Miller v. Lakeside Village Condo. Ass’n Inc.*, 1 Cal. App. 4th 1611 (1991); *Sanderson v. Int’l Flavors & Fragrances, Inc.*, 1996 WL 529274 (C.D. Cal. July 11, 1996)). However, neither case “analyzed whether *DeRose*’s interpretation of *Davies* was correct or analyzed the *Davies* holding in light of the cases the California Supreme Court relied on [in rendering the *Davies* decision]”; thus, the *Crowley* court concluded that the two cases “do not provide any independent support for the *DeRose* Court’s interpretation of *Davies*’s holding or the term ‘nominal damages.’” *Id.*

1 Cal. 3d at 513. As *Crowley* explained, “any compensable injury will, by definition, give rise to
2 damages that are more than nominal.” *Crowley*, 206 F. Supp. 2d at 1045.

3 Here, Mr. Rattagan disclaims any harm prior to November 2017, when he was arrested for
4 aggravated tax evasion. Opp. at 14. However, his Third Amended Complaint tells a different
5 story. For example:

- 6 • In the immediate aftermath of the Uber launch on April 12, 2016, “taxi drivers
7 surrounded the office building and protesters blocked its exits, preventing
8 employees and clients from entering or exiting for hours. Additionally, local media
9 outlets were filled with angry interviews and negative coverage concerning ‘Uber’
10 and all those associated with it, including Rattagan and his firm.” TAC ¶ 66.
- 11 • Several days after the launch, “police raided Rattagan’s offices armed with an
12 ‘acta’ (a search warrant) and issued an order to shut down ‘Uber.’ According to the
13 warrant, the raid was the result of a charge that Rattagan, as the legal representative
14 of ‘Uber,’ was using public space for commercial gain, without a permit.
15 Television cameras filmed the police raid. The prime-time news programs
16 displayed the Rattagan firm logo and reported that his offices were the location of
17 Uber’s illegal activities, which included tax evasion.” *Id.* ¶ 69.
- 18 • That same day, Mr. Rattagan asked to be replaced as legal representative of the
19 international Uber entities, and when Uber’s Head Counsel for Latin America
20 Operations failed to act immediately, Mr. Rattagan resigned. However, his TAC
21 notes that, at that point, “*the damage was done.*” *Id.* ¶ 68 (emphasis added).
- 22 • After the launch, “[t]axi drivers, labor unions, and politicians had a local public
23 face to direct their ire and Rattagan was it. He was smeared in the local media for
24 his alleged role in UTI’s launch of Uber Ridesharing.” *Id.* ¶ 81.
- 25 • On May 26, 2016, Mr. Rattagan spoke with General Counsel and Corporate
26 Secretary for Uber Technologies and asked her “to promptly designate someone he
27 could coordinate with to hand over his ‘Uber’-related files in an orderly manner
28 and to instruct her team to immediately refrain from mentioning or invoking

Rattagan’s name and from using his offices as legal domicile in any future communications with the Argentine government (national, provincial or city levels) or with any third parties without Rattagan’s prior written consent.” *Id.* ¶ 73. He alleges that, at that time, Uber Technologies’ General Counsel acknowledged that Uber Technologies “was responsible to Rattagan *for the harm caused by the unlawful launch.*” *Id.* (emphasis added).

In attempting to explain why he did not experience “actual or appreciable harm” until his arrest in November 2017, Mr. Rattagan asserts that the arrest prohibited him from traveling abroad and also damaged his professional reputation. *Opp.* at 15. While the 2017 arrest may have exacerbated his harm, the Complaint clearly alleges damage to Mr. Rattagan’s professional reputation as early as April 2016 in the immediate aftermath of Uber’s launch; as noted above, the local media ran negative coverage of Rattan and his firm, TAC ¶ 66, and prime-time news programs showed footage of the police raid on Rattagan’s firm and “reported that his offices were the location of Uber’s illegal activities, which included tax evasion,” *id.* ¶ 69. As the TAC alleges, by then “the damage was done.” *Id.* at ¶ 68. Thus, even if Mr. Rattagan ultimately experienced additional reputational harm after being arrested in November 2017, the very harm he claims to have suffered as a result of that arrest clearly began in April 2016. He allegedly suffered “compensable injury” – “actual and appreciable harm.” Thus, the statute of limitations on Counts Two and Three began to run in April 2016.

Mr. Rattagan attempts to avoid that conclusion by further asserting that his claims accrued in 2017 due to “continuing-wrong accrual principles.” Opposition to Motion to Dismiss TAC (“MTD Opp.”) at 14, Docket No. 70. “There are two main branches” of continuing-wrong principles: “the continuing violation doctrine and the theory of continuous accrual.” *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1197 (2013). The former “aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them.” *Id.* at 1192. It is animated by the concern that “[s]ome injuries are the product of a series of small harms, any one of which may not be actionable on its own.” *Id.* at 1197. Under the latter, “a series of wrongs or injuries may be

viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period.” *Id.* at 1192.

What is critical is that both the continuing violation and continuous accrual doctrines are triggered by ongoing *acts* by the defendant. *See Richards v. CH2M Hill, Inc.*, 26 Cal. 4th 798, 812 (2001) (“[T]he continuing violation doctrine comes into play when [a plaintiff] raises a claim based on conduct that occurred in part outside the limitations period.”); *Aryeh*, 55 Cal. 4th at 1199 (“[Continuous accrual applies whenever there is a continuing or recurring obligation: When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period.”) (citation and internal quotation marks omitted). It is not enough that the plaintiff merely suffers ongoing *injury*. As California courts have explained, “if continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injuries persisted. This is not the law.” *Vaca*, 198 Cal. App. 4th at 745.

The alleged misconduct by Uber Technologies did not extend into the two-year limitations period, which reached back to April 12, 2017. For example, Mr. Rattagan complains that Uber kept him as Uber’s representative in Argentina for more than two months after the launch even though he requested immediate replacement. TAC ¶¶ 68, 71. But even if his causes of action accrued two months after the launch, that would place the trigger date at mid-June of 2016 (and generate a filing deadline of June 2018, well before the date in 2019 when Mr. Rattagan filed this lawsuit). Similarly, Mr. Rattagan recounts an occasion when Uber delivered a letter to City officials that showed Mr. Rattagan’s law firm office address and name, falsely implying his ongoing association with Uber. *Id.* ¶¶ 71–72. But that incident, too, occurred within the two months after Uber’s launch.

Mr. Rattagan also argues that Uber Technologies “continuously breached the duties owed to Rattagan after the launch, and these breaches culminated in Rattagan’s arrest for aggravated tax evasion in November 2017.” MTD Opp. at 16. Specifically, in April 2017, Mr. Rattagan was charged with “the unauthorized use of public space with a commercial aim.” TAC ¶ 77. Then in

1 November 2017, he was charged with aggravated tax evasion. *Id.* ¶ 78. He alleges the tax evasion
2 charge arose from the fact that Uber had failed to pay appropriate sales tax prior to the launch, and
3 it was deemed aggravated “due to the uninterrupted and increasing volume of Uber Ridesharing’s
4 sales in the year after the launch.” *Id.* ¶¶ 77–79. Under this theory, Uber’s continued
5 noncompliance with the law (up through November 2017, when Rattagan was charged with
6 aggravated tax evasion) was an ongoing act that triggers continuing-wrong accrual principles.

7 However, Mr. Rattagan was replaced as Uber’s legal representative approximately two
8 months after Uber’s launch in Buenos Aires in 2016, TAC ¶ 68, and his TAC does not explain
9 how he would be held criminally responsible for Uber’s continued non-compliance in the year
10 after he was replaced as the company’s legal representative. Instead, the TAC alleges only: “The
11 alleged tax evasion charges were aggravated due to the uninterrupted and increasing volume of
12 Uber Ridesharing’s sales in the year after the launch.” *Id.* ¶ 79. Because Mr. Rattagan’s role as
13 Uber’s legal representative terminated in mid-2016, Uber’s continuing noncompliance in the time
14 between Mr. Rattagan’s removal as the company’s legal representative and his arrest for
15 aggravated tax evasion is not the kind of continuing conduct to which the continuous accrual
16 doctrine applies. Mr. Rattagan cites no persuasive case law involving similar facts.

17 To the extent that Mr. Rattagan contends that Uber’s wrongful act was not just mere
18 noncompliance, but instead the company’s failure to “inform authorities that Rattagan was
19 unaware of and uninvolved in the launch,” Mr. Rattagan has pointed to no case law indicating that
20 the company actually owed Mr. Rattagan an affirmative duty to publicize the fact that he was no
21 longer the company’s representative. For one thing, Mr. Rattagan alleges that he was replaced as
22 the company’s legal representative in Argentina within two months of the launch. *Id.* ¶ 68. His
23 replacement was a matter of public record. *Id.* ¶¶ 68, 75. As of two months after the launch,
24 official records would have indicated that he was no longer the legal representative of Uber in
25 Argentina.

26 Finally, the continuing violation doctrine does not apply for an independent reason. That
27 doctrine applies where there is “a series of small harms, any one of which may not be actionable
28 on its own.” *Aryeh*, 55 Cal. 4th at 1197 (2013). It does not apply where the defendant engaged in

discrete wrongful acts which caused injury to the plaintiff sufficient to give rise to a legal claim. Although allegations of “a pattern of reasonably frequent and similar acts may . . . justify treating the acts as an indivisible course of conduct actionable in its entirety, notwithstanding that the conduct occurred partially outside and partially inside the limitations period,” that is not the case where a plaintiff alleges “a series of discrete, independently actionable alleged wrongs.” *Id.* at 1198.

Accordingly, the Court **GRANTS** the motion to dismiss Mr. Rattagan’s negligence claim (Count Two) and breach of the implied covenant of good faith and fair dealing claim (Count Three) on statute of limitations grounds.

2. Counts One and Four Are Barred by the Economic Loss Doctrine

Defendant also contends that Mr. Rattagan’s claims for fraudulent concealment (Count One), negligence (Count Two) and aiding and abetting fraudulent concealment (Count Four) are barred by the economic loss doctrine. *See* MTD at 11. As Count Two has already been dismissed on statute of limitations grounds, it is not discussed further in this section.

Summarized briefly, the economic loss rule limits a party to a contract “to recover[ing] in contract for purely economic loss due to disappointed expectations,” rather than in tort, “unless he can demonstrate harm above and beyond a broken contractual promise.” *Robinson Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004). The rule “serves to prevent every breach of a contract from giving rise to tort liability” and “prevents the law of contract and the law of tort from dissolving one into the other.” *JMP Sec. LLP v. Altair Nanotechnologies Inc.*, 880 F. Supp. 2d 1029, 1042–43 (N.D. Cal. 2012) (quoting *Robinson*, 34 Cal. 4th at 988). In short, generally one cannot recover tort damages for breach of contract. Here, Uber Technologies argues that Mr. Rattagan “alleges only economic loss—*e.g.*, reputational harm, lost revenues—not physical injury or injury to property. Such economic losses are recoverable, if at all, in contract. Consequently, his tort claims must be dismissed.” MTD at 12 (citing TAC ¶¶ 65–66, 69, 80–81, 87, 91, 96, 102). Mr. Rattagan offers three arguments in response.

First, Mr. Rattagan argues that the economic loss doctrine should not apply because it “normally applies in products liability and construction defect cases where physical injury is even

possible.” MTD Opp. at 17 (quoting *Rowland v. JPMorgan Chase Bank, N.A.*, WL 992005, at *10 (N.D. Cal. Mar. 12, 2014)). Because he “was not a purchaser nor is this . . . a products liability or construction defect case,” he contends that the doctrine does not bar his claims. *Id.* However, the economic loss rule has been applied outside of the products liability and construction defect contexts. MTD Reply at 5 (collecting cases); *see also Sorensen v. New Koosharem Corp.*, No. CV1501088RGKPJWX, 2015 WL 12826460, at *3 (C.D. Cal. June 29, 2015) (applying the economic loss doctrine to bar fraud claims in the context of claims related to an executive employment contract). There is no *per se* rule limiting the economic loss doctrine to products liability or construction defect cases.

Second, Mr. Rattagan alleges that “[t]he economic loss rule does not apply for the additional reason that Rattagan alleges fraud in the inducement.” MTD Opp. at 18. However, Mr. Rattagan’s TAC actually alleges “fraudulent concealment,” which involves non-disclosure after the contractual relationship arose; it does *not* allege fraud in inducing Mr. Rattagan into the contract. Although there is some conflict in this area of the law, the weight of authority counsels in favor of applying the economic loss doctrine to fraudulent concealment, but not to fraudulent inducement. *Sloan v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2020 WL 1955643, at *24 (N.D. Cal. Apr. 23, 2020); *compare United Guar. Mortg. Indem. Co. v. Countrywide Fin. Corp.*, 660 F. Supp. 2d 1163, 1188 (C.D. Cal. 2009)) (“The economic loss rule poses no barrier to a properly pled fraudulent inducement claim: ‘[I]t has long been the rule that where a contract is secured by fraudulent representations, the injured party may elect to affirm the contract and sue for fraud.’”); *with Traba v. Ford Motor Co.*, No. 218CV00808SVWGJS, 2018 WL 6038302, at *4 (C.D. Cal. June 27, 2018) (holding that economic loss doctrine applies to and bars plaintiffs’ allegations of fraudulent concealment).

Moreover, to get around the economic loss doctrine, the fraud must be based on an affirmative misrepresentation. In *Robinson Helicopter Co. v. Dana Corp.*, 102 P.3d 268 (2004), the key California case on this subject, the California Supreme Court explained: “The economic loss rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise.”

34 Cal. 4th at 988 (internal citations and quotation marks omitted). It concluded that “the economic loss rule does not bar . . . fraud and intentional misrepresentation claims . . . [that] were independent of [defendant’s] breach of contract.” *Id.* at 991. However, the *Robinson* court based that determination on the defendant’s “affirmative intentional misrepresentations of fact”: “Our holding today is narrow in scope and limited to a defendant’s *affirmative misrepresentations* on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff’s economic loss.” *Id.* at 993 (emphasis added). Numerous courts have since relied on *Robinson* in holding that affirmative representations are required for exceptions to the economic loss rule to apply. *See, e.g., Stewart v. Electrolux Home Prod., Inc.*, 304 F. Supp. 3d 894, 902 (E.D. Cal. 2018); *Zagarian v. BMW of N. Am., LLC*, No. CV 18-4857-RSWL-PLA, 2019 WL 6111731, at *3 (C.D. Cal. Oct. 23, 2019); *Traba*, 2018 WL 6038302, at *4.

Here, Mr. Rattagan’s fraudulent concealment allegations do not contain assertions that Uber Technologies or the international Uber entities made any affirmative misrepresentations. *See, e.g.,* TAC ¶ 84 (“UTI directly and as principal of the Dutch Entities knowingly and intentionally failed to disclose, concealed and/or suppressed material facts from Rattagan”); *id.* ¶ 98 (similar allegations against the international Uber entities); *id.* ¶ 86 (“Rattagan is informed and believes and thereon alleges that UTI directly and as principal of the Dutch Entities intentionally concealed these facts from Rattagan because it knew that its actions would be deemed unlawful under Argentine law and did not want Rattagan taking any steps that might interfere with or delay the launch of Uber Ridesharing in Buenos Aires.”); *id.* ¶ 101 (“UTI aided and abetted the Dutch Entities’ fraudulent nondisclosure as set forth herein. UTI knew that the Dutch Entities’ conduct constituted a breach of their duty of disclosure to Rattagan and UTI provided substantial assistance and/or encouragement to the Dutch Entities to engage in the fraudulent conduct described herein. Rattagan is informed and believes and thereon alleges that UTI expressly or impliedly directed the Dutch Entities to conceal these facts from Rattagan because it knew that its actions would be deemed unlawful under Argentine law and did not want Rattagan taking any steps that might interfere with or delay the launch of Uber Ridesharing in Buenos Aires.”). Accordingly, Mr. Rattagan’s fraudulent concealment allegations would not

1 operate to bar the application of the economic loss doctrine against his first and fourth claims.

2 Finally, Mr. Rattagan asserts that “the crux of [his] claims is based on [Uber
3 Technologies’] tortious conduct (and that of the Foreign Shareholders), not on their failure to pay
4 him for services rendered (i.e., the failure to make good on contractual promises). In fact,
5 Rattagan does not even allege breach of contract.” MTD Opp. at 18. In other words, he argues
6 that he is not “attempt[ing] to recast a breach of contract claim as tort claims based on an alleged
7 failure to make good on contractual promises” and therefor that the economic loss doctrine should
8 not apply. *Id.* But here, too, Mr. Rattagan’s complaint tells a different story.

9 In alleging his fraudulent concealment claim (Count I), Mr. Rattagan asserts that Uber
10 Technologies “owed Rattagan a duty to disclose all facts known to [Uber Technologies] that were
11 material to both Rattagan’s legal representation and his role as legal representative of the Foreign
12 Entities,” and that this duty was “[b]ased on the direct attorney-client relationship between [Uber
13 Technologies] and Rattagan.” TAC ¶ 83; *see also id.* ¶ 94 (“UTI and Rattagan were in express
14 and/or implied contractual relationships arising from UTI and Rattagan’s direct attorney-client
15 relationship starting in 2015.”). Likewise, in alleging his aiding and abetting fraudulent
16 concealment claim (Count 4), Mr. Rattagan states: “Because of the Dutch Entitie[s]’ confidential,
17 attorney-client relationship with Rattagan, the Dutch Entities owed a duty to Rattagan to disclose
18 these material facts.” *Id.* ¶ 99. The attorney-client relationship is undoubtedly a contractual one.
19 *See, e.g., Sky Valley Ltd. P’ship v. ATX Sky Valley, Ltd.*, 150 F.R.D. 648, 651 (N.D. Cal. 1993)
20 (“[T]he attorney-client relationship can be formed . . . only by contract, express or implied.”); *Fox*
21 *v. Pollack*, 181 Cal. App. 3d 954, 959 (1986) (“Except for those situations where an attorney is
22 appointed by the court, the attorney-client relationship is created by some form of contract,
23 express or implied, formal or informal.”).

24 The California Supreme Court has recognized that “a party’s contractual obligation may
25 create a legal duty and that a breach of that duty may support a tort action.” *Robinson*, 34 Cal. 4th
26 at 989. However, “conduct amounting to a breach of contract becomes tortious only when it also
27 violates a duty independent of the contract arising from principles of tort law.” *Erlich v. Menezes*,
28 21 Cal. 4th 543, 551 (1999). As noted above, as to Uber Technologies, Mr. Rattagan specifically

1 alleges:

2 Based on the direct attorney-client relationship between UTI and
3 Rattagan starting in 2015, UTI's principal/agent relationship in 2013
4 and Rattagan's role as legal representative of the Foreign
5 Shareholders at the request and for the benefit of UTI directly and as
6 principal, UTI both directly and as principal owed Rattagan a duty
7 to disclose all facts known to UTI that were material to both
8 Rattagan's legal representation and his role as legal representative of
9 the Foreign Entities.

10 TAC ¶ 83. Here, the duty of disclosure allegedly owed by Uber in its capacity as Mr. Rattagan's
11 client is rooted in the contractual relationship. Mr. Rattagan alleges that Uber Technologies
12 breached its "duty to disclose all facts known to [Uber Technologies] that were material to both
13 Rattagan's legal representation and his role as legal representative," and that this duty was "based
14 on" the "direct attorney-client relationship between" Uber Technologies and Mr. Rattagan. *Id.*
15 Likewise, as to the international Uber entities, Mr. Rattagan alleges that they breached their "duty
16 of disclosure to Rattagan," TAC ¶ 101, and that this duty existed "[b]ecause of the Dutch
17 Entitie[s'] confidential, attorney-client relationship with Rattagan." *Id.* ¶ 99. These allegations
18 are squarely inconsistent with his now-raised assertion that Uber Technologies breached a duty
19 that was "independent of the contract." *See Erlich*, 21 Cal. 4th at 551.

20 In his briefing and at the hearing, Mr. Rattagan presented the following hypothetical in
21 support of his position:

22 A lawyer is handed a box by his client to deliver to the client's
23 business partner. The client conceals from his lawyer that illegal
24 contraband is in the box. The lawyer is arrested and charged with
25 possession. Under UTI's view of the law, the lawyer has no
26 recourse against the client.

27 Opp. at 11 n.10. However, as the distinction in *Erlich* makes clear, such an action clearly
28 "violates a duty independent of the contract arising from principles of tort law." *Erlich*, 21 Cal.
4th at 551. That conclusion is underscored by the fact that any person who hands any other person
a box containing illegal contraband puts the unknowing recipient in harm's way. No contract
between the parties is needed for that to be true; it does not matter whether the recipient is a
lawyer or the neighbor next door. The hypothetical proves nothing.

Accordingly, the economic loss doctrine bars Counts One and Four.

1 **IV. CONCLUSION**

2 In light of the foregoing analysis, the Court **DISMISSES** the Third Amended Complaint.
3 The dismissal is with prejudice because Mr. Rattagan has demonstrated, through multiple
4 iterations of his allegations, many of which exemplify shifting and often inconsistent and
5 contradictory allegations and theories, that his claims suffer from deficiencies that cannot be cured
6 by further amendment.

7 This order disposes of Docket No. 67. The Clerk is directed to enter judgment and close
8 this case.

9 **IT IS SO ORDERED.**

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11 Dated: August 19, 2020

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14 EDWARD M. CHEN
15 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. [19-cv-01988-EMC](#)

JUDGMENT

On August 19, 2020, the Court issued its Order Granting Defendant's Motion to Dismiss and Dismissing Case With Prejudice (*see* Order, Docket No. 76). Pursuant to Federal Rule of Civil Procedure 58, the Court hereby **ENTERS** judgment in favor of Defendant. The Clerk of Court shall close the file in this matter.

IT IS SO ORDERED.

Dated: August 19, 2020



EDWARD M. CHEN
United States District Judge

Docket No. 20-16796

In the
UNITED STATES COURT OF APPEALS
For the
NINTH CIRCUIT

Michael R. Rattagan,
Plaintiff-Appellant,

vs.

Uber Technologies, Inc.,
Defendant-Appellee.

APPEAL FROM JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CASE No. 3:19-cv-01988-EMC
HON. EDWARD M. CHEN, UNITED STATES DISTRICT JUDGE

EXCERPTS OF RECORD – VOLUME TWO

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

MICHAEL R. RATTAGAN,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 19-01988 EMC
)	
UBER TECHNOLOGIES, INC.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Thursday, August 13, 2020

TRANSCRIPT OF PROCEEDINGS BY ZOOM WEBINAR

APPEARANCES BY ZOOM WEBINAR:

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Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

Thursday - August 13, 2020

1:34 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil action 19-1988, Rattagan vs. Uber Technologies, Inc., et al.

Counsel, please state your appearances for the record beginning with plaintiff's counsel.

Mr. August, you are muted. You're still muted.

MR. AUGUST: Can you hear me now?

THE COURT: Yeah. Now we can hear you.

MR. AUGUST: Thank you, Your Honor.

Anyway, Andrew August, special counsel to Steyer Lowenthal, appearing on behalf of Mr. Rattagan, plaintiff.

THE COURT: All right. Thank you, Mr. August.

MR. STEYER: Allan Steyer on behalf of Mr. Rattagan.

THE COURT: All right. And you're appearing just by audio and not visually; is that correct, Mr. Steyer?

MR. STEYER: No. The video should be on, Your Honor. There we go.

THE COURT: There you go. Now we see you.

MR. STEYER: I got all dressed up.

THE COURT: Yeah. Good. You're ready for action here. Ready for the camera.

MR. DAVIDSON: Good afternoon, Your Honor. Jeffrey Davidson, Covington & Burling, on behalf of the defendant Uber

1 Technologies. And with me should be my colleague Amy Heath,
2 who tells me she's on the Zoom and is trying to get in.

3 **THE COURT:** Oh. All right. Maybe ask her to raise
4 her hand in the attendee status and then she can be promoted
5 into the well.

6 **THE CLERK:** I do not see her hand raised. I don't see
7 an Amy.

8 **MR. DAVIDSON:** Hmm. Well, we can proceed and perhaps
9 if it can be worked out as we go forward, that would be great.

10 **THE COURT:** All right.

11 **MR. DAVIDSON:** She tells me that she has raised her
12 hand.

13 **THE COURT:** Oh, has she? Is she going under an alias
14 or something? I'm looking at the attendee list and -- what is
15 her last name?

16 **MR. DAVIDSON:** Heath, H-E-A-T-H. Before becoming a
17 lawyer, she did work for the CIA.

18 **THE COURT:** Oh, well, that explains a lot.

19 **THE CLERK:** I do not see her as an attendee,
20 Your Honor.

21 **THE COURT:** I don't either for some reason.

22 **THE CLERK:** Maybe she's in another hearing.

23 **THE COURT:** I don't know.

24 **MR. DAVIDSON:** We can go ahead, Your Honor. That's
25 fine.

1 **THE COURT:** Okay. Yeah, and it's public, the sign-in.
2 She might want to check and make sure she's not in another
3 courtroom or something. Maybe she ended up using a different
4 digit and ended up in one of my colleague's courtrooms, but I
5 think she'll realize it at some point.

6 And if you get word that she's trying to get in, just let
7 us know and then Angie can go back to the attendee list and
8 look for her to promote her.

9 **MR. DAVIDSON:** Okay.

10 **THE COURT:** All right. Well, let me zoom in, so to
11 speak, on the critical issues I think here.

12 First is the assertion of the two-year statute of
13 limitations, the time bar, which applies to Count 2,
14 negligence, and Count 3, the implied covenant.

15 If the two-year statute of limitations applies, it is hard
16 to see how this action is timely given the events that unfolded
17 and the knowledge that, at least according to Mr. Rattagan,
18 there have been some breach of his -- or violation of his
19 rights.

20 So I guess my question is: How do you make the statute of
21 limitations?

22 **MR. AUGUST:** I'm going to handle that question,
23 Your Honor. I'll probably handle most of the questions. I
24 don't quite have Mr. Steyer's style and panache, but I'm going
25 to do my best.

1 **THE COURT:** Sure.

2 **MR. AUGUST:** So essentially what Uber is saying is, as
3 a matter of law, Mr. Rattagan suffered appreciable and
4 compensable harm on April 12 because his firm was raided and
5 his name appeared in the media.

6 In our briefs we've cited to you that whether or not -- or
7 when appreciable and compensable harm -- and that's
8 important -- appreciable and compensable harm occurs is a very
9 fact-driven question.

10 There's nothing in paragraphs 69 to 76 of the complaint
11 that alleges any compensable harm. Those are the paragraphs
12 that talk about what happened post-April 12, 2016.

13 And, in fact, if all that had happened was that
14 Mr. Rattagan had his 15 minutes of infamy, there would be no
15 case because he had no damages, period. News reports, media
16 reports don't necessarily cause clients to leave you. It
17 doesn't cause partners to leave you. It doesn't cause
18 necessarily the damage to the reputation.

19 Uber offers no explanation of how he was harmed in that
20 period of time.

21 **THE COURT:** So are you conceding you're not seeking
22 any damages resulting from the raid of his office in April of
23 2016? You're not --

24 **MR. AUGUST:** That is correct, Your Honor. Yes, that
25 is correct. And, in fact, let me go one step further.

1 The damages did not really accrue here -- now, Uber
2 characterizes it in their brief as an arbitrary date of
3 November of 2017. It's anything but arbitrary. It was at that
4 point that this well-known, well-respected lawyer in
5 Buenos Aires is charged with aggravated tax evasion.

6 So, again, if you juxtapose you're having your name across
7 the 5:00 o'clock news or the 10:00 o'clock news or possibly
8 mentioned in a newspaper article for a couple of days versus a
9 story breaking that a famous lawyer or at least a well-known,
10 well-respected lawyer is arrested -- or we would use the word
11 "arrested." They don't quite use that same terminology in
12 Argentina, but that's effectively what happened -- and charged
13 with aggravated tax evasion, it is at that point in time that
14 the damages really occur.

15 So what we did, and as the Court is well aware from the
16 unfortunate prior history of the complaints in this case, what
17 we did is we continued to tell the story in the third amended
18 complaint. Apparently that story has now morphed into, well,
19 on April 12th he suffered harm.

20 Again, if somebody were to raid my office today -- and, by
21 the way, Mr. Rattagan, this is not in the complaint, but
22 Mr. Rattagan wasn't even in the office. If somebody was to
23 raid my office today, what's my damage today?

24 So you've got to find an appreciable, compensable harm and
25 the action that creates that appreciable, compensable harm is

1 the 2017 -- I believe it's the November of 2017 arrest.

2 Hopefully that answers your question, Your Honor.

3 **THE COURT:** Well, you're saying there's no appreciable
4 harm to be raided by law enforcement. And the raid occurs in
5 public view; right?

6 **MR. AUGUST:** Well, when you say "public view," it was
7 a raid on an office that Mr. Rattagan was not present at. We
8 do not have -- the record is not full in terms of how many TV
9 stations. Was it one? Was it two? Was it five? Was it -- we
10 don't know that.

11 **THE COURT:** But it does say television cameras film a
12 police raid. Prime time news displayed the firm logo. Right
13 after that he was understandably upset and wrote Gonzalez an
14 e-mail notifying him demanding that he address inexplicable
15 failure to timely disclose a launch plan.

16 The whole thing about -- the whole theme of this case is
17 he was not kept in the loop. This was sprung. He didn't have
18 a chance to get out of harm's way. It was sprung and a nice
19 little surprise is, you know, he's on TV, I don't know how many
20 stations, with his office raided in connection with the Uber
21 stuff.

22 It's hard to imagine that, you know, the theory of the
23 case hasn't been formulated at that point, that you have enough
24 for a cognizable action.

25 **MR. AUGUST:** I think, Your Honor, it certainly begins

1 a certain sort of circumstances, but what is the compensation
2 that we would possibly be seeking if that's all that happened?
3 There would be no -- if that --

4 **THE COURT:** Emotional distress.

5 **MR. AUGUST:** I'm sorry?

6 **THE COURT:** Emotional distress.

7 **MR. AUGUST:** As the Court may be aware, we, unlike our
8 prior counsel, we concluded that this case was not worthy of an
9 emotional distress claim. Again, Mr. Rattagan wasn't in the
10 office.

11 And, by the way, the raid was not -- the raid -- and I
12 don't have this particular allegation in front of me. I just
13 know that it's covered somewhere between paragraphs 69 and 76.
14 But bear in mind, what they raided Rattagan's office for was
15 for the Uber records. They raided it for Uber's records, not
16 for his records, not for him. They didn't arrest anybody.

17 So, again, the question I think the Court needs to grapple
18 with is on a motion to dismiss where you have a -- the issue is
19 when did appreciable and compensable harm commence, you would
20 have to conclude as a matter of law it happened on the day of
21 the raid even though there's no allegation of any harm having
22 occurred on that date. We eliminated the emotional distress
23 claim because, frankly, it was not -- we did not believe it was
24 a viable claim.

25 **THE COURT:** All right. What's your response,

1 Mr. Davidson?

2 **MR. DAVIDSON:** That argument, Your Honor, is
3 completely inconsistent with what the complaint says, and we
4 can go paragraph by paragraph.

5 In paragraph 66, which is talking about the immediate
6 consequences of Uber's launch in Argentina, the complaint says
7 (reading):

8 "... taxi drivers surrounded the office building" --
9 referring to Rattagan's offices -- "and protestors blocked
10 its exits preventing employees and clients from entering
11 or exiting for hours. Additionally, local media outlets
12 were filled with angry interviews and negative coverage
13 concerning 'Uber' and all those associated with it,
14 including Rattagan and his firm."

15 That links up, I should say, Your Honor, to the actual
16 cause of action. If you look -- or, rather, at the very end of
17 the factual discussion --

18 **THE COURT:** Which paragraph are you looking at?

19 **MR. DAVIDSON:** Paragraph 81, Your Honor. Mr. Rattagan
20 pleads (reading):

21 "Taxi drivers, labor unions, and politicians had a
22 local public face to direct their ire and Rattagan was it.
23 He was smeared in the local media for his alleged role in
24 UTI's launch of Uber Ridesharing."

25 So it's directly linking the alleged reputational damage

1 with the media reports that are referenced in paragraph 66.

2 In paragraph 68, it's talking about Rattagan e-mailing one
3 of Uber's employees to ask to be replaced as the legal
4 representative. It's clear from the very fact that he is
5 asking to be removed from that position that he believes that
6 he had suffered injury as of that date, otherwise why is he
7 asking to be removed.

8 And then the very last sentence in paragraph 68 was "But
9 the damage was done." It's a direct assertion by Mr. Rattagan
10 that on April 15th the damage is done.

11 And then in paragraph 69, also referring to April 15th, it
12 says (reading):

13 "... the police raided Rattagan's offices... and
14 issued an order to shut down Uber... Television cameras
15 filmed the police raid. The prime-time news programs" --
16 plural, we do know that it's more than one program
17 contrary to what Mr. August just said -- "displayed the
18 Rattagan firm logo and reported that his offices were the
19 location of Uber's illegal activities..." including tax
20 evasion, which is what he later was charged with.

21 And I should say, Your Honor, that although there's been a
22 change in counsel, there has not been a change in client. In
23 the second amended complaint, Mr. Rattagan directly alleged
24 that he suffered trauma from the raid and alleged a cause of
25 action for intentional infliction of emotional distress based

1 on that raid.

2 And so it just could not be clearer that at least some
3 increment of injury had accrued as of April 2016, which is more
4 than a year, and then the lawsuit was not filed for more than a
5 year after the expiration of the statute of limitations in
6 April 2018.

7 And Mr. Rattagan is a U.S.-educated lawyer. There's
8 absolutely no unfairness in holding him to his allegations and
9 to require him to file a complaint in a timely basis.

10 **MR. AUGUST:** Your Honor, if I may.

11 **THE COURT:** Yeah. I'll give you one chance to reply.
12 I'd like to move on to the next issue. Go ahead.

13 **MR. AUGUST:** Thank you, Your Honor.

14 So Mr. Davidson just mentioned some increment of harm.
15 The question before the Court is whether or not it's
16 appreciable and compensable; and based upon the record before
17 the Court, the Court would have to rule as a matter of law, on
18 April 12th, he suffered appreciable and compensable harm.

19 **THE COURT:** What does "appreciable" mean?

20 **MR. AUGUST:** That's a good question. That is a
21 factual question.

22 **THE COURT:** Well, what's the legal definition?

23 **MR. AUGUST:** I honestly do not have an answer to that
24 question, but I would tell you this --

25 **THE COURT:** In many cases when somebody recovers

1 nominal damages, if they get stopped by the police, for
2 instance, but suffer no physical injury and their
3 constitutional rights are violated or their First Amendment
4 rights are violated, for instance, and no economic harm, we
5 still recognize nominal damage. A cause of action accrues even
6 if you get \$1, of course, that opens the door often to
7 attorneys' fees and other things, but it is a cognizable -- it
8 is a cognizable amount. So it's not the dollar amount. That
9 certainly can't be the test. It's --

10 **MR. AUGUST:** No, I would agree that it's not the
11 dollar amount.

12 **THE COURT:** It's compensable. The question for
13 statute of limitations is: Could you have brought a cause of
14 action? Did you have all the elements necessary to bring a
15 cause of action as of a particular date? And given the
16 allegations in the complaint -- these are not questions of
17 fact, these are allegations in the complaint I take as true --
18 it seems to me that if the damage was done and his harm to
19 reputation is obvious at that point, he's displayed in the
20 media as being a tax evader and aligned with the law-breaking
21 Uber and it was worthy enough, you know, to have television
22 cameras, it's hard to imagine that that's not going to result
23 in at least enough cognizable injury so as to give rise to a
24 cause of action.

25 That's the question. When does the cause of action arise?

1 **MR. AUGUST:** Well, I mean, I certainly understand the
2 Court's view of that, but it's not just appreciable. It's also
3 compensable. And the question becomes is whether or not
4 Mr. Rattagan would have been entitled to a dollar or a million
5 dollars or whatever as of April 12th.

6 But let me add one last point that we haven't addressed,
7 and that is, we have in the brief -- and I'll just refer the
8 Court to the brief, and I won't take long on this -- we have
9 alleged that Uber had a continuing duty and, in fact, it
10 adhered to that duty at least in part, it hasn't paid for
11 Mr. Rattagan's legal fees in full the way it's supposed to, but
12 it had a continuing duty to abdicate -- or, I'm sorry --
13 exculpate Mr. Rattagan's responsibility for what they did with
14 the authorities and they never did that ever.

15 So the relationship between Rattagan and Uber continued as
16 did their failure, their negligent failure, to say to the
17 authorities, "Hey, our lawyer here had nothing to do with this.
18 We did this on our own."

19 So I would ask that the Court just go back and reconsider
20 the continuing violation argument in our opposition brief if,
21 in fact, the Court is convinced, as it appears to be, that
22 compensable harm occurred the day of the raid.

23 **THE COURT:** All right. Let me ask. There's actually
24 two doctrines here I want to distinguish. One is the
25 continuing violation doctrine, which I don't think that applies

1 here. That's if you have a -- you have to aggregate a series
2 of wrongs just to even have a cause of action, such as a
3 hostile work environment situation where one little act alone
4 is not enough and when you begin to accrue them and aggregate
5 them, at some point you do.

6 But there is a doctrine, distinct doctrine, called
7 continuous accrual doctrine. I think that's what you're
8 referring to. So even if certain harms accrued, certain causes
9 accrued let's say by 2016 -- and the limitations period -- you
10 know, that's outside the limitations period -- to the extent
11 there are other wrongs within the limitations period, which
12 would be within two years of the filing, that you could sue at
13 least on those latter acts.

14 **MR. AUGUST:** That is correct, Your Honor.

15 **THE COURT:** So what's your response to that,
16 Mr. Davidson.

17 **MR. DAVIDSON:** So let me say two things. Let me first
18 just go back to, you know, Mr. August said that there's, you
19 know, no law about how much injury needs to accrue. That's
20 just not right, Your Honor.

21 In our reply brief we cite a case called *Crowley*, which is
22 206 Fed. Supp. 2d at 1038. It's a case out of the Central
23 District of California. And that's a case where there's a
24 plane crash and the passengers on the plane suffer emotional
25 damage, fear, you know, as of the date of the plane crash and

1 then physical injuries are observed later on. And there the
2 court holds that your injury accrues as of the date of the
3 plane crash and that starts the limitations clock.

4 Obviously there's nothing as severe here as a plane crash,
5 but it's the exact same situation where there's at least some
6 injury, enough to have him go to Uber to ask to be relieved as
7 legal representative as of the date of the raid; and then even
8 if there's injuries later, that doesn't extend the limitations
9 period.

10 **THE COURT:** All right. What about this other
11 doctrine, this continuous -- there's a continuing duty --
12 assume there's a continuing duty to extricate Mr. Rattagan from
13 this dilemma so even if the original act -- even if the
14 original accrual occurred before, there were other alleged
15 wrongs within the limitations period?

16 **MR. DAVIDSON:** Right. So two points on that,
17 Your Honor. I mean, first, the continuous accrual cases that
18 Mr. Rattagan cites in his brief are -- they relate to the
19 situation where there's a sequence of obligations. For
20 example, there's a serial collection of taxes once a quarter,
21 once a year; or there's a continuing obligation to make pension
22 payments, you know, once a month. And so -- and what those
23 cases hold is that, you know, if you fail to make the pension
24 payment in month one and limitations lapses, there can still be
25 a claim for the failure to make the pension payment in month

1 6 or 12 or 24.

2 That is not the situation here. I mean, here -- that's a
3 situation where there's a continuing obligation and a
4 continuing relationship. Here, as the complaint pleads, the
5 relationship between Uber and Mr. Rattagan was severed
6 completely as of June 2016 when he's relieved of being the
7 legal representative.

8 So as of June 2016, there's no obligation that could be
9 breached resulting in a continuing accrual kind of situation.
10 The only thing I can imagine that Mr. Rattagan might be
11 referring to is that there's a separate unpleaded indemnity
12 agreement, you know, whereby Uber paid Mr. Rattagan's legal
13 fees in defending against the claims of the Argentine
14 authorities. Uber has abided by that agreement and has paid
15 the legal fees in successfully defending against those claims.
16 There's certainly no allegation of a breach of that or any
17 other duty after June 2016.

18 **THE COURT:** I'll give you just a brief chance to
19 respond to that point, that with the termination of the
20 relationship, absent some other -- what's the source of any
21 continuing duty after that?

22 **MR. AUGUST:** Well, I think that the fact that the
23 relationship -- there were two relationships here. Okay. One
24 is the legal representative and the other one is the lawyer.
25 And regardless -- so that's important and that may be important

1 depending upon the Court's other zoom items that we want to
2 discuss today.

3 But, regardless, Uber had the opportunity to reach out to
4 the Argentine authorities for its -- let's say its former
5 lawyer, let's say its former legal representative. And before
6 the criminal aggravated tax evasion charges were filed, before
7 that happened, they had the opportunity to come in for two
8 years, or at least a year and a half, and say "Mr. Rattagan had
9 nothing to do with that."

10 Does the termination of the legal relationship change
11 their -- that obligation? I don't think it does, and that's
12 the whole idea.

13 Now, I will -- one other last point. The idea of
14 analogizing this to the *Crowley* case where you have a passenger
15 on an airplane that goes down, they suffer minutes of fear of
16 death compared to Michael Rattagan who was on his way to the
17 airport, not in the office, unaware of anything, again, this
18 goes to this question of what is compensable harm.

19 So I don't want to take us back to that point, but --

20 **THE COURT:** I want to focus on this last one. What is
21 the -- I've heard enough about the compensable harm thing. I'm
22 more interested in this continuing obligation.

23 What is the source of the obligation? You say basically
24 they had a legal obligation, which they breached, to try to
25 intervene with the Argentine authorities. Is that a

1 contractual obligation? Or where did that obligation come
2 from?

3 **MR. AUGUST:** Okay. So that obligation arises out
4 of -- there is no contract here, as Mr. Davidson has eloquently
5 pointed out. This is not a contract case. This is a tort
6 case. I think that was the basis for the motion to dismiss the
7 implied covenant claim.

8 There is -- this is not a contract issue. This is a -- it
9 is a negligence issue and the question becomes whether or not,
10 as a result of the preceding relationship and Uber had all of
11 the time it wanted to, it would continue to work with
12 Mr. Rattagan defending him, or at least paying his lawyers, and
13 communicating with him. All they needed to do was say, "Look,
14 Argentine authorities, he had nothing to do with this. Please
15 let him out of this."

16 **THE COURT:** Right. So what's the source of that duty?
17 You're saying there's a tort duty. What is the source of that
18 duty if it's not based on --

19 **MR. AUGUST:** Okay. So that segues into the
20 relationship, the *de facto* attorney-client relationship,
21 between Uber and Rattagan that was established in February of
22 2015, and much the way it was a *de facto* relationship that was
23 established in 2015. What was terminated in 2016 was his legal
24 representation relationship.

25 But the idea -- I'm having a hard time comprehending the

1 idea that simply because you terminate a lawyer and you are in
2 a position to have protected your lawyer against this, that the
3 statute of limitations begins to run when you terminate the
4 lawyer.

5 **THE COURT:** I'm still trying to figure out what is
6 the -- are you saying there was still a legal relationship?
7 You call it -- whatever you -- I'm not sure what's the
8 distinction between a legal representation and a lawyer.

9 **MR. AUGUST:** Okay. So let me explain that. May I?

10 **THE COURT:** Briefly.

11 **MR. AUGUST:** Okay.

12 **THE COURT:** As of 2017, what's the legal source of the
13 duty?

14 **MR. AUGUST:** I think it is a continuing duty by a
15 former client to protect its existing -- its former attorney.

16 **THE COURT:** Is there a case law that says a former
17 client has a duty to protect its former attorney?

18 **MR. AUGUST:** Where it is in the -- maybe it's a last
19 best -- what is the tort theory? -- a last best chance
20 doctrine, there could be. I, frankly, did not focus on that.

21 **MR. DAVIDSON:** May I respond, Your Honor?

22 **THE COURT:** Okay. Very briefly, and then I've got to
23 move on.

24 **MR. DAVIDSON:** Well, I think the first point is there
25 is absolutely nothing in the complaint alleging any breach of

1 the continuing duty that existed in 2017. That's just being
2 made up on the fly. It's not in the complaint anywhere.

3 The second point is Mr. August just said this is not a
4 contract case, there was no contract, and I'm confused by that
5 because I am looking at paragraph 94 of the complaint that says
6 that UTI and Rattagan were in express and/or implied
7 contractual relationships arising from UTI and Rattagan's
8 direct attorney-client relationship starting in 2015.

9 So I think the complaint very clearly identifies the
10 source of the alleged duty, and that's a duty that expired when
11 there was no longer an attorney-client relationship, even
12 allegedly, as of June 2016.

13 **THE COURT:** All right. Let me go on because I've got
14 to move on -- thank you, this is helpful -- to the economic
15 loss doctrine.

16 And maybe, Mr. Davidson, you can just step back for a
17 moment and tell me how the economic loss doctrine applies to
18 Counts 1, 2, and 4 here, aiding and abetting, fraudulent
19 concealment, negligence and fraudulent concealment.

20 **MR. DAVIDSON:** Sure.

21 So the economic loss rule exists I think, as everyone
22 knows, to protect the law of contract by foreclosing tort
23 claims that overlap with alleged contractual obligations. And
24 it's not just an abstraction. It assures the existence of
25 breach of contract doctrine because otherwise every contract

1 claim could just be pled as a tort claim.

2 And there's a powerful idea behind it, which is that when
3 the parties have ordered their affairs by a contract, they have
4 decided what the duties are that they are going to owe to each
5 other. And here, at least according to the complaint, the
6 parties decided to order their affairs by reference to an
7 attorney-client contractual relationship.

8 And as I just read in paragraph 94, it could not be
9 clearer that the complaint alleges a contractual relationship.
10 It uses those exact words, "express and/or implied contractual
11 relationship."

12 And, further, Count 3 is a breach of contract claim. It's
13 a claim for the breach of the implied covenant and fair dealing
14 that is implied in law into every contract. It's a breach of
15 contract claim.

16 As a result of that, tort claims related to -- related to
17 the contract are foreclosed by the economic loss rule. And the
18 economic loss rule has, you know, a special degree of bite
19 where, as here, the tort claims are based on only a failure to
20 perform the alleged contractual duties. So here Mr. Rattagan
21 says that pursuant to the alleged contract, there was a duty
22 for Uber to tell him certain information about its plans in
23 Argentina, and that's referenced in paragraph 83 of the
24 complaint.

25 And so here what is the alleged tort that's being

1 committed? It's the exact same thing, the failure to tell him
2 the same information which Uber allegedly had an obligation to
3 tell him pursuant to the contract.

4 So this is just the classic case where the tort claims
5 merely replicate the alleged contract; and if those type of
6 claims were permitted, it would cause a lot of contracts to
7 disappear.

8 And let me refer the Court to one case that I thought was
9 particularly helpful here. It's the *JMP Securities* case from
10 Judge Conti, and that's at 880 Fed. Supp. 2d, and page 1043 is
11 where it refers most directly to the economic loss doctrine.
12 And in it it explains --

13 **THE COURT:** Right. And so there are -- the issue here
14 is whether there's an exception to the economic loss doctrine
15 that allows extra-contractual kind of remedies when the right
16 is not rooted in contract but in something else. And one of
17 those examples is if there is fraud in the inducement; right?
18 That's one of the recognized exceptions.

19 **MR. DAVIDSON:** Sure.

20 **THE COURT:** And I think it also requires, from my
21 reading, an affirmative misrepresentation.

22 **MR. DAVIDSON:** Yes.

23 **THE COURT:** And so I've searched here, and I don't see
24 a fraud in the inducement claim here. The fraud seems to have
25 arisen post-contract. I mean, the fraud is when -- the

1 nondisclosure is when they launched -- when Uber launched its
2 Argentina campaign and didn't forewarn Mr. Rattagan and left
3 him hanging, so to speak.

4 **MR. DAVIDSON:** That's why, Your Honor --

5 **THE COURT:** So that gets us to my question to
6 Mr. August. I recognize there are exceptions to the economic
7 loss doctrine. One of them, and I think the primary one, being
8 fraud in the inducement; but the fraudulent concealment here,
9 it seems to me it's fraud in the performance of the contract.
10 They had a duty because of the obligation to let him know, give
11 him a fair heads-up to what was going on and not subject him to
12 police raids and arrests and everything else, and they didn't
13 do that. But I don't see where that's fraud in the inducement.
14 That's my problem.

15 **MR. AUGUST:** Okay. So here -- let's go back because
16 Uber has filed a claim -- I'm just reading from their brief
17 here -- a third amended complaint. This simply does not
18 identify the benefit, whether express or implied, that Rattagan
19 supposedly failed to receive and so his implied covenant claim
20 fails.

21 A different way of saying that is that they are moving to
22 dismiss the implied covenant claim on the basis that you need a
23 contract, and there is none. So if the Court -- I will
24 indulge --

25 **THE COURT:** Well, wait a minute. But you're the one

1 asserting that there's a contract claim. I mean, that's
2 disputed saying, "No, there wasn't a contract claim to cover
3 it," and you're saying, "Yes, there was." So I've got to look
4 at your complaint. You are alleging there is a contract, but
5 on top of that you want to allege tort claims.

6 **MR. AUGUST:** So if the Court were to accept
7 Mr. Davidson's approach and dismiss the third cause of action,
8 there would be no contract claim, and that is the essence of
9 this case.

10 So let me -- let me step back. And I do want to
11 address -- before I step back --

12 **THE COURT:** You think this is like a plea in the
13 alternative; that is --

14 **MR. AUGUST:** That's it exactly.

15 **THE COURT:** -- if that claim is out, then you should
16 be able to recover a tort claim, but the problem is that tort
17 claim is still rooted in the contract. I mean --

18 **MR. AUGUST:** It is not, and that's --

19 **THE COURT:** How is it not?

20 **MR. AUGUST:** I'll tell you how it's not. We have a
21 special relationship. This is called a special relationship
22 exception. And let me cite -- the cases are cited in I think
23 both parties' briefs -- *UMG Recording, Inc. vs. Global Eagle*
24 *Entertainment, Inc.*, 117 F.Supp. 3d 1092. And what that case
25 says, and there are other cases that I will cite you if you'd

1 like, there are other cases that say if a special relationship
2 existed between the parties, a party can still recover from
3 California's economic loss rule or otherwise apply to bar tort
4 recovery.

5 My point is this: There's two ways to look at this --
6 oops.

7 (Pause in proceedings.)

8 **MR. DAVIDSON:** Did the Zoom freeze?

9 **MR. AUGUST:** So I'm having -- I'm back. I'm back. I
10 lost the Zoom feed, but I am back.

11 **THE COURT:** Okay.

12 **MR. AUGUST:** Okay. So there's two ways to look at
13 this. If you -- and we are -- we will voluntarily dismiss or
14 you could grant the motion to dismiss the implied covenant
15 because there is no contract upon which the terms that
16 Mr. Rattagan is basing his tort claim on, there's no terms that
17 say "You need to tell me this. You need to tell me this. You
18 need to cooperate here. You need to cooperate there." It's
19 based upon a common law duty that -- and this gets into the
20 whole issue of the duty of whether or not a client owes a
21 duty -- some duty to a lawyer, and I want to address that
22 separately because that is the quintessential question in this
23 case.

24 Uber has taken the position that other than paying a
25 client's -- a lawyer's bills, a client has no duty. And I'm

1 going to come to that in a minute.

2 But under the *UMG Recordings* case, there's -- let me give
3 you two other cases, *Takano vs. Procter & Gamble*, 2018
4 WL5374817, Eastern District of California case; and, last,
5 *Avago -- A-V-A-G-O -- Technologies U.S., Inc. vs. Venture*
6 *Capital Limited*.

7 **THE COURT:** Are these cited in your brief? I'm
8 looking.

9 **MR. AUGUST:** They are not. This is what -- so what we
10 did was we went back and looked at this economic loss rule, and
11 we dove deeper into their reply brief. And what Uber has
12 not -- what Uber has not told it -- has not addressed with the
13 Court -- and, frankly, maybe it was our oversight as well --
14 that there is another exception; but before you get to
15 exception -- to an exception, you have to apply the rule.

16 And our first point is this case derives from a duty that
17 is based upon a lawyer-client relationship. Now, if we go back
18 to the Rule 11 motion, Uber argued it had no such relationship.
19 As the Court is well aware, we did a very deep dive into the
20 documents. We now know that that is false, that there was an
21 attorney-client relationship.

22 Now, of course we're not saying and we do not allege that
23 the obligations are mutual; but the idea that a client can do
24 what Uber did, fail to disclose all of what we allege it
25 disclosed and leave the client there to -- hanging out there,

1 that is a tort in and of itself. So --

2 **THE COURT:** What case establishes a client duty to a
3 lawyer that is breached by some nondisclosure? What's the
4 strongest case you have on that point?

5 **MR. AUGUST:** All right. So the only case that we
6 could find that addressed this very unique situation --
7 because, let's face it, clients aren't usually in the business
8 of leaving their lawyers hanging out to dry other than for
9 perhaps payment -- the only case we have is the Eighth Circuit
10 case, and I don't have it -- I believe it's cited in our
11 opposition brief. There's an Eighth Circuit case and I just
12 don't have it at the ready. However, the concept -- and let
13 me -- let me just look at my notes here for a second.

14 Every case -- and maybe this is a different way to look at
15 it -- every single case cited by Uber in both its briefs, there
16 was an express contract, whether it be oral or written, between
17 a commercial counterparties -- or between commercial counties
18 where the purchaser or the seller of the goods or services had
19 an expectation of receiving a specific benefit of the specified
20 contractual bargain and was disappointed.

21 In other words, the economic loss rule applies where the
22 tort claims are nothing more than alleged failure to make good
23 on the contractual promises.

24 I would say there were no contractual promises here other
25 than for Mr. Rattagan to perform legal services and for Uber to

1 pay him. So, therefore, the duty arises -- and let me address
2 the duty issue here, if I may. Hold on one second.

3 **THE COURT:** You know, as I'm listening to you, I'm
4 trying to figure out -- are you saying, for instance, if a
5 client doesn't disclose all facts to his or her lawyer that's
6 representing them and then the lawyer loses the case and looks
7 bad, "You know, you didn't tell me about this other document
8 that was sitting out there. You didn't tell me about witness
9 X" -- and I'm sure this happens, maybe it's happened to you; it
10 happened to me -- are you saying that the lawyer can turn
11 around and say, "Well, now that my reputation has been
12 besmirched, my reputation with the court is now sullied, you,
13 client, breached a duty that's not contracted, not an implied
14 promise that you're going to give me, you know, cooperate and
15 be truthful, but some other tort duty," you can turn around and
16 sue that client?

17 **MR. AUGUST:** That is not this case, Your Honor, and of
18 course --

19 **THE COURT:** Isn't that --

20 **MR. AUGUST:** Look at -- I would defer the Court -- I
21 would refer the Court to Footnote 10 of our opposition brief.

22 **THE COURT:** What page is that on? Let's see --

23 **MR. STEYER:** Page 11, Your Honor.

24 **THE COURT:** Okay. Footnote 10, the hypothetical.

25 **MR. AUGUST:** Right.

1 **THE COURT:** So you plant something on -- you plant
2 something on the lawyer?

3 **MR. AUGUST:** Well, you don't plant it on the lawyer.
4 What you do is you are working with your lawyer. Your
5 lawyer -- you give the -- the client gives the lawyer something
6 to deliver to his business partner. You don't plant it. Okay?
7 You just conceal from the lawyer what you're doing and the
8 lawyer gets arrested. Okay. It is beyond justice, it's beyond
9 policy, it's beyond common sense to say that the lawyer has
10 zero responsibility -- has zero recourse against the client.

11 And what we're saying here is -- you know, Mr. Davidson
12 did a very clever thing. In his brief, particularly in a reply
13 brief, they make the extreme argument that we are asking for --
14 because -- no, what they say, and I'm quoting (reading):

15 "Because the alleged attorney-client relationship
16 does not encompass broad duties of disclosure, UTI did not
17 have an obligation to tell Rattagan anything."

18 Okay. We're not saying that UTI had a broad duty of
19 disclosure. What UTI had, as a result of the attorney-client
20 relationship and the fact that it was forewarned, and this is
21 critical, I think it's paragraph 41, if you juxtapose paragraph
22 41 with paragraphs 25, 31, and 59 and 60, Uber knew that if it
23 did something unlawful or that was deemed unlawful or perceived
24 unlawful, Rattagan would take the fall.

25 They never disclosed to Rattagan that what they were going

1 to do -- and all they had to disclose -- we're not talking
2 about setting some broad precedent here of what a client must
3 tell a lawyer in every instance. So your hypothetical,
4 Your Honor, I would agree with you, a lawyer has no claim.

5 What we're saying here is there was a duty to tell him
6 that they were going to launch, tell him -- and maybe this is
7 the most important fact -- tell him that they met with the
8 government officials without him, the government officials
9 rejected their approach, told them that they believed that Uber
10 was acting unlawfully, tell him that they had a war plan to
11 deal with the government officials, and they hired another
12 government affairs lawyer to do that.

13 And what they could have said and what they should have
14 said had they disclosed that is "Do you still want to remain as
15 our legal representative when we launch what we have been told
16 is illegal?"

17 So that is a tort responsibility -- or a tort --

18 **THE COURT:** Let me ask Mr. Davidson to respond to
19 famous Footnote 10. What's your response to Footnote 10?

20 **MR. DAVIDSON:** Well, let me answer it directly and
21 then I think it's a nice segue to a few points about the
22 attorney-client relationship that I think are important.

23 So to answer the hypothetical, I think the lawyers
24 certainly can and should, as a matter of good practice, ask
25 what is in the box and should inquire about that, and the

1 lawyer has the ability to accept or decline the representation.

2 **THE COURT:** And what if the client says, "Oh, it's
3 just a bunch of papers. These are legal papers. Don't worry
4 about the gun"? Or, "No, I'm not going to tell you about the
5 gun that's in the box with the fingerprints and the ballistics
6 and everything else."

7 **MR. DAVIDSON:** So, look, I mean, you know, if there's,
8 like, an actual crime, like, of violence or something or using
9 the lawyer as a drug courier, I guess I'm not going to stake
10 that firm of a ground. Although I would say, look, the
11 lawyer-client relationship is a fiduciary relationship. The
12 lawyer owes the client fiduciary responsibilities.

13 And what that means is that you suffer the slings and
14 arrows that come with being the lawyer for the particular
15 client. It's the duty of utmost good faith and loyalty and
16 it's not owed by the client to the lawyer. It's owed by the
17 lawyer to the client.

18 And I think that's a good segue to respond to some of the
19 things that Mr. August said. And the first thing he said is
20 that the attorney-client relationship is not a contractual
21 relationship, and that's just not right. It is a contractual
22 relationship.

23 **THE COURT:** Well, I think the argument here is not
24 that it's not a contractual relationship, but the duty that he
25 is asserting here is not rooted in contract. It is a common

1 law duty. It arises out of the relationship but it doesn't
2 arise out of the contract.

3 **MR. DAVIDSON:** Yeah. And so that's just made up,
4 Your Honor. I mean, the contract is the relationship. It's
5 what forms the predicate for the relationship. If you take
6 away the contract to be the lawyer for the client, then at that
7 point Rattagan is just -- he's just a person in Argentina.
8 There's no special duty that would be owed, you know, but for
9 the existence of the contract.

10 And I think the way that the complaint has the duties
11 between lawyer and client upside down, it's just a really
12 important aspect of this case and it's the reason this case is
13 so offensive.

14 As you just heard, Mr. Rattagan has no authority, no case
15 ever holding that a client has the types of duties that are
16 alleged in this case. They just have not cited one.

17 On the other hand, the obligations that lawyers owe to
18 their clients are very well established, and I would refer the
19 Court to the *Oasis Western Realty* case, which is cited in our
20 papers, which is 51 Cal.App.4th 811. And what it says at
21 page 821 is that a lawyer is a, quote, "... 'fiduciary... of
22 the very highest character' and bound to 'most conscientious
23 fidelity -- *uberrima fides*.'" Among those fiduciary obligations
24 were the duties of loyalty and confidentiality, which continue
25 in force even after the representation has ended."

1 And part of those duties of loyalty that persist to the
2 client even after the end of the representation is that, quote
3 (reading):

4 "The attorney may not do anything which will
5 injuriously affect the former client in any matter in
6 which the attorney formerly represented the client, nor
7 may the attorney at any time use against the former client
8 knowledge or information acquired by virtue of the
9 previous relationship."

10 There's no such obligation on the part of the client --
11 the client can sue the lawyer for malpractice, for example --
12 but there is such a continuing duty on the part of the lawyer.

13 **THE COURT:** Well, there's no doubt about that. The
14 question is: Is there some reciprocal or some inverse duty
15 going the other way? And that's where the case law is pretty
16 sparse.

17 One of your arguments might be, to the extent there is any
18 duty, it is rooted in the contract that may be an implied term
19 in good faith, so maybe that's what's wrong with Footnote 10.
20 It violates the duty of honesty perhaps impliedly owed under
21 the contract by the client to the attorney so that the attorney
22 doesn't get in hot water. I don't know. But your argument is
23 it's not a tort-based duty. It is a contract-based duty.

24 **MR. DAVIDSON:** It can't be a tort duty, Your Honor,
25 because it would destroy the attorney-client relationship if at

1 the end of the representation the client, you know -- the
2 lawyer dissatisfied with how the representation went or, you
3 know, they lose a tobacco case and their friends stop talking
4 to them because they're the tobacco company's lawyer can sue
5 the tobacco company. I mean, that would destroy the
6 attorney-client relationship.

7 And that is what has happened here. I mean, Rattagan was
8 hired to facilitate Uber's launch in Argentina, and he is now
9 opposing Uber with respect to that very activity, even calling
10 his former client's activities illegal.

11 He was hired as a corporate lawyer to create enforceable
12 corporate structures, and he's now trying to undermine them and
13 pierce the corporate veil. And he has said in his complaint a
14 series of things that no lawyer should ever say about his
15 client. So at paragraph 62 he says (reading):

16 "Despite being acutely aware of the fallout that
17 arises from flouting local laws upon entry into a new
18 market and all the while concealing its launch plans from
19 Rattagan, UTI employed it's 'better to ask for forgiveness
20 than permission' strategy in Buenos Aires."

21 In paragraph 63 he refers to a damn the torpedoes to tough
22 regulatory environments.

23 In paragraph 71 he refers to Uber's supposed war-like
24 approach to dealing with the City of Buenos Aires.

25 In paragraph 73 --

1 **THE COURT:** I'm familiar with that and I understand
2 the irony of that, that he took on a job knowing who he was
3 working for and then now blaming his client for doing what one
4 would have -- not shocking, you know, the tactic that was
5 taken; but, in any event, that's not the issue.

6 I'm going to give you one minute, Mr. August, just to
7 respond. I've got to move on to the next case.

8 **MR. AUGUST:** There's a lot to respond to, but --

9 **THE COURT:** You have one minute.

10 **MR. AUGUST:** -- I will squeeze it in.

11 Your Honor, he did not know the client he was taking on.
12 Bear in mind, you of all judges I think maybe in America know
13 Uber better than anybody. This was 2013. Look back at the
14 history of Uber in 2013. This was not what we know about Uber
15 today. That's number one.

16 Number two, there is no case, absolutely no case that says
17 a lawyer -- I'm sorry -- a client has zero duty to a
18 client [sic] other than to pay his bill.

19 So as you point out, the case law is sparse. That's why
20 we look to secondary materials. We look to common sense. We
21 look to the specifics of this case, the circumstances of this
22 case. That's what we need to do.

23 The *Oasis* case, we deal with it in our reply brief. The
24 *Oasis* case has nothing to do with what we're talking about
25 here. The *Oasis* case was a situation where a lawyer took on a

1 representation directly adverse. That is not the case. We're
2 not -- Mr. Rattagan is suing because of what he was not told,
3 not because of what he was told.

4 So I think my minute is up.

5 **THE COURT:** All right. Well, thank you.

6 **MR. DAVIDSON:** Can I have 30 seconds, Your Honor, just
7 to address --

8 **THE COURT:** Then I have to give Mr. August another 15
9 seconds.

10 **MR. DAVIDSON:** Well, what I wanted to say was that the
11 statute of limitations issue can't be cured by amendment.
12 That's point one.

13 And point two is the economic loss problem can't be cured
14 by amendment either because even if they sort of sucked the
15 contract allegations out of the complaint, the relationship is
16 still founded on a contract and that implicates the economic
17 loss doctrine whether an express contract claim is pleaded or
18 not.

19 So these are issues that cannot be solved by amendment.
20 This is already the fourth complaint and the dismissal should
21 be with prejudice.

22 **THE COURT:** All right. Last chance to convince me,
23 Mr. August, that even though there was a contractual
24 relationship, a legal relationship, between the parties the
25 duty that was breached here is independent of any contractual

1 obligation.

2 **MR. AUGUST:** So, again, Your Honor, the whole concept
3 of the duty arises from the attorney-client relationship.
4 There is no contract. You will look high and low throughout
5 this entire record. There's no written contract. There's
6 none -- none of the terms that Mr. Davidson has to rely upon to
7 assert the economic loss rule, they're not there because they
8 were never there. And the special relationship exception that
9 I quoted those three cases, clearly an attorney and a client is
10 a special relationship.

11 **THE COURT:** All right. Thank you, Counsel. I
12 appreciate it. I'll take it under submission.

13 **MR. STEYER:** Thank you for your time, Your Honor.
14 Stay safe.

15 **THE COURT:** Thank you.

16 **MR. AUGUST:** Bye. Have a good day, Your Honor.

17 **THE COURT:** Thank you. You too.

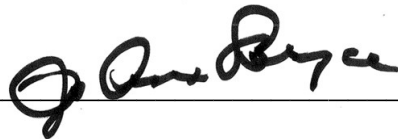
18 (Proceedings adjourned at 2:30 p.m.)

19 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Sunday, August 23, 2020

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", is written over a horizontal line.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19 MICHAEL R. RATTAGAN,

20 Plaintiff,

21 v.

22 UBER TECHNOLOGIES, INC.

23 Defendant.

Civil Case No.: 3:19-CV-01988-EMC

**DEFENDANT'S REPLY IN SUPPORT OF
MOTION TO DISMISS THIRD AMENDED
COMPLAINT**

Date: August 13, 2020
Time: 1:30 PM
Location: Courtroom 5 - 17th Floor
Judge: Hon. Edward M. Chen

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INTRODUCTION

Rattagan asserts that Uber Technologies, Inc. is liable in tort to him—a professional services provider—due to the allegedly negative and unfounded reactions of Argentinian governmental authorities, labor unions, and journalists to Uber’s lawful operations in Argentina. This theory is untenable as a matter of law, but his case also suffers from two threshold deficiencies that require dismissal. First, Rattagan alleges that he had a contractual relationship with three Uber entities, and that his claims arise out of those contracts. In those circumstances, the economic loss rule channels litigation to contract law and precludes Rattagan’s claims in tort. Second, the only contract claim he does assert is time-barred on its face. Rattagan has no sufficient answer for these fundamental failings, or for any of the other deficiencies in his Third Amended Complaint (“TAC”). Because this is Rattagan’s fourth complaint, because he has previously misled the Court, and because he does not identify any amendments that could cure the TAC’s failings, the Court should dismiss the case with prejudice.

ARGUMENT

I. Rattagan’s Negligence And Implied Covenant Claims Are Time-Barred.

Rattagan asserts that fact disputes preclude application of the statute of limitations to his negligence and implied covenant claims. Opp’n to Mot. Dismiss (“Opp’n”) 13, Dkt. 70. To the contrary, it is evident from the face of the TAC that Rattagan’s claims are time-barred. Rattagan alleges that Uber’s purported misconduct first caused him injury on April 15, 2016, the day that Argentine authorities allegedly raided his offices and local news media televised that raid, purportedly causing him reputational harm. TAC, Dkt. 64 ¶¶ 66, 68-69, 81. Rattagan waited three years to file this lawsuit in April 2019—a full year after the two-year limitations period for these claims expired.

Rattagan first asserts that he did not suffer appreciable harm until November 2017, when he was allegedly charged with aggravated tax evasion. Opp’n 14-15. But he focuses on the November date only because it is within the limitations period; otherwise, it is entirely arbitrary. He gives no reason why the publicized raid on his office on April 15, 2016 is not sufficient to start the limitations period, even though it has featured prominently in his claims of reputational harm.

Rattagan’s own cases establish that the limitations period begins to run as soon as a plaintiff suffers “actual and appreciable” or “actionable” harm, and neither uncertainty as to the amount of

damages nor difficulty in proving damages is grounds for tolling. *See, e.g., Davies v. Krasna*, 535 P.2d 1161, 1169 (Cal. 1975). Indeed, *Davies, Crowley v. Peterson*, 206 F. Supp. 2d 1038 (C.D. Cal. 2002), and *Miller v. Lakeside Village Condominium Ass'n*, 1 Cal. App. 4th 1611 (1991), address situations analogous to the one here, where a plaintiff suffers an initial harm and then a later, potentially more significant harm. In each case, the court rejected the argument that the limitations period only began to run on the occurrence of the later, greater harm. For example, in *Crowley*, the court held that the limitations period began to run on the day the plaintiffs were involved in a plane crash and suffered several minutes of extreme fear, not later, when delayed injuries were discovered. 206 F. Supp. 2d at 1047. It reasoned, “The fact that these damages might have been small is irrelevant because *any* compensable harm is sufficient to trigger the running of the statute. Likewise, the fact that more substantial injuries emerged later is irrelevant because a single tort can give rise to only one action for damages.” *Id.*; *see also Davies*, 535 P.2d at 1169 (limitations period began to run when defendant first publicly disclosed confidential work, not when defendant later began to profit from the disclosure); *Miller*, 1 Cal. App. 4th at 1624-25 (plaintiff suffered actual and appreciable harm when she first had allergies and asthma attributable to mold, even though a more severe injury came later).

Rattagan’s complaint alleges, clearly, that his injuries began in 2016. Specifically, Rattagan alleges that shortly after the launch on April 12, 2016, his office was surrounded by protesters. He also alleges that “local media outlets were filled with angry interviews and negative coverage concerning ‘Uber’ and all those associated with it, including Rattagan and his firm.” TAC ¶ 66. Rattagan alleges that on April 15, 2016, his office was raided and that the raid was broadcast, *id.* ¶ 69, and that he suffered reputational harm based on these press reports, *id.* ¶ 81. He even alleges that as of that time, “the damage was done.” *Id.* ¶ 68; *see also id.* ¶ 73 (alleging that, when Rattagan interacted with Uber Technologies General Counsel Salle Yoo on May 26, 2016, Yoo “did not dispute that UTI was responsible *for the harm caused by the unlawful launch*” (emphasis added)). Indeed, in previous versions of the complaint, Rattagan repeatedly referred to the “trauma” that he suffered from the raid and asked for emotional distress damages based on that “trauma.” *See* Second Am. Compl., Dkt. 38 ¶¶ 45, 47, 49, 100-05. It is plain that at least some of Rattagan’s alleged injury had accrued as of April 15, 2016, and that the limitations period ran long before he filed his complaint.

1 Rattagan's "continuous accrual" theory, Opp'n 16-17, does not save his claims, for the
 2 straightforward reason that no violation of a "continuing or recurring obligation" is alleged. *Aryeh v.*
 3 *Canon Bus. Sols., Inc.*, 292 P.3d 871, 880 (Cal. 2013). Rattagan argues that Uber breached duties it
 4 owed to Rattagan "well into the statute of limitations period," Opp'n 17, but he does not plead what
 5 those duties supposedly were or what actions Uber Technologies took after April 12, 2017 that could
 6 have breached them. *See In re Syntex Corp. Sec. Litig.*, 95 F.3d 922, 926 (9th Cir. 1996) ("conclusory
 7 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss").

8 The TAC alleges only the following alleged misconduct on the part of Uber: failing to notify
 9 Rattagan of the impending launch, to remove him as legal representative after the launch, and,
 10 remarkably, to cease operations while Rattagan was still legal representative. TAC ¶¶ 89-90, 94-95.
 11 Rattagan's allegations in the TAC make clear that all of Uber's purportedly wrongful conduct had
 12 ceased by June 2016, when Rattagan was replaced as the legal representative. *See* TAC ¶ 75. In his
 13 Opposition, Rattagan points to allegations that make this timeline clear: (1) in May 2016, Uber sent a
 14 letter to a Buenos Aires official mentioning Rattagan; (2) Rattagan contacted Uber executive Salle Yoo
 15 on May 26, 2016, to seek help ending his engagement, and she "responded that same day" to assist
 16 Rattagan; and (3) Uber's operations continued during the two months between the launch and Rattagan's
 17 replacement as legal representative in June 2016. *See* TAC ¶¶ 71, 73, 75; Opp'n 15-16. Nowhere is any
 18 allegation of tortious conduct after the April 2017 limitations cutoff. Indeed, as of June 2016, no Uber
 19 entity had any relationship with Rattagan. *See* TAC ¶¶ 3 (alleging Uber Technologies sought legal
 20 advice from Rattagan through May 2016); 75 (alleging that Uber operated for two months after the
 21 launch while Rattagan was still legal representative).

22 The "continuous accrual" cases cited by Rattagan, Opp'n 16-17, are wildly inapposite. In
 23 *Dryden v. Board of Pension Commissioners*, a widow who belatedly sued for a pension after the initial
 24 six-month limitations period had expired was not precluded from seeking "*present and future*" pension
 25 payments because her "right to pension payments *is a continuing right*." 59 P.2d 104, 107 (Cal. 1936)
 26 (emphases in original). In *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, plaintiffs who belatedly
 27 challenged the validity of a municipal tax were not precluded from bringing claims based on the
 28 government's continuing monthly collection of the tax. 23 P.3d 601, 606-09 (Cal. 2001). Both cases

involved repeated and ongoing instances of the allegedly wrongful acts—the failure to make ongoing pension payments and improper ongoing monthly collection of taxes—that occurred within the limitations period.¹

The “continuing violation” employment discrimination cases cited by Rattagan, Opp’n 15—where the plaintiffs alleged a course of discriminatory conduct that included discriminatory acts within the limitations period—are equally inapposite. *See O’Loghlin v. County of Orange*, 229 F.3d 871, 875 (9th Cir. 2000) (“if a discriminatory act takes place within the limitations period and that act is ‘related and similar to’ acts that took place outside the limitations period, all the related acts—including the earlier acts—are actionable as part of a continuing violation”); *DeGrassi v. City of Glendora*, 207 F.3d 636, 645 (9th Cir. 2000) (same); *Richards v. CH2M Hill, Inc.*, 29 P.3d 175, 182-91 (Cal. 2001) (same).

Unlike in those cases, the TAC does not allege continuing wrongful conduct by Uber within the limitations period. It alleges only continuing *injuries* from pre-limitations conduct. *See* Opp’n 16 (referencing later “tax evasion” charge based on Rattagan’s April to June 2016 role as the Uber International Entities’ legal representative). Such continuing injuries are irrelevant for limitations purposes. *See Vaca v. Wachovia Mortg. Corp.*, 198 Cal. App. 4th 737, 745 (2011) (“[I]f continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injuries persisted. This is not the law.”).

The continuous accrual and continuing violation doctrines are “a response to the inequities that would arise if the expiration of the limitations period following a first breach of duty or instance of misconduct were treated as sufficient to bar suit for any subsequent breach or misconduct; parties engaged in long-standing misfeasance would thereby obtain immunity in perpetuity from suit even for recent and ongoing misfeasance.” *Aryeh*, 292 P.3d at 880. That concern does not apply here, where any tortious conduct indisputably ceased in June 2016. There is no inequity in requiring Rattagan—a lawyer—to have asserted his claims within the two-year limitation period.

¹ Rattagan also cites *Jones v. Tracy School District*, 611 P.2d 441 (Cal. 1980). Opp’n 16. *Jones* does not discuss that doctrine of continuous accrual at all. Rather, the court determined the limitations period based on its interpretation of the California Labor Code. 611 P.2d at 443. *Jones* also discussed the equitable tolling doctrine, *id.* at 444-46, which is not alleged here.

II. Rattagan's Fraudulent Concealment, Negligence, And Aiding And Abetting Claims Are Barred By The Economic Loss Rule.

The economic loss rule preserves the distinction between tort law and contract law by barring tort claims when a contract governs the parties' relationship. Rattagan now openly presses a contract claim (Count Three) arising out of the same alleged duties, conduct, harm, and damages as his tort claims, and so the tort claims must be dismissed. In his Opposition, Rattagan almost entirely ignores that he alleges contracts between himself and Uber Technologies and the Uber International Entities, TAC ¶ 94, and that he now brings a contract claim. Rattagan seems to assert in a footnote that an implied covenant contract claim somehow does not trigger the economic loss rule, but the case he cites says nothing of the sort. *See* Opp'n 18 n.12 (citing *DiDio v. Jones*, 2014 WL 12591676, at *3-4 (C.D. Cal. July 3, 2014)). *DiDio* addressed an argument that the economic loss rule required dismissal of an implied covenant claim, which is "necessarily a breach of contract [claim]." It has no application here; Uber is seeking a conventional application of the economic loss rule to cut off Rattagan's tort claims.

Rattagan also contends that the economic loss rule only applies to products liability cases, not commercial cases like this one. But courts routinely apply the economic loss rule to contexts outside products liability. *See, e.g., Juice Roll-Upz Inc. v. Liquid Guys Distributions, Inc.*, 2018 WL 6118606, at *3-6 (C.D. Cal. Aug. 2, 2018) (fraud claim related to distribution agreement); *Body Jewelz, Inc. v. Valley Forge Ins. Co.*, 241 F. Supp. 3d 1084, 1091-92 (C.D. Cal. 2017) (negligence claim related to administration of website); *Westport Ins. Co. v. Vasquez, Estrada & Conway LLP*, 2016 WL 1394360, at *5-7 (N.D. Cal. Apr. 8, 2016) (fraud and negligent misrepresentation claims related to insurance dispute); *JMP Sec. LLP v. Altair Nanotechs. Inc.*, 880 F. Supp. 2d 1029, 1042-44 (N.D. Cal. 2012) (fraud and negligent misrepresentation claims related to financial advisory services).

Rattagan next says that the economic loss rule does not apply because, this case "is based on UTI's tortious conduct," not on a "failure to pay him for services rendered (i.e., failure to make good on contractual promises). In fact, Rattagan does not even allege breach of contract." *See* Opp'n 18. This argument fails because Count Three of the TAC is a claim for a breach of the implied covenant of good faith and fair dealing, and "a breach of the implied covenant is necessarily a breach of contract." *DiDio*, 2014 WL 12591676, at *3 (quoting *Digerati Holdings, LLC v. Young Money Entm't, LLC*, 194 Cal. App.

4th 873, 885 (2011)). He also alleges that “UTI and Rattagan were in express and/or implied contractual relationships arising from UTI and Rattagan’s direct attorney-client relationship starting in 2015.” TAC ¶ 94 (emphasis added). Indeed, the entire basis for Uber Technologies owing Rattagan a supposed duty to disclose certain information is the alleged contractual relationship. See TAC ¶ 83 (“Based on the direct attorney-client relationship between UTI and Rattagan starting in 2015 . . . UTI . . . owed Rattagan a duty to disclose all facts known to UTI that were material to both Rattagan’s legal representation and his role as legal representative of the Foreign Entities.”), ¶ 89 (alleging that Uber owed Rattagan a duty of care based on the same contractual relationships).

As a last retreat, Rattagan observes that claims of fraudulent inducement may be an exception to the economic loss rule. Opp’n 18; see *Results by IQ LLC v. Netcapital.com LLC*, 2013 WL 4835838, at *6 (N.D. Cal. Sept. 11, 2013) (“the jury found that Defendants had fraudulently induced Plaintiff to enter a contract via a false promise—that is enough to avoid application of the economic loss rule” (emphasis added)). But the TAC contains no such allegation. Rattagan entered the alleged contracts in 2013 and 2015. He does not allege that he was defrauded into doing so. The exception for fraudulent inducement therefore does not apply.

The Court should dismiss the TAC based on the statute of limitations and economic loss rule.

III. Rattagan Does Not Adequately Allege Breach Of The Implied Covenant.

Rattagan’s claim for the breach of the implied covenant of good faith and fair dealing is the only claim that survives the economic loss rule, but it is untenable on the merits. Rattagan concedes that to state a claim for breach of the implied covenant, he must adequately allege that Uber Technologies deprived him of the benefit of their purported contract. Opp’n 19. A contrary rule would lead to an implied covenant entirely untethered from the parties’ contractual relationship, a concern that is particularly acute where, as here, the very existence of the supposed contract is merely implied. Rattagan seems to acknowledge that Uber complied with all of the express terms of the purported contract, but argues that he can premise an implied covenant claim on some generalized failure to provide him with unspecified implied benefits of the contract. Opp’n 19 (citing *Daly v. United Healthcare Ins. Co.*, 2010 WL 4510911, at *5 (N.D. Cal. Nov. 1, 2010), to argue that requiring frustration of an express benefit of the contract would make “the entire concept of an implied

1 covenant . . . superfluous”)).

2 The dictum in *Daly* does not authorize a plaintiff to plead an implied covenant claim without any
 3 allegation of what contractual benefit was thwarted by the defendant. The TAC simply does not identify
 4 the benefit, whether express or implied, that Rattagan supposedly failed to receive, and so his implied
 5 covenant claim fails. Rattagan’s opposition tries to fill this gap by characterizing the alleged contract
 6 between Rattagan and UTI as an agreement “to provide legal services for a fee and to serve as the legal
 7 representative of the Foreign Shareholders so UTI could lawfully commence operations in Argentina.”
 8 Opp’n 19. In effect, Rattagan alleges that Uber Technologies impliedly contracted with Rattagan to
 9 conduct its Argentine operations in a lawful manner. It would take significantly more facts to sustain a
 10 pleading of such an unusual contractual benefit, and Rattagan does not plead this benefit anywhere in
 11 the TAC. *See Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“In
 12 determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a
 13 plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s motion to dismiss.”).²

14 Even if the Court were to accept Rattagan’s unpleaded characterization of his alleged contract
 15 with Uber Technologies, his claim would still fail. Rattagan now defines the benefit he expected to
 16 receive as the fee for his legal services and Uber’s lawful commencement of operations. There is no
 17 allegation that he did not receive payment. And it is undisputed that Uber’s operations were and are
 18 fully legal, as Rattagan did not oppose Uber Technologies’ Request for Judicial Notice of the Argentine
 19 court cases establishing the legality of its operations. *See* Request for Judicial Notice, Dkt. 24. Even by
 20 his own belated definition, then, Rattagan received the benefits of the contract.

21 Finally, Rattagan has no response to the cases holding that the implied covenant “cannot impose
 22 substantive duties or limits on the contracting parties beyond those incorporated in the specific terms of
 23 their agreement.” *Guz v. Bechtel Nat’l Inc.*, 8 P.3d 1089, 1110 (Cal. 2000). Accordingly, Rattagan
 24 cannot use the implied covenant to read into the alleged contract the types of extensive duties he
 25 contends Uber Technologies owed, including ceasing its operations to protect Rattagan. *See* TAC ¶ 95

26
 27 ² The same principle precludes Rattagan’s attempt on pages 6-7 of the Opposition to supplement his
 28 allegations regarding Uber’s launches in other countries. This Internet-sourced information is not
 included in the TAC or the subject of a request for judicial notice.

(alleging Uber Technologies breached the covenant of good faith “by failing to apprise Rattagan of its plans to launch Uber Ridesharing in Buenos Aires,” “failing to replace Rattagan as legal representative prior to the launch,” and “continuing operations despite directives from Argentine authorities” while Rattagan remained legal representative).

IV. Rattagan’s Fraudulent Concealment Claim Fails Because Uber Technologies Had No Duty To Disclose.

A. The Scope Of Duty Based On An Attorney-Client Relationship Is Implausible.

Rattagan’s tort claims depend on the unprecedented and unsupported idea that Uber Technologies shouldered broad obligations to tell Rattagan details of its business plans and the risks associated with them because he filed papers to form a new corporate entity. There is nothing in the law governing attorney-client relationships that imposes on the *client* wide-ranging duties of disclosure to its attorney, the breach of which can give rise to a fraud claim. Rattagan’s resort to the general law of agency fares no better.

Focusing first on the law governing attorney-client relationships, Rattagan cites the Restatement of the Law Governing Lawyers for the principle that if a client fails to cooperate with a lawyer, the lawyer may withdraw or “the client’s misrepresentation may constitute a defense to the client’s malpractice claim, modify the lawyer’s duty of confidentiality, or entitle the lawyer to indemnity if the client’s conduct exposes the lawyer to liability to a third person.” Opp’n 9 (quoting Restatement § 17). None of that would yield a damages claim here, given that, as Rattagan acknowledges, the Uber International Entities indemnified him for the costs of associated with successfully defending the unfounded claims made by Argentine authorities. TAC ¶ 8. Rattagan thus foresaw possible risks associated with the legal representative role, contracted with the Uber International Entities to indemnify him against “any threatened or pending, action, suit, or proceeding of any kind,” and received that indemnification. *See* Exs. C, D to August Decl., Dkts. 70-4, 70-5; TAC ¶ 8. He has received the remedy he contracted for and all the Restatement says he may be entitled to.³

³ Rattagan highlights that Ryan Graves, a former Uber Technologies executive, signed the indemnity letters, as if this proves some sort of relationship with Uber Technologies. Opp’n 17. Both letters clearly state they are issued by the Uber International Entities and Graves signed them in his capacity as

1 The Restatement does not authorize an attorney to sue his client for fraud, nor does Rattagan cite
 2 any cases so holding. To the contrary, the Restatement recognizes that “[a] lawyer seeking relief from a
 3 present or former client is not in the same position as are most other claimants with respect to
 4 responding parties.” Restatement (Third) of the Law Governing Lawyers § 7 (2000). Indeed, a lawyer
 5 is forbidden to “do anything which will injuriously affect his former client in any manner in which he
 6 formerly represented him,” or “use against his former client any knowledge . . . acquired through their
 7 former connection.” See *Wutchumna Water Co. v. Bailey*, 15 P.2d 505, 508-09 (Cal. 1932).

8 Rattagan resorts to the general law of agency, but the attorney-client relationship is governed by
 9 special rules that preclude lawyers from opposing their “former client with respect to an ongoing matter
 10 that was the precise subject of the prior representation.” *Oasis W. Realty, LLC v. Goldman*, 250 P.3d
 11 1115, 1122 (Cal. 2011). The case he cites, *Yanchor v. Kagan*, and all of the authority it in turn cites,
 12 mention agency law only when discussing whether an attorney can bind his client to a contract to which
 13 the client did not consent. See 22 Cal. App. 3d 544, 549 (1971) (citing *Moving Picture, etc., Union v.*
 14 *Glasgow Theaters, Inc.*, 6 Cal. App. 3d 395, 403 (1970)). None address a *client’s* duty to its attorney.

15 Rattagan then asserts that as a matter of general agency law a principal owes its agent broad
 16 duties of disclosure, but the cases he cites simply do not stand for this proposition either. *Cunningham*
 17 *v. Northern California Region, LLC*, 2017 WL 2666110 at *4 (Cal. Ct. App. June 21, 2017), which is
 18 unpublished, merely assumed arguendo that an agency relationship could give rise to a duty to disclose,
 19 and it went on to find no breach of any such duty. *Walter v. Libby*, 72 Cal. App. 2d 138, 144 (1945),
 20 concerns the circumstances in which a principal (in that case, a landowner) can end the agency
 21 relationship with his agent (a real estate broker). *Burton Way Hotels, Ltd. v. Four Seasons Hotels Ltd.*,
 22 2012 WL 12883616, at *17 (C.D. Cal. Feb. 23, 2012), features a principal suing its agent, not the other
 23 way around.

24 Rattagan’s assertion that clients owe their attorneys broad tort duties would lead to absurd
 25 results. Consider Rattagan’s assertion that a principal has a duty to “refrain from conduct that is likely

26 _____
 27 a director of each entity. See Ex. C at 4, 6; Ex. D at 4, 6; *Strasner v. Touchstone Wireless Repair &*
 28 *Logistics, LP*, 5 Cal. App. 5th 215, 224 (2016) (“overlapping corporate officers and directors are normal
 attributes of a parent-subsidary relationship”).

to injure the agent’s business reputation through the agent’s association with the principal.” Opp’n 9. Applied in the attorney-client context, a law firm would have a cause of action for fraudulent concealment every time any of its clients does something controversial if the client failed to disclose to the firm its intentions ahead of time. That is far from the law, which imposes on lawyers the obligation to vigorously represent their clients at every peril to themselves. Indeed, the very section of the Restatement upon which Rattagan relies acknowledges that “[l]awyers are not typical agents” and “[c]ontracts purporting to impose duties on clients must be read in light of the purposes of the client-lawyer relationship and public policies relating to it.” *See id.* § 17. Those policies do not permit the lawyer to seek to enrich himself by suing his former client for tort damages.

B. The Uber International Entities Were Not Agents Of Uber Technologies.

Because the alleged attorney-client relationship does not encompass broad duties of disclosure, Uber Technologies did not have an obligation to tell Rattagan anything. Rattagan therefore seeks to impute his legal representative relationship with the Uber International Entities to Uber Technologies by arguing that the International Entities were agents of Uber Technologies. He uses two different formulations of California’s agency test, but the first relies on law that has been struck down by the Supreme Court in other contexts and the second is not sufficiently alleged.⁴

Rattagan first relies on the “representative services” formulation of the agency test, which imputes liability when “the subsidiary functions as the parent corporation’s representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation’s own officials would undertake to perform substantially similar services.” Opp’n 13 (citing *Doe v. Unocal Corp.*, 248 F.3d 915, 928 (9th Cir. 2001), *abrogated by Daimler AG v. Bauman*, 571 U.S. 117 (2014)). This doctrine stems from the law of personal jurisdiction but has been expanded by California courts to the liability context. *See E. & J. Gallo Winery v. EnCana Energy Servs., Inc.*, 2008 WL 2220396 (E.D. Cal. May 27, 2008) (discussion

⁴ Rattagan also misrepresents a Court order, stating that “the Court has already recognized that Rattagan plausibly alleged in the SAC . . . facts providing that the Foreign Shareholders were UTI’s agents.” Opp’n 11. The Court made no finding of plausibility; it merely noted that the SAC had added the agency theory. *See* Dkt. 63 at 6-7.

California courts' adoption of *Unocal*'s representative services doctrine in the context of liability). However, the Supreme Court and Ninth Circuit have rejected the test's reasoning in the personal jurisdiction context, and there is no basis for believing the test has continued viability in the liability context, either.

Specifically, in *Bauman*, a general jurisdiction case, the Supreme Court overturned the representative services doctrine, finding that the test disregarded established principles of separate corporate personhood. The Court explained that the test "stacks the deck" because "[a]nything a corporation does through [a] . . . subsidiary . . . is presumably something that the corporation would do 'by other means' if the . . . subsidiary . . . did not exist." *Bauman*, 571 U.S. at 136. The Ninth Circuit has since extended *Bauman*'s disapproval of the representative services doctrine to specific jurisdiction, recognizing that "the *Daimler* Court's criticism of the [agency test] found fault with the [test's] own internal logic, and therefore applies with equal force regardless of whether the standard is used to establish general or specific jurisdiction." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017). There is no reason that the representative services doctrine remains viable as a theory of liability after being struck down in the jurisdiction context. See *Miller v. Gammie*, 335 F.3d 889, 892-93 (9th Cir. 2003) (where a prior decision "is clearly irreconcilable with the reasoning or theory of intervening higher authority," the prior decision is "effectively overruled"); *Strasner*, 5 Cal. App. 5th at 224 n.1 (stating that California agency test does not include the representative services doctrine).

The second formulation of the agency test requires that the parent company has "in effect taken over performance of the subsidiary's day-to-day operations." See Mot. 18-20. Rattagan contends that he has sufficiently alleged pervasive control of the Uber International Entities, such that their actions and relationships can be imputed to Uber Technologies. Opp'n 11-13. Rattagan principally relies on the fact that certain Uber headquarters employees were involved in acting on behalf of the Uber International Entities. But Rattagan does nothing to address the authority cited by Uber Technologies establishing that the use of shared services, such as a shared legal department, is entirely conventional and insufficient to create an agency relationship under California law. See Mot. 18-20; Opp'n 12. These cases recognize that modern international businesses may have shared legal or accounting functions, for example, and the mere fact that a subsidiary draws on these shared resources does not

mean that the subsidiary is an agent of the parent company or that a subsidiary's liability can be imputed to the parent. *See* Mot. 19-20 (citing cases).

V. Rattagan's Breach Of The Duty Of Loyalty Warrants Dismissal Under The Doctrine Of Unclean Hands.

As explained in the Motion, Rattagan has unclean hands because he seeks to disregard his own former clients' corporate form despite being retained to assist with corporate formation, and because he disparages his alleged former clients' culture and operations. Rattagan argues that Uber Technologies is barred from raising an unclean hands defense because, during the course of the prior Rule 11 proceedings, Uber prevailed in its position that Rattagan did not have a contractual relationship with Uber Technologies.⁵ *Opp'n* 20-21. Rattagan's argument ignores that: (1) Uber Technologies must accept the allegations of an attorney-client relationship as true on a Rule 12 motion; and (2) the Motion also focused on Rattagan's breach of his duties to the Uber International Entities, which all parties agree had an attorney-client relationship with him. *See* Mot. 20-21.

Rattagan tries to distinguish Uber Technologies' authorities establishing that this suit breaches his duty of loyalty to the Uber International Entities by arguing that they address situations where an attorney "subsequently represents a client with interests directly competing with a former client." *Opp'n* 21. That is a plainly inaccurate characterization of the cases. *Oasis Western Realty*, 250 P.3d 1115, addressed an attorney who became involved in a personal capacity in a campaign against the interests of one of his former clients. The case states that an attorney breaches his duties by taking confidential

⁵ Rattagan devotes considerable effort to relitigating the Rule 11 proceedings, which is improper, including because doing so here circumvents Rule 11's procedural safeguards. Rattagan appears to argue that Uber Technologies somehow hid correspondence between San Francisco-based paralegals and members of his law firm when it argued that any attorney-client relationship existed between the Uber International Entities and Rattagan, not Uber Technologies and Rattagan. But Uber Technologies put in evidence that Rattagan's engagement was with the Uber International Entities and that he submitted all bills to the Uber International Entities. *See* Rule 11 Mot., Dkt. 27, at 6; Exs. B, F to Shin Decl., Dkts. 27-3, 27-7. One of its exhibits also showed correspondence with one of its San Francisco-based paralegals, Ryan Black. *See* Ex. D to the Shin Decl., Dkt. 27-5 (reflecting email from Ryan Black with San Francisco address). In fact, in that same exchange, Rattagan wrote, "we were not hired by Ryan Black but by Liesbeth ten Brink, Director Legal - Europe, Uber International B.V. (February 2013)." *Id.* During the hearing, Rattagan's counsel even raised the argument that Rattagan presses now—that an attorney-client relationship was established with Uber Technologies notwithstanding the lack of an engagement letter or other contract. *See* Hr'g Tr. at 7-8.

information into account when framing a course of action, even where “*no second client exists and no confidences are actually disclosed.*” *id.* at 1122 (emphasis added); *see also Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1174 (2011) (“[T]he prohibition against acting in a manner that would injure a former client in any matter in which the attorney formerly represented the client is not limited to the situation where the attorney concurrently or successively represents another client.”). Indeed, an attorney assumes heightened duties to his client and represents his client at every peril to himself. Wherever the line delineating proper and improper attorney conduct toward his client may be drawn, Rattagan’s conduct here—as a corporate attorney, arguing that his own clients’ actions should be imputed to one another despite their corporate separateness and accusing those clients of fraud and illegal operations and otherwise disparaging them—clearly breaches his duty of loyalty.

VI. Rattagan Fails To State A Claim For Aiding And Abetting.

In claiming that he sufficiently alleged that Uber Technologies “substantially encouraged” the Uber International Entities’ alleged fraudulent concealment, Rattagan asserts that Uber Technologies “expressly or impliedly directed the Foreign Shareholders to conceal these facts from Rattagan” and that it controlled the Foreign Shareholders. Opp’n 21-22. But he alleges no specific facts in support of the first conclusory allegation that would allow the Court to conclude that it is true, and it should thus be disregarded. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The allegations related to control of the International Entities concern the hiring of Rattagan and the financial status of the entities in 2013; they in no way relate to the events surrounding the launch, and so cannot support an aiding and abetting claim. *See* ¶¶ TAC 32-34. Indeed, Rattagan alleges he was directly working for Uber Technologies by the time of the launch, and the TAC contains no explanation of what actions the Uber International Entities took with regard to the launch or how Uber Technologies allegedly encouraged them.

VII. Rattagan Fails To Plausibly Allege Proximate Causation.

Rattagan does not dispute that to prevail on any claim, he must plausibly allege proximate causation. He also accepts that unforeseeable conduct by intervening actors breaks the proximate causal chain. *See* Mot. 22-23; Opp’n 22-23. Rattagan asserts, however, that proximate cause is “generally a question of fact” and is immune from scrutiny at the motion-to-dismiss stage. Opp’n 22-23. But “where the facts are such that the only reasonable conclusion is an absence of causation, the question is one of

law, not of fact.” *Steinle v. City & Cty. of S.F.*, 230 F. Supp. 3d 994, 1034 (N.D. Cal. 2017) (citation omitted). Courts regularly dismiss claims at the pleadings stage when proximate causation is not plausibly alleged. For example, *Lopez v. Nissan North America Inc.*, which Rattagan does not address, held as a matter of law that a third party’s actions constituted “an intervening and superseding cause” of the plaintiff’s alleged injuries, resulting in a “causal link . . . too attenuated for [the defendant’s] conduct to be considered a proximate cause of” the plaintiff’s harm. 2017 WL 10338593, at *5 (N.D. Cal. Nov. 6, 2017). Here as in *Lopez*, the TAC depends on an attenuated causal link interrupted by the intervening acts of third parties. Indeed, it is hard to imagine a clearer example of an intervening act than the choice of a sovereign foreign government to bring novel and unwarranted charges against the legal representative of the Uber International Entities based on Uber’s lawful operations.

Rattagan argues that the harm he suffered at the hands of local authorities was foreseeable, and thus not an intervening cause. Opp’n 22-23. He relies on his allegation that city officials allegedly told Uber employees that “all drivers would need to have a professional driver’s license, commercial insurance coverage and drive a vehicle examined and approved by the City” and that “commencing operations without complying with these requirements would be deemed illegal.” Opp’n 23. Even crediting these allegations, Rattagan does not allege that Uber’s professional service providers in any other country faced any backlash, let alone criminal charges, even when operations in those countries were incorrectly “deemed” unlawful. TAC ¶¶ 60-61. As a result, it was not reasonably foreseeable that the local authorities would pursue baseless criminal charges against Rattagan.

Rattagan next argues that the precise harm need not have been foreseen, relying on *Bigbee v. Pacific Telephone & Telegraph Co.*, 665 P.2d 947, 951-53 (Cal. 1983). But the facts of that case are remote from this one. There, a man was injured when the telephone booth he was in was struck by a drunk driver. He sued the telephone booth operators, arguing that such an accident was foreseeable given the placement of the booth near a busy road. He introduced evidence that a different booth in the same location had been struck by a car, leading to the installation of barriers. *Id.* at 949-50, 952-53. The court also cited multiple cases involving the exact same type of harm—cars striking telephone booths. *See id.* at 953. Here, there is no precedent for what happened to Rattagan. Were Rattagan’s argument credited, Uber could not launch legally compliant operations in any jurisdiction, given the

1 theoretical risk that some news media or taxi drivers or local authorities in that jurisdiction might react
2 poorly.

3 **VIII. Rattagan Cannot Recover Punitive Damages For Any Of His Claims.**

4 To state a punitive damages claim against a corporate defendant, Rattagan must plead “willful
5 and malicious” conduct on the part of an officer, director, or managing agent of that corporation.
6 *Taiwan Semiconductor Mfg. Co. v. Tela Innovations, Inc.*, 2014 WL 3705350, at *6 (N.D. Cal. July 24,
7 2014); *see* Mot. 23-25. Rattagan identifies several employees whose alleged conduct is relevant to his
8 claims, but only one of those employees is an “officer” of Uber Technologies, and none of their conduct
9 can plausibly be considered “malicious.” As detailed in the Motion, the only “officer” mentioned in the
10 TAC is Salle Yoo, Uber Technologies’ “Chief Legal Officer, General Counsel, and Corporate
11 Secretary.” Mot. 24. Rattagan alleges that he asked Ms. Yoo to “promptly designate someone” to talk
12 to him about transitioning out of the legal representative role, and that Ms. Yoo responded to his request
13 the same day, expressed concern, and assigned an Uber employee to address Rattagan’s requests. TAC
14 ¶ 73. Rattagan does not allege malice in Ms. Yoo’s actions. The remaining allegations in the TAC refer
15 to conduct by “Uber,” not individual employees, and so are irrelevant to the punitive damages claim.
16 Rattagan nevertheless urges the Court to disregard its deficient allegations because other courts have
17 “assumed” authorization by officers or directors. Opp’n 25. But allowing a punitive damages claim to
18 proceed solely on such an assumption would render the requirements of Cal. Civ. Code § 3294(b)
19 meaningless, because any plaintiff could circumvent the requirement by alleging that the conduct could
20 not have occurred without higher-level ratification.

21 **CONCLUSION**

22 Rattagan’s claims are facially time-barred or otherwise fatally deficient. A dismissal with
23 prejudice is warranted because Rattagan has already amended his complaint three times, including twice
24 after fully briefing Uber Technologies’ first motion to dismiss, which put Rattagan on notice of the
25 deficiencies in his legal theories and factual allegations. If Rattagan could have cured these deficiencies,
26 he would have done so in the TAC, but he did not. He has not identified any changes that he would
27 make to cure the deficiencies if given further leave to amend. Further amendment would be futile.
28

1 Dated: July 30, 2020

Respectfully submitted,

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MICHAEL R. RATTAGAN,
13 Plaintiff,
14
15 v.
16 UBER TECHNOLOGIES, INC.,
17 Defendant.

Case No. 3:19-cv-01988-EMC

Hon. Edward M. Chen

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS
THIRD AMENDED COMPLAINT**

Date: August 13, 2020
Time: 1:30 p.m.
18 Ctrm: Courtroom 5 – 17th Floor
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1 Plaintiff Michael Rattagan (“Plaintiff” or “Rattagan”) submits this Memorandum of Points
 2 and Authorities in Opposition to Defendant Uber Technologies, Inc.’s (“UTI”) Motion to Dismiss
 3 Third Amended Complaint (the “Motion”).¹

4 **A. INTRODUCTION AND SUMMARY OF ARGUMENT**

5 UTI’s Opening Brief [Dkt. 67 (“Opening Brief”)] continues to harp on superseded
 6 pleadings, ignores for the most part Rattagan’s very detailed factual allegations in the TAC and
 7 offers a scentless potpourri of tepid legal arguments to the effect that the alleged facts do not give
 8 rise to any plausible legal claim.

9 Stripped of *ad hominem* attacks on Mr. Rattagan, UTI’s continuing refusal to accept that
 10 the prior complaints are superseded by the TAC (the Opening Brief refers to allegations in the
 11 Second Amended Complaint no fewer than six times) and its obsessive reliance on the Court’s prior
 12 Rule 11 sanctions order – which UTI obtained through its own sanctionable conduct - the Motion
 13 is a textbook example of defense counsel “throwing [legal] spaghetti against the wall” [Dkt. 67 at
 14 3:3-25], none of which sticks in this case. UTI’s strategy is to divert, deflect and obfuscate with
 15 seven grounds for dismissal, all of which either ignore or twist the law governing the asserted
 16 claims for relief and the facts *actually* alleged (as opposed to those UTI makes up or alleged in
 17 earlier pleadings) or are predicated on UTI’s extreme and untenable view that clients never owe
 18 their attorney any legal duty, other than to pay their bills.

19 The TAC clearly and plausibly alleges that UTI (as principal) controlled the Foreign
 20 Shareholders (as agents) that initially engaged Rattagan in 2013. Indeed, based on public financial
 21 records – which UTI characterizes as “non-public information” (Dkt. 67 at 7:1-5) – these Foreign
 22 Shareholders were nothing more than shell companies. The TAC further alleges detailed, plausible
 23 facts that in February 2015, UTI transitioned the relationship into a direct attorney/legal
 24 representative relationship between it and Rattagan. Although UTI vigorously disputes this, the
 25 allegations must be taken as true.²

26
 27 ¹ To the extent possible, the terminology used in this brief tracks the terminology used in the Third
 28 Amended Complaint (“TAC”).

² If the court requests, Plaintiff can provide the court, *in camera*, numerous non-privileged

As discussed below, at all times UTI knew that it had put Plaintiff -- its lawyer and its Foreign Shareholders' legal representative -- in harm's way. The TAC alleges UTI did so knowingly and deceitfully and concealed from Plaintiff that Buenos Aires officials warned UTI not to launch until it fully complied with all laws governing transportation companies and that if it did not so comply, it would be considered to be acting illegally and would be held accountable. When Plaintiff was charged in November 2017 with aggravated criminal violations of Buenos Aires tax laws, UTI's callous indifference and deceitful conduct caused substantial harm to Mr. Rattagan, who has carefully cultivated for decades a reputation in the Buenos Aires legal/business community for honesty and integrity.

B. PROCEDURAL HISTORY

1. Rattagan's Prior Complaints and the TAC.

UTI emphasizes that this is Rattagan's fourth complaint. [Dkt. 67 at 1:12-13; 3:23-25; 5:1-25]. This is, however, the first time the Court will consider the substantive merits of Rattagan's pleadings. Although the TAC is the operative complaint, it is worthwhile to briefly revisit how we got here.

After improperly naming UTI's Foreign Shareholders as defendants in the Original Complaint, [Dkt. 1] Rattagan's prior counsel voluntarily filed the First Amended Complaint, [Dkt. 15] completely eliminating references to them. This was bad lawyering because the Foreign Shareholders did in fact hire Rattagan -- in 2013. What should have been alleged in the FAC were the detailed allegations included in the TAC that the Foreign Shareholders were virtually shell companies completely controlled by UTI as their principal. Instead, the FAC simply ignored these facts and instead conclusionally alleged there was a direct attorney-client relationship between Rattagan and UTI. Dkt. 15. Although the Court determined, based on the evidence before it, that this contradicted the Original Complaint, the documentary evidence establishes such statement was indisputably true as of February 2015.³ The failure of Rattagan's prior counsel to submit the

communications establishing the attorney-client relationship.

³ As explained in Mr. August's declaration in Support of Rattagan's Motion for Leave to Amend, undersigned counsel did extensive due diligence before filing the TAC. Dkt. 58-1.

1 overwhelming evidence of the direct attorney-client relationship was poor lawyering, but that does
2 not change the fact the relationship existed.

3 Prior counsel filed the Second Amended Complaint [Dkt. 38] which began to lay out the
4 facts of UTI's control over the Foreign Shareholders. At this point, undersigned counsel substituted
5 in, undertook a far more comprehensive factual investigation, including a trip to Buenos Aires to
6 meet with Rattagan and interview potential witnesses, as well as carefully reviewing the documents
7 that establish the direct attorney-client relationship after February 2015. This work culminated in
8 the factually detailed allegations in the TAC.

9 **2. Uber's Misleading Rule 11 Motion.**

10 An attorney is expected to be a zealous advocate for his or her client. But she is also an
11 officer of the court. As such, an attorney has a duty of good faith and candor in dealing with the
12 judiciary. *See, e.g., United States v. Associated Convalescent Enterprises, Inc.*, 766 F.2d 1342,
13 1346 (9th Cir. 1985). In its Rule 11 Motion, UTI presented selective and thus misleading evidence
14 to argue that it never had a direct attorney-client relationship with Plaintiff:

15 "Mr. Rattagan's claims in the [First] Amended Complaint rest on at least two allegations
16 that Mr. Rattagan knows to be untrue...(2) the existence of an attorney-client relationship
17 between Mr. Rattagan and Uber Technologies...The documentary evidence establishes that
each of these allegations is false." (Dkt. 27 at 4:19-24.)

18 "Mr. Rattagan's allegation in the Amended Complaint that Uber Technologies had an
19 'attorney/client and contractual relationship with Mr. Rattagan' is simply untrue." (*Id.* at
20 6:15-16.)

21 "There is no evidence to support Mr. Rattagan's allegations that an attorney-client
22 relationship existed between him or his law firm and Uber Technologies." (*Id.* at 6:23-24.)

23 "Accordingly, the viability of Mr. Rattagan's fraud and deceit claims depend on the
24 existence of an 'attorney/client and contractual relationship with Mr. Rattagan' or the
25 'appointment of Mr. Rattagan as legal representative.' Assuming for the moment that these
alleged relationships could give rise to an affirmative duty to disclose as a general matter,
no such relationship ever existed between Mr. Rattagan and Uber Technologies." (*Id.* at
26 7:13-17.)

27 The TAC draws heavily on documentary evidence reviewed by Rattagan's undersigned
28 counsel that UTI has always had in its possession – mostly emails between Rattagan and his firm
and UTI – that establishes the exact opposite of what UTI told this Court: In February 2015, UTI

1 established a direct attorney-client relationship with Rattagan that lasted until after the Uber launch
 2 in April 2016. Whatever responsibility prior counsel bears for allowing these untrue statements to
 3 go essentially unchallenged, that is no excuse for UTI's disregard of the truth.⁴

4 **C. FACTUAL HIGHLIGHTS OF THE TAC**

5 The key operative facts are as follows:

6 1) Rattagan was *initially* hired in 2013 by UTI's Foreign Shareholders to form an Argentine
 7 corporation and to be their legal representative in Buenos Aires. ¶¶35-42⁵;

8 2) In connection with this engagement, Rattagan specifically informed the Foreign
 9 Shareholders' lawyer who hired him that a registered legal representative could face potential
 10 personal liability for the wrongful acts of the client. ¶¶5, 41;

11 3) The Foreign Shareholders were asset-less shells formed barely a year earlier. ¶¶2, 34;

12 4) UTI completely controlled the Foreign Shareholders so as to create a principal/agent
 13 relationship in which UTI effectively hired Plaintiff. ¶¶2, 32-33;⁶

14 5) Beginning in early 2015, UTI's legal department directly hired Plaintiff to provide legal
 15 services and advice regarding the formation of multiple Argentine entities that would enable UTI
 16 to provide Uber Ridesharing in Argentina. ¶¶3, 46-53;

17 6) All of the communications with Plaintiff for this work came directly from UTI's legal
 18 department in San Francisco or Mexico. ¶¶3, 46-53;

19 7) All of Plaintiff's legal advice and work product was provided directly to UTI's legal
 20 department in San Francisco. ¶¶3, 46-53;

21 8) Throughout this time, Plaintiff remained the registered "legal representative" in
 22

23 ⁴ When the TAC was first submitted with the Motion for Leave to Amend, UTI demanded that
 24 undersigned counsel withdraw certain allegations because UTI contends they disclose attorney-
 25 client privileged communications. When Rattagan's counsel explained why they do not, UTI next
 26 demanded that Rattagan return its client file, which undersigned counsel agreed to do if UTI agreed
 27 there was a direct attorney-client relationship so as to warrant the request. UTI never substantively
 28 responded to this offer.

26 ⁵ Hereafter, all references to paragraphs refer to paragraphs in the TAC unless otherwise indicated.

27 ⁶ Even Mr. Rattagan's written indemnity agreement from the Foreign Shareholders for acting as
 28 their legal representative was signed by UTI's senior officer (Ryan Graves) and apostilled in San
 Francisco. *See* August Declaration, Exhibits C and D, filed herewith.

1 Argentina for the Foreign Shareholders. ¶¶3, 53;

2 9) By late 2015, UTI had begun its plans to launch Uber Ridesharing in Buenos Aires. ¶¶4,
3 63;

4 10) UTI concealed its plans from Rattagan, instead working with a Buenos Aires
5 government compliance lawyer and a foreign public relations firm to help with the launch. ¶¶4, 54,
6 56, 59, 63, 65;

7 11) Between December 2015 and March 2016, UTI's government compliance team from
8 Bogota, Sao Paulo and Washington, D.C. participated in several in-person meetings with Buenos
9 Aires transportation department government officials but concealed these meetings from Plaintiff.
10 ¶¶4, 63;

11 12) Unknown to Plaintiff until after this case was filed, during these meetings, the officials
12 expressly warned UTI that its plan to launch Uber Ridesharing would be considered unlawful and
13 explicitly told UTI not to do so unless and until it was in full compliance with all applicable Buenos
14 Aires transportation regulations. ¶¶4, 63;

15 13) UTI concealed these warnings from Rattagan. ¶¶4, 59, 63, 65;

16 14) UTI's representatives decided to ignore these warnings and again, UTI concealed their
17 decision from Rattagan. ¶¶4, 59, 63, 65;

18 15) Despite this and without first removing Rattagan from harm's way, UTI launched Uber
19 Ridesharing knowing that it was doing so in blatant disregard of the local government's warnings
20 that it would be deemed unlawful. ¶¶5, 59, 63, 65;

21 16) Based on UTI's prior launch experiences in many other cities around the world, it
22 knew that launching Uber Ridesharing in a locale that presented "regulatory challenges" like
23 Buenos Aires would be met with immediate and adverse reaction (something Rattagan learned
24 after-the-fact). ¶¶6, 60-62;

25 17) To counteract these foreseeable responses, UTI had even developed a written "how to"
26 manual for its "armed forces" who were responsible for the launch. ¶6;

27 18) Despite the warnings from the Buenos Aires government and even though it had not
28 completed its corporate formation or its tax registration – or replaced Rattagan as legal

1 representative - UTI officially launched Uber Ridesharing on April 12, 2016 without any prior
2 notice or forewarning to Plaintiff. ¶¶6, 59, 65;

3 19) Within a couple of days of the launch, law enforcement authorities targeted the only
4 public faces of Uber in Argentina: Plaintiff and his colleagues. ¶¶7, 69;

5 20) Buenos Aires police raided their offices and homes. ¶¶7, 69;

6 21) In 2017, after the authorities completed their investigation of UTI's launch, they
7 arrested Plaintiff and charged him with criminal activity, including aggravated tax evasion. ¶¶7,
8 77-78.

9 **D. UTI'S ATTEMPT TO REWRITE FACTUAL ALLEGATIONS**

10 While paying lip-service to the rule that allegations in a complaint challenged under Rule
11 12(b)(6) must be accepted as true, UTI provides its own improper spin on key allegations. UTI
12 argues, for example, that Rattagan "agreed to act as the legal representative of the [Foreign
13 Shareholders] knowing that Uber's previous launches in other major cities had been met with
14 negative press, violent protests and rebuke from government authorities" but "nonetheless agreed
15 to represent the [Foreign Shareholders]." Dkt. 67 at 4:17-20. Nowhere does Rattagan allege that he
16 was aware of Uber's global contumacy with its Uber Ridesharing, because he was not.

17 Rattagan was hired to act as legal representative in March 2013. Uber Ridesharing (where
18 drivers use their personal vehicles, as opposed to Uber's earlier model where town cars and taxis
19 were used) was not launched in other countries until April 2013.⁷

20 As to South America, Uber launched in Mexico in August 2013; Colombia in late 2013;
21 Brazil, Peru, and Chile in 2014, after Rattagan was hired but before UTI launched in Buenos Aires.
22 *Id.* The earliest article upon which the allegations in paragraph 60 of the TAC is based on is June
23 2014.

24 UTI's juxtaposition of the cited allegations from the TAC misleads because it ignores the
25 temporal relationship between Rattagan's retention in March 2013 and Uber's controversial tactics
26 to bulldoze its way to domination – one city at a time. Indeed, the TAC alleges that when Rattagan
27

28 ⁷ See https://en.wikipedia.org/wiki/Timeline_of_Uber

1 was engaged in early 2013, Ten Brink (the Foreign Shareholders' counsel in Amsterdam) explained
 2 "Uber was an American start-up company" that was expanding rapidly and was considering
 3 Argentina. ¶35. In early 2013, very few people outside of San Francisco and New York had heard
 4 of the company or knew of its unscrupulous tactics.

5 Another misleading statement by UTI – this time used to dispute the allegations that the
 6 asset-less Foreign Shareholders were controlled by UTI - is its assertion that paragraph 34 of the
 7 TAC discloses non-public information Rattagan purportedly received during the course of his
 8 representation. This information is public, however, having been filed with the Netherlands
 9 Chamber of Commerce by the Foreign Shareholders' accountants. *See* August Declaration,
 10 Exhibits A and B.

11 UTI disingenuously argues that Rattagan "disavowed alter ego and abandoned his false
 12 claims that [UTI] directly appointed him to be its legal representative." These statements are
 13 obviously intended to distract from the allegations of the TAC - the only operative pleading. Neither
 14 it nor any of the prior complaints asserted an alter ego claim so there is nothing to "disavow." Nor
 15 does the TAC allege UTI directly hired Rattagan as the legal representative of its Foreign
 16 Shareholders.

17 **E. LEGAL ARGUMENT**

18 **1. Standards on a Rule 12(b)(6) Motion to Dismiss.**

19 Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss on the
 20 ground that there is a "failure to state a claim upon which relief can be granted." The purpose of a
 21 motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star*
 22 *Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). A plaintiff is required to allege
 23 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550
 24 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that
 25 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
 26 alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court "must accept as true all of the
 27 factual allegations contained in the complaint." (*Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). In
 28 addition to the factual allegations in the complaint, the court is permitted to consider documents

that are not attached to the complaint if their authenticity is not contested and the plaintiff's complaint necessarily relies on them, as well as matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

The claims asserted against UTI in the TAC and the factual allegations underlying those claims easily clear the bar of these well-settled standards.

2. The TAC Alleges a Direct Attorney-Client Relationship Between Rattagan and UTI as of February 2015 and Thus Establishes UTI Owed Rattagan a Duty to Disclose Information Material to the Relationship and the Breach of That Duty.

The common thread of UTI's effort thus far to avoid liability in this case – as best reflected in its Rule 11 Motion - has been its stubborn denial that it had a direct attorney-client relationship with Rattagan or had any vicarious legal relationship with him as the legal representative of the Foreign Shareholders. Following extensive due diligence, undersigned counsel discovered this was false. Based on several dozen emails and related documents, it is clear that in February 2015, UTI directly engaged Rattagan as its attorney in Buenos Aires. The TAC alleges this relationship in detail. These allegations must be accepted as true despite UTI's denials.⁸

UTI cannot make up its mind: On the one hand it continues to vehemently deny ever having retained Rattagan (doubling down on its Rule 11 Motion) but on the other hand seeks to have this case dismissed on the ground that Rattagan breached his duty of loyalty to his clients (UTI and the Foreign Shareholders) based on unclean hands. Dkt. 67 at 15:10-19. Because UTI must accept as true the allegations of the attorney-client relationship, it argues that as a client, the only duty it owed Rattagan was a duty to pay his bills.⁹ The law, according to UTI, permits clients, as principals, to knowingly conceal information from their lawyers, as agents, material to the relationship and remain absolutely immune from liability, even where the client knows the attorney could be held

⁸ Moreover, even if there is conflicting evidence, the existence of the attorney-client relationship is a question of fact. *Responsible Citizens v. Superior Court*, 16 Cal.App.4th 1717, 1733 (1993).

⁹ UTI also twists and misstates the allegations of the duties Rattagan alleges he was owed by both UTI and the Foreign Shareholders. Compare ¶¶84, 98 with Dkt. 67 at 15:1-9 (falsely implying that Rattagan contends clients always have duties to disclose all forward-looking business plans and whether they have hired other attorneys in relation to other legal questions).

1 responsible for the client's misconduct. This untenable proposition not only undermines public
2 policy, it ignores the law governing the attorney-client/principal-agent relationship.

3 The Restatement (Third) of the Law Governing Lawyers § 17 (2000) expressly recognizes
4 that a lawyer may have to sue a client where the client has exposed the lawyer to liability without
5 the lawyer's fault. The comment recognizes "if a client lies to a lawyer or fails to honor an expressed
6 or implied provision of a client-lawyer contract requiring cooperation with the lawyer, withdrawal
7 by the lawyer may be authorized, and the client's misrepresentation may constitute a defense to the
8 client's malpractice claim, modify the lawyer's duty of confidentiality, or entitle the lawyer to
9 indemnity if the client's conduct exposes the lawyer to liability to a third person without the
10 lawyer's fault. Such consequences can be predicated on client conduct such as misleading a lawyer
11 concerning important facts, even where there is no explicit contract by the client to cooperate."
12 (Internal citations omitted).

13 This conclusion is buttressed by the general rules of agency applicable to the attorney-client
14 relationship. *Yanchor v. Kagan*, 22 Cal.App.3d 544, 549 (1971) (internal citations omitted) ("An
15 attorney is the agent of his client and the attorney-client relationship is governed by the rules
16 applicable to the relationship of principal and agent in general."). California courts follow the
17 Restatement of Agency (Third) in determining the parameters of the principal-agent relationship.
18 *See, e.g., Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522, 532 (2014); *Phillips v. TLC*
19 *Plumbing, Inc.*, 172 Cal.App.4th 1133, 1144 (2009); *Blickman Turkus, LP v. MF Downtown*
20 *Sunnyvale, LLC*, 162 Cal.App.4th 858, 887 (2008); *Huong Que, Inc. v. Luu*, 150 Cal.App.4th 400,
21 410-414 (2007). The Restatement provides that "[a] principal has a duty to deal fairly and in good
22 faith with an agent." Restatement (Third) of Agency, §8.15 (2006). This duty "obliges the principal
23 to refrain from engaging in conduct that will foreseeably result in loss for the agent when the agent's
24 own conduct is without fault" and "requires that the principal furnish information to the agent, in
25 particular, information about circumstances of which the agent is unaware that might subject the
26 agent to physical or pecuniary loss in acting on the principal's behalf." *Id.* This duty also mandates
27 that "the principal refrain from conduct that is likely to injure the agent's business reputation
28 through the agent's association with the principal." *Id.*

1 Notably, a California court of appeal has cited this section of the Restatement as authority
 2 for the proposition that a principal owes an agent a duty to act fairly and in good faith, including a
 3 duty to provide the agent with information about risks that the principal knows, has reason to know,
 4 or should know are present in the agent's work but unknown to the agent. *Cunningham v. Northern*
 5 *California Region, LLC*, 2017 WL 2666110 at *4 (June 21, 2017). In *Walter v. Libby*, 72
 6 Cal.App.2d 138, 144 (1945), the court confirmed that a principal owes a duty of disclosure of
 7 pertinent facts to its agent – “While the duty to make full disclosure as between principal and agent
 8 is more often emphasized with respect to the conduct of the agent, the doctrine is by no means one-
 9 sided.” *See also Lawrence Warehouse Co. v. Twohig*, 224 F.2d 493, 497 (8th Cir. 1955) (“A
 10 principal has the obligation of exercising good faith toward his agent in the incidents of their
 11 relationship. He is subject to the responsibility in favor of the agent of using care to prevent harm
 12 coming to the agent in the prosecution of the enterprise, and this extends in general to his disclosing
 13 facts which, if unknown, would be likely to subject the agent to pecuniary loss.”). Moreover, “[t]hat
 14 ‘the relationship is one between two sophisticated business entities does not necessarily preclude
 15 the imposition of confidential or fiduciary disclosure obligations where there is inequity in the
 16 parties’ skill and experience or access to information.’” *Burton Way Hotels, Ltd. v. Four Seasons*
 17 *Hotels Ltd.*, 2012 WL 12883616, at *17 (C.D. Cal. Feb. 23, 2012) (citing *In re Daisy Sys. Corp.*,
 18 97 F.3d 1171, 1177-78 (9th Cir. 1996)) (emphasis added).

19 The TAC is replete with detailed facts alleging that UTI and Rattagan had a principal-agent
 20 relationship based on their direct attorney-client relationship, Rattagan's role as legal representative
 21 of the Foreign Shareholders and UTI's liability for the actions of the Foreign Shareholders as its
 22 agent. *See, e.g.*, ¶¶2-3, 48-49, 52-53. The TAC also alleges facts establishing that UTI was aware
 23 of the harm that would befall Rattagan as legal representative if UTI failed to comply with
 24 Argentine law when it launched Uber Ridesharing. *See, e.g.*, ¶¶4-7, 59-63, 65-66.

25 Ample authority requires rejection of UTI's threshold argument that it owed Rattagan no
 26 legal duties to act fairly, in good faith or disclose the material information about the risks to
 27 Rattagan that UTI knew about and knew Rattagan did not. Any other conclusion would
 28

countenance a client's fraudulent and even criminal conduct.¹⁰

3. The TAC Alleges Facts Establishing that the Foreign Shareholders were Agents of UTI and Thus UTI is Liable for Their Acts.

As an alternative to the direct attorney-client relationship between Rattagan and UTI formed in February 2015,¹¹ the Court has already recognized that Rattagan plausibly alleged in the SAC and then "fleshed out in greater detail in the TAC" facts providing that the Foreign Shareholders were UTI's agents. Dkt. No. 58-2, ¶¶ 2, 32. As such, the duties of disclosure and of good faith and fair dealing owed to Rattagan by UTI's agents, and liability for breach of those duties, is imputed to UTI as principal. "A parent corporation can be held vicariously liable for the acts of a subsidiary corporation if an agency relationship exists between the parent and the subsidiary" and "[a]gency has been a theory on which courts in [the Ninth Circuit] have allowed plaintiffs to proceed for many decades." *Bowoto v. Chevron Texaco Corp.*, 312 F.Supp.2d 1229, 1238 (N.D. Cal. 2004).

Contrary to UTI's arguments, "[u]nlike liability under the alter-ego or veil-piercing test (a theory never posited by Rattagan), agency liability does not require the court to disregard the corporate form." *Id.* "Whether to hold a parent liable for the acts of its subsidiary is a highly fact-specific inquiry," and therefore, generally not amenable for resolution on a motion to dismiss. *Id.* at 1235; *see also Rose v. Seamless Financial Corp. Inc.*, 916 F.Supp.2d 1160, 1169 (S.D. Cal. 2013) (allegation that "[defendant] consented to [plaintiff] acting on [defendant's] behalf, and [plaintiff] consented to act for [defendant]" sufficiently pleaded an agency relationship"); *Dion LLC v. Infotek Wireless, Inc.*, 2007 WL 3231738 at *4 (N.D. Cal. Oct. 30, 2007) (denying motion to dismiss on grounds facts establishing agency relationship not adequately alleged because a plaintiff "is only

¹⁰ A simple hypothetical underscores the absurdity of UTI's contrary position: A lawyer is handed a box by his client to deliver to the client's business partner. The client conceals from his lawyer that illegal contraband is in the box. The lawyer is arrested and charged with possession. Under UTI's view of the law, the lawyer has no recourse against the client.

¹¹ Although the Court noted that "the allegations in the TAC relating to an attorney-client relationship between Mr. Rattagan and UTI appear to contradict Plaintiff's earlier factual allegations on that topic, the Court will not strike those allegations, nor will it deny Plaintiff's motion on those ground." Dkt. 63 at 6:12-15, citing *PAE Gov't Servs., Inc. v. MPRI, Inc.*, 514 F.3d 856, 859 (9th Cir. 2007) and *Stanislaus Food Prod. Co. v. USSPOSCO Indus.*, 782 F. Supp. 2d 1059, 1076 (E.D. Cal. 2011) ("there is nothing in the Federal Rules of Civil Procedure to prevent a party from filing successive pleadings that make inconsistent or even contradictory allegations").

1 required by Rule 8(a) to place [the defendant] ‘on notice’ of its claim for breach of contract based
 2 on [the defendant’s] agency relationship with [its principal]”); *Ruiz v. Decision One Mortg. Co.,*
 3 *LLC*, 2006 WL 2067072 at * 4 (N.D. Cal. 2006) (boilerplate allegation of agency sufficient to
 4 withstand dismissal at the pleading stage). The TAC makes very detailed allegations of how and
 5 why the Foreign Shareholders were UTI’s agents and therefore puts UTI on notice of the factual
 6 bases for Rattagan’s claim that the Foreign Shareholders were UTI’s agents.

7 UTI offers a strawman argument that Rattagan bases the agency allegations on the mere
 8 sharing of professional services between UTI and the Foreign Shareholders. However, the TAC
 9 alleges facts far beyond these and establishing a principal-agent relationship under the two tests
 10 for agency. The first test focuses on the parent’s control of the subsidiary, while the second test
 11 focuses on the parent’s dependence on the subsidiary’s services. *Bowoto*, 312 F.Supp.2d at 1241.
 12 Under California law, a subsidiary may be considered the agent of the parent “where the nature
 13 and extent of the control exercised over the subsidiary by the parent is... pervasive and
 14 continual...” *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal.App.4th 523, 541 (2000). In *E. & J.*
 15 *Gallo Winery v. EnCana Energy Servs., Inc.*, No. CVF03-5412 AWI LJO, 2008 WL 2220396 at
 16 *11 (E.D. Cal. May 27, 2008), the court explained that the amount of control required is
 17 “inherently fact specific”:

18
 19 How much control the parent must exert over [the] subsidiary in order for
 20 liability to attach against the parent under principal/agent theory is a subject
 21 over which courts have long struggled... The type of control that typifies the
 22 principal/agent relationship is control over the operations of the agent that
 23 lie outside the controls normally imposed between a provider and receiver
 24 of services. As the Restatement puts it: The power to give *interim*
 25 instructions distinguishes principals in agency relationships from those who
 26 contract to receive services provided by persons who are not agents.

27 (Internal citations omitted; emphasis in original.)

28 The TAC alleges facts establishing that UTI exercised “pervasive and continual” control
 over the Foreign Shareholders and had the power to give interim instructions. For example, the
 TAC avers UTI exercised complete control over setting the Foreign Shareholders’ policies and
 decision-making in setting up new affiliates around the world, including Argentina, to implement
 Uber Ridesharing; the few Foreign Shareholders’ employees took direction from UTI’s senior

employees; and UTI controlled the directives given to Rattagan regarding the scope of -- and timeline for -- the legal work he performed. ¶¶32-33. Thus, facts underpinning an agency relationship between UTI and the Foreign Shareholders under the control test are adequately alleged.

The second test, referred to as the “representative services doctrine,” requires the court to ask whether “the subsidiary functions as the parent corporation’s representative in that it performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation’s own officials would undertake to perform substantially similar services.” *Doe v. Unocal Corp.*, 248 F.3d 915, 928 (9th Cir. 2001); *Sonora Diamond Corp.*, 83 Cal.App.4th at 543. In other words, the representative services doctrine applies where the function the subsidiary is performing “assists the parent’s *own* business.” *Id.* (emphasis in original). The TAC alleges specific facts establishing that the Foreign Shareholders performed services critical to UTI that it would have had to perform itself if the Foreign Shareholders did not. ¶¶32-33.

The TAC pleads facts establishing that UTI, as principal, owed Rattagan duties to act fairly and in good faith and disclose facts material to the relationship by virtue of its direct relationship with Rattagan, and/or because UTI’s agents, the Foreign Shareholders, owed Rattagan such duties.

4. Rattagan’s Claims for Negligence and Breach of the Implied Covenant of Good Faith and Fair Dealing are Not Time-Barred.

UTI argues this Court should dismiss the Second and Third Claims for Relief because as a matter of law they are barred by statutes of limitation. Dkt. 67 at 9-11. “[W]here the statute of limitations question turns on factual issues that may be disputed,” it “is more appropriately addressed at a later stage of the proceeding,” not on a motion to dismiss. *Belete v. Oaks Corner*, 2016 WL 6393510, at *4 (N.D. Cal. Oct. 28, 2016). UTI’s statute of limitations argument is not appropriate for resolution on this Motion because the TAC alleges facts establishing that the negligence and breach of the implied covenant of good faith claims are timely pursuant to well-settled accrual principles.

First, appreciable harm to Rattagan did not occur until November 2017, within the

1 applicable statutes of limitation. Second, under California law, there are two main branches of
 2 continuing-wrong accrual principles: the continuing violation doctrine and the theory of continuous
 3 accrual. The continuing violation doctrine “aggregates a series of wrongs or injuries for purposes
 4 of the statute of limitations, treating the limitations period as accruing for all of them upon
 5 commission or sufferance of the last of them.” *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal.4th 1185,
 6 1192 (2013). The theory of continuous accrual views a series of wrongs or injuries “as each
 7 triggering its own limitations period, such that a suit for relief may be partially time-barred as to
 8 older events but timely as to those within the applicable limitations period.” *Id.* Both doctrines
 9 apply here and mandate the rejection of UTI’s statute of limitations argument.

10 **a. The Appreciable Harm Which this Action Seeks to Address did not**
 11 **Occur Until November 2017 – When Rattagan Was Charged with**
 12 **Aggravated Tax Evasion**

13 Under California law a cause of action does not accrue, and the statute of limitations does
 14 not begin to run, until the plaintiff has suffered “actual and appreciable harm.” *Davies v. Krasna*,
 15 14 Cal.3d 502, 514 (1975). This does not occur until “events have developed to a point where
 16 plaintiff is entitled to a legal remedy, not merely a symbolic judgment such as an award of nominal
 17 damages.” *Id.* at 512; *see also Crowley v. Peterson*, 206 F. Supp. 2d 1038, 1045 (C.D. Cal. 2002)
 18 (actual and appreciable harm is synonymous with “actionable” or “compensable” harm); *Adams v.*
 19 *Paul*, 11 Cal.4th 583, 589 (1995) (“the character or quality of the injury must be manifest and
 20 palpable”); *Miller v. Lakeside Village Condominium Assn.*, 1 Cal.App.4th 1611, 1622-23, (1991)
 21 (explaining that the Supreme Court in *Davies v. Krasna*, *supra*, observed that “we have drifted
 22 away from the view held by some that a limitations period necessarily begins when an act or
 23 omission of defendant constitutes a legal wrong as a matter of substantive law. ... Rather we
 24 generally now subscribe to the view that the period cannot run before plaintiff possesses a true
 25 cause of action, by which we mean that events have developed to a point where plaintiff is entitled
 26 to a legal remedy, not merely a symbolic judgment such as an award of nominal damages.”).

27 When Rattagan’s offices were raided, he had not yet suffered appreciable or compensable
 28 harm. That did not happen until after November 2017, when he was arrested and charged with
 aggravated tax evasion. ¶78. The aggravated tax evasion charge resulted in Rattagan being banned

1 from traveling abroad, preventing him from freely conducting his professional activities and
 2 jeopardizing his contribution to his law firm. ¶79. His professional reputation was also damaged
 3 because his name became synonymous with aggravated tax evasion and illegal commercial
 4 operations by a foreign multinational. ¶81. Thus, because Rattagan did not suffer actionable or
 5 compensable harm until November 2017, the claims are not time-barred. At a minimum, when
 6 Rattagan suffered actual harm that commenced the running of the statute of limitations is a factual
 7 question not amenable for resolution on a motion to dismiss. *Adams v. Paul*, 11 Cal.4th at 588 (the
 8 determination of when a plaintiff suffers actual and appreciable harm is a question of fact); *Geneva*
 9 *Towers Ltd. Partnership v. City of San Francisco*, 29 Cal.4th 769, 781 (2003) (“California law
 10 provides that a statute of limitations defense may be raised on a motion to dismiss, but should not
 11 be granted ‘where the action may be, but is not necessarily barred.’ Facts supporting the conclusion
 12 that a complaint is time-barred by the statute of limitations ‘must clearly and affirmatively appear
 13 on the face of the complaint.’”).

14 **b. The Continuing Violation Doctrine.**

15 The continuing violation doctrine is an equitable doctrine designed “to prevent a defendant
 16 from using its earlier illegal conduct to avoid liability for later illegal conduct of the same sort.”
 17 *O’Loughlin v. County of Orange*, 229 F.3d 871, 875 (9th Cir. 2000). To establish a continuing
 18 violation, a plaintiff must show “that the alleged ... acts are related closely enough to constitute a
 19 continuing violation.” *DeGrassi v. City of Glendora*, 207 F.3d 636, 645 (9th Cir.2000). Where the
 20 alleged conduct constitutes a continuing pattern and course of conduct, the continuing violation
 21 doctrine permits recovery “for actions that take place outside the limitations period if these actions
 22 are sufficiently linked to unlawful conduct within the limitations period [.]” *Richards v. CH2M*
 23 *Hill, Inc.*, 26 Cal.4th 798, 812 (2001).

24 The TAC alleges that after the April 12, 2016 launch, UTI continued operations in a manner
 25 that Argentine authorities had deemed illegal and which continued to expose Rattagan to injury.
 26 For example, in May 2016, despite his resignation and demands from Rattagan to have his name
 27 removed from all official documents filed with the Argentinian authorities, UTI’s Head Counsel
 28 for Latin America Operations sent a letter to Buenos Aires officials using Rattagan’s name and firm

address, thereby falsely implying that Rattagan was part of, consented to, or ratified UTI's unlawful actions. ¶71. For many months after the launch, UTI continued to operate in Argentina while Rattagan remained, as far as the governmental officials knew, the sole legal representative for the Foreign Shareholders. ¶75. UTI holding Rattagan out as the Foreign Shareholders' legal representative after the launch resulted in the City prosecutor concluding that Rattagan helped design, plan, and implement the launch. ¶76. In April 2017, Rattagan was criminally charged with the unauthorized use of public space with a commercial aim arising from his purported role in the launch. ¶77. In November 2017, Rattagan was charged with aggravated tax evasion. ¶78. The tax evasion charges were aggravated due to the uninterrupted and increasing volume of Uber Ridesharing's sales in the year after the launch. ¶79. At no point during the year after the launch did UTI inform authorities that Rattagan was unaware of and uninvolved in the launch. *Id.*

These allegations demonstrate that UTI continuously breached the duties owed to Rattagan after the launch, and these breaches culminated in Rattagan's arrest for aggravated tax evasion in November 2017. As such, a pattern and course of closely related conduct that invokes the continuing violations doctrine is sufficiently alleged. Accordingly, the claims for negligence and breach of the implied covenant of good faith and fair dealing are not time-barred.

c. The Theory of Continuous Accrual.

Continuous accrual applies "whenever there is a continuing or recurring obligation: 'When an obligation or liability arises on a recurring basis, a cause of action accrues each time a wrongful act occurs, triggering a new limitations period.'" *Aryeh*, 55 Cal.4th at 1199, quoting *Hogar Dulce Hogar v. Cmty. Dev. Comm'n*, 110 Cal.App.4th 1288, 1295 (2003). California courts have recognized the application of the continuous accrual doctrine in a variety of circumstances, including: where sex discrimination continued for six years despite a two-year statute of limitations, *Jones v. Tracy School Dist.*, 27 Cal.3d 99 (1980); a widow sued for a pension six months after the period for filing a claim had expired because "[t]he right to pension payments is a continuing right," *Dryden v. Bd. of Pension Commrs.*, 6 Cal.2d 575, 580 (1936); and where the limitations period had run to challenge the validity of a municipal tax ordinance, reasoning that the continuing monthly collection on the tax that was alleged was an ongoing breach of state law,

1 *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809, 818-822 (2001), as
 2 *modified* (July 18, 2001).

3 As detailed above, UTI's breaches of duties owed to Rattagan occurred on an ongoing basis
 4 far beyond the date of the launch and well into the statute of limitations period. Indeed, UTI
 5 provided a defense to Rattagan (presumably under the Indemnity Agreements executed in San
 6 Francisco by Ryan Graves UTI's then board member and interim CEO – *see* August Declaration,
 7 Exhibits C and D) for the criminal charges only to renege when he filed this lawsuit. ¶8. Pursuant
 8 to the continuous accrual theory, a new statute of limitations applies to each wrongful act. As such,
 9 UTI fails to establish that the negligence and breach of the implied covenant of good faith and fair
 10 dealing claims are time-barred as a matter of law. The Motion on this ground should be denied.

11 **5. The Economic Loss Rule Does Not Bar the Fraudulent Concealment,**
 12 **Negligence, and Aiding and Abetting Claims.**

13 UTI argues the economic loss rule bars Rattagan's tort claims. But this is putting a square
 14 peg in a round hole. The rule "normally applies in products liability and construction defect cases
 15 where physical injury is even possible" and where a plaintiff's claims "stem from disappointed
 16 expectations in a commercial transaction." *Rowland v. JPMorgan Chase Bank, N.A.*, WL 992005,
 17 at *10 (N.D. Cal. Mar. 12, 2014), quoting *Robinson Helicopter Co. v. Dana Corp.*, 34 Cal.4th 979,
 18 989-90 (2004). Purely economic loss consists of "damages for inadequate value, costs of repair and
 19 replacement of the defective product or consequent loss of profits [because of the defective
 20 product]." *Robinson Helicopter*, 34 Cal.4th at 988. Here, Rattagan was not a purchaser nor is this
 21 is not a products liability or construction defect case where physical injury is possible, and Rattagan
 22 does not seek damages arising from a defective product.

23 The three cases cited by UTI in support of its argument are inapposite. *Robinson Helicopter*
 24 was a products liability case where the court ruled that the plaintiff's misrepresentation claims were
 25 not barred by the economic loss rule because they were based on allegations that the defendant had
 26 not just delivered defective helicopter parts, but had also falsely certified those parts to comply with
 27 safety standards and failed to provide information that would have allowed the plaintiff to sooner
 28 discover and replace the defective parts and the conduct thus went beyond mere breach of contract.

1 *Robinson Helicopter*, 34 Cal.4th at 990-91. The court also found that even in product liability cases,
2 the economic loss rule does not apply to claims alleging fraud in the inducement. *Id.* at 989-90.

3 In *JMP Sec. LLP v. Altair Nanotechs, Inc.*, 880 F.Supp.2d 1029, 1042 (N.D. Cal. 2012), the
4 court held that because the “tort claims consist of nothing more than [the defendant’s] alleged
5 failure to make good on its contractual promises,” they were barred by the economic loss rule. Here,
6 Rattagan’s tort claims cannot be characterized as a matter of law as limited to UTI’s failure to make
7 good on its contractual obligations to compensate him for legal work performed. *See ReactX v.*
8 *Mendez*, 2018 WL 6164275, at *3 (C.D. Cal. Jan 4, 2018) (distinguishing *JMP*). In *UMG*
9 *Recordings, Inc. v. Glob. Eagle Entm’t, Inc.*, 117 F.Supp.3d 1092, 1106 (C.D. Cal. 2015), the court
10 found that the economic loss rule barred tort claims where “allegations underpinning a
11 straightforward claim for breach of a commercial contract” were recast as tort claims. Unlike *JMP*
12 and *UMG*, the crux of Rattagan’s claims is based on UTI’s tortious conduct (and that of the Foreign
13 Shareholders), not on their failure to pay him for services rendered (i.e., failure to make good on
14 contractual promises). In fact, Rattagan does not even allege breach of contract.

15 The economic loss rule does not apply for the additional reason that Rattagan alleges fraud
16 in the inducement. ¶86; *Robinson Helicopter*, 34 Cal.4th at 989-90; *R Power Biofuels, LLC v.*
17 *Chemex LLC*, No. 16-CV-00716-LHK, 2017 WL 1164296, at *5 (N.D. Cal. Mar. 29, 2017)
18 (“fraudulent inducement is a well-recognized exception to the economic loss rule”); *Grouse River*
19 *Outfitters Ltd. v. Net Suite, Inc.*, 2016 WL 5930273, at *11 (N.D. Cal. Oct. 12, 2016) (“excepted
20 from the economic loss rule are claims that a contract was fraudulently induced”); *Frye v. Wine*
21 *Library, Inc.*, 2006 WL 3500605, at *3 (N.D. Cal. Dec. 4, 2006) (“As Plaintiff’s negligent
22 misrepresentation claim can be characterized as relating to Defendant’s inducement of Plaintiff to
23 contract, there is also no question of it being barred by the economic loss rule.”).

24 Rattagan alleges fraudulent inducement and does not attempt to recast a breach of contract
25 claim as tort claims based on an alleged failure to make good on contractual promises.¹²

26
27 ¹² The fact that a claim for breach of the implied covenant of good faith and fair dealing is alleged
28 does not alter the analysis. *Didio v. Jones*, 2014 WL 12591676, at *3 (C.D. Cal. July 3, 2014)
(holding economic loss rule did not apply because breach of implied covenant claim was not

Accordingly, the economic loss rule does not apply in this case.

6. A Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing is Stated.

Although the gravamen of Rattagan's TAC is UTI's tortious conduct towards its lawyer, as an alternative theory, he states facts supporting a plausible claim for breach of the implied covenant of good faith and fair dealing. To state a claim for breach of the implied covenant, facts must be alleged establishing that the defendant deliberately acted in such a way that deprived the plaintiff of the benefits of the parties' agreement. "The covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract." *Int'l Union of Operating Engineers v. Bank of New York Mellon Corp.*, 2012 WL 476526, at *6 (N.D. Cal. Feb. 14, 2012). Just what conduct will meet these criteria must be determined on a case by case basis and will depend on the contractual purposes and reasonably justified expectations of the parties. *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal.App.3d 1371, 1395 (1990).

Here, Rattagan agreed to provide legal services for a fee and to serve as the legal representative of the Foreign Shareholders so UTI could lawfully commence operations in Argentina. By secretly planning and executing a launch of operations in Argentina that UTI knew would be perceived as illegal by governmental authorities without telling Rattagan, UTI failed to exercise good faith and thereby frustrated Rattagan's reasonable expectations with respect to the very purpose of the contract and deprived him of its benefits. *See Daly v. United Healthcare Ins. Co.*, 2010 WL 4510911, at *4 (N.D. Cal. Nov. 1, 2010). UTI's argument that an implied covenant claim must be based on violation of the express terms of the contract was soundly rejected by Judge Koh in *Daly* where she explained that if the "implied covenant only enforces the express terms of the contract, then the entire concept of an implied covenant would be superfluous." *Id.* at *5.

UTI's reliance on *Sheahan v. State Farm Gen. Ins. Co.*, 394 F.Supp.3d 997 (N.D. Cal. 2019)

based on same conduct as breach of contract claim).

1 is misplaced. There, the implied covenant claim failed because the plaintiff failed to allege that he
 2 was denied any benefits under an insurance contract, but instead alleged that State Farm failed to
 3 pay more than the policy limit. *Id.* at 1003-04. The claim was dismissed because “[t]he shortfall
 4 [between plaintiffs’ loss and the policy limits] stems from the express terms of contract, not from
 5 the implementation of its terms.” *Id.* at 1004. Here, Rattagan’s implied covenant claim is based on
 6 UTI’s bad faith implementation of the contract and the claim is not contrary to the contract’s
 7 express terms.¹³ UTI’s bad faith implementation of the contract frustrated Rattagan’s reasonable
 8 expectations regarding the common purpose of the contract and thus unfairly deprived him of the
 9 contract’s benefits. Thus, a cause of action for breach of the implied covenant of good faith and fair
 10 dealing is adequately alleged.

11 **7. The Doctrine of Unclean Hands is Inapplicable.**

12 UTI argues that by seeking to hold UTI accountable for its tortious conduct in making
 13 Rattagan the face of the company’s operations in Argentina, secretly launching without his
 14 knowledge, and disregarding the inevitable consequences that would befall him, Rattagan is
 15 breaching his duty of loyalty owed to UTI as its attorney and cannot maintain this action under the
 16 doctrine of unclean hands. UTI’s argument directly contradicts its Rule 11 Motion. In support of
 17 the Rule 11 motion, UTI submitted declarations under penalty of perjury stating that it never had
 18 an attorney-client relationship with Rattagan or its firm. We now know this is untrue.

19 UTI’s entire defense is predicated on its belief that no lawyer can ever sue its client (other
 20 than for money owed or unless the client first sues for malpractice), because the lawyer may never
 21 use any communications to prove even the existence of the relationship. Predictably, UTI fails to
 22 cite any case or statute that supports this extreme and untenable view of the attorney-client
 23 relationship.

24
 25 ¹³The other cases UTI cites are also inapposite. In *Lee v. Wells Fargo Bank NA*, 2013 WL 1117866,
 26 at *5 (N.D. Cal. Mar. 18, 2013), the implied covenant claim was dismissed because plaintiff failed
 27 to allege the existence of any contract. In *Oculus Innovative Scis., Inc. v. Nofil Corp.*, 2007 WL
 28 2600746, at *4 (N.D. Cal. Sept. 10, 2007), the implied covenant claim failed to adequately allege
 “how Oculus ‘unfairly interfered with the [Nofil’s] right to receive the benefits of the contract.’”
 Here Rattagan alleges exactly how UTI interfered with his right to receive the benefits of the
 contract.

1 The cases cited by UTI are inapposite here because they address a breach of an attorney's
 2 duty of loyalty when he subsequently represents a client with interests directly competing with a
 3 former client. None of them involve an attorney who was injured by the torts of his former client.
 4 In *Oasis W. Realty LLC v. Goldman*, 51 Cal.4th 811, 815 (2011), an attorney represented a
 5 developer for two years to obtain approval of a project. The court found the attorney breached his
 6 duty of loyalty when he subsequently became involved in a campaign to thwart the same project.
 7 Here, Rattagan is not challenging the legality of the entities he helped form but rather the actions
 8 by UTI in launching Uber Ridesharing in a manner it knew would be deemed illegal and concealing
 9 its plans from Rattagan who it knew would be held responsible.

10 In *Wutchumna Water Co. v. Bailey*, 216 Cal. 564 (1932), the court held that a water
 11 company was entitled to an order preventing its former attorney from representing competing water
 12 claimants, where the attorney had represented the company for many years, including in matters
 13 involving the same water rights. These cases merely hold that where there is patent conflict of
 14 interest, there are limitations to what a lawyer may do in litigation with its former client. There is
 15 an obvious and fundamental difference between an attorney being prohibited from representing a
 16 new client with interests adverse to a former client and a former client being able to use the prior
 17 representation to immunize itself from liability for its own intentional torts committed against the
 18 attorney.

19 **8. A Claim for Aiding and Abetting Fraudulent Concealment is Adequately**
 20 **Alleged.**

21 UTI argues that the aiding and abetting fraudulent concealment claim fails for two reasons.
 22 First, UTI incorrectly contends that neither it nor the Foreign Shareholders owed Rattagan a duty
 23 of disclosure. As discussed in sections 2-3, *supra*, UTI and the Foreign Shareholders did owe such
 24 a duty.

25 Second, UTI argues that the TAC fails to plead facts establishing the element of substantial
 26 assistance or encouragement. UTI ignores that the TAC alleges that "UTI expressly or impliedly
 27 directed the Foreign Shareholders to conceal these facts from Rattagan because it knew that its
 28 actions would be deemed unlawful under Argentine law and did not want Rattagan taking any steps

that might interfere with or delay the launch of Uber Ridesharing in Buenos Aires” [TAC, ¶10], as well as the TAC’s extensive allegations regarding UTI’s control over the Foreign Shareholders [¶¶32-34], which spell out in detail UTI’s conduct Rattagan contends constituted substantial assistance or encouragement. These allegations more than satisfy the Rule 12(b)(6) standards. *See Neilson v. Union Bank of California, N.A.*, 290 F.Supp.2d 1101, 1131 (C.D. Cal. 2003) (rejecting argument that the complaint must allege the who, what, and when of communications giving rise to substantial assistance and holding Rule 9(b) requirement is met where the complaint informs the defendant what he did that constituted substantial assistance).

9. The TAC Alleges Facts Establishing UTI was a Proximate Cause of Rattagan’s Damages.

UTI’s argument that it cannot be held liable for Rattagan’s injuries because the actions of the Buenos Aires authorities¹⁴ acted as an “independent intervening force” thereby breaking the chain of causation is unavailing because the actions of the authorities was entirely foreseeable to UTI and, in any event, proximate cause is a question of fact not amenable for resolution on a motion to dismiss. Under California law, an intervening act only breaks the chain of proximate causation when the intervening act was not reasonably foreseeable. *USAir Inc. v. Dept. of Navy*, 14 F.3d 1410, 1413 (9th Cir. 1994) (discussing sections 442–453 of the Restatement of Torts, which define when an intervening act constitutes a superseding cause); *Ewart v. Southern Cal. Gas Co.*, 237 Cal.App.2d 163, 172 (1965); *Earp v. Nobmann*, 122 Cal.App.3d 270, 292-93 (1981). Moreover, even if the intervening act is negligent, it is not a superseding cause if the first actor should have known that a third person might so act. *See* Restatement (Second) of Torts § 447(a); *Earp*, 122 Cal.App.3d at 292-93.

The TAC contains detailed factual allegations establishing that the fallout from UTI’s unlawful launch and the risk of harm to Rattagan was entirely foreseeable to UTI. ¶¶7, 59-62. Prior to the launch, UTI had expressly been warned by officials in Buenos Aires that “in order to launch

¹⁴ To be clear, Rattagan does not contend his injuries were caused by the public’s reaction and outcry to the illegal Uber Ridesharing launch. The Buenos Aires taxi drivers and their supporters were merely a harbinger for Rattagan being charged by Buenos Aires officials for aggravated tax evasion.

Uber Ridesharing lawfully, all drivers would need to have a professional driver's license, commercial insurance coverage and drive a vehicle examined and approved by the City" and that "commencing operations without complying with these requirements would be deemed illegal."

¶63. UTI's argument that the harm to Rattagan was not foreseeable as a matter of law because the exact same harm had not occurred in other countries is contrary to well-established law. *See Bigbee v. Pacific Tel. & Tel. Co.*, 34 Cal.3d 49, 58 (1983) ("[I]t is settled that what is required to be foreseeable is the general character of the event or harm...not its precise nature or manner of occurrence.").

UTI ignores the well-settled rule that whether an act is the proximate cause of an injury is generally a question of fact. *Ileto v. Glock Inc.*, 349 F.3d 1191, 1206 (9th Cir. 2003); *Hoyem v. Manhattan Beach City Sch. Dist.*, 22 Cal.3d 508, 520 (1978). Therefore, except for the rare instance where only one deduction or inference may be drawn from the facts alleged in a complaint, proximate cause is an issue of fact that cannot be resolved on a motion to dismiss. *Pradhan v. Citibank, N.A.*, 2011 WL 90235, at *6 (N.D. Cal. Jan. 10, 2011) ("Issues of proximate cause are general factual inquiries that are not appropriate for resolution on a 12(b)(6) motion."). When the facts alleged in the TAC are proven, a reasonable factfinder could properly determine that UTI's conduct was the proximate cause of Rattagan's harm. As such, the issue of proximate cause should not be decided on the pleadings and the motion to dismiss should be denied.

10. Sufficient Facts are Alleged to Support a Punitive Damages Claim.

Under California law, punitive damages are appropriately awarded where "the defendant has been guilty of oppression, fraud, or malice." Cal. Civ. Code §3294(a). Rattagan's fraudulent concealment and aiding and abetting fraudulent concealment claims support the imposition of punitive damages against UTI. *See, e.g., Textron Financial Corp. v. Nat'l Union Fire Ins. Co.*, 118 Cal.App.4th 1061, 1082 (2004) (fraudulent concealment supported award of punitive damages); *Chodos v. Ins. Co. of North America*, 126 Cal.App.3d 86, 101 (1981) (same).

UTI argues that the punitive damages claim is nonetheless deficient under Cal. Civil Code §3294(b) because the TAC does not allege facts establishing an officer, director, or managing agent of UTI engaged in the fraudulent conduct. However, as discussed in *Rees v. PNC Bank, N.A.*, 308

1 F.R.D. 266, 274 (N.D. Cal. 2015), because section 3294(b) “is a pleading requirement,” courts in
 2 the Ninth Circuit “have reached different results regarding the sufficiency of pleadings in federal
 3 court for punitive damages under section 3294(b).” *See also Robinson v. Managed Accounts*
 4 *Receivable Corp.*, 654 F.Supp.2d 1051, 1066 (C.D. Cal. 2009) (“[T]he fact that California courts
 5 may impose a heightened pleading requirement on claims for punitive damages is irrelevant,
 6 because such a requirement conflicts with federal procedural law.”). Some courts have “assumed
 7 authorization” or “inferred authorization or ratification based on factual allegations in the
 8 complaint.” *Id.*, citing *Robinson*, 654 F.Supp.2d at 1066, n.13 (court construed complaint in light
 9 most favorable to plaintiff to assume conduct was authorized); *Shaterian v. Wells Fargo Bank,*
 10 *N.A.*, 829 F.Supp.2d 873, 888-89 (N.D. Cal. 2011) (facts alleged sufficient to give rise to inference
 11 that high level corporate approval would have been required for marketing of loan). In *Rees*, this
 12 Court found that the allegations plausibly suggested a calculated plan that caused injury to the
 13 plaintiffs that “could not have occurred absent advance knowledge, authorization, or ratification by
 14 an officer, director, or managing agent” of the defendant, and therefore allegations regarding
 15 individual conduct were not necessary to state a claim for punitive damages. *Rees, supra*, 308 F.R.D
 16 at 273 (citing *Ortega v. Univ. of Pac.*, 2013 WL 6054447, at *4 (E.D. Cal. Nov. 15, 2013) (inferring
 17 authorization or ratification from superior’s refusal to investigate complaints of wrongful acts); *see*
 18 *also Nouri v. Ryobi Am. Corp.*, No. 14-6283, 2014 WL 5106903, at *1 (C.D. Cal. Oct. 9, 2014)
 19 (allegation that conduct “was authorized” sufficient to state punitive damages claim against
 20 corporation).

21 Moreover, the Ninth Circuit recognizes that pleading rules may be relaxed “with respect to
 22 matters within the opposing party’s knowledge” because “plaintiffs cannot be expected to have
 23 personal knowledge of relevant facts.” *In re Emulex Corp. Sec. Litig.*, 210 F.R.D. 714, 716 (C.D.
 24 Cal. 2002), *on reconsideration in part* (May 3, 2002), quoting *Neubronner v. Milken*, 6 F.3d 666,
 25 672 (9th Cir. 1993). “This ‘exception’ applies to cases of corporate fraud.” *Emulex*, 210 F.R.D. at
 26 716.

27 Here, the TAC sufficiently alleges facts that, at a minimum, allow the Court to infer that
 28 UTI’s corporate management authorized or ratified Uber Ridesharing’s chaotic launch in Argentina

and the plan to allow Rattagan to suffer the consequences. *See, e.g.*, ¶6 (UTI developed a “how to” manual for its “armed forces” to counteract adverse reactions to Uber Ridesharing launches); ¶¶12, 20 (all material actions and decisions concerning Rattagan giving rise to action were made by persons in UTI’s legal department in San Francisco, California and Sally Yoo (“Yoo”), UTI’s general counsel and corporate secretary, directed and supervised the legal department); ¶33 (Yoo controlled and directed the Foreign Shareholders); ¶44 (Yoo and Frederique Dame directed communications with Rattagan); ¶55 (UTI made the decision to launch Uber Ridesharing in Argentina); ¶57 (declaration sent from CEO of UTI regarding use of the name Hinter Argentina to avoid calling attention to the Uber name and its pending launch); ¶¶60-62 (UTI aware of backlash from launches in other markets but elected to employ “better to ask for forgiveness than for permission” strategy despite being told no); ¶63 (UTI’s heads of public policies had discussions with Argentinian officials about the launch); ¶65 (UTI’s Head Counsel for Latin Operations was in charge of launch); ¶73 (Yoo directed Todd Hamblet, UTI’s managing counsel, corporate, to handle the matter “from HQ”). It is implausible that corporate management would be unaware of UTI’s strategy regarding expansion into new markets. The identities of additional UTI officers, directors, and managing agents who participated in the plan to have Rattagan suffer the consequences of the launch while UTI profited by operating in Argentina with impunity will be revealed in discovery. Rattagan should not be precluded from asserting his claim for punitive damages at the pleading stage.

F. CONCLUSION

For the foregoing reasons, Defendant’s Motion should be denied.

Dated: July 20, 2020

STEYER LOWENTHAL BOODROOKAS
ALVAREZ & SMITH LLP

By: /s/ Andrew A. August
Andrew A. August
Allan Steyer
Jill K. Cohoe
Attorneys for Plaintiff
Michael R. Rattagan

CERTIFICATE OF SERVICE

On July 20, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notice of electronic filing to all persons registered for ECF pursuant to 28 U.S.C. §1746 and in compliance with Local Rule 5-5(a)(2).

/s/ Andrew A. August

Andrew A. August

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8 Attorneys for Plaintiff
Michael R. Rattagan

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MICHAEL R. RATTAGAN,
13 Plaintiff,
14
15 v.
16 UBER TECHNOLOGIES, INC.,
17 Defendant.

Case No. 3:19-cv-01988-EMC

Hon. Edward M. Chen

**DECLARATION OF ANDREW A. AUGUST
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS THIRD AMENDED
COMPLAINT**

18 Date: August 13, 2020
Time: 1:30 p.m.
19 Ctrm: Courtroom 5 – 17th Floor

DECLARATION OF ANDREW A. AUGUST

I, Andrew A. August, declare as follows:

1. I am Special Counsel at the law firm of Steyer Lowenthal Boodrookas Alvarez & Smith LLP, Counsel of Record for Plaintiff Michael Rattagan (Plaintiff"). I am licensed to practice law in the State of California and am admitted to the United States District Court for the Northern District of California. I make this declaration in support of Mr. Rattagan's Opposition to Defendant's Motion to Dismiss Third Amended Complaint. The matters set forth herein are true and correct of my own personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of Uber International B.V.'s Financial Statements for 2013. As reflected on the cover page, the document was filed with the Chamber of Commerce, Amsterdam and at all times was available to the public.

3. Attached hereto as **Exhibit B** is a true and correct copy of Uber International Holding B.V.'s Financial Statements 2013. As reflected on the cover page, the document was filed with the Chamber of Commerce, Amsterdam and at all times was available to the public.

4. Attached hereto as **Exhibit C** is a true and correct copy of an April 22, 2013 indemnity agreement between Uber International B.V. and Michael R. Rattagan. The Agreement on Uber letter was signed in San Francisco by Ryan Allan Graves, Uber's former interim CEO and a director. It was apostilled and filed with the Office of Secretary of the State of California.

5. Attached hereto as **Exhibit D** is a true and correct copy of an April 22, 2013 indemnity agreement between Uber International Holding B.V. and Michael R. Rattagan. The Agreement on Uber letter was signed in San Francisco by Ryan Allan Graves, Uber's former interim CEO and a director. It was apostilled and filed with the Office of Secretary of the State of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 20, 2020, at Park City, Utah.

/s/ Andrew A. August
Andrew A. August, Declarant

CERTIFICATE OF SERVICE

On July 20, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notice of electronic filing to all persons registered for ECF pursuant to 28 U.S.C. §1746 and in compliance with Local Rule 5-5(a)(2).

/s/ Andrew A. August

Andrew A. August

EXHIBIT A

Uber International B.V.
Amsterdam

Financial Statements 2013
(for filing with the Chamber of Commerce)

Registered with the Trade Registry of the Chamber of Commerce and Industries in Amsterdam, file number 55808646.

The financial statements were adopted by the General Meeting held on January 23, 2015.

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Amsterdam, January 23, 2015

T.C. Kalanick

Koolen Management B.V.

N.F. Wass

Balance sheet as at December 31, 2013

(after appropriation of the result)

Assets

(in thousands of euro's)

	2013		2012	
	\$	\$	\$	\$
Fixed assets				
Tangible fixed assets	74,075		-	
Financial fixed assets ⁽¹⁾	84,223		33,227	
		158,298		33,227
Current assets				
Receivables ⁽²⁾	29,968,409		84,321	
Cash at bank	395,982		24,017	
		30,364,391		108,338
		<u>30,522,689</u>		<u>141,565</u>
Shareholders' equity and liabilities				
Shareholders' equity ⁽³⁾				
Paid-up and called-up share capital	24,800		23,901	
Share premium account	237,831		-	
Currency translation reserve	(129,448)		(39,384)	
Other reserves	(920,634)		(1,193,277)	
		(787,451)		(1,208,760)
Provisions ⁽⁴⁾		-		755,395
Current liabilities		31,310,140		594,930
		<u>30,522,689</u>		<u>141,565</u>

Accounting policies used for the financial statements

General

The financial statements have been prepared in accordance with Part 9 of Book 2 of the Dutch Civil Code. The financial statements were prepared on January 23, 2015.

The direct shareholder is Uber International C.V. and the ultimate parent company is Uber Technologies Inc, San Francisco, California, United States of America.

Going concern

As at December 31, 2013, the company's liabilities exceeded its total assets by \$ 787,451. These conditions indicate the existence of an uncertainty which may cast doubt about the company's ability to continue as a going concern. The company received a letter of financial support from its shareholder. The negative equity is financed by current accounts of the shareholder and other group companies. Based on the continuance of funding by the shareholder and other group companies, valuation of assets has taken place on a going concern basis.

Comparative figures

The financial year 2013 represents the calendar year. The comparative figures in the profit and loss account for 2012 represent the period October 24, 2012 up to and including December 31, 2012.

Basis of consolidation

Pursuant to Section 407, Paragraph 2 Part 9 of Book 2 of the Netherlands Civil Code no consolidated balance sheet and profit and loss account have been prepared, because there is no legal requirement to do so on account of the company's size.

Foreign currency translation

The financial statements are prepared in USD, the functional and presentation currency of the company.

Transactions denominated in foreign currencies are initially carried at the functional exchange rates ruling at the date of transaction. Monetary balance sheet items denominated in foreign currencies are translated at the functional exchange rates ruling at the balance sheet date. Non-monetary balance sheet items that are measured at historical cost in a foreign currency are translated at the functional exchange rates ruling at the date of transaction.

Exchange differences arising on the settlement or translation of monetary items denominated in foreign currencies are taken to the profit and loss account (financial income and expense).

Exchange differences arising on the translation of non-monetary balance sheet items denominated in foreign currencies that are carried at current value are taken directly to the currency translation reserve.

Functional currency change

As from January 1, 2013 the Company changed its functional currency from Euro to US Dollar as the Companies cash flows are predominantly in US Dollar. Therefore the Company will publish the financial statements in US Dollar instead of Euros. For reference purposes the prior period figures are translated into US Dollar.

Tangible fixed assets

Tangible fixed assets in use by the company are carried at cost or production (less any investment grants) net of accumulated depreciation and accumulated impairment losses as applicable.

Depreciation is calculated on a straight-line basis over the expected useful lives, taking into account the residual value. Changes in the expected depreciation method, useful life and/or residual value over time are treated as changes in accounting estimates.

Tangible fixed assets (equipment) are depreciated on a straight-line basis over an estimated useful life of 3 years.

Financial fixed assets

Participating interests

Participating interests over whose financial and operating policies the company exercises significant influence are valued using the net asset value method. Under this method, participating interests are carried at the company's share in their net asset value plus its share in the results of the participating interests and its share of changes recognized directly in the equity of the participating interests as from the acquisition date, determined in accordance with the accounting policies disclosed in these financial statements, less its share in the dividend distributions from the participating interests. The company's share in the results of the participating interests is recognized in the profit and loss account. If and to the extent the distribution of profits is subject to restrictions, these are included in a legal reserve. The company's share in direct equity increases and decreases of participating interests is also included in the legal reserve except for asset revaluations recognized in the revaluation reserve.

If the value of the participating interest under the net asset value method has become nil, this method is no longer applied, with the participating interest being valued at nil if the circumstances are unchanged. In connection with this, any long-term interests that, in substance, form part of the investor's net investment in the participating interest, are included. A provision is formed if and to the extent the company stands surety for all or part of the debts of the participating interest or if it has a constructive obligation to enable the participating interest to repay its debts.

Participations with a negative equity are valued at nil. If the company fully or partly guarantees the liabilities of the participation concerned a provision is formed, primarily comprising the receivables from this participation.

Receivables

Receivables are carried at face value net of a provision for doubtful debts where necessary.

Cash at bank

Cash at bank are carried at face value. Cash at bank not expected to be at the companies free disposal for over 12 months is classified as financial fixed assets.

Provisions

Other provisions

A provision is formed for the negative equity of participations whose liabilities are guaranteed.

Taxes

The company together with its Dutch group companies constitutes a fiscal unit. Taxes are settled within this fiscal unit as if each company were an independent taxable entity.

Liabilities

Current liabilities are carried at face values.

Income

General

Net turnover represents the service fee income.

Expenses

General

Expenses are determined with due observance of the aforementioned accounting policies and allocated to the financial year to which they relate. Foreseeable and other obligations as well as potential losses arising before the financial year-end are recognized if they are known before the financial statements are prepared and provided all other conditions for forming provisions are met.

Workforce

The average number of staff employed by the company in 2013 was 8 (2012: 1). All employees were administrative.

Notes to the balance sheet

Financial fixed assets (1)

The information relating to the equity interests of the company is included under appendix 1 and 2.

Receivables (2)

The amounts receivable have a validity shorter than a year.

Shareholders' equity (3)

(in thousands of euro's)

	2013	2012
	\$	\$
<i>Paid-up and called-up share capital</i>		
18,000 ordinary shares with a nominal value of € 1.00	24,800	23,901

The issued and paid up share capital has been translated into USD at the balance sheet exchange rate of EURO 1 = USD 1.37775.

Share premium account

Effective as per June 11, 2013 the Company obtained a non-cash contribution of the shares of several group companies amounting to \$ 237.831 recorded by the Company as share premium.

Other reserves

In accordance with the proposal for the appropriation of profit, \$ 309,521 (2012: \$ 1,193,277) is added to the other reserves.

(in thousands of euro's)

	2013	2012
	\$	\$
Provisions (4)		
Provision for participating interests	-	755,395

Arrangements not shown in the balance sheet

Fiscal unit

The company is the head of a fiscal unit for corporate income tax and VAT purposes, which makes the group jointly and severally liable for tax liabilities of the fiscal unit.

Letter of financial support

The company have signed letters of financial support relating to Uber B.V. and Uber International Holding B.V.

Office rent

The company entered into a rental agreement until September 1, 2017 with an annual obligation of Euro 505.925.

Appendix 1

Direct Equity interests 2013

Name	Registered office	% Interest in equity
Uber International Holding B.V.	Amsterdam	100
Uber B.V.	Amsterdam	100
Uber Belgium BVBA	Brussels	1
Uber Czech Republic Technology s.r.o.	Prague	10
Uber Peru S.A.	Lima	10
Uber India Systems Private Limited	Mumbai	10
Uber Technology LLC	Moscow	1
Uber Poland sp.zo.o.	Warsaw	10
Uber Mexico Technology & Software S.A.	Mexico city	1
Uber Portugal LDA	Lisbon	1
Uber Kenya Limited	Nairobi	10
Uber Do Brasil Tecnologia LTDA	Sao Paolo	0,

Appendix 2

Indirect Equity interests 2013

Name	Registered office	% Interest in equity
Uber Australia Pty Ltd	Victoria	100
Uber Italy S.R.L.	Milan	100
Uber Netherlands B.V.	Amsterdam	100
Uber Belgium BVBA	Brussels	99
Uber Sweden AB	Stockholm	100
Uber Germany GmbH	Berlin	100
Uber Turkey Yazilim ve Teknoloji Hizmetleri Limited Sirketi	Istanbul	100
Uber Norway AS	Oslo	100
Uber Singapore Technology Pte. LTD.	Singapore	100
Uber Austria GmbH	Vienna	100
Uber Switzerland GmbH	Zurich	100
Uber Korea Technology LLC	Seoul	100
Uber Czech Republic Technology s.r.o.	Prague	90
Uber Hungary Korlátolt Felelősségű Társaság	Budapest	100
Uber (Asia) Limited	Hong Kong	100
Uber Taiwan Co., Ltd.	Taipei	100
Uber Japan Co., Ltd.	Tokyo	100
Uber Middle East FZ-LLC (Dubai)	Dubai	100
Hinter France SAS	Paris	100
Uber Latvia SIA	Riga	100
Uber Peru S.A.	Lima	90
Uber India Systems Private Limited	Mumbai	90
Uber Technology LLC	Moscow	99
Uber Poland sp.zo.o.	Warsaw	90
Uber Colombia SAS	Bogota	100
Uber Systems, Inc.	Makati city	100
Uber Britannia (fka Hinter UK)	London	100
Uber Canada, Inc.	Toronto	100
Uber Chile SpA	Santiago	100
Uber France SAS	Paris	100
Uber Ireland Technologies Limited	Dublin	100
Uber Mexico Technology & Software S.A.	Mexico city	99
Uber Malaysia SDN. BHD.	Kuala Lumpur	100
Uber New Zealand Technologies Limited	Auckland	100
Uber Panama Technology Inc.	Panama city	100
Uber Portugal LDA	Lisbon	99
Uber South Africa Technology Proprietary Limited	Johannesburg	100
Uber Kenya Limited	Nairobi	90
Uber Do Brasil Tecnologia LTDA	Sao Paolo	99
Uber Personnel Services B.V.	Amsterdam	100
Yu Jia (Shanghai) Network Technology Service Co., Ltd.	Shanghai	100

EXHIBIT B

Uber International Holding B.V.
Amsterdam

Financial Statements 2013
(for filing with the Chamber of Commerce)

Registered with the Trade Registry of the Chamber of Commerce and Industries in Amsterdam, file number 55976255.

The financial statements were adopted by the General Meeting held on January 23, 2015.

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Amsterdam, January 23, 2015

A. Martinez

K.S. Walker

Uber International B.V. represented by Koolen
Management B.V.

Balance sheet as at December 31, 2013

(after appropriation of the result)

Assets

	2013		2012	
	€	€	€	€
Fixed assets				
Intangible fixed assets	2,328,961		-	
Financial fixed assets ⁽¹⁾	1,106,165		98,860	
		3,435,126		98,860
Current assets				
Receivables ⁽²⁾	8,038,353		57,877	
Cash at bank	318,628		23,933	
		8,356,981		81,810
		<u>11,792,107</u>		<u>180,670</u>
Shareholders' equity and liabilities				
Shareholders' equity ⁽³⁾				
Paid-up and called-up share capital	24,800		23,901	
Share premium account	237,831		-	
Currency translation reserve	(127,841)		291	
Other reserves	(53,822)		8,785	
		80,968		32,977
Provisions ⁽⁴⁾		2,489,224		-
Current liabilities		9,221,915		147,693
		<u>11,792,107</u>		<u>180,670</u>

Accounting policies used for the financial statements

General

The financial statements have been prepared in accordance with Part 9 of Book 2 of the Dutch Civil Code. The financial statements were prepared on January 23, 2015.

The direct shareholder is Uber International B.V. and the ultimate parent company is Uber Technologies Inc, San Francisco, California, United States of America.

Comparative figures

The financial year 2013 represents the calendar year. The comparative figures in the profit and loss account for 2012 represent the period August 28, 2012 up to and including December 31, 2012.

Basis of consolidation

Pursuant to Section 407, Paragraph 2 Part 9 of Book 2 of the Netherlands Civil Code no consolidated balance sheet and profit and loss account have been prepared, because there is no legal requirement to do so on account of the company's size.

Foreign currency translation

The financial statements are prepared in USD, the functional and presentation currency of the company.

Transactions denominated in foreign currencies are initially carried at the functional exchange rates ruling at the date of transaction. Monetary balance sheet items denominated in foreign currencies are translated at the functional exchange rates ruling at the balance sheet date. Non-monetary balance sheet items that are measured at historical cost in a foreign currency are translated at the functional exchange rates ruling at the date of transaction.

Exchange differences arising on the settlement or translation of monetary items denominated in foreign currencies are taken to the profit and loss account (financial income and expense).

Exchange differences arising on the translation of non-monetary balance sheet items denominated in foreign currencies that are carried at current value are taken directly to the currency translation reserve.

Functional currency change

As from January 1, 2013 the Company changed its functional currency from Euro to US Dollar as the Companies cash flows are predominantly in US Dollar. Therefore the Company will publish the financial statements in US Dollar instead of Euros. For reference purposes the prior period figures are translated into US Dollar.

Intangible fixed assets

General

An intangible fixed asset is recognized in the balance sheet if:

- It is probable that the future economic benefits that are attributable to the asset will accrue to the company and
- The cost of the asset can be reliably measured

Goodwill

Amounts by which the purchase price exceeds the interest of the company in the fair values of the acquired identifiable assets and liabilities at the time of the acquisition of a participating interest are capitalized in the balance sheet as goodwill.

Intangible fixed assets are amortized on a straight-line basis over their expected useful lives, subject to a maximum of twenty years. The useful life and the amortization method are reviewed at each financial year-end. If the estimated useful life exceeds twenty years, an impairment test is carried out at each financial year-end following the date of recognition. Intangible fixed assets are amortized on a straight-line basis over an estimated useful life of 5 years.

Financial fixed assets

Participating interests

Participating interests over whose financial and operating policies the company exercises significant influence are valued using the net asset value method. Under this method, participating interests are carried at the company's share in their net asset value plus its share in the results of the participating interests and its share of changes recognized directly in the equity of the participating interests as from the acquisition date, determined in accordance with the accounting policies disclosed in these financial statements, less its share in the dividend distributions from the participating interests. The company's share in the results of the participating interests is recognized in the profit and loss account. If and to the extent the distribution of profits is subject to restrictions, these are included in a legal reserve. The company's share in direct equity increases and decreases of participating interests is also included in the legal reserve except for asset revaluations recognized in the revaluation reserve.

If the value of the participating interest under the net asset value method has become nil, this method is no longer applied, with the participating interest being valued at nil if the circumstances are unchanged. In connection with this, any long-term interests that, in substance, form part of the investor's net investment in the participating interest, are included. A provision is formed if and to the extent the company stands surety for all or part of the debts of the participating interest or if it has a constructive obligation to enable the participating interest to repay its debts.

Participations with a negative equity are valued at nil. If the company fully or partly guarantees the liabilities of the participation concerned a provision is formed, primarily comprising the receivables from this participation.

Receivables

Deposits under financial fixed assets are carried at the lower of their face value and their recoverable amount (being the higher of their value in use and fair value less costs to sell). Discounts and premiums on loans granted or acquired are taken to the profit and loss account during the term of the receivable.

Receivables

Receivables are carried at face value net of a provision for doubtful debts where necessary.

Cash at bank

Cash at bank are carried at face value. Cash at bank not expected to be at the companies free disposal for over 12 months is classified as financial fixed assets.

Provisions

A provision is formed for liabilities if it is probable that they will have to be settled and the amount of the liability can be reliably estimated. The amount of the provision is determined based on a best estimate of the amounts required to settle the liabilities and losses concerned at the balance sheet date. Provisions are carried at non-discounted value.

Taxes

The company together with its Dutch group companies constitutes a fiscal unit. Taxes are settled within this fiscal unit as if each company were an independent taxable entity.

Taxes are calculated on the result disclosed in the profit and loss account, taking account of tax-exempt items and partly or completely non-deductible expenses.

Liabilities

Current liabilities are carried at face values.

Income

General

Net turnover represents the service fee income.

Services

If the result of a transaction relating to a service can be reliably estimated and the income is probable to be received, the income relating to that service is recognized in proportion to the service delivered.

Interest

Interest income is recognized pro rata in the profit and loss account, taking into account the effective interest rate for the asset concerned.

Expenses

General

Expenses are determined with due observance of the aforementioned accounting policies and allocated to the financial year to which they relate. Foreseeable and other obligations as well as potential losses arising before the financial year-end are recognized if they are known before the financial statements are prepared and provided all other conditions for forming provisions are met.

Workforce

The company has no staff during the year under review (2012: nil).

Notes to the balance sheet

Financial fixed assets (1)

Equity interests

The information relating to the equity interests of the company is included under appendix 1.

Receivables (2)

The amounts receivable have a validity shorter than a year.

Shareholders' equity (3)

Paid-up and called-up share capital

Issued share capital is equal to the paid-up and called-up share capital.

	2013	2012
	€	€
18.000 ordinary shares with a nominal value of € 1	24,800	23,901

The issued and paid up share capital has been translated into USD at the balance sheet exchange rate of EURO 1 = USD 1.37775 The translation difference has been presented in the currency translation reserve.

Share premium account

Effective as per June 11, 2013 the Company obtained a non-cash contribution of the shares of several group companies amounting to \$ 237.831 recorded by the Company as share premium.

Other reserves

According to legal requirements the negative result of 2013 amounting to \$ 62,898 is deducted from the other reserves.

	2013	2012
	€	€
Provision for participating interests	2,489,224	-

Arrangements not shown in the balance sheet

Fiscal unit

The group forms part of a fiscal unit for corporate income tax and VAT purposes of Uber International B.V., which makes the group jointly and severally liable for tax liabilities of the fiscal unit.

Appendix 1


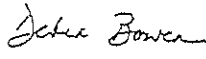
Equity interests 2013

Name	Registered office	% Interest in equity
Uber Australia Pty Ltd	Victoria	100
Uber Italy S.R.L.	Milan	100
Uber Netherlands B.V.	Amsterdam	100
Uber Belgium BVBA	Brussels	99
Uber Sweden AB	Stockholm	100
Uber Germany GmbH	Berlin	100
Uber Turkey Yazilim ve Teknoloji Hizmetleri Limited Sirketi	Istanbul	100
Uber Norway AS	Oslo	100
Uber Singapore Technology Pte. LTD.	Singapore	100
Uber Austria GmbH	Vienna	100
Uber Switzerland GmbH	Zurich	100
Uber Korea Technology LLC	Seoul	100
Uber Czech Republic Technology s.r.o.	Prague	90
Uber Hungary Korlátolt Felelősségű Társaság	Budapest	100
Uber (Asia) Limited	Hong Kong	100
Uber Taiwan Co., Ltd.	Taipei	100
Uber Japan Co., Ltd.	Tokyo	100
Uber Middle East FZ-LLC (Dubai)	Dubai	100
Hinter France SAS	Paris	100
Uber Latvia SIA	Riga	100
Uber Peru S.A.	Lima	90
Uber India Systems Private Limited	Mumbai	90
Uber Technology LLC	Moscow	99
Uber Poland sp. zo. o.	Warsaw	90
Uber Colombia SAS	Bogota	100
Uber Systems, Inc.	Makati city	100
Uber Britannia (fka Hinter UK)	London	100
Uber Canada, Inc.	Toronto	100
Uber Chile SpA	Santiago	100
Uber France SAS	Paris	100
Uber Ireland Technologies Limited	Dublin	100
Uber Mexico Technology & Software S.A.	Mexico city	99
Uber Malaysia SDN. BHD.	Kuala Lumpur	100
Uber New Zealand Technologies Limited	Auckland	100
Uber Panama Technology Inc.	Panama city	100
Uber Portugal LDA	Lisbon	99
Uber South Africa Technology Proprietary Limited	Johannesburg	100
Uber Kenya Limited	Nairobi	90
Uber Do Brasil Tecnologia LTDA	Sao Paolo	99
Uber Personnel Services B.V.	Amsterdam	100
Yu Jia (Shanghai) Network Technology Service Co., Ltd.	Shanghai	100

EXHIBIT C

State of California

Secretary of State

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays / País:	United States of America		
This public document Le présent acte public / El presente documento público			
2. has been signed by a été signé par ha sido firmado por	Gary Hirsch		
3. acting in the capacity of agissant en qualité de quien actúa en calidad de	Notary Public, State of California		
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	Gary Hirsch, Notary Public, State of California		
Certified Attesté / Certificado			
5. at à / en	Sacramento, California	6. the le / el día	22nd day of April 2013
7. by par / por	Secretary of State, State of California		
8. N° sous n° bajo el número	77226		
9. Seal / stamp: Sceau / timbre: Sello / timbre:			10. Signature: Signature: Firma: 

This Apostille is the trilingual model Apostille Certificate as suggested by the Permanent Bureau and developed in response to the 2009 Special Commission on the practical operation of the Hague Apostille Convention.
 This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and, where appropriate, the identity of the seal or stamp which the public document bears.
 This Apostille does not certify the content of the document for which it was issued.
 This Apostille is not valid for use anywhere within the United States of America, its territories or possessions.
 To verify the issuance of this Apostille, see: www.sos.ca.gov/business/notary/apostille-search/.

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 Cette Apostille atteste uniquement la véracité de la signature, la qualité en laquelle le signataire de l'acte a agi et, le cas échéant, l'identité du sceau ou timbre dont cet acte public est revêtu.
 Cette Apostille ne certifie pas le contenu de l'acte pour lequel elle a été émise.
 L'utilisation de cette Apostille n'est pas valable en / au États-Unis d'Amérique, ses territoires ou possessions.
 Cette Apostille peut être vérifiée à l'adresse suivante: www.sos.ca.gov/business/notary/apostille-search/.

Esta apostilla es el modelo trilingüe Certificado de Apostilla según lo sugerido por la Oficina Permanente y desarrollado en respuesta a la Comisión especial de 2009 sobre el funcionamiento práctico del Convenio de La Haya sobre Apostilla.
 Esta Apostilla certifica únicamente la autenticidad de la firma, la calidad en que el signatario del documento haya actuado y, en su caso, la identidad del sello o timbre del que el documento público esté revestido.
 Esta Apostilla no certifica el contenido del documento para el cual se expidió.
 No es válido el uso de esta Apostilla en Estados Unidos de América, sus territorios o posesiones.
 Esta Apostilla se puede verificar en la dirección siguiente: www.sos.ca.gov/business/notary/apostille-search/.

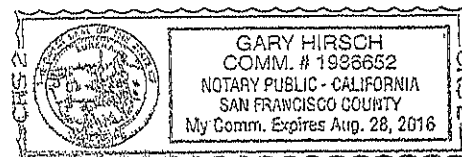
State of California)

County of San Francisco)CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENTOn April 22, 2017 before me, Gary Hirsch Notary Public
(here insert name and title of the officer)personally appeared Ryan Allan Graves

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature _____

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s)

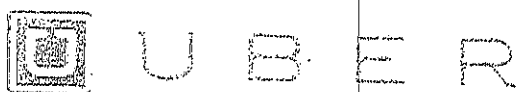
Title(s) _____

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____

Name(s) of Person(s) or Entity(ies) Signer is Representing _____

Method of Signer Identification	
Proved to me on the basis of satisfactory evidence:	
<input checked="" type="radio"/> form(s) of identification	<input type="radio"/> credible witness(es)
Notarial event is detailed in notary journal on:	
Page # _____	Entry # _____
Notary contact: _____	
Other	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/>	



22 April 2013

Mr. Michael R. Rattagan
Rattagan Arocena Macchiavello & Peña Robirosa
Av. N. Alem 855, 8th floor (C1001AAD)
Ciudad de Buenos Aires
Argentina

Dear Mr. Rattagan:

WHEREAS, Uber International B.V. is a company formed under the laws of Netherlands (the "Company"), with offices at Barbara Strozilaan 201, 1083HN, Amsterdam;

WHEREAS, the Company has requested that Mr. Michael R. Rattagan act as its legal representative in the Republic of Argentina in accordance with section 123 of Law 19,550 (hereinafter the "Legal Representative");

WHEREAS, the Company is willing to hold a 10% participation in Uber Argentina S.A., an Argentine stock corporation to be incorporated with the Office of Corporations ("*Inspección General Justicia*" - IGJ).

WHEREAS, the Company agrees that the performance of the position entrusted to the Legal Representative entails certain duties, responsibilities and contingencies under Argentine legal framework and desires to hold the Legal Representative harmless from any threatened or pending, action, suit or proceeding of any kind;

NOW, THEREFORE, the Company agrees with you as follows:

1. The Legal Representative's duties were, are and shall be limited to attending the shareholders' meetings of Uber Argentina S.A. and voting as directed by any officer, representative or counsel to the Company. The Company acknowledges that the Legal Representative was not, is not and will not become familiar with the day-to-day operations of the Company or of Uber Argentina S.A. and was not, is not and will not be required to undertake any executive or managerial responsibilities with respect thereto. The Company acknowledges that the Legal Representative may has been or may be required to sign certain documents, whether on behalf of the Company or of Uber Argentina S.A. and/or in his personal capacity as legal representative of the Company, including, but not limited to, filings with the Office of Corporations under Resolution IGJ N° 7/2005, tax statements and reports under resolution N° 1375 of the Tax Bureau ("*Administración Federal de Ingresos Públicos*"). Such documents were and shall be prepared by the employees or auditors of the Company and/or of Uber Argentina S.A. or by the Legal Representative based on information, forms, returns, statements and/or reports supplied by the Company and/or by Uber Argentina S.A. on which the Legal Representative may have relied or will rely on entirely, and in no event shall the Legal Representative be held responsible for the truthfulness, accuracy and timeliness thereof.
2. The Company will hold the Legal Representative harmless from any action, suit or proceeding, pending or threatened, whether civil, criminal, administrative or investigative (including, but not limited to, any action or suit by or in the right of the

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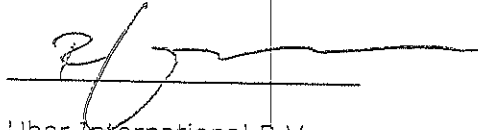
Company) by reason of the fact that the Legal Representative is or was legal representative of the Company hereby indemnifies the Legal Representative against any and all liabilities and expenses (including reasonable attorneys' fees and expenses), payable by the Legal Representative in connection with the defense or settlement of any such action, suit or proceeding, or any appeal with respect thereto; provided, however, that no indemnification shall be provided hereunder if a court of competent jurisdiction issues a final, non-appealable judgment, award or other final adjudication holding that (i) the Legal Representative's acts were committed in bad faith or were the result of active and deliberate dishonesty and in either case, were the direct cause of the cause of action so adjudicated, or (ii) the Legal Representative gained financial profit or other material advantage to which such Legal Representative was not legally entitled. The Company shall assume the defense of the Legal Representative in any such action, suit or proceeding through counsel retained by the Legal Representative. No settlement or other non-adjudicated disposition of any threatened or pending action, suit or proceeding shall be agreed upon unless both the Company and the Legal Representative have given their prior consent. In no event shall the indemnification provided hereunder cover any matter for which indemnification is not permitted by applicable law.

3. The Legal Representative was and shall at all times be entitled to rely upon (i) the financial statements, tax returns, social security statements, reports and other documents of Uber Argentina S.A. as presented to them by the management, counsel or auditors of the Company or of Uber Argentina S.A., (ii) the facts and opinions presented to them by the management of Uber Argentina S.A., or any other officer of the Company or any of Uber Argentina S.A. and (iii) the information, reports, statements and any other documentation presented to them by the management of the Company, or any other officer of the Company or any of Uber Argentina S.A. The Legal Representative has been entitled and may comply with any request or instruction, whether oral or written, of any director, officer, advisor or counsel of the Company.
4. The rights of indemnification provided in this letter shall inure to the benefit of the Legal Representative's heirs, executors, administrators, or legal representative, and shall be in addition to any rights to which the Legal Representative or any such persons may otherwise be entitled by any provision of law, articles of incorporation, by-law, contract, shareholders' or board resolution, or otherwise.
6. The Company hereby represents and warrants that:
 - a) Is a Company duly organized and validly existing under the laws of Netherlands. The Company has full power, authority and legal right to grant and perform the obligations undertaken in this hold-harmless letter and to execute and deliver this hold-harmless letter; and this hold-harmless letter has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.
 - b) The entry into and performance by the Company of this hold-harmless letter have been duly authorized by all necessary action of the Company, and do not and will not violate any provision of any applicable law, rule, regulation, or decree or any order of any court or regulatory body or arbitral tribunal in effect on the date hereof and binding on the Company or any provision of its incorporation documents, and do not and will not result in the breach of, or constitute a default or require any consent under, any agreement, instrument or other document to which the Company is a party, or by which the Company is

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JULY 16, 2020

bound.

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A handwritten signature in black ink, appearing to read 'Ryan', is written over a horizontal line.

By: Uber International B.V.
Name: Ryan Allan Graves
Title: Director

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TRADUCCIÓN PÚBLICA -----

Estado de California -----

Secretaria de Estado -----

APOSTILLA -----

[Sigue apostilla redactada en tres idiomas, entre ellos, el español.] -----

[Las páginas uno y dos del documento están coselladas con el sello de la Secretaria del Estado de California.] -----

Declaración de Reconocimiento para Propósitos Múltiples -----

Estado de California -----

Condado de San Francisco -----

El 22 de abril de 2013 compareció personalmente ante mí, Gary Hirsch, Escribano Público, el Sr. Ryan Allan Graves, quien demostró satisfactoriamente ser la persona cuyo nombre figura en el instrumento y reconoció que firmó dicho instrumento en su calidad de persona autorizada y que con su firma celebró el instrumento en cuestión en su propio nombre, o en nombre de la persona o entidad que representaba. -----

Certifico bajo pena de falso testimonio conforme a las leyes del Estado de California que el párrafo que antecede es válido y correcto. -----

En fe de lo cual, estampo mi firma y sello oficial. -----

Firma: [aparece una firma ilegible] -----

(Sello): [Aparece un sello que reza:] Gary Hirsch. Matrícula 1986652. Escribano Público. California, Condado de San Francisco. Mi matrícula vence el 28 de agosto de 2016. -----

[Sigue un apartado de Información Opcional que está tachado y cuyos campos están en blanco.] -----

[En papel membrete de la firma Uber] -----

22 de abril de 2013 -----

Sr. Michael R. Rattagan -----

Rattagan Arocena Macchiavello & Peña Robirosa -----

Av. N. Alem 855, Piso 8 (C1001AAD) -----

Ciudad de Buenos Aires, Argentina -----

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Estimado Sr. Rattagan:-----

POR CUANTO, Uber International B.V. es una compañía constituida conforme a las leyes de los Países Bajos (en adelante, la "Compañía"), cuya sede social está sita en Barbara Strozilaan 201, 1083HN, Ámsterdam;-----

POR CUANTO, la Compañía ha solicitado que el Sr. Michael R. Rattagan actúe como su representante legal en la República Argentina de conformidad con el artículo 123 de la Ley 19.550 (en adelante, el "Representante Legal");-----

POR CUANTO, la Compañía está dispuesta a adquirir una participación del 10% en la sociedad anónima Uber Argentina S.A., que habrá de inscribirse en la Inspección General de Justicia (IGJ);-----

POR CUANTO, la Compañía acuerda que el desempeño de la función encomendada al Representante Legal implica ciertas obligaciones, responsabilidades y contingencias conforme al marco legal argentino y desea mantener al Representante Legal indemne contra acciones, juicios o procedimientos pendientes o futuros de cualquier tipo.-----

POR ELLO, la Compañía acuerda con usted los siguientes términos y condiciones: -

1. Las obligaciones del Representante Legal estuvieron, están y estarán limitadas a asistir a asambleas de accionistas de Uber Argentina S.A. y votar conforme a las instrucciones de cualquier funcionario, representante o abogado de la Compañía. la Compañía acepta que el Representante Legal no estuvo, está ni estará familiarizado con la operaciones cotidianas de la Compañía o de Uber Argentina S.A. y que no se le requirió, requiere ni requerirá que asuma ninguna responsabilidad ejecutiva ni de gestión en relación con dichas operaciones. La Compañía acepta que pueda haberse requerido o se requiera que el Representante Legal firme ciertos documentos, ya sea en nombre de la Compañía o de Uber Argentina S.A. y/o en su carácter personal de representante legal de la Compañía, incluso, a modo enunciativo, presentaciones ante la Inspección General de Justicia conforme a la Resolución IGJ N° 7/2005, declaraciones de impuestos e informes conforme a la Resolución N° 1375 de la Administración Federal de Ingresos Públicos. Dichos documentos han sido y serán preparados por los empleados o auditores de la Compañía y/o Uber Argentina S.A. o el Representante Legal sobre la base de información, formularios, declaraciones de impuestos, declaraciones y/o informes suministrados por la

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Compañía y/o Uber Argentina S.A. en los que el Representante Legal pueda haberse basado o se base completamente, y en ningún caso el Representante Legal será responsable de la veracidad, exactitud y pertinencia de estos.-----

2. La Compañía mantendrá al Representante Legal indemne contra acciones, juicios o procedimientos pendientes o futuros, ya sean civiles, penales o administrativos o de investigación (incluso, a modo enunciativo, acciones o juicios iniciados por la Compañía o en nombre de ella) en virtud de que el Representante Legal es o fue representante legal de la Compañía; por la presente, la Compañía indemniza al Representante Legal contra cualquier tipo de responsabilidad y gastos (incluso gastos y honorarios razonables de abogados) que el Representante Legal deba abonar en relación con la defensa o transacción de dichas acciones, juicios o procedimientos, o en cualquier apelación relacionada con estos; no obstante, no se abonará indemnización alguna en virtud de la presente en caso de que un tribunal competente dicte una sentencia, laudo o resolución definitiva conforme al cual: (i) el Representante Legal actuó de mala fe o con deshonestidad manifiesta y deliberada o que sus actos fueron la causa directa de la acción judicial resuelta, o (ii) el Representante Legal obtuvo beneficios financieros u otras ventajas materiales a los que no tenía derecho. La Compañía asumirá la defensa del Representante Legal en dichas acciones, juicios o procedimientos mediante el abogado que contrate el Representante Legal. No se acordará la transacción ni otra resolución no dictada de acciones, juicios o procedimientos pendientes o futuros salvo con el consentimiento previo de tanto la Compañía como el Representante Legal. En ningún caso la indemnización prevista en la presente cubrirá asuntos para los cuales la legislación aplicable prohíbe la indemnización.-----

3. El Representante Legal estuvo y estará en todo momento facultado para basarse en (i) estados contables, declaraciones de impuestos, declaraciones de previsión social, informes y otros documentos de Uber Argentina S.A. que le suministre la gerencia, el abogado o los auditores de la Compañía o de Uber Argentina S.A., (ii) datos y opiniones que le suministre la gerencia de Uber Argentina S.A. u otro funcionario de la Compañía o de Uber Argentina S.A., e (iii) información, informes, declaraciones y cualquier otra documentación que le suministre la gerencia de la Compañía o cualquier otro funcionario de la Compañía o de Uber Argentina S.A. Se ha facultado al Representante Legal a los efectos de que cumpla cualquier solicitud o instrucción, ya sea oral o escrita, de cualquier director, funcionario, asesor o abogado de la Compañía. -----

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4. Los derechos de indemnización previstos en la presente carta de indemnidad redundarán en beneficio de los herederos, albaceas, administradores o el representante legal del Representante Legal, y serán adicionales a cualquier otro derecho que asista al Representante Legal o cualquiera de las personas citadas conforme a cualquier disposición legal, certificado de constitución, estatuto, contrato, resolución de accionistas o directorio, etc. -----

6. Por la presente, la Compañía manifiesta y garantiza que: -----

a) Es una Compañía debidamente constituida de conformidad con las leyes de los Países Bajos. La Compañía tiene facultad, autoridad y derecho legal plenos para disponer y cumplir las obligaciones asumidas en la presente carta de indemnidad y para suscribir y entregar la presente carta de indemnidad; y esta carta de indemnidad ha sido debidamente suscripta y entregada por la Compañía y constituye una obligación legal, válida y vinculante de la Compañía, ejecutable conforme a sus términos. -----

b) La celebración y el otorgamiento de esta carta de indemnidad por parte de la Compañía ha sido debidamente autorizada mediante todos los actos necesarios de la Compañía y no viola ni violará ninguna disposición de ninguna ley, norma, reglamentación o decreto aplicable o una resolución de cualquier tribunal u organismo regulador o tribunal de arbitraje en vigor al día de la fecha y vinculante para la Compañía o cualquier disposición de sus documentos de constitución, y no implica ni implicará el incumplimiento, ni constituirá una violación ni requerirá ningún consentimiento, de ningún acuerdo, instrumento u otro documento en el que la Compañía sea parte o que sea vinculante para la Compañía. -----

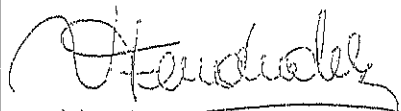
Por: [aparece una firma ilegible]-----

Uber International B.V. -----

Nombre: Ryan Allan Graves-----

Cargo: Director -----


ES TRADUCCIÓN FIEL AL ESPAÑOL DEL DOCUMENTO ORIGINAL ADJUNTO EN INGLÉS, QUE HE TENIDO A LA VISTA Y AL CUAL ME REMITO. CIUDAD AUTÓNOMA DE BUENOS AIRES, 14 DE MAYO DE 2013. -----


VIVIANA L. FERNÁNDEZ
TRADUCTORA PÚBLICA
IDTOMA-INGLÉS
MAT. T. XVIII P.º 180 - CAPITAL FEDERAL
INSCRIP. C.T.P.C.B.A. N.º 6817

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EXHIBIT D

State of California Secretary of State

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. Country: Pays / País:	United States of America		
This public document Le présent acte public / El presente documento público			
2. has been signed by a été signé par ha sido firmado por	Gary Hirsch		
3. acting in the capacity of agissant en qualité de quien actúa en calidad de	Notary Public, State of California		
4. bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	Gary Hirsch, Notary Public, State of California		
Certified Attesté / Certificado			
5. at à / en	Sacramento, California	6. the le / el día	22nd day of April 2013
7. by par / por	Secretary of State, State of California		
8. N° sous n° bajo el número	95418		
9. Seal / stamp: Sceau / timbre: Sello / timbre:			10. Signature: Signature: Firma: <i>John Bowen</i>

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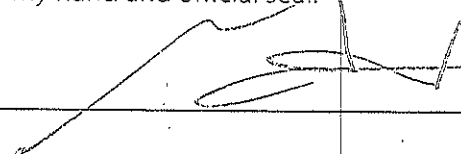
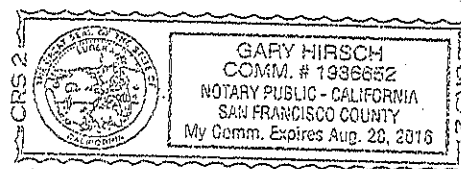
County of San Francisco)CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENTOn April 22, 2013 before me, Gary Hirsch, Notary Public,
(here insert name and title of the officer)personally appeared Ryan Allan Griggs

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-In-Fact
☐ Corporate Officer(s)

Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____

Name(s) of Person(s) or Entity(ies) Signer is Representing

Method of Signer Identification.

Proved to me on the basis of satisfactory evidence:

☐ form(s) of Identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

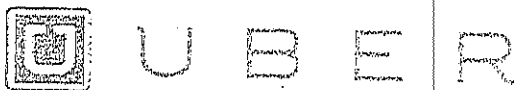
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Notary contact: _____

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐



22 April 2013

Mr. Michael R. Rattagan
 Rattagan Arocena Macchiavello & Peña Robirosa
 Av. N. Alem 855, 8th floor (C1001AAD)
 Ciudad de Buenos Aires
 Argentina

Dear Mr. Rattagan:

WHEREAS, Uber International Holding B.V. is a company formed under the laws of Netherlands (the "Company"), with offices at Barbara Strozzi laan 201, 1083HN, Amsterdam;

WHEREAS, the Company has requested that Mr. Michael R. Rattagan act as its legal representative in the Republic of Argentina in accordance with section 123 of Law 19,550 (hereinafter the "Legal Representative");

WHEREAS, the Company is willing to hold a 90% participation in Uber Argentina S.A., an Argentine stock corporation to be incorporated with the Office of Corporations ("*Inspección General Justicia*" – IGJ).

WHEREAS, the Company agrees that the performance of the position entrusted to the Legal Representative entails certain duties, responsibilities and contingencies under Argentine legal framework and desires to hold the Legal Representative harmless from any threatened or pending, action, suit or proceeding of any kind;

NOW, THEREFORE, the Company agrees with you as follows:

1. The Legal Representative's duties were, are and shall be limited to attending the shareholders' meetings of Uber Argentina S.A. and voting as directed by any officer, representative or counsel to the Company. The Company acknowledges that the Legal Representative was not, is not and will not become familiar with the day-to-day operations of the Company or of Uber Argentina S.A. and was not, is not and will not be required to undertake any executive or managerial responsibilities with respect thereto. The Company acknowledges that the Legal Representative may have been or may be required to sign certain documents, whether on behalf of the Company or of Uber Argentina S.A. and/or in his personal capacity as legal representative of the Company, including, but not limited to, filings with the Office of Corporations under Resolution IGJ N° 7/2005, tax statements and reports under resolution N° 1375 of the Tax Bureau ("*Administración Federal de Ingresos Públicos*"). Such documents were and shall be prepared by the employees or auditors of the Company and/or of Uber Argentina S.A. or by the Legal Representative based on information, forms, returns, statements and/or reports supplied by the Company and/or by Uber Argentina S.A. on which the Legal Representative may have relied or will rely on entirely, and in no event shall the Legal Representative be held responsible for the truthfulness, accuracy and timeliness thereof.
2. The Company will hold the Legal Representative harmless from any action, suit or

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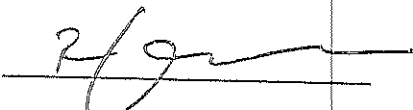
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proceeding, pending or threatened, whether civil, criminal, administrative or investigative (including, but not limited to, any action or suit by or in the right of the Company) by reason of the fact that the Legal Representative is or was legal representative of the Company hereby indemnifies the Legal Representative against any and all liabilities and expenses (including reasonable attorneys' fees and expenses), payable by the Legal Representative in connection with the defense or settlement of any such action, suit or proceeding, or any appeal with respect thereto; provided, however, that no indemnification shall be provided hereunder if a court of competent jurisdiction issues a final, non-appealable judgment, award or other final adjudication holding that (i) the Legal Representative's acts were committed in bad faith or were the result of active and deliberate dishonesty and in either case, were the direct cause of the cause of action so adjudicated, or (ii) the Legal Representative gained financial profit or other material advantage to which such Legal Representative was not legally entitled. The Company shall assume the defense of the Legal Representative in any such action, suit or proceeding through counsel retained by the Legal Representative. No settlement or other non-adjudicated disposition of any threatened or pending action, suit or proceeding shall be agreed upon unless both the Company and the Legal Representative have given their prior consent. In no event shall the indemnification provided hereunder cover any matter for which indemnification is not permitted by applicable law.

3. The Legal Representative was and shall at all times be entitled to rely upon (i) the financial statements, tax returns, social security statements, reports and other documents of Uber Argentina S.A. as presented to them by the management, counsel or auditors of the Company or of Uber Argentina S.A., (ii) the facts and opinions presented to them by the management of Uber Argentina S.A., or any other officer of the Company or any of Uber Argentina S.A. and (iii) the information, reports, statements and any other documentation presented to them by the management of the Company, or any other officer of the Company or any of Uber Argentina S.A. The Legal Representative has been entitled and may comply with any request or instruction, whether oral or written, of any director, officer, advisor or counsel of the Company.
4. The rights of indemnification provided in this letter shall inure to the benefit of the Legal Representative's heirs, executors, administrators, or legal representative, and shall be in addition to any rights to which the Legal Representative or any such persons may otherwise be entitled by any provision of law, articles of incorporation, by-law, contract, shareholders' or board resolution, or otherwise.
6. The Company hereby represents and warrants that:
 - a) Is a Company duly organized and validly existing under the laws of Netherlands. The Company has full power, authority and legal right to grant and perform the obligations undertaken in this hold-harmless letter and to execute and deliver this hold-harmless letter; and this hold-harmless letter has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.
 - b) The entry into and performance by the Company of this hold-harmless letter have been duly authorized by all necessary action of the Company, and do not and will not violate any provision of any applicable law, rule, regulation, or decree or any order of any court or regulatory body or arbitral tribunal in effect on the date hereof and binding on the Company or any provision of its incorporation documents, and do not and will not result in the breach of, or

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constitute a default or require any consent under, any agreement, instrument or other document to which the Company is a party, or by which the Company is bound.


By: Uber International Holding B.V.
Name: Ryan Allan Graves
Title: Director

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TRADUCCIÓN PÚBLICA -----

Estado de California -----

Secretaría de Estado -----

APOSTILLA -----

[Sigue apostilla redactada en tres idiomas, entre ellos, el español.] -----

[Las páginas uno y dos del documento están coselladas con el sello de la Secretaría del Estado de California.] -----

Declaración de Reconocimiento para Propósitos Múltiples -----

Estado de California -----

Condado de San Francisco -----

El 22 de abril de 2013 compareció personalmente ante mí, Gary Hirsch, Escribano Público, el Sr. Ryan Allan Graves, quien demostró satisfactoriamente ser la persona cuyo nombre figura en el instrumento y reconoció que firmó dicho instrumento en su calidad de persona autorizada y que con su firma celebró el instrumento en cuestión en su propio nombre, o en nombre de la persona o entidad que representaba. -----

Certifico bajo pena de falso testimonio conforme a las leyes del Estado de California que el párrafo que antecede es válido y correcto. -----

En fe de lo cual, estampo mi firma y sello oficial. -----

Firma: [aparece una firma ilegible] -----

(Sello): [Aparece un sello que reza:] Gary Hirsch. Matrícula 1986652. Escribano Público. California, Condado de San Francisco. Mi matrícula vence el 28 de agosto de 2016. -----

[Sigue un apartado de Información Opcional que está tachado y cuyos campos están en blanco.] -----

[En papel membrete de la firma Uber] -----

22 de abril de 2013 -----

Sr. Michael R. Rattagan -----

Rattagan Arocena Macchiavello & Peña Robirosa -----

Av. N. Alem 855, Piso 8 (C1001AAD) -----

Ciudad de Buenos Aires, Argentina -----

JA L. PERIN
DUCTORA PU
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C.T.P.C.B.A.

Estimado Sr. Rattagan:-----

POR CUANTO, Uber International Holding B.V. es una compañía constituida conforme a las leyes de los Países Bajos (en adelante, la "Compañía"), cuya sede social está sita en Barbara Strozziilaan 201, 1083HN, Ámsterdam;-----

POR CUANTO, la Compañía ha solicitado que el Sr. Michael R. Rattagan actúe como su representante legal en la República Argentina de conformidad con el artículo 123 de la Ley 19.550 (en adelante, el "Representante Legal");-----

POR CUANTO, la Compañía acuerda que el desempeño de la función encomendada al Representante Legal implica ciertas obligaciones, responsabilidades y contingencias conforme al marco legal argentino y desea mantener al Representante Legal indemne contra acciones, juicios o procedimientos pendientes o futuros de cualquier tipo.-----

POR ELLO, la Compañía acuerda con usted los siguientes términos y condiciones: -

1. Las obligaciones del Representante Legal estuvieron, están y estarán limitadas a asistir a asambleas de accionistas de Uber Argentina S.A. y votar conforme a las instrucciones de cualquier funcionario, representante o abogado de la Compañía. la Compañía acepta que el Representante Legal no estuvo, está ni estará familiarizado con la operaciones cotidianas de la Compañía o de Uber Argentina S.A. y que no se le requirió, requiere ni requerirá que asuma ninguna responsabilidad ejecutiva ni de gestión en relación con dichas operaciones. La Compañía acepta que pueda haberse requerido o se requiera que el Representante Legal firme ciertos documentos, ya sea en nombre de la Compañía o de Uber Argentina S.A. y/o en su carácter personal de representante legal de la Compañía, incluso, a modo enunciativo, presentaciones ante la Inspección General de Justicia conforme a la Resolución IGJ Nº 7/2005, declaraciones de impuestos e informes conforme a la Resolución Nº 1375 de la Administración Federal de Ingresos Públicos. Dichos documentos han sido y serán preparados por los empleados o auditores de la Compañía y/o Uber Argentina S.A. o el Representante Legal sobre la base de información, formularios, declaraciones de impuestos, declaraciones y/o informes suministrados por la Compañía y/o Uber Argentina S.A. en los que el Representante Legal pueda haberse basado o se base completamente, y en ningún caso el Representante Legal será responsable de la veracidad, exactitud y pertinencia de estos.-----

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2. La Compañía mantendrá al Representante Legal indemne contra acciones, juicios o procedimientos pendientes o futuros, ya sean civiles, penales o administrativos o de investigación (incluso, a modo enunciativo, acciones o juicios iniciados por la Compañía o en nombre de ella) en virtud de que el Representante Legal es o fue representante legal de la Compañía; por la presente, la Compañía indemniza al Representante Legal contra cualquier tipo de responsabilidad y gastos (incluso gastos y honorarios razonables de abogados) que el Representante Legal deba abonar en relación con la defensa o transacción de dichas acciones, juicios o procedimientos, o en cualquier apelación relacionada con estos; no obstante, no se abonará indemnización alguna en virtud de la presente en caso de que un tribunal competente dicte una sentencia, laudo o resolución definitiva conforme al cual: (i) el Representante Legal actuó de mala fe o con deshonestidad manifiesta y deliberada o que sus actos fueron la causa directa de la acción judicial resuelta, o (ii) el Representante Legal obtuvo beneficios financieros u otras ventajas materiales a los que no tenía derecho. La Compañía asumirá la defensa del Representante Legal en dichas acciones, juicios o procedimientos mediante el abogado que contrate el Representante Legal. No se acordará la transacción ni otra resolución no dictada de acciones, juicios o procedimientos pendientes o futuros salvo con el consentimiento previo de tanto la Compañía como el Representante Legal. En ningún caso la indemnización prevista en la presente cubrirá asuntos para los cuales la legislación aplicable prohíbe la indemnización.-----

3. El Representante Legal estuvo y estará en todo momento facultado para basarse en (i) estados contables, declaraciones de impuestos, declaraciones de previsión social, informes y otros documentos de Uber Argentina S.A. que le suministre la gerencia, el abogado o los auditores de la Compañía o de Uber Argentina S.A., (ii) datos y opiniones que le suministre la gerencia de Uber Argentina S.A. u otro funcionario de la Compañía o de Uber Argentina S.A., e (iii) información, informes, declaraciones y cualquier otra documentación que le suministre la gerencia de la Compañía o cualquier otro funcionario de la Compañía o de Uber Argentina S.A. Se ha facultado al Representante Legal a los efectos de que cumpla cualquier solicitud o instrucción, ya sea oral o escrita, de cualquier director, funcionario, asesor o abogado de la Compañía.-----

4. Los derechos de indemnización previstos en la presente carta de indemnidad redundarán en beneficio de los herederos, albaceas, administradores o el representante legal del Representante Legal, y serán adicionales a cualquier otro

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derecho que asista al Representante Legal o cualquiera de las personas citadas conforme a cualquier disposición legal, certificado de constitución, estatuto, contrato, resolución de accionistas o directorio, etc. -----

6. Por la presente, la Compañía manifiesta y garantiza que: -----

a) Es una Compañía debidamente constituida de conformidad con las leyes de los Países Bajos. La Compañía tiene facultad, autoridad y derecho legal plenos para disponer y cumplir las obligaciones asumidas en la presente carta de indemnidad y para suscribir y entregar la presente carta de indemnidad; y esta carta de indemnidad ha sido debidamente suscripta y entregada por la Compañía y constituye una obligación legal, válida y vinculante de la Compañía, ejecutable conforme a sus términos. -----

b) La celebración y el otorgamiento de esta carta de indemnidad por parte de la Compañía ha sido debidamente autorizada mediante todos los actos necesarios de la Compañía y no viola ni violará ninguna disposición de ninguna ley, norma, reglamentación o decreto aplicable o una resolución de cualquier tribunal u organismo regulador o tribunal de arbitraje en vigor al día de la fecha y vinculante para la Compañía o cualquier disposición de sus documentos de constitución, y no implica ni implicará el incumplimiento, ni constituirá una violación ni requerirá ningún consentimiento, de ningún acuerdo, instrumento u otro documento en el que la Compañía sea parte o que sea vinculante para la Compañía. -----

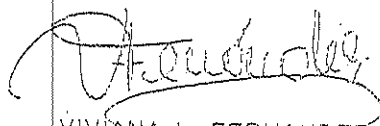
Por: [aparece una firma ilegible]-----

Uber International Holding B.V.-----

Nombre: Ryan Allan Graves-----

Cargo: Director-----

ES TRADUCCIÓN FIEL AL ESPAÑOL DEL DOCUMENTO ORIGINAL ADJUNTO EN INGLÉS, QUE HE TENIDO A LA VISTA Y AL CUAL ME REMITO. CIUDAD AUTÓNOMA DE BUENOS AIRES, 14 DE MAYO DE 2013. -----


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*Counsel for Defendant
Uber Technologies, Inc.*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.

Defendant.

Civil Case No.: 3:19-CV-01988-EMC

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS THIRD
AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 30, 2020
Time: 1:30 PM
Location: Courtroom 5 - 17th Floor
Judge: Hon. Edward M. Chen

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17	<i>Strasner v. Touchstone Wireless Repair & Logistics, LP,</i>	
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19	<i>Taiwan Semiconductor Mfg. Co. v. Tela Innovations, Inc.,</i>	
20	No. 14-cv-00362-BLF, 2014 WL 3705350 (N.D. Cal. July 24, 2014).....	24, 25
21	<i>Tribeca Cos., LLC v. First Am. Title Ins. Co.,</i>	
22	239 Cal. App. 4th 1088 (2015).....	23
23	<i>UMG Recordings, Inc. v. Glob. Eagle Entm't, Inc.,</i>	
24	117 F. Supp. 3d 1092, 1106 (C.D. Cal. 2015).....	12
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26	10 Cal. App. 4th 612 (1992).....	21
27	<i>United States v. Bentson,</i>	
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 30, 2020, at 1:30 p.m., or as soon thereafter as the matter may be heard, before the Honorable Edward M. Chen, in Courtroom 5 of the United States District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, Defendant Uber Technologies, Inc. will and hereby does move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff Michael Rattagan's Third Amended Complaint for failure to state a claim upon which relief may be granted. The Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice and Exhibits thereto, documents on file with the Court, and further evidence and argument as the Court may permit.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Rattagan has now filed four complaints against Uber Technologies in an effort to manufacture federal jurisdiction over his meritless claims. Undeterred by this Court's Rule 11 sanctions, Rattagan has changed his allegations yet again, but the one constant is his continued failure to state a claim.

One day after Uber Technologies filed for its IPO, Rattagan sued Uber International BV and Uber International Holding BV (the Dutch "Uber International Entities")—the parties which had hired him—as well as their ultimate parent company, Uber Technologies. When Uber¹ pointed out that naming the Uber International Entities destroyed subject matter jurisdiction, Rattagan filed the First Amended Complaint ("FAC") naming only Uber Technologies and falsely alleging that he served as "legal representative" for and had a "contractual relationship" with Uber Technologies.

These changes may have secured Rattagan's preferred federal forum, but they did not match the facts—Rattagan's contract and legal representative relationship were with the overseas entities, not Uber Technologies. As a result of these allegations, the Court found that the FAC was based on "false factual premises," granted Uber Technologies' Rule 11 Motion, awarded Uber nearly \$30,000 in sanctions, and dismissed Rattagan's FAC.

¹ In this Motion, Uber Technologies, Inc. is referred to as "Uber Technologies," and Uber Technologies, Inc., its subsidiaries, and affiliates collectively are referred to as "Uber."

1 Rattagan then filed a Second Amended Complaint (“SAC”), making cosmetic changes to remove
 2 the false allegations that Rattagan had a direct contractual relationship with Uber Technologies, and to
 3 focus instead on Uber Technologies’ alleged “appointment” of Rattagan to serve as legal representative
 4 for the Uber International Entities in Argentina. This latter allegation, however, was also false, as the
 5 Court had already concluded in granting Uber’s motion for sanctions. The SAC also alleged an
 6 attorney-client relationship between Rattagan and Uber Technologies that Rattagan admitted had “gone
 7 dormant” prior to the events that allegedly caused him harm.

8 One day before Uber Technologies’ motion to dismiss the SAC was due, and after Uber
 9 Technologies had already incurred the cost of responding, Rattagan’s counsel moved to withdraw from
 10 the case. Rattagan then filed yet another complaint—his fourth—again changing the facts, abandoning
 11 some of his prior legal theories, and asserting new claims. Rattagan now asserts that he had an attorney-
 12 client relationship directly with Uber Technologies in the lead-up to Uber’s launch in Argentina, and
 13 bases all of his allegations on that supposed relationship. As the Court observed in granting leave to
 14 amend, “Plaintiff’s allegations relating to the existence of an attorney-client relationship between
 15 Mr. Rattagan and Uber Technologies have changed significantly between various iterations of the
 16 complaint.”

17 No one can credibly dispute that Rattagan has not been candid with the Court. His prior
 18 allegations cannot be reconciled with his current allegations; nor can the inconsistencies be attributed to
 19 a party’s right to plead alternative theories. Rattagan’s track record of chasing federal court jurisdiction
 20 with what this Court has found to be “false factual premises” does not stand alone, but is part of a
 21 pattern of wrongdoing. First, Rattagan’s strategy has been to sue Uber Technologies, rather than the
 22 Uber International Entities, so as to improperly manipulate this Court’s jurisdiction. Second, Rattagan
 23 asks this Court to look past the corporate form of the Uber International Entities and hold Uber
 24 Technologies liable based on a principal-agent theory, even though his entire law practice is devoted to
 25 creating corporate structures for multinational companies that can be defended against precisely such
 26 improper attempts to “pierce the corporate veil.” Third, if the attorney-client relationships alleged by
 27 Rattagan existed, then Rattagan is by this lawsuit breaching his ethical duty of loyalty—attacking the
 28

1 Uber International Entities' corporate form and using facts he obtained in the course of his
2 representation, which alone is grounds to dismiss based on the doctrine of unclean hands.

3 Rattagan's misconduct is all the more disturbing considering that it is unavailing—his Third
4 Amended Complaint does not state a claim on which relief can be granted. *First*, two of Rattagan's four
5 claims are time-barred on their face. Rattagan's claims for negligence (Count Two) and breach of the
6 covenant of good faith and fair dealing (Count Three) accrued shortly after Uber launched its operations
7 in Argentina in April 2016, and so were extinguished by the two-year statute of limitations in April
8 2018—a year before Rattagan filed suit. *Second*, Rattagan's fraudulent concealment, negligence, and
9 aiding and abetting claims (Counts One, Two, and Four, respectively) are barred by the economic loss
10 rule, which prohibits tort recovery for purely economic losses when the relationship between the parties
11 is governed by a contract, as Rattagan alleges it is here. *Third*, the claim for breach of the implied
12 covenant of good faith and fair dealing fails because Rattagan has not alleged a required element: that
13 Uber Technologies interfered with his receipt of an express benefit of the alleged contract. *Fourth*, the
14 fraudulent concealment claim fails because Rattagan does not plausibly allege the existence or scope of
15 a duty to disclose the allegedly withheld information. *Fifth*, if the alleged attorney-client relationship is
16 to be credited, Rattagan's breach of his duty of loyalty warrants dismissal under the doctrine of unclean
17 hands. *Sixth*, the aiding and abetting fraudulent concealment claim fails because there was no
18 underlying fraudulent concealment. *Seventh*, each of the claims independently fails because all of
19 Rattagan's supposed injuries were caused by third-party actors such as Argentine police or media. Uber
20 Technologies has no control over Argentine civil society, and their treatment of Rattagan was, as a
21 matter of law, an unforeseeable, intervening cause of his alleged injuries. *Finally*, Rattagan fails to
22 adequately plead any basis for his punitive damages claim.

23 Rattagan has had four chances to state a claim against Uber Technologies. He has tried different
24 facts. He has tried different legal theories. He has tried different claims. All have failed. The Court
25 should dismiss the Third Amended Complaint with prejudice.
26
27
28

BACKGROUND²

A. Uber’s Operations In Argentina

As with virtually all multinational companies, Uber is structured as a group of separate corporate entities connected through subsidiary and affiliate relationships. Uber Technologies, a Delaware corporation headquartered in California, is the ultimate parent company of the corporate group. Third Amended Complaint (“TAC”), Dkt. 64 ¶¶ 12, 14-15. Generally, when the Uber applications are launched in a new country, a new Uber affiliate company is formed to support local operations. This structure is entirely conventional and appropriate, and it serves to facilitate compliance with local laws, to limit liability and protect shareholders, to streamline operations, to manage risk, and to reduce tax burdens.

In 2013, Uber began to lay the groundwork to launch operations in Argentina. *Id.* ¶¶ 35, 37. This groundwork included taking steps to form an Argentine limited liability company to support Uber operations in Argentina. This Argentine entity would be owned by two Dutch corporations—Uber International BV and Uber International Holding BV.³ Under Argentine law, the Dutch corporations needed to designate a local resident to act as their “legal representative” for certain ministerial functions. *Id.* ¶¶ 39, 40-41.

Rattagan agreed to act as the legal representative for the Uber International Entities knowing that Uber’s previous “launches in other major cities” had at times been met with “negative press, violent protests, and rebuke from governmental authorities.” *Id.* ¶ 60. Rattagan, who presents himself as “one of the top and most renowned business lawyers in Buenos Aires” with “nearly 30 years in practice” in Argentina, *id.* ¶ 11, nonetheless agreed to represent the Uber International Entities. *Id.* ¶ 42.

On April 12, 2016—an important date for limitations purposes, as discussed below—Uber “officially launched” its operations in Buenos Aires. *Id.* ¶ 59. About two months later, at Rattagan’s request, the Uber International Entities replaced Rattagan as legal representative in Argentina. *Id.* ¶ 68.

² Uber Technologies takes the allegations in the Third Amended Complaint as true solely for purposes of this Rule 12(b)(6) Motion.

³ In the TAC, Rattagan refers to Uber International BV as “Uber IBV” and Uber International Holding BV as “Uber IHBV.” *See* TAC ¶¶ 14-15.

B. Rattagan's First Three Complaints

Rattagan initially sued the Uber International Entities, along with Uber Technologies. *See* Dkt. 1 at 1. By letter, Uber informed Rattagan that the inclusion of the Uber International Entities destroyed diversity jurisdiction. *See Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 991 (9th Cir. 1994). Attempting to stay in federal court, Rattagan filed the FAC, which removed the Uber International Entities but did not plead any factual allegations tying his claims to Uber Technologies, the only remaining defendant. *See* Dkt. 15. The two amendments Rattagan made to his original complaint were to (1) redefine the term “Uber” from “Uber Technologies, Uber International BV, and Uber International Holdings BV,” to refer only to “Uber Technologies,” and (2) delete his substantive allegation that Uber Technologies “directed and authorized” the “operational decisions” of the Uber International Entities. *See* Ex. A to Shin Decl., Dkt. 27-2.

Because the FAC baselessly imputed all of the allegations previously lodged against the Uber International Entities to Uber Technologies, Uber Technologies filed a Rule 11 Motion. *See* Dkt. 27. The Rule 11 Motion showed that the FAC misleadingly attributed the actions of the Uber International Entities to Uber Technologies. Uber Technologies also moved to dismiss the FAC for failure to state a claim based on many of the same deficiencies that it identifies here. *See* Dkt. 23. The Court granted the Rule 11 motion, awarded sanctions, and dismissed the FAC with leave to amend. *See* Dkt. 36.

Rattagan then filed a SAC which made minor changes to the allegations in the FAC. *See* Dkt. 38. One day before the response to the SAC was due, and after Uber Technologies had already incurred the cost of responding to the SAC, Rattagan's counsel moved to withdraw. *See* Dkt. 45, 46. After securing new counsel, Rattagan moved to file yet another amended complaint. *See* Dkt. 58. The Court observed that “[i]t would be obvious to anyone reading the three previous complaints and the proposed Third Amended Complaint that Plaintiff's claims have been inconsistently pled throughout the early stages of this lawsuit.” Dkt. 63 at 4. Citing the Ninth Circuit's mandate that leave to amend must be applied with “extreme liberality,” the Court allowed the amendment. *See id.* at 4, 7.

C. Rattagan's Third Amended Complaint

Tacitly acknowledging that his previous claims were meritless, Rattagan in the TAC abandons all of the claims he had asserted for almost a year, except negligence, and introduces three new claims:

(1) fraudulent concealment; (2) breach of the implied covenant of good faith and fair dealing; and (3) aiding and abetting fraudulent concealment. TAC ¶¶ 82-87, 92-102; *see* Compl. ¶¶ 70-103; FAC ¶¶ 70-103; SAC ¶¶ 78-111. None survive scrutiny.

Although three of the four claims are new, each is based on the same general theory of liability that was the subject of Uber Technologies’ first motion to dismiss: that Uber launched operations in Argentina, allegedly without first telling Rattagan and with the help of “other advisors”; that Argentine local law enforcement authorities claimed Uber’s operations in Buenos Aires were unlawful; and that those local authorities targeted Rattagan because, as the Uber International Entities’ legal representative, his name was publicly associated with Uber’s Argentina operations for approximately two months following the launch. *See* TAC ¶¶ 54-55, 65-66, 69, 75, 77-81.

While this general theory of the case remains the same, Rattagan’s alleged relationship with Uber Technologies differs markedly from the allegations in the previous three complaints. He now claims that his relationship with the Uber International Entities should be attributed to Uber Technologies because the International Entities acted as its agents. He also claims that he established a direct attorney-client relationship with Uber Technologies.

Specifically, Rattagan alleges that he was hired in 2013 by Liesbeth ten Brink, “Director Legal for Uber IBV,” to help form an Uber entity in Argentina. *Id.* ¶¶ 35, 37. Rattagan also agreed to act as the legal representative for the Uber International Entities, which were to be the shareholders in the to-be-formed Argentine entity. *Id.* ¶¶ 39, 42. Rattagan alleges that there was “never a formal written engagement agreement as such for these services,” but that ten Brink instructed Rattagan to bill “Uber IBV” for his firm’s work. *Id.* ¶ 37.

Rattagan does not allege that he had any direct contact with any Uber Technologies employees during this time. Nevertheless, Rattagan—a corporate attorney whose expertise includes corporate formation—contends that this Court should disregard the Uber International Entities’ corporate form and attribute their relationships and contracts to Uber Technologies because the International Entities supposedly acted as Uber Technologies’ agents. *See id.* ¶¶ 2, 11, 32, 83, 89, 94. In support of this agency theory, Rattagan makes the conclusory allegation “on information and belief” that all of the Uber International Entities’ actions and communications were somehow controlled by Uber Technologies’

1 legal department, and specifically by Uber Technologies General Counsel Salle Yoo. *Id.* ¶ 33. To
 2 support his related allegation that the Uber International Entities could not have operated independently
 3 from Uber Technologies, Rattagan appears to draw on non-public information he purportedly received
 4 during the course of his representation of those entities, alleging that Uber IBV was newly formed, had a
 5 small number of employees, and received financial support from Uber Technologies. *Id.* ¶ 34.

6 Rattagan also alleges that he formed a direct attorney-client relationship with Uber Technologies.
 7 According to Rattagan, in February 2015, an Uber IBV paralegal introduced Rattagan to Ryan Black, a
 8 paralegal based in Uber Technologies' California headquarters, who allegedly became involved in the
 9 corporate formation process for the Argentine Uber entity. *Id.* ¶¶ 46-47. Based on the alleged
 10 involvement of Black and another California paralegal named Shirin Schokrpur, Rattagan asserts that he
 11 had a direct attorney-client relationship with Uber Technologies, despite the fact that he continued to bill
 12 "Uber IHBV" for his firm's work. *See id.* ¶ 50.

13 As a result of the communications with the two California-based paralegals, Rattagan contends
 14 that Uber Technologies was his client, and as such was obligated to notify him of its plans to launch in
 15 Argentina. Alternatively, he claims that Uber Technologies had to notify him of its launch plans
 16 because he was the legal representative of and provided legal advice to the Uber International Entities,
 17 which were supposedly agents of Uber Technologies. *See, e.g.,* TAC ¶¶ 83-84.

18 When Uber launched its operations in Argentina on April 12, 2016, Rattagan's name and office
 19 address were associated with the Uber International Entities in certain public records, since he was their
 20 registered legal representative. *Id.* ¶¶ 65-66. The day after the launch, rather than resigning—as he
 21 surely would have if his alleged future injuries were foreseeable as Rattagan now claims—Rattagan
 22 sought more work from Uber. *Id.* ¶ 67. Two days later, on April 15, 2016, Rattagan "asked to be
 23 replaced" as legal representative for the Uber International Entities. *Id.* ¶ 68. Rattagan's removal and
 24 replacement as legal representative were effective approximately two months later. *Id.* ¶ 75. During the
 25 intervening time period, Uber operations continued in Argentina, and certain governmental authorities
 26 claimed that those operations did not comport with local regulations. *See id.* ¶¶ 75, 77, 79.

27 According to Rattagan, local unions, law enforcement, and media in Buenos Aires reacted in a
 28 "hostile" manner during the two months he served as legal representative after Uber's launch on April

12, 2016. *Id.* ¶¶ 66, 69, 80-81. It is the conduct of these third parties—Argentine governmental authorities and the media—that Rattagan alleges caused him reputational harm. Rattagan alleges that, on April 15, 2016, the police raided Rattagan’s offices, and “prime-time news programs” broadcast the raid. *Id.* ¶ 69. In April 2017, a Buenos Aires prosecutor “charged” Rattagan with “unauthorized use of public space with a commercial aim” based on his role as former legal representative of the Uber International Entities. *Id.* ¶ 77. In November 2017, Rattagan was charged with aggravated tax evasion. *Id.* ¶ 78. Rattagan alleges that Uber Technologies owes him tort damages for the purported “name-bashing, severe embarrassment, and anguish” inflicted by third-party prosecutors, police, and news media. *Id.* ¶ 80. Rattagan also seeks punitive damages. *Id.* Prayer for Relief.

In point of fact, Uber’s operations in Argentina were and are fully lawful, as has been confirmed repeatedly by Argentine courts and legal commentators. *See* Request for Judicial Notice (“RJN”), Dkt. 24, Exs. A-D (Argentine trial and appeals court rulings affirming legality of Uber’s operations in Buenos Aires). Those operations continue to this day to facilitate vital transportation services that have become part of daily life in Buenos Aires. Multiple trial courts have determined that Uber’s business in Argentina “does not constitute a criminal offense and is a lawful business activity.” *Id.* Exs. B-D. The claimed illegality of Uber’s operations was refuted recently by the Court of Appeals of the City of Buenos Aires, which cleared Uber and its executives of any wrongdoing and held that Uber’s operations in Argentina did not violate any law or municipal ordinance. *Id.* Ex. A. There is no substantial argument that Uber’s Argentine operations violated any law; as such, Rattagan’s claims depend entirely on assigning to Uber Technologies in California responsibility for the incorrect assertions of illegality made by Argentine prosecutors, police officers, and journalists.

LEGAL STANDARD

A complaint must “state[] a plausible claim for relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Mere “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” or “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements” are not enough. *Id.* at 678. Instead, a plaintiff must allege “sufficient factual matter” that, taken as true, “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* These “[f]actual allegations must be enough to raise

a right to relief above the speculative level.” *Twombly*, 550 U.S. at 545 (citation omitted).

Claims that “sound in fraud” must satisfy the heightened pleading requirements of Federal Rule of Civil Procedure 9(b). *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009). To satisfy Rule 9(b), a plaintiff must allege “the who, what, when, where, and how” of the misconduct charged. *Id.* at 1124 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

ARGUMENT

I. Rattagan’s Claims For Negligence (Count Two) And Breach Of The Implied Covenant Of Good Faith And Fair Dealing (Count Three) Are Time-Barred.

Rattagan’s claims for negligence and breach of the implied covenant of good faith and fair dealing are time-barred.

Claims for negligence are subject to a two-year statute of limitations. Cal. Code Civ. P. § 335.1; *see also Rae v. Bank of Am., N.A.*, No. CV 16-8932 PA (SSx), 2017 WL 447306, at *3 (C.D. Cal. Feb. 1, 2017) (dismissing negligence claim as time-barred). A breach of the implied covenant of good faith and fair dealing claim rooted in contract, as Rattagan’s is, adopts the limitations period for the underlying contract. *See Leon v. Wells Fargo Bank NA*, No. 17-cv-03371-BLF, 2018 WL 3474182, at *3 (N.D. Cal. July 19, 2018) (citing Cal. Code Civ. P. §§ 337, 339). Under California law, the limitations period for actions upon a written contract is four years; for implied contracts, it is two years. *See* Cal. Code Civ. P. §§ 337, 339.

Rattagan admits that there was “never a formal written engagement agreement” with the Uber International Entities. TAC ¶ 37. He likewise admitted there was never a formal contractual relationship with Uber Technologies. Rule 11 Hr’g Tr., Dkt. 37, at 2:24-3:3 (Rattagan’s counsel agreeing that it is undisputed “that a formal contractual agreement existed only between Mr. Rattagan and the international entities”); 30:15-17 (Rattagan’s counsel stating, “There’s been no question, there’s been no assertion at all that Uber U.S. signed any contracts.”); *see United States v. Bentson*, 947 F.2d 1353, 1356 (9th Cir. 1991) (collecting authority that an “attorney’s statement during oral argument constitutes judicial admission”). At most, the TAC alleges an implied contract with Uber Technologies based on the alleged implied attorney-client relationship. *See* TAC ¶¶ 3, 46-48. Because any such

underlying contract was “not founded upon an instrument of writing,” Cal. Code Civ. P. § 339.1, the two-year limitations period applies to the implied covenant claim. *See Leon*, 2018 WL 3474182, at *3.

A district court “may dismiss a claim ‘if the running of the statute [of limitations] is apparent on the face of the complaint.’” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1045 (9th Cir. 2011). The two-year limitations period “commences when a cause of action ‘accrues,’ and it is generally said that an action accrues on the date of injury,” or “upon the occurrence of the last element essential to the cause of action.” *Vaca v. Wachovia Mortg. Corp.*, 198 Cal. App. 4th 737, 743 (2011). The well-known elements of a negligence claim are “duty, breach of duty, causation, and damages.” *Averbach v. Vnesheconombank*, 280 F. Supp. 2d 945, 960 (N.D. Cal. 2003). The elements of a contract-based implied covenant claim are “(1) the existence of a contract; (2) the plaintiff did all, or substantially all of the significant things the contract required; (3) the conditions required for the defendant’s performance had occurred; (4) the defendant unfairly interfered with the plaintiff’s right to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant’s conduct.” *Oculus Innovative Sciences v. Nofil Corp.*, No. C 06-01686 SI, 2007 WL 2600746, at *4 (N.D. Cal. Sept. 10, 2007).

As explained in Uber Technologies’ first motion to dismiss, Rattagan’s negligence claim accrued on April 15, 2016, the date on which Rattagan alleges that Uber’s purported misconduct first injured him—*i.e.*, “the occurrence of the last element essential to the cause of action.” *Vaca*, 198 Cal. App. 4th at 743. The same is true of his implied covenant claim. Indeed, Rattagan himself states emphatically that as of April 15, 2016, “*the damage was done.*” TAC ¶ 68 (emphasis added). Both claims are premised on purported injuries from being “smeared in the local media for his alleged role” in the launch. TAC ¶ 81. Those supposed injuries first occurred on April 15, 2016, when Buenos Aires police officers allegedly raided Rattagan’s office. A prime-time news program allegedly broadcast the search and reported that Rattagan’s office was “the location of Uber’s illegal activities.” *Id.* ¶¶ 68-69. As of that date—nearly three years before this lawsuit was filed—Rattagan’s negligence and implied covenant claims, as alleged, were fully formed, and the two-year limitations period commenced.

Rattagan’s allegations that he faced further damage in April and November 2017, in the form of charges by the Argentine prosecutors, do not cure these statute of limitations deficiencies. TAC ¶¶ 77-

78. It is well-settled that continued *injuries* do not restart the statute of limitations clock. *See Rae*, 2017 WL 447306, at *3 (“That Plaintiff may continue to suffer the ill effects from [the defendant’s] allegedly tortious conduct does not toll or extend the applicable statutes of limitations.” (citation omitted)); *Powell v. Wells Fargo Home Mortg.*, No. 14-cv-04248-MEJ, 2015 WL 4719660, at *8 (N.D. Cal. Aug. 7, 2015) (“the fact that [the plaintiff] purportedly continues to experience damage as a result of the alleged wrongdoing underlying these claims does not save them from the applicable statutes of limitations”). If it were otherwise, statutes of limitations would be illusory: “if continuing injury from a completed act generally extended the limitations periods, those periods would lack meaning. Parties could file suit at any time, as long as their injuries persisted. This is not the law.” *Vaca*, 198 Cal. App. 4th at 745.

Rattagan’s claims for negligence and breach of the implied covenant accrued when he was allegedly injured by Uber’s purported misconduct on April 15, 2016. At that point, all of the elements of the claims had accrued. The statutes of limitations for those claims therefore expired on April 15, 2018. Rattagan failed to file suit by that date or in the year thereafter.

II. Rattagan’s Fraudulent Concealment, Negligence, And Aiding And Abetting Claims (Counts One, Two, and Four) Are Barred By The Economic Loss Rule.

Rattagan alleges that he had contractual relationships with Uber Technologies and the Uber International Entities. TAC ¶ 94. In fact, in a change from his previous three complaints, Rattagan now asserts a contract-based claim. *See id.* at ¶¶ 92-96 (implied covenant claim). Under these circumstances, the economic loss rule channels litigation to Rattagan’s (time-barred) breach of contract claim and precludes tort remedies. Accordingly, Rattagan’s fraudulent concealment, negligence, and aiding-and-abetting claims are barred by the economic loss rule.

The economic loss rule is a critical bulwark “prevent[ing] the law of contract and the law of tort from dissolving one into the other.” *Robinson Helicopter Co. v. Dana Corp.*, 34 Cal. 4th 979, 988 (2004). Under the rule, when a plaintiff who is party to a contract with a defendant suffers only economic damages, but not physical injury or injury to property, the plaintiff’s remedy is limited to what he can claim in contract. *See JMP Sec. LLP v. Altair Nanotechs. Inc.*, 880 F. Supp. 2d 1029, 1042 (N.D. Cal. 2012). The rule is particularly strong when a party alleges “commercial activities that negligently or inadvertently [went] awry.” *Robinson Helicopter*, 34 Cal. 4th at 991 n.7. And it applies even more

1 forcefully where, as here, permitting the tort claims to proceed would nullify the two-year statute of
 2 limitations applicable to the contract claims.

3 Rattagan alleges only economic loss—*e.g.*, reputational harm, lost revenues—not physical injury
 4 or injury to property. TAC ¶¶ 65-66, 69, 80-81, 87, 91, 96, 102. Such economic losses are recoverable,
 5 if at all, in contract. Consequently, his tort claims must be dismissed. *See UMG Recordings, Inc. v.*
 6 *Glob. Eagle Entm't, Inc.*, 117 F. Supp. 3d 1092, 1106 (C.D. Cal. 2015) (dismissing fraud claims under
 7 economic loss rule).

8 Mr. Rattagan, as a New York-barred attorney and “one of the top and most renowned business
 9 lawyers in Buenos Aires,” has failed to meet the elemental requirements of filing his lawsuit on time and
 10 omitting tort claims that are obviously precluded by the economic loss rule. His entire complaint can be
 11 dismissed on these two straightforward grounds, but it has other deficiencies as well.

12 **III. Rattagan Does Not Adequately Allege A Claim For Breach Of The Implied Covenant Of** 13 **Good Faith And Fair Dealing (Count Three).**

14 A covenant of good faith and fair dealing is implied in every contract. *Mundy v. Household Fin.*
 15 *Corp.*, 885 F.2d 542, 544 (9th Cir. 1989). The covenant does not, however, create some ill-defined
 16 general honor system supplanting the express terms, but rather “rests upon the existence of some
 17 specific contractual obligation” and “is limited to ensuring compliance with the express terms of the
 18 contract.” *Lee v. Wells Fargo Bank NA*, No. 5:12-cv-02820 EJD, 2013 WL 1117866 at *5 (N.D. Cal.
 19 Mar. 18, 2013) (quoting *Racine & Laramie, Ltd. v. Cal. Dep’t of Parks & Recreation*, 11 Cal. App. 4th
 20 1026, 1031–32 (1992)). As this Court has recognized, “[t]he California Supreme Court has rejected the
 21 argument that ‘the implied covenant [of good faith and fair dealing] can impose substantive terms and
 22 conditions beyond those to which the contract parties actually agreed.’” *Sheahan v. State Farm Gen.*
 23 *Ins. Co.*, 394 F. Supp. 3d 997, 1003 (N.D. Cal. 2019) (Chen, J.) (quoting *Guz v. Bechtel Nat’l, Inc.*, 24
 24 Cal. 4th 317, 349-50 (2000)). Accordingly, to state an implied covenant claim, a plaintiff must allege
 25 that the defendant unfairly interfered with the plaintiff’s right to receive the *express* benefits of the
 26 contract. *Oculus Innovative Sciences, Inc.*, 2007 WL 2600746, at *4 (listing elements of implied
 27 covenant claim). Rattagan fails to allege this element, foreclosing his implied covenant claim.

1 Instead, Rattagan uses the implied covenant to read a series of very specific fiduciary-like duties
 2 into the alleged contracts with the Uber entities: a duty to keep Rattagan apprised of future business
 3 plans; a duty to replace him as legal representative before the launch of services in Argentina; a duty to
 4 cease its legal operations in response to warnings from the Buenos Aires government, and, reading
 5 between the lines, a duty to hire him as an attorney for regulatory issues. *See* TAC ¶ 95. In fact, in
 6 previous versions of the complaint, Rattagan advanced a fiduciary duty claim based on these same
 7 alleged duties. *See, e.g.,* SAC ¶¶ 81(a), (c), (d) (alleging that Uber Technologies owed Rattagan a
 8 fiduciary duty to “inform him of its planned activities in Argentina,” “immediately cease any allegedly
 9 unlawful business practices,” and “replace or remove Mr. Rattagan as legal representative as soon as it
 10 determined that it no longer desired to . . . heed his advice . . .”). Realizing that a fiduciary duty claim
 11 was unsustainable, Rattagan jettisoned that argument and now seeks to impose the same duties through
 12 an implied covenant claim. But none of these duties were express terms of any alleged contract, as an
 13 implied covenant claim would require. Indeed, one would generally expect that the client’s obligation
 14 under an agreement for legal services consists principally of the obligation to pay attorney’s fees—
 15 Rattagan does not and could not allege that the implied contract here included the types of expansive
 16 fiduciary-like duties he is seeking to impose.

17 Because Rattagan does not identify any express benefits of any contract that he failed to receive,
 18 the implied covenant claim should be dismissed. *See Sheahan*, 394 F. Supp. 3d at 1003 (dismissing
 19 implied covenant claim where plaintiffs failed to allege that defendant frustrated their right to receive
 20 the benefit of an insurance contract); *Lee*, 2013 WL 1117866, at *5 (similar); *Oculus Innovative*
 21 *Sciences*, 2007 WL 2600746, at *4 (similar).

22 **IV. Rattagan’s Claim For Fraudulent Concealment (Count One) Fails Because He Does Not**
 23 **Plausibly Allege That Uber Technologies Had A Duty To Disclose The Allegedly Concealed**
 24 **Information.**

25 The required elements for fraudulent concealment “are (1) concealment or suppression of a
 26 material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant
 27 intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was
 28 unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or
 suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the

fact.” *Hambrick v. Healthcare Partners Med. Grp., Inc.*, 238 Cal. App. 4th 124, 162 (2015). As a claim sounding in fraud, “fraudulent” concealment must be pleaded with particularity. Fed. R. Civ. P. 9(b); *see Kearns*, 567 F.3d at 1126 (holding that Rule 9(b) applies to fraudulent omissions claims).

Rattagan asserts a fraudulent concealment claim based on Uber Technologies’ purported concealment from him of the following four alleged facts: (1) Uber Technologies planned to launch operations in Buenos Aires “in a manner it knew would be disruptive and that authorities would deem illegal”; (2) it planned to launch “despite express directives from Buenos Aires authorities not to unless and until it was fully compliant with the law”; (3) it had “a war-like strategic plan to battle challenging regulatory environments”; and (4) Uber Technologies “would disavow any responsibility to Rattagan for its conduct.” TAC ¶ 84. To proceed on his fraudulent concealment claim, Rattagan must show that Uber Technologies owed him a duty to disclose the allegedly withheld material facts. Because the TAC fails to allege the plausible scope or existence of such a duty, the claim should be dismissed.

A. The Scope Of Duty Based On An Alleged Attorney-Client Relationship Is Implausible.

Rattagan asserts that Uber Technologies owed him a duty to disclose because (1) he allegedly served as Uber Technologies’ attorney, (2) he allegedly served as the Uber International Entities’ attorney, and that relationship should be attributed to Uber Technologies because the International Entities were Uber Technologies’ agents; and/or (3) he allegedly served as the legal representative for the Uber International Entities, and that relationship should be attributed to Uber Technologies because the International Entities were Uber Technologies’ agents. TAC ¶ 83. Even if the Uber International Entities’ attorney-client relationship with Rattagan could somehow be attributed to Uber Technologies, the first two bases for the alleged duty to disclose fail. An attorney-client relationship does not impose upon the *client* duties to disclose to its *attorney* the types of information Rattagan focuses on here. It follows *a fortiori* that the ministerial legal representative role could not impose such duties.⁴

⁴ As Rattagan himself explained in the SAC, “The role of the legal representative is limited to registering a shareholder locally, incorporating a subsidiary on its behalf, attending shareholder meetings upon written instructions, and acting as the face of the shareholder at any legal proceedings, such as

1 There is a developed body of law that governs attorney-client relationships and defines the duties
 2 attorneys owe their clients. *See, e.g.*, Cal. R. Prof'l Conduct 1.4(a)(3) (requiring attorney to "keep the
 3 client reasonably informed about significant developments relating to the representation"). Rattagan
 4 disregards those actual duties—which generally require attorneys to meet a high standard of conduct
 5 with respect to the interests of their clients, but impose few if any duties running the opposite direction.
 6 As a result, Rattagan's allegations of duty are fanciful. For example, Rattagan contends that a client
 7 owes its attorney a duty to disclose, among other things, its forward-looking business plans and whether
 8 it has hired other attorneys in relation to other legal questions. Rattagan also claims that the former
 9 attorney can sue the former client for fraud in the absence of such disclosures. TAC ¶¶ 4, 55, 65, 84.

10 Such an allegation is untethered from the well-developed law governing attorney-client
 11 relationships. In fact, Rattagan's interpretation of the duties flowing from an attorney-client relationship
 12 is entirely backwards. An attorney owes his *client* certain duties, including a duty of loyalty. Rattagan
 13 has grossly breached this duty to the Uber International Entities by bringing this lawsuit because an
 14 attorney may not (1) "do anything which will injuriously affect his former client in any manner in which
 15 he formerly represented him," nor may he (2) "at any time use against his former client knowledge or
 16 information acquired by virtue of the previous relationship." *See Wutchumna Water Co. v. Bailey*, 15
 17 P.2d 505, 509 (Cal. 1932); *see also Oasis W. Realty LLC v. Goldman*, 250 P.3d 1115, 1122 (Cal. 2011)
 18 (refusing to narrow the rule articulated in *Wutchumna*). If there was an attorney-client relationship
 19 between Rattagan and Uber Technologies, Rattagan has breached his duty to Uber Technologies, too.⁵

20 There is a reason suits like Rattagan's are practically unheard-of. A lawyer is not supposed to
 21 break faith with his client even after the representation has terminated. The California Supreme Court
 22 made clear in *Oasis Western Realty* that an attorney breaches his duty to a former client by "taking

23 _____
 24 trial." SAC ¶ 16. "The role of the legal representative is not to make decisions for the shareholders or
 25 to ensure that the shareholders or their affiliates, if any, comply with Argentine law (practically
 speaking, the legal representative has little to no ability to do so)." *Id.*

26 ⁵ Uber Technologies disputes Rattagan's allegation of an attorney-client relationship. Solely for the
 purpose of this Motion, however, it is compelled to treat the allegations as if true. *See Sgarlata v.*
 27 *PayPal Holdings, Inc.*, No. 17-cv-06956-EMC, 2018 WL 6592771, at *4 (N.D. Cal. Dec. 13, 2018)
 (Chen, J.) (court must accept as true all factual allegations in complaint when evaluating motion to
 28 dismiss).

[confidential] information significantly into account in framing a course of action” even where “no second client exists and no confidences are actually disclosed.” 250 P.3d at 1122; *see also Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1174 (2011) (“[T]he prohibition against acting in a manner that would injure a former client in any matter in which the attorney formerly represented the client is not limited to the situation where the attorney concurrently or successively represents another client with interests adverse to those of the former client.”). This is particularly true where, as here, an attorney “actively oppose[s] the former client with respect to an ongoing matter that was the precise subject of the prior representation.” *Oasis W. Realty*, 250 P.3d at 1122. Rattagan, a corporate lawyer who purports to have represented Uber Technologies and who did represent Uber International BV on corporate formation issues for Uber’s expansion in Argentina, thus breaches his ethical duties by (1) claiming that Uber’s alleged operation in Argentina without proper corporate entities was unlawful, *see* TAC ¶¶ 5, 71, 79; (2) arguing that the Court should disregard the corporate form of the Uber International Entities, *see* TAC ¶¶ 2, 32-34; and (3) using information that he appears to have gained in the course of his representation to support his argument for disregarding the corporate form, *see* TAC ¶ 32-34.⁶ He then multiplies his violations with a frontal attack on the character of his alleged former client. *See id.* ¶¶ 60, 63(g).

The Court should reject Rattagan’s attempt to invert the law. There is no authority imposing on a client a duty to disclose to its attorney the types of information Rattagan alleges Uber Technologies withheld here. There is, however, established law that precludes Rattagan from harming his alleged former client “in any manner in which he formerly represented him.” *Oasis W. Realty LLC*, 51 Cal. 4th at 819. Rattagan cannot simultaneously claim the existence of an attorney-client relationship to benefit

⁶ Notably, without conceding the existence of any such relationship, Uber Technologies on May 25, 2020 demanded that Rattagan return any Uber Technologies client file. Rattagan refused. If he actually had an attorney-client relationship with Uber Technologies, Rattagan would be ethically obligated to return Uber Technologies’ client file on demand. *See, e.g.,* Cal. R. Prof’l Conduct 1.16(e)(1); N.Y. R. Prof’l Conduct 1.16(e); *In re Regan*, No. 00-O-10318, 2005 WL 1864217, at *10 (Rev. Dep’t State Bar Cal. Aug. 8, 2005) (affirming violation of rules of professional conduct based on refusal to return client file); *In re LeBow*, 285 A.D.2d 28, 32 (N.Y. Sup. Ct. App. Div. 2001) (same); Cal. Prac. Guide Prof. Resp. § 10:318 (stating that there is no work product protection in litigation against client on matters “arising out of the attorney-client relationship”).

himself in this action and refuse to abide by the ethical rules governing such a relationship. As a result, the alleged attorney-client relationships cannot form the basis for the fraudulent concealment claim. His breach also constitutes an independent ground for dismissal of the entire TAC under the doctrine of unclean hands, as discussed in Section V, below.

B. The Uber International Entities Were Not Agents Of Uber Technologies.

Rattagan next asserts that Uber *Technologies* owed him a duty of disclosure based on his role as legal representative of the Uber *International Entities*, imputing the obligations of the subsidiaries to the corporate parent. However, it is “a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation . . . is not liable for the acts of its subsidiaries.” *United States v. Bestfoods*, 524 U.S. 51, 61 (1998) (internal citations and quotations omitted). Indeed, Rattagan’s self-described practice as “one of the top and most renowned business lawyers in Buenos Aires” is underpinned by this principle—there would be no reason to create subsidiary corporations if their conduct and liabilities could be readily imputed to their corporate parents.

The law generally imposes a high bar to imposing such liability, pursuant to the alter ego doctrine. Rattagan has expressly disclaimed reliance on that doctrine in open court. *See* Rule 11 Hr’g Tr., Dkt. 37, at 3:21-23 (“[T]his is not a case where we’re seeking . . . the parent to cover liability of a subsidiary.”); 4:7-11 (affirming that this case is not “an alter-ego, pierce-the-corporate-veil kind of situation”). Having disavowed alter ego liability and abandoned his false claims that Uber Technologies directly appointed him to be its legal representative, Rattagan now advances yet another theory for why Uber Technologies, rather than the Uber entities with which he contracted, should be held liable for his alleged injuries. This time, Rattagan alleges that the Uber International Entities were agents of Uber Technologies. *See* TAC ¶¶ 2, 32-34.

A common law agency relationship is established when “one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” *Mavrix Photographs, LLC v. Livejournal, Inc.*, 873 F.3d 1045, 1054 (9th Cir. 2017) (quoting Restatement (Third) Of Agency § 1.01 (Am. Law Inst. 2006)). An agency relationship can be created through actual or apparent authority. *Id.* “Actual authority arises through ‘the principal’s assent that the agent take

1 action on the principal’s behalf.” *Id.* “Apparent authority arises by “a person’s manifestation that
 2 another has authority to act with legal consequences for the person who makes the manifestation, when a
 3 third party reasonably believes the actor to be authorized and the belief is traceable to the
 4 manifestation.” *Id.* at 1055.

5 Rattagan alleges that “Uber IBV acted as the authorized agent and at the direction of UTI as
 6 principal,” TAC ¶ 32, but he does not provide any factual allegations to support any of the elements of
 7 an agency relationship through actual or apparent authority. With respect to actual authority, there is no
 8 allegation that Uber Technologies assented to the Uber International Entities acting as its agents, nor is
 9 there an allegation that the Uber International Entities agreed to do so. Nor can Rattagan rely on
 10 apparent authority, which can only arise through the manifestations of the *principal*, not the agent. *See*
 11 *Mavrix Photographs*, 873 F.3d at 1054. Rattagan does not allege that he had any interaction whatsoever
 12 with any Uber Technologies employees until at least 2015. *See* TAC ¶¶ 3, 46. As a result, he cannot
 13 plausibly allege that Uber Technologies made any representations implying that the Uber International
 14 Entities were authorized to act as its agents in 2013, when Rattagan agreed to serve as legal
 15 representative for the Uber International Entities.

16 In addition to common law agency, California law permits a parent company to be held liable for
 17 its subsidiaries’ actions under an agency theory if the parent has “moved beyond the establishment of
 18 general policy and direction for the subsidiary and in effect taken over performance of the subsidiary’s
 19 day-to-day operations in carrying out that policy.” *whiteCryption Corp. v. Arxan Techs., Inc.*, No. 15-
 20 cv-00754-WHO, 2015 WL 3799585, at *2 (N.D. Cal. June 18, 2015). The level of control required to
 21 establish an agency relationship “must be over and above that to be expected as an incident of the
 22 parent’s ownership of the subsidiary and must reflect the parent’s purposeful disregard of the
 23 subsidiary’s independent corporate existence.” *Sonora Diamond Corp. v. Super. Ct.*, 83 Cal. App. 4th
 24 523, 542 (2000).

25 Thus, common features of parent-subsidiary relationships, such as “interlocking directors and
 26 officers, consolidated reporting, . . . shared professional services,” close financial relationships, and “a
 27 certain degree of direction and management” exercised by the parent, are not sufficient to create an
 28 agency relationship. *Id.* at 540-41. Likewise, “evidence of co-branding or the broad use of terms

1 linking the corporations together . . . do not establish control rising to the level of an agency
2 relationship.” *Strasner v. Touchstone Wireless Repair & Logistics, LP*, 5 Cal. App. 5th 215, 225 (2016).

3 Rattagan fails to plausibly allege agency through pervasive control. He alleges only the
4 generalities that Uber Technologies’ legal department “exercised complete control over” policies
5 governing international expansion and “controlled and directed” the Uber International Entities’ work in
6 accomplishing those policies. TAC ¶ 33. He also alleges that ten Brink took direction from Yoo. *Id.*
7 All of these statements are conclusory assertions using the verbatim language of the case law, and so
8 should be disregarded. *See Iqbal*, 556 U.S. at 678 (“[t]hreadbare recitals of the elements of a cause of
9 action, supported by mere conclusory statements” are not enough to state a claim).

10 The only non-conclusory allegation related to control—that Uber Technologies’ General Counsel
11 Salle Yoo purportedly allowed ten Brink to decide which firm to hire to work on the expansion in
12 Argentina, *see* TAC ¶ 33—actually establishes the opposite of day-to-day control, showing that the Uber
13 International Entities had discretion in hiring professional services firms in order to implement a broader
14 directive.

15 Even if the conclusory allegation that Yoo somehow completely controlled ten Brink’s
16 communications with Rattagan were credited, California and district courts have repeatedly stated that
17 “shared professional services,” including legal services, are a normal feature of a parent-subsidiary
18 relationship and do not establish an agency relationship. *See Pitt v. Metro. Tower Life Ins. Co.*, No. 18-
19 cv-06609-YGR, 2020 WL 1557429, at *4 (N.D. Cal. Apr. 1, 2020) (finding that employees can wear
20 multiple “hats” to do work for different companies without imputing all of one company’s actions to
21 another); *Strasner*, 5 Cal. App. 5th at 225 (declining to find agency relationship despite “some
22 integration of accounting and human resources functions” and that “some managers at [the parent]
23 oversaw some managers at [the subsidiary] in human resources or accounting”); *Fru-Con Constr. Corp.*
24 *v. Sacramento Mun. Util. Dist.*, No. CIV. S-05-583 LKK/GGH, 2007 WL 2384841, at *6-7 (E.D. Cal.
25 Aug. 17, 2007) (declining to find agency relationship despite parent’s general counsel providing legal
26 services to both parent and subsidiary); *Sonora Diamond*, 83 Cal. App. 4th at 540-41; *cf. Calvert v.*
27 *Huckins*, 875 F. Supp. 674, 679 (E.D. Cal. 1995) (in alter ego context, parent’s counsel providing legal
28

1 services to parent and subsidiary “does not suffice to establish the measure of control necessary to
2 justify disregarding the corporate entity”).

3 International business depends on companies being able to create corporate vehicles whose
4 separate corporate personhood will be respected. Rattagan’s forum shopping leads him once more to
5 seek, wrongly, to impute conduct by the Uber International Entities to Uber Technologies, in violation
6 of bedrock principles of corporations. His conclusory allegations of control are not remotely enough to
7 justify such an extreme step.

8 **V. Rattagan’s Breach Of The Duty Of Loyalty Warrants Dismissal Under The Doctrine Of**
9 **Unclean Hands.**

10 Not only does Rattagan’s breach of his duty of loyalty preclude Rattagan’s fraudulent
11 concealment claim, but it is also an independent ground for dismissing the entire TAC under the
12 doctrine of unclean hands. Under California law, the unclean hands doctrine applies to legal claims as
13 well as equitable ones. *Adler v. Fed. Republic of Nigeria*, 219 F.3d 869, 877 (9th Cir. 2000). Thus,
14 when a plaintiff has acted improperly in relation to the case at hand, he cannot recover. *See id.* at 876-
15 77; *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App. 4th 612, 618-21 (1992).

16 Based on the facts as pled, Rattagan has breached his duty of loyalty to benefit himself in this
17 case at the expense of his client Uber International BV and alleged client Uber Technologies. *See supra*
18 Section IV. The breach is not some ancillary issue, but rather lies at the core of Rattagan’s case. *See*
19 *Unilogic*, 10 Cal. App. 4th at 620. Each of Rattagan’s theories of liability is inextricably intertwined
20 with his ethical breach: he attempts to hold Uber Technologies liable based on the alleged direct
21 attorney-client relationship, but the very act of suing his alleged client based on the same subject matter
22 of the representation constitutes a breach of loyalty. *See Oasis W. Realty*, 250 P.3d at 1122. He also
23 attempts to hold Uber Technologies liable by urging the Court to disregard the corporate form of his
24 client, Uber International BV, but this too breaches his duty of loyalty, particularly since Rattagan, a
25 corporate attorney, was hired to work on issues of corporate formation. *See id.*

26 Rattagan cannot pursue the TAC’s allegations or theories of liability without breaching his
27 ethical duties. Because his unclean hands are evident from the face of the TAC, he cannot recover and
28 the TAC should be dismissed. *See Sams v. Yahoo! Inc.*, 713 F.3d 1175, 1179 (9th Cir. 2013) (“[T]he

assertion of an affirmative defense may be considered properly on a motion to dismiss where the ‘allegations in the complaint suffice to establish’ the defense.” (quoting *Jones v. Bock*, 549 U.S. 199, 215 (2007)). The application of the unclean hands doctrine is cemented by Rattagan’s false statements in this litigation, as well as his obvious forum shopping. *See* Dkt. 36 at 8 (“[T]he Court concludes that Rattagan presented the Court with a complaint that was inaccurate and misleading.”); Dkt. 63 at 4 (“It would be obvious to anyone reading the three previous complaints and the proposed Third Amended Complaint that Plaintiff’s claims have been inconsistently pled throughout the early stages of this lawsuit.”)

VI. Rattagan Fails To State A Claim For Aiding And Abetting Fraudulent Concealment (Count Four).

A tort claim can be brought against “one who aids and abets the commission of an intentional tort if the person (a) knows the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person’s own conduct, separately considered, constitutes a breach of duty to the third person.” *Casey v. U.S. Bank Nat’l Ass’n*, 127 Cal. App. 4th 1138, 1144 (2005). “The plaintiff must also allege and prove that the elements of an underlying tort were fulfilled by a primary wrongdoer.” Restatement (Third) of Torts: Liability for Economic Harm § 28 (Am. Law Inst. 2019).

Rattagan asserts a claim for aiding and abetting fraudulent concealment “in the alternative,” “applicable if and to the extent the trier of fact determines that UTI had no direct relationship with Rattagan and/or was not the principal of the Dutch Entities liable for their acts.” TAC ¶ 97. He thus appears to proceed only under part (a) of the definition above. This claim fails for two reasons: (1) Rattagan fails to establish that the Uber International Entities committed the underlying tort of fraudulent concealment; and (2) he fails to plausibly plead what substantial assistance or encouragement Uber Technologies provided to the Uber International Entities.

Turning first to the underlying tort, according to Rattagan, the Uber International Entities owed Rattagan a duty of disclosure because they were in an attorney-client relationship with Rattagan. TAC ¶ 98-99. Rattagan fails to establish an underlying fraudulent concealment for the same reasons

identified in Section IV, above. Namely, he fails to plausibly plead that the scope of any duty arising from an attorney-client or legal representative relationship encompasses the alleged omissions at issue.

Next, Rattagan fails to plausibly plead what substantial “assistance or encouragement” Uber Technologies gave the Uber International Entities. The only allegation Rattagan makes is that, upon “information and belief,” Uber Technologies “expressly or impliedly directed the Dutch Entities to conceal these facts from Rattagan.” *Id.* ¶ 101. Such a conclusory allegation of assistance does not satisfy Rattagan’s obligations under Rule 8, let alone the heightened pleading standard of Rule 9(b), which applies because the claim for aiding and abetting fraudulent concealment sounds in fraud. *See Iqbal*, 556 U.S. at 678; *Kearns*, 567 F.3d at 1125 (holding that Rule 9(b) applies to claims that are “grounded in fraud” or “sound in fraud”).

VII. Rattagan Fails To Plausibly Allege That Uber Technologies Caused His Purported Damages.

To adequately plead each of the four causes of action, Rattagan must plausibly allege that Uber Technologies’ conduct was the proximate cause of his purported harm: “Injuries have countless causes, and not all should give rise to legal liability.” *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 692 (2011).⁷ Of particular relevance here, when an “independent intervening force”—*i.e.*, a third-party actor—“actively operates to produce the injury,” that third-party act is a superseding cause, and the defendant is not liable. 9 Witkin, *Summary of California Law*, § 1348 (11th ed. 2018).

All of Rattagan’s alleged injuries arose from conduct by intervening third parties, including governmental authorities. TAC ¶¶ 69 (raid by “police”); *id.* (raid broadcast on “prime-time news programs”); *id.* ¶ 80 (labeling Rattagan as “flight risk” by prosecutor led to “name-bashing”); *id.* ¶ 81 (“smear[ing]” by local media). His claims therefore rest on the incredible proposition that Uber Technologies should be held liable for the independent and unwarranted actions of Argentine local

⁷ *See Tribeca Cos., LLC v. First Am. Title Ins. Co.*, 239 Cal. App. 4th 1088, 1102-03 (2015) (negligence claims require proof of proximate causation); *Song Fi, Inc. v. Google, Inc.*, No. C-14-5080 CW, 2016 WL 1298999, at *8 (N.D. Cal. Apr. 4, 2016) (fraudulent concealment); *Ryan v. Editions Ltd. W., Inc.*, No. C-06-4812 PVT, 2007 WL 4577867, at *8 (N.D. Cal. Dec. 27, 2007) (implied covenant); *Chance World Trading E.C. v. Heritage Bank of Commerce*, No. C-03-05474 RMW, 2004 WL 2359857, at *4 (N.D. Cal. Oct. 15, 2004) (aiding and abetting).

government and civil society. In the parlance of proximate causation, these third parties' actions were unforeseeable superseding causes of Rattagan's alleged damages. *See Lopez v. Nissan N. Am. Inc.*, No. 17-cv-01625-EDL, 2017 WL 10338593, at *5 (N.D. Cal. Nov. 6, 2017) (dismissing negligence claim with prejudice due to "intervening and superseding cause" of alleged injuries).

Rattagan seeks to bolster his allegations by claiming that earlier Uber launches in other South American countries had been met with protests, and that Buenos Aires government officials had warned that Uber's launch would be deemed illegal. But Rattagan does not allege that Uber's professional service providers in any other country faced any backlash, let alone criminal charges. And more significantly, Rattagan ignores that Uber's operations in Argentina were entirely lawful, which has been confirmed by multiple judicial rulings subject to this Court's judicial notice. *See RJN*, Dkt. 24, Exs. A-D. Uber cannot reasonably be required to have foreseen that governmental subdivisions would prosecute *unprecedented, unsubstantiated, and unwarranted* claims against Rattagan, nor should it be held liable for those actions. Rather, Rattagan's complaints directed toward Argentine governmental actors and media organizations should be directed to those independent actors based on their independent decisions.

Rattagan's causation theory amounts to the contention that Uber should have ceased its entirely legal operations in response to certain Argentine authorities' alleged reaction to Uber's Argentina launch. *See TAC* ¶ 79 (faulting Uber for not "temporarily suspend[ing] its operations after the police raid"). It cannot be that every time a commentator or government official threatens to "deem[]" a business's operations unlawful, *see id.* ¶ 63(e), or raises "the prospect of potential civil and criminal liability," *id.* ¶ 70, the business must cease operations or face civil liability to the contractors and vendors of its affiliates. This Court should refrain from creating a new category of international tort liability whereby companies that are erroneously accused of violating municipal law overseas can be subjected to California tort claims.

VIII. Rattagan Cannot Recover Punitive Damages For Any Of His Claims.

Rattagan seeks punitive damages, although it is not clear what claims he believes entitles him to such. *See Prayer for Relief*. The prayer for punitive damages claims should be dismissed because Rattagan fails to plead that Uber Technologies' officers, directors, or managing agents acted with the

“willful and malicious” intent that is required to sustain a punitive damages claim. *Taiwan Semiconductor Mfg. Co. v. Tela Innovations, Inc.*, No. 14-cv-00362-BLF, 2014 WL 3705350, at *6 (N.D. Cal. July 24, 2014).

Because “[c]orporations are legal entities which do not have minds capable of recklessness, wickedness, or intent to injure or deceive[, a]n award of punitive damages against a corporation . . . must rest on the malice of the corporation’s employees.” *Cruz v. HomeBase*, 83 Cal. App. 4th 160, 167 (2000); *see also Taiwan Semiconductor*, 2014 WL 3705350, at *6 (“Under California punitive damages law, a company simply cannot commit willful and malicious conduct—only an individual can.”). Moreover, corporations are only liable for punitive damages if the corporate leaders—the “officers, directors, or managing agents”—acted with the requisite intent. *Cruz*, 83 Cal. App. 4th at 167 (quoting Cal. Civ. Code § 3294(b)). Failure to allege such conduct on the part of corporate leaders requires dismissal of a punitive damages claim against the corporate employer. *See, e.g., McMurray v. Merck & Co., Inc.*, No. C 07-1007 MMC, 2007 WL 1456042, at *2 (N.D. Cal. May 17, 2007) (striking prayer for punitive damages for failure “to plead the allegedly wrongful conduct was authorized or ratified by an officer, director, or managing agent of defendant”); *Xerox Corp. v. Far W. Graphics, Inc.*, No. C-03-4059-JFPVT, 2004 WL 2271587, at *2 (N.D. Cal. Oct. 6, 2004) (striking request for punitive damages based on failure to allege any conduct by corporation’s officer, director, or managing agent).

Rattagan does not allege any facts regarding the conduct of Uber Technologies’ managing agents to support his claim for punitive damages. As a matter of California law, “Uber” cannot act intentionally or maliciously, and the only “officer” whose conduct is mentioned in the TAC is Salle Yoo, “General Counsel and Corporate Secretary.” TAC ¶ 20. Rattagan alleges that Yoo controlled the Uber International Entities’ international expansion efforts, *id.* ¶ 33, that he asked Yoo to “promptly designate someone” to talk to Rattagan about “handing over all [of his] files ” and to refrain from mentioning Rattagan’s law firm in communications with the Argentine government, *id.* ¶ 73. Rattagan further alleges that Yoo responded to his request *that same day* and “assigned Todd Hamblet, Uber’s Managing Counsel, Corporate” to address Rattagan’s requests. *Id.* ¶ 73.

Nowhere in the TAC does Rattagan contend that Yoo failed to adequately respond to Rattagan’s specific requests, let alone that she acted with “malice” or “oppression.” Cal. Civ. Code § 3294(a). Nor

1 does the TAC allege such conduct by any other “officer, director, or managing agent” of Uber
2 Technologies. *McMurray*, 2007 WL 1456042, at *2. Rattagan’s claims for punitive damages
3 accordingly should be dismissed. *Id.* (striking prayer for punitive damages).

4 CONCLUSION

5 Rattagan, a New York-barred corporate attorney who makes his living by helping international
6 companies establish corporate affiliates in Argentina, now asks this Court to ignore *his own alleged*
7 *clients’* corporate formalities in order to enrich himself at their expense. Over the course of four
8 complaints, he has not been candid with this Court, manipulated its jurisdiction, and committed a serious
9 ethical breach against the Uber International Entities and, if his allegations are taken as true, against
10 Uber Technologies. He has done all of this to press claims that are facially time-barred or otherwise
11 fatally deficient.

12 For the above reasons, the Court should dismiss Rattagan’s TAC with prejudice. A dismissal
13 with prejudice is warranted because Rattagan has already amended his complaint three times, including
14 twice after fully briefing Uber Technologies’ first motion to dismiss, which put Rattagan on notice of
15 the deficiencies in his legal theories and factual allegations. If Rattagan could have cured these
16 deficiencies, he would have done so in the TAC, but he did not. Further amendment would be futile.

1 Dated: June 19, 2020

Respectfully submitted,

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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 MICHAEL R. RATTAGAN,
14 Plaintiff,
15 v.
16 UBER TECHNOLOGIES, INC.,
17 Defendant.

Case No. 3:19-cv-01988-EMC

Hon. Edward M. Chen

THIRD AMENDED COMPLAINT

JURY TRIAL DEMANDED

CASE OVERVIEW

1. Plaintiff Michael (or “Miguel”) Rattagan (“Plaintiff” or “Rattagan”) is a prominent lawyer in Buenos Aires, Argentina and at all relevant times was the co-founding and managing partner of the law firm Rattagan Macchiavello Arocena¹. In February 2013, a then relatively unknown American start-up, Uber Technologies Inc. (“UTI”), decided to expand its now ubiquitous ride-hailing service, Uber Ridesharing, into Buenos Aires.² To that end, UTI used two of its subsidiaries to hire Rattagan to reserve the name, form and register a local Buenos Aires entity, and provide legal advice on the process.

2. UTI also directed the two entities to use Rattagan as their formal legal representative and his business address as their local domicile. They were both near-assetless shell entities formed by UTI under Dutch law less than a year earlier to use for its international expansion strategy. As alleged in detail below, these Dutch entities were merely agents controlled by their principal, UTI, with respect to all substantive decisions, communications and activities *vis-à-vis* Mr. Rattagan and the Rattagan firm. As a practical matter, UTI not only established the policy and direction for expanding in Argentina and elsewhere in the world through the Dutch entities, in effect it controlled their day-to-day operations in hiring and directing Rattagan. In fact, UTI exercised such complete dominion and control over the Dutch entities that but for their existence, UTI would have had to perform the identical “services” provided by the Entities. In short, even in 2013, UTI as principal effectively hired Rattagan. As a result of this agency/principal relationship, UTI is responsible for all of the actions of the Dutch entities. But then there was 2015.

3. 2014 was a period of relative inactivity between the Dutch entities and Rattagan. Beginning in early 2015, however, the situation changed dramatically. UTI had accelerated its

¹ Rattagan was his firm’s managing partner and the originating/responsible partner for all legal services provided by the firm alleged herein. Therefore, unless otherwise specified, the reference to “Rattagan” herein includes other lawyers in the firm and the firm itself. Separately, with UTI’s knowledge and consent, Mr. Rattagan was appointed as the “legal representative” in Argentina of two UTI-affiliates which would be the registered shareholders of the local Uber entity.

² As used herein, “Uber Ridesharing” refers to the actual driver/passenger service facilitated by UTI’s technology platform. The term does not denote UTI or any of its myriad affiliated entities discussed below.

1 efforts to launch Uber Ridesharing in Buenos Aires and, therefore, beginning in early 2015 into
2 May 2016, UTI's legal department – not the Dutch entities – directly hired Rattagan to provide a
3 slew of new legal services and advice regarding the formation of multiple Argentine entities that
4 would enable UTI to provide Uber Ridesharing in Argentina. Every one of the directives,
5 questions and information given to Rattagan for this scope of work came directly from UTI's
6 legal department in San Francisco. Similarly, all of Rattagan's legal advice and work product was
7 provided directly to UTI's legal department in San Francisco. In short, by February 2015, UTI
8 established a direct attorney-client relationship with Rattagan. Throughout this time, he remained
9 as the "legal representative" of the Dutch entities in Argentina.

10 4. By late 2015, UTI had begun its plans to launch Uber Ridesharing in Buenos
11 Aires, plans that it concealed from Rattagan. UTI hired a Buenos Aires government compliance
12 lawyer and an international public relations firm to help with the launch. Between December 2015
13 and March 2016, UTI's government compliance team from Bogota, Sao Paulo and Washington,
14 D.C. participated in several in-person meetings with Buenos Aires transportation department
15 government officials. UTI concealed these meetings from Rattagan. During these meetings, the
16 officials expressly warned UTI that its plan to launch Uber Ridesharing would be considered
17 unlawful and explicitly told UTI not to do so unless and until it was in full compliance with all
18 applicable City transportation regulations. UTI concealed these warnings from Rattagan. UTI's
19 representatives rejected these warnings (because UTI asserted it was merely a technology
20 platform, not a transportation provider). Again, UTI concealed this from Rattagan.

21 5. When Mr. Rattagan was first asked to be the registered legal representative for
22 UTI's Dutch entities in Argentina, he expressly warned of the potential liability that a legal
23 representative could personally face under Argentine law if the company violated the law. Despite
24 this and without first removing Rattagan from harm's way, UTI launched Uber Ridesharing
25 knowing that it was doing so in blatant disregard of the local government's warnings that it would
26 be unlawful.

27 6. Based on UTI's prior launch experiences in numerous other cities around the
28 world, it knew - to an absolute certainty - that launching Uber Ridesharing in a locale that

1 presented “regulatory challenges” like Buenos Aires would be met with immediate and adverse
 2 reaction. To counteract these foreseeable responses, UTI had even developed a “how to” manual
 3 for its “armed forces.” Despite the warnings from the Buenos Aires government and even though
 4 it had not completed its corporate formation or its tax registration – or replaced Mr. Rattagan as
 5 legal representative - UTI officially launched Uber Ridesharing on April 12, 2016 without any
 6 prior notice or forewarning to Rattagan.

7 7. The response to UTI’s Uber Ridesharing launch was swift and predictable:
 8 thousands of local taxi drivers stormed both the local government transportation offices and
 9 Rattagan’s law offices in protest. Within a couple of days, law enforcement authorities targeted
 10 the only public faces of Uber in Argentina: Rattagan and his colleagues who he had introduced to
 11 UTI to be interim managers of the then “in formation” local entity (after formation, UTI was to
 12 substitute permanent managers in their place). Buenos Aires police raided their offices and
 13 homes, they were vilified in the media and subjected to scorn and ridicule in social and
 14 professional gatherings. In 2017, after the authorities completed their investigation of UTI’s
 15 launch, they summoned Mr. Rattagan to the local prosecutor where he was fingerprinted, had his
 16 mug shots taken and was charged with various crimes, including aggravated tax evasion.

17 8. Although UTI has publicly acknowledged its mistakes and had been paying
 18 Rattagan’s criminal defense legal fees pursuant to an indemnity agreement - it ceased doing so
 19 after he filed this lawsuit - it has failed and refused to compensate him for the financial and
 20 reputational harm he has suffered as a result of UTI’s tortious conduct. This lawsuit seeks
 21 compensation for the substantial damages UTI caused Rattagan.

22 **JURISDICTION AND VENUE**

23 9. This Court has subject matter jurisdiction over the claims asserted herein pursuant
 24 to 28 U.S.C. § 1332 because: (a) Rattagan is a citizen of a different state and/or country than UTI,
 25 and (b) the amount in controversy exceeds \$75,000, exclusive of costs and interest.

26 10. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because a substantial
 27 part of the events or omissions giving rise to this action occurred here and because UTI is subject
 28 to the Court’s personal jurisdiction with respect to the claims for relief asserted herein.

PARTIES TO THIS ACTION

11. Plaintiff Michael (or “Miguel”) R. Rattagan is an individual and a citizen of Argentina. At all relevant times, Rattagan resided and conducted his law practice in the city of Buenos Aires. Among Rattagan’s clients were UTI and the Dutch entities described below. Rattagan co-founded and at all relevant times was the managing partner of Rattagan Macchiavello Arocena. As a lawyer licensed in Argentina and in the State of New York, Rattagan counsels large multinational companies in various business matters, with an emphasis on transactions, investments and interests in Argentina. For nearly 30 years in practice, Rattagan has carefully built and maintained a reputation for honesty and integrity and for advising his clients to adhere to the same in the conduct of their own businesses. This unyielding approach to compliance with the law placed Rattagan in a unique and prominent class of legal professionals in Argentina. Rattagan’s reputation as a skilled lawyer and honest broker made him ideal counsel for multinational companies looking to do business in Argentina. As one of the top and most renowned business lawyers in Buenos Aires, much of his practice came from international referrals. As the main business generator of his firm for more than 13 consecutive years, an essential part of Rattagan’s role was to travel abroad extensively to develop professional relations and create awareness of the investment climate and opportunities in Argentina while promoting the firm and its abilities.

12. Defendant Uber Technologies, Inc. (“UTI”) is and at all relevant times was a corporation duly organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. As alleged herein, all material actions and decisions concerning Rattagan giving rise to this action were made by persons in UTI’s legal department in San Francisco, California. UTI is a transportation provider that contends it is a pure “technology company” that merely generates “leads” for its “customers” – the drivers and riders who use the technology platform – Uber Ridesharing. Rattagan is informed and believes and thereon alleges that although UTI’s contention was rejected by Buenos Aires City transportation officials (as described below), UTI nevertheless refused to abide by or comply with Buenos Aires local rules and regulations governing transportation providers.

NON-PARTY ENTITIES AND INDIVIDUALS

13. The following non-exclusive list of non-party entities and individuals are referred to throughout this complaint.

UTI-Affiliated Entities

14. **Uber International B.V. (“Uber IBV”)** – Plaintiff is informed and believes and thereon alleges that this is a limited liability company formed by UTI under the laws of the Netherlands in or about 2012. Plaintiff is further informed and believes and thereon alleges that at all relevant times its sole (or ultimate) shareholder was UTI. This is the entity that UTI contends hired Rattagan in February 2013. It was one of the two shareholders of Uber S.R.L. and Hinter Argentina, S.R.L. (both defined below) at the time of UTI’s launch of Uber Ridesharing. Mr. Rattagan was at that time its registered legal representative in Argentina.

15. **Uber International Holding B.V. (“Uber IHBV”)** – Plaintiff is informed and believes and thereon alleges that this is a limited liability company formed by UTI under the laws of the Netherlands in or about 2012 for the purpose of being the sole or majority shareholder of Uber IBV and other UTI-affiliates throughout the world. Its sole shareholder was Uber IBV. Uber IHBV was the second shareholder of Uber S.R.L. and Hinter Argentina, S.R.L. (both defined below) at the time of UTI’s launch of Uber Ridesharing. Mr. Rattagan was at that time its legal representative in Argentina. Hereinafter, Uber IBV and Uber IHBV are sometimes collectively referred to as the “Dutch Entities” or the “Foreign Shareholders.”

16. **Uber Argentina, S.A. (“Uber S.A.”)** – Plaintiff is informed and believes and thereon alleges that this is the name of the corporation that Rattagan was asked to reserve with the Buenos Aires Office of Corporations (“*Inspección General de Justicia*” or “IGJ”) in 2013. Its two Foreign Shareholders were to have been Uber IBV and Uber IHBV. The intended corporate purpose of this entity was to provide support services with respect to promoting and marketing software and technology provided by Uber IBV. Plaintiff is informed and believes and thereon alleges that in 2015, UTI’s legal department decided to pursue the formation of a limited liability company (an “SRL”) instead of a corporation. As a result, Rattagan never completed the incorporation of “Uber S.A.”

17. **Uber Argentina, S.R.L. (“Uber S.R.L.”)** – This is the name of the limited liability company that, in 2015, UTI’s legal department directed Rattagan to form and register with the City of Buenos Aires in place of Uber S.A. Its two shareholders (“members”) remained Uber IBV and Uber IHBV and Rattagan remained their registered legal representative. In July 2015, Ryan Graves, Vice President, Operations of UTI, submitted a declaration provided to the IGJ that Uber Argentina, S.R.L, a corporation to be incorporated in Argentina, belonged to the Uber Group and authorized its Argentine subsidiary to use the name of “Uber Argentina S.R.L.”

18. **Hinter, LLC** – Plaintiff is informed and believes and thereon alleges that this is a U.S. limited liability company, the sole member of which was Travis Kalanick, UTI’s then CEO. Plaintiff is further informed and believes and thereon alleges that on March 30, 2016, less than two weeks before UTI launched Uber Ridesharing in Buenos Aires, Kalanick submitted a declaration provided to the IGJ that Hinter Argentina, S.R.L. was an affiliate of Hinter LLC and authorized its affiliate to use the name Hinter Argentina, S.R.L.

19. **Hinter Argentina, S.R.L.** – This is an Argentine limited liability company that UTI directed Rattagan to form in March 2016, just prior to UTI launching Uber Ridesharing on April 12, 2016.

UTI-Affiliated Employees

20. **Salle Yoo** – UTI’s then General Counsel and Corporate Secretary. Plaintiff is informed and believes and thereon alleges that Yoo and her subordinates in UTI’s legal department in San Francisco directed all day-to-day decisions regarding the legal work performed by Rattagan described in detail below. In particular, Yoo, directly and through her subordinates, controlled and managed Uber IBV’s retention and direction of Rattagan in Buenos Aires to provide legal services to expand Uber Ridesharing into Argentina and to act as the legal representative of Uber IBV and Uber IHBV. Plaintiff is informed and believes and thereon alleges that by 2015, the entity formation work for UTI affiliates around the world was handled by and through corporate paralegals in UTI’s legal department in San Francisco under the direction and supervision of Yoo.

21. **Liesbeth Ten Brink** – Plaintiff is informed and believes and thereon alleges that

1 Ten Brink, a former NYU Law School classmate of Mr. Rattagan's, was a temporary "Director
 2 Legal" of Uber IBV from January to June 2013. Plaintiff is further informed and believes and
 3 thereon alleges that in February 2013, she was directed by Yoo to hire local counsel in Buenos
 4 Aires to help facilitate the launch of Uber Ridesharing in Argentina. Plaintiff is further informed
 5 and believes and thereon alleges that in addition to taking day-to-day direction from Yoo, Ten
 6 Brink took day-to-day direction from Frederique Dame, UTI's senior Product Manager leading its
 7 Driver Experience team during UTI's expansion and internationalization.

8 22. **Ryan Black** – UTI's "Senior Paralegal, Corporate." Beginning in February 2015,
 9 Black took over day-to-day direction and control of Rattagan with respect to all legal services
 10 Rattagan provided to UTI.

11 23. **Shirin Schokrpur** – Plaintiff is informed and believes and thereon alleges that she
 12 was a senior UTI corporate paralegal in San Francisco. Along with Ryan Black, beginning in
 13 early 2015, she managed and controlled on a day-to-day basis all of the work performed by
 14 Rattagan for UTI.

15 24. **Enrique Gonzalez** – Plaintiff is informed and believes and thereon alleges that
 16 between March 2015 and May 2018, he was UTI's Head Counsel for Latin America Operations.
 17 Plaintiff is further informed and believes and thereon alleges that, beginning in 2016, he was
 18 responsible for all legal services provided by UTI's outside legal counsel in the region, including
 19 Argentina. Plaintiff is further informed and believes and thereon alleges that Gonzalez hired
 20 Leonardo Orlanski (a Buenos Aires regulatory lawyer identified below) and intentionally
 21 concealed from Rattagan until late March 2016 that he and Orlanski had been extensively
 22 working together on the Uber Ridesharing launch preparations.

23 25. **Carl Meacham, Gonzalo Araujo and Juan de Dios Btiz** - Plaintiff is informed
 24 and believes and thereon alleges that these gentlemen were the senior UTI employees in its Public
 25 Policy and Government Relations department covering South America. Plaintiff is further
 26 informed and believes and thereon alleges they all met with Buenos Aires government officials
 27 who warned them that if UTI launched Uber Ridesharing without complying with City
 28 transportation regulations, it would be deemed illegal and that there would be serious

consequences.

26. **Frederique Dame** - Plaintiff is informed and believes and thereon alleges that she was UTI's Product Manager leading its Driver Experience team through a period of rapid expansion and internationalization. As Ten Brink's "client" she issued day-to-day requests and instructions to Ten Brink regarding international entity formation issues.

27. **Ryan Graves** – One of UTI's first employees, its Senior Vice President of Global Operations and at all relevant times a member of UTI's Board of Directors.

28. **Travis Kalanick** – UTI's founder, former CEO and member of its Board of Directors. He was the sole member and shareholder and manager of Hinter LLC, which authorized the use of the name Hinter Argentina S.R.L.

Other Key Individuals

29. **Leonardo Orlanski** – A Buenos Aires lawyer specializing in government relations. Plaintiff is informed and believes and thereon alleges that Orlanski was hired by Gonzalez to help plan, assist and implement the launch of Uber Ridesharing in Buenos Aires.

30. **Ricardo Mihanovich-Murphy** and **Enrique Gustavo Gibert** – Interim Manager and Interim Alternative Manager, respectively, for Uber S.R.L. sourced by Rattagan and personally vetted and hired by Ryan Black.

31. **Juan Jose Méndez** – Secretary of Transportation for the City of Buenos Aires. Plaintiff is informed and believes and thereon alleges that he and other Buenos Aires City government officials attended several meetings with UTI representatives between December 2015 and March 2016, during which they warned UTI that unless and until it fully complied with all City transportation regulations, it could not lawfully launch Uber Ridesharing.

FACTUAL ALLEGATIONS

A. THE PRINCIPAL/AGENT ALLEGATIONS: UTI CONTROLLED THE DAY-TO-DAY FUNCTIONS OF AND EXERCISED SUCH CONTROL OVER THE DUTCH ENTITIES THAT THEY WERE THE ONLY MEANS THROUGH WHICH UTI ACTED IN ARGENTINA.

32. At all relevant times, Uber IBV acted as the authorized agent and at the direction of UTI as principal. In hiring and directing Rattagan, Uber IBV acted in the course and scope of its agency under the complete control of UTI's legal department. Plaintiff is informed and

believes that Uber IBV functioned as UTI's agent in that it performed services that were essential to UTI such that if UTI did not have Uber IBV to perform them, UTI would have had to undertake to perform substantially similar services.

33. With respect to UTI's control over Uber IBV, Rattagan is informed and believes and thereon alleges that: 1) UTI through Yoo exercised complete control over setting Uber IBV's policies and decision-making in setting up legal entities around the world, including Argentina, to implement Uber Ridesharing; 2) Uber IBV's few employees, including Ten Brink, took direction from UTI's senior employees including Yoo and Frederique Dame and had no independent authority to deviate from those directions or set policy; 3) the substantive scope of legal work performed by Rattagan for Uber IBV and nearly all of the content of the communications between Uber IBV and Rattagan relating thereto were controlled and directed by UTI's legal department and in particular, Yoo; 4) other than allowing Ten Brink to choose which law firm she hired, Yoo and Dame exercised pervasive and continual control over Uber IBV's directives to Rattagan regarding the scope of and timeline for the legal work performed by Rattagan; and 5) Uber IBV, directly and through its wholly-owned subsidiary Uber IHBV, was the only means through which UTI acted in expanding UTI's Uber Ridesharing globally during the time period relevant to this case.

34. With respect to Uber IBV's inability to provide services without UTI, Rattagan is informed and believes and thereon alleges that when he was engaged by Uber IBV in February 2013, the company had no officers or directors and had approximately one or two employees. Rattagan is further informed and believes and thereon alleges that: 1) at all relevant times, Uber IBV had insufficient employees and assets to conduct business for its own benefit; 2) the average number of staff employed by Uber IBV throughout 2013 was eight (8) and all employees were administrative (including Ten Brink); 3) Uber IBV's shareholder equity as of December 31, 2013 was less than €25,000, and the company's liabilities exceeded its total assets by €787,451; 4) Uber IBV's accountants reflected in the company's 2013 year-end financial statements that there was doubt about the company's ability to continue as a going concern, but for a letter of financial support from the shareholder (UTI) and that based on the continuance of funding by the

shareholder and other group companies, it valued the company on a going concern basis.

B. 2013 - RATTAGAN IS HIRED BY TEN BRINK TO PROVIDE LEGAL SERVICES AND AS “LEGAL REPRESENTATIVE” OF THE DUTCH ENTITIES.

35. On February 27, 2013, Liesbeth Ten Brink - a former classmate of Rattagan’s from New York University School of Law – wrote an unsolicited email to Rattagan from her @uber.com email address with the subject matter “Re Uber Argentina.” Ten Brink explained that she was Director Legal for Uber IBV. She explained that “Uber was an American start-up company” (her words) that was expanding rapidly and was starting to consider Argentina. She attached a four-page request for a fee quote (“RFQ”) which was replete with references to “Uber.” The RFQ was on “Uber” letterhead. It provided background on “Uber” (her word) and a proposed scope of work.

36. The RFQ provided general background about Uber IHBV’s relationship to Uber, Uber’s global expansion plans and explained that Uber was looking for assistance with providing incorporation services for “our Uber company in Argentina.” The RFQ explained the intended purpose of the local entity, what services it would and would not provide and inquired about local representatives/resident directors.

37. Rattagan is informed and believes and thereon alleges that the RFQ was drafted by UTI’s legal department in San Francisco as a generalized request to all potential lawyers to be retained to form local legal entities throughout the world. Rattagan is further informed and believes that Ten Brink was instructed by Yoo to provide the RFQ to potential counsel before retaining them. Ten Brink negotiated with Rattagan about his proposed fee for acting as a legal representative for the Foreign Shareholders in Argentina, a service that was separate and distinct from the corporate legal services Rattagan and the firm were to provide. Ten Brink engaged Rattagan to: 1) reserve the name Uber Argentina – S.A.; 2) register the Dutch Entities as foreign shareholders in Argentina; 3) create corporate formation documents (by-laws, deeds of incorporation, restrictive covenant agreements, etc.); and 4) eventually register the entity with the IGJ (this never occurred). There was, however, never a formal written engagement agreement as such for these services. Rather, Ten Brink instructed Rattagan to submit his firm’s bills to Uber

1 IBV.

2 38. On March 5, 2013, Rattagan sent Ten Brink an initial memorandum explaining the
3 types of entities that could be formed under Argentine law – a corporation (S.A.) and a limited
4 liability company (S.R.L.) - and the various legal formalities required for each.

5 39. Under Argentine law, a foreign company that intends to do business must first
6 register with the IGJ and submit certain required documents, including detail of the foreign
7 company's shareholders. Also, representation of a foreign shareholder is entrusted to a "legal
8 representative" who, under Argentine law, must be a local resident registered with the IGJ. The
9 legal representative of a corporate foreign shareholder is the human face of that entity in
10 Argentina. Rattagan explained this in writing.

11 40. Rattagan is informed and believes and thereon alleges that based on the
12 information he provided Ten Brink, Yoo instructed her to proceed with an S.A. with the corporate
13 name "Uber Argentina S.A." and whose two shareholders would be Uber IHBV – 90% and Uber
14 IBV – 10%. Rattagan is further informed and believes and thereon alleges Yoo also instructed
15 Ten Brink regarding the stated corporate purpose of the S.A to be included in its by-laws.

16 41. On March 9, 2013, Rattagan sent Ten Brink drafts of documents required to
17 register the Dutch Entities as foreign shareholders of the to-be-formed S.A. entity and a memo
18 which described the full potential personal exposure of registered legal representatives of foreign
19 shareholders under Argentine law.

20 42. As requested, Rattagan prepared papers reflecting that he was the legal
21 representative for both of Uber S.A.'s Foreign Shareholders (i.e., Uber IBV and Uber IHBV) and
22 registered as such with the IGJ using his law firm's address. Again, this was separate and apart
23 from the legal services provided.

24 43. Throughout 2013, Rattagan and his colleagues provided legal advice to Uber IBV
25 on matters concerning the creation and registration of the S.A. including but not limited to:

- 26 (a) The advantages/disadvantages of forming an S.A. versus an S.R.L;
- 27 (b) Registration of the Dutch Entities as "foreign shareholders";
- 28 (c) Capitalization of the S.A.;

- (d) Setting shareholder percentages for Uber S.A.;
- (e) Opening of local bank accounts;
- (f) Reviewing and adapting for Argentina law employment, stock option and restrictive covenant agreements prepared by UTI's outside international counsel (Bird and Bird);
- (g) Drafting by-laws, articles of incorporation, stock restriction agreements, and Board of Director resolutions;
- (h) Dealing with the absence of "accounting certificates" for the Dutch Entities; and
- (i) Ensuring all documents were executed by Ryan Graves and Travis Kalanick and apostilled so they could be filed with the IGJ (which never occurred).

C. 2014 – THE ATTORNEY-CLIENT RELATIONSHIP BETWEEN RATTAGAN AND THE DUTCH ENTITIES GOES DORMANT.

44. Rattagan is informed and believes and thereon alleges that both Yoo and Frederique Dame directed and controlled Ten Brink's communications with Rattagan until approximately June 2013, when Ten Brink left Uber IBV. By then, Rattagan had provided Ten Brink with drafts of the company's by-laws, certificates of incorporation, resolutions and key contracts. However, none of the corporate documents had been finalized. Rattagan is informed and believes and thereon alleges that when Ten Brink left Uber IBV in June 2013, she was temporarily replaced by two paralegals – Agnieszka Hibbert and Amrita Ramsaransing.

D. 2015 – UTI CHANGES DIRECTION AND ESTABLISHES A DIRECT ATTORNEY-CLIENT RELATIONSHIP WITH RATTAGAN.

45. Rattagan is informed and believes and thereon alleges that at some time prior to 2015, UTI assigned to its corporate paralegals in San Francisco responsibility for the legal work involving corporate formation of foreign entities.

46. In February 2015, UTI resumed its active efforts to have Rattagan work on the corporate formation of a local Buenos Aires entity. This time it did so directly rather than through its Dutch Entity agents. On February 23, 2015, Rattagan sent Agnieszka Hibbert (an Uber IBV

1 paralegal) a reminder that the Foreign Shareholders needed to comply with the mandatory annual
 2 reporting requirement for providing the IGJ with an update of i) the non-current assets held by
 3 each entity outside of Argentina, and ii) their own shareholding structure. Later, that same day,
 4 Ms. Hibbert introduced Ryan Black to Rattagan. Black was a senior paralegal at UTI in San
 5 Francisco

6 47. Later that day, Black emailed Rattagan introducing himself as a new member of
 7 the “Uber Legal team” (his words)³ who would be assisting in matters related to Uber’s presence
 8 in South America going forward including preparing updated shareholder certificates, which
 9 Rattagan explained had to be done by April 1, 2015.⁴

10 48. Beginning in March 2015, and continuing throughout the year, Rattagan and his
 11 firm colleagues exchanged hundreds of emails with Black and his colleague Shirin Schokrpur
 12 (also a senior paralegal at UTI in San Francisco) and had numerous telephone conferences
 13 regarding the following legal services and advice UTI requested and received from Rattagan:

- 14 (a) Moving forward with the incorporation process;
- 15 (b) Reviewing and revising the by-laws for Uber S.A.;
- 16 (c) Updating and filing of the statutory annual report of Uber S.A.’s
 17 shareholders with IGJ;
- 18 (d) Advising on permissible corporate purposes for UTI’s local entities;
- 19 (e) Advising on specifics of services to be provided by Uber S.A.;
- 20 (f) Responsibilities of registered legal representatives of Argentine
 21 corporations, limited liability companies and branches of foreign entities;

22
 23 ³ Mr. Black’s electronic signature appears as:

24 Best regards,
 25 Ryan

26 **Ryan Black** | Senior Paralegal, Corporate | **UBER TECHNOLOGIES, INC.**
 1455 Market Street, 4th Floor | San Francisco, CA 94103 | [+1.415.515.1079](tel:+14155151079) | ryan.black@uber.com

27 ⁴ Jumping ahead in this story, when Rattagan’s office was raided by the Police after the launch,
 28 Rattagan wrote Enrique Gonzalez to tell him what had happened. Gonzalez responded by noting
 that Black was the one who hired Rattagan and was the decision-maker.

- (g) Advising on registration and liability of branch operations for foreign entities;
- (h) Sourcing and contacting potential local directors for Uber S.A. (which candidates were personally vetted by Black);
- (i) Advising on UTI's consideration of alternative entities (i.e., S.R.L.s and branches) to enable UTI to operate in Argentina;
- (j) Forming an S.R.L. instead of proceeding with the S.A. option;
- (k) Advising about minimum capital requirements, minimum number of member/shareholders, percentage ownership requirements, disclosure of shareholder/member assets, etc. for Uber S.R.L.;
- (l) Registering with the IGJ an entirely new entity – Uber S.R.L.;
- (m) Drafting new by-laws for Uber S.R.L. and responding to Black's comments thereto;
- (n) Advising on specifics regarding the scope of services to be provided by Uber S.R.L.;
- (o) Advising on use of "investment vehicles" of foreign entities under Argentine law;
- (p) Reviewing the updated Foreign Shareholder holdings for 2014;
- (q) Advising on Argentine law regarding registered foreign entity shareholders with negative asset value holdings; and
- (r) Advising on opening local bank accounts while the Uber S.R.L. formation was in process.

49. In the course of Rattagan providing the legal services and advice regarding the matters identified in paragraph 48, Black and/or Schokrpur specifically:

- (a) Confirmed that UTI's "internal tax team" was directly involved in advising Black on the entity formation decision-making process;
- (b) Confirmed that UTI's "internal accounting team" was directly involved in advising Black and Schokrpur on the entity formation process; and

(c) Confirmed that UTI's "treasury department" (responsible for managing UTI's bank accounts) was directly involved in advising Black and Schokrpur on the entity formation process.

50. With respect to Rattagan's invoices, in September 2015, at Schokrpur's request, Rattagan sent her a new matter profile for processing through UTI's online vendor payment system so she could create the matters and Rattagan could upload the invoices electronically. For this reason and this reason only, Rattagan continued to issue and address its invoices to Uber IHBV. Rattagan is informed and believes and thereon alleges that all approvals of Rattagan's bills were done by UTI in San Francisco.

E. 2016 – UTI CONTINUES DIRECTLY SOLICITING AND RECEIVING LEGAL ADVICE AND SERVICES FROM RATTAGAN.

51. On January 5, 2016, Rattagan informed UTI (through Black and Schokrpur) that the IGJ had requested specific details as to the kind of services Uber S.R.L. will provide (i.e., its corporate purpose as set forth in the by-laws) and the identity of the beneficial owner of the entity.

52. On January 6, 2016, Black sent Rattagan an "*Attorney-Client Privileged Communication*" email updating him on UTI's decision-making process regarding the corporate purpose of Uber S.R.L. to be included in the IGJ filings. Thereafter, at the requests of Gonzalez, Black and Schokrpur, between January and April 2016, Rattagan continued providing legal advice and services directly to UTI including:

- (a) Amending and clarifying the corporate purpose in Uber S.R.L.'s by-laws;
- (b) Reviewing the S.R.L.'s manager agreements (with Messrs. Mihanovich-Murphy and Gibert);
- (c) Filing of the formal incorporation documents (on March 12, 2016) with the IGJ;
- (d) Fast tracking the formation of another S.R.L. entity – Hinter Argentina, S.R.L. – that did not use the Uber name;
- (e) Corresponding with the IGJ regarding the modifications to the corporate purpose in the by-laws and other documents for Hinter Argentina, S.R.L.

(f) Advising UTI regarding formally withdrawing the prior incorporations (Uber S.A. and Uber S.R.L.).

(g) Completing of the formation of Uber S.R.L. and Hinter Argentina, S.R.L.;

53. In addition to the legal services and advice described above, UTI continued having Rattagan registered as the legal representative of the Foreign Shareholders.

F. 2016 – UTI PLANS ITS LAUNCH IN BUENOS AIRES BUT CONCEALS IT FROM RATTAGAN AND FAILS TO REPLACE HIM AS LEGAL REPRESENTATIVE.

54. In March 2016, the IGJ requested that Rattagan provide certain modifications to Uber S.R.L.’s corporate purpose in the by-laws. Rattagan is informed and believes and thereon alleges that prior to March 2016, Enrique Gonzalez retained Orlanski to advise UTI on government regulatory matters in connection with its plan to launch Uber Ridesharing in Buenos Aires. On March 22, 2016, in a telephone call with another lawyer at the Rattagan firm, Orlanski, at Gonzalez’s request, told Rattagan not to file the modifications to the corporate purpose in the Uber S.R.L. by-laws as requested by the IGJ so that Orlanski could “check some implications on the regulatory front.” Orlanski said nothing about the impending launch.

55. Rattagan is informed and believes and thereon alleges that at some point prior to March 22, 2016, UTI made the decision to launch Uber Ridesharing in April 2016 even though its Argentine entities were still “in formation” and had not registered with the Tax Authority. Despite this and despite knowing that Rattagan was still the legal representative of record for Uber S.R.L. and Hinter Argentina, S.R.L., UTI continued to conceal its launch plans from Rattagan.

56. On March 29, 2016, 14 days prior to the launch, Rattagan emailed with Black about the “in-formation” status of Hinter Argentina, S.R.L. and about Rattagan’s discussion with Orlanski. Again, neither Orlanski nor Black nor Gonzalez (or anyone else from UTI) told Rattagan anything about the impending Uber Ridesharing launch two weeks away.

57. On March 30, 2016, Black sent to Rattagan a formal declaration to the IGJ from Travis Kalanick, UTI’s then CEO, establishing that he was also the sole member and manager of Hinter, LLC and that Hinter Argentina, S.R.L., “a corporation to be incorporated in Argentina is an affiliate of Hinter, LLC and authorizes its affiliate to use the name Hinter Argentina S.R.L.”

1 Rattagan is informed and believes and thereon alleges that one of the reasons for the use of the
 2 name Hinter Argentina was to avoid calling attention to the Uber name and its pending launch
 3 that was less than two weeks away.

4 58. Even after the launch, UTI was still requesting legal services from Rattagan. On
 5 both April 13 and 14, 2016, the two days immediately following UTI's launch of Uber
 6 Ridesharing, Gonzalez and Black instructed Rattagan to continue with the incorporation process
 7 of Uber S.R.L. and Hinter Argentina, S.R.L. in parallel.

8 **G. THE IMPENDING HARM TO RATTAGAN WAS CLEAR, PRESENT AND**
 9 **FORESEEABLE.**

10 1. **UTI was Explicitly Told by Buenos Aires Government Officials NOT to**
 11 **Launch but Ignored Their Warnings and Concealed their Warnings from**
 12 **Rattagan.**

13 59. UTI officially launched Uber Ridesharing in Buenos Aires on April 12, 2016.
 14 Despite the almost daily communications between Rattagan on the one hand and UTI (through
 15 Messrs. Gonzalez, Black, Schokrpur and Orlanski) on the other hand, in the weeks and days
 16 leading up to the launch, UTI knowingly and intentionally continued to conceal its launch plans
 17 from Rattagan even though he was the "face" of Uber in Buenos Aires (Rattagan learned about
 18 the launch like everyone else - through a blast email). UTI launched despite knowing that the
 19 formation and tax registration requirements were still incomplete. UTI took no action before the
 20 launch to remove Rattagan as the registered legal representative of Uber S.R.L.'s Foreign
 21 Shareholders. Rattagan is informed and believes and thereon alleges that UTI knew that its
 22 contumacy in launching what would be considered by the government as a legally non-compliant
 23 and tax evasive transportation business in Buenos Aires, would have grave personal consequences
 24 for Rattagan but hid its plans from him nevertheless.

25 60. Having disrupted transportation and employment norms all over the world since
 26 2013, UTI knew there would be substantial adverse consequences if it launched Uber Ridesharing
 27 without the imprimatur of the Buenos Aires government. UTI just did not care. UTI's Uber
 28 Ridesharing launches in other major cities before Buenos Aires were routinely met with negative
 press, violent protests, and rebuke from governmental authorities. UTI had experienced
 coordinated and violent demonstrations in Paris, Berlin, London, and Madrid, leading to the

1 arrests of taxi drivers and Uber Ridesharing drivers. Traffic often snarled to a standstill which
 2 engendered swift and harsh government responses. In Madrid, for example, Uber Ridesharing
 3 drivers were subject to fines up to \$22,000 for operating commercial vehicles without a
 4 mandatory license. Some Uber services were banned outright in Berlin. Similar chaos reigned all
 5 over the world - in Hong Kong, New York City, Detroit, Boston, Toronto, Budapest, Jakarta,
 6 Mexico City, and Guadalajara. Violent protests occurred so frequently that UTI had employees
 7 focus on taxi violence or harassment preparedness.

8 61. UTI's launches of Uber Ridesharing in Colombia and Brazil shortly before Buenos
 9 Aires foretold the fallout that would result from the failure to properly register and become legally
 10 compliant in a South American country. Both countries experienced increasingly violent protests,
 11 including the kidnapping and assault of Uber Ridesharing drivers. In response, Rio de Janeiro
 12 banned Uber Ridesharing entirely while other major Brazilian cities, such as Sao Paolo, attempted
 13 to quell the violence by hurriedly passing legislation to regulate the service. Similarly, amid
 14 protests from cab drivers and fines instituted by the nation's transport superintendent, the
 15 president of Colombia warned UTI that Uber Ridesharing could be banned for its failure to
 16 formally register its operations.

17 62. Despite being acutely aware of the fallout that arises from flouting local laws upon
 18 entry into a new market and all the while concealing its launch plans from Rattagan, UTI
 19 employed its "better to ask for forgiveness than for permission" strategy in Buenos Aires.

20 63. Rattagan is informed and believes and thereon alleges as follows (Rattagan was
 21 unaware of these facts until March 2020):

- 22 (a) Between December 2015 and the April 12, 2016 launch, UTI
 23 representatives had a series of meetings with Buenos Aires City officials
 24 including Juan Jose Méndez, then and current Secretariat of Transportation
 25 for the City of Buenos Aires, Federico Nilles, Advisor to the Secretariat of
 26 Transportation and Public Works of the City of Buenos Aires and Silvia
 27 Torres Carbonell, then Buenos Aires' Under-Secretary of Innovation. The
 28 initial meeting was arranged by Edelman, a global public relations firm

1 hired by UTI.

- 2 (b) Gonzalo Araujo, UTI's then Head of Public Policy and Government
3 Affairs, South America and based in Bogota, met with Méndez on
4 December 17, 2015, and disclosed UTI's plan to launch Uber Ridesharing
5 in Buenos Aires. During this meeting, Méndez rejected UTI's argument
6 that as a technology company, it was not subject to regulations governing
7 transportation providers.
- 8 (c) A second meeting was held on January 22, 2016. Araujo again attended as
9 did Juan de Dios Bátiz, UTI's Head of Latin America Public Policy and
10 Carl Meacham, UTI's Head of Public Policy and Government Relations
11 (Southern Cone) from Washington, D.C. This time UTI purported to adopt
12 a more conciliatory approach. Meacham explained that he was
13 recommending to UTI's senior management that they obey the local
14 regulations because Buenos Aires "was very different compared to other
15 cities in the region."
- 16 (d) In late February 2016, a third meeting took place, this time between
17 Secretary Méndez and Meacham (and possibly Mariano Otero, Uber
18 Ridesharing's General Manager for Buenos Aires from February 2016).
- 19 (e) At each of the meetings, City officials told the UTI representative(s) that in
20 order to launch Uber Ridesharing lawfully, all drivers would need to have a
21 professional driver's license, commercial insurance coverage and drive a
22 vehicle examined and approved by the City. The UTI representatives were
23 expressly told that commencing operations without complying with these
24 requirements would be deemed illegal.
- 25 (f) Despite these warnings, on April 11, 2016, the night before the launch, at a
26 large annual dinner organized by the Center for the Implementation of
27 Public Policies Promoting Equity and Growth (CIPPEC), a private, non-
28 profit Argentine think tank, Meacham informed Secretary Méndez that UTI

would be launching Uber Ridesharing the very next day and that his public policy and government affairs team was unsuccessful in persuading UTI's operations team to comply with local law and that an internal order had been issued to move forward.

(g) UTI's "damn the torpedoes" approach to tough regulatory environments like Buenos Aires led it to create a multi-pronged war-like strategy. This included "ground forces" to deal with legal actions, enforcement preparedness and taxi violence or harassment preparedness; an "air force" to handle strong reactive communications and crisis preparedness, social media strategy, background with key opinion leaders; and "special forces" to deal with stakeholder engagement, grassroots constituency-building decision-maker engagement and negotiation of legislation proposals. UTI concealed all of this from Rattagan.

H. UTI'S UBER RIDESHARING LAUNCH IN BUENOS AIRES AND ITS FAILURE TO MITIGATE ITS UNLAWFUL CONDUCT CAUSED RATTAGAN REAL, CALCULABLE AND COMPENSABLE DAMAGE.

64. As of April 12, 2016, the corporate registration documents that Rattagan was still working on for Black and Gonzalez were incomplete and remained unfiled – the hyperlinks at the IGJ showed the local UTI entities - Hinter Argentina, S.R.L. and Uber S.R.L. - were "in formation." As a result, neither entity had been registered with the Buenos Aires nor federal tax authorities.

65. Rattagan is informed and believes and thereon alleges that Gonzalez, Otero and Orlanski were in charge of the launch which they continued to conceal from Rattagan. At no time before the launch did they update the critical information with the IGJ regarding the legal representative of the two Uber entities "in formation." Consequently, when UTI launched its Buenos Aires Uber Ridesharing, the public records reflected that Rattagan, Mihanovich-Murphy, Gibert, and Rattagan's firm's offices were, respectively, the Foreign Shareholders' legal representative, the interim managers of Uber S.R.L. and the latter's Foreign Shareholders' legal domicile, despite the fact that none of them had ever been consulted about or even made aware of

1 UTI's secret launch plans. UTI protected its new attorney (Orlanski) while leaving Rattagan to
2 face the foreseeable – indeed predicted –adverse publicity and wrath of the Buenos Aires
3 authorities.

4 66. The reaction of Buenos Aires taxi drivers and labor unions to UTI's Uber
5 Ridesharing launch was immediate and hostile, just as it had been in other major markets. Labor
6 unions held violent demonstrations and protests and blocked streets throughout the City. Because
7 Rattagan's office was the legal domicile for the Foreign Shareholders, taxi drivers surrounded the
8 office building and protesters blocked its exits, preventing employees and clients from entering or
9 exiting for hours. Additionally, local media outlets were filled with angry interviews and negative
10 coverage concerning "Uber" and all those associated with it, including Rattagan and his firm.

11 67. Because Rattagan believed he was in the best position to attempt to smooth things
12 over with the local government officials on behalf of UTI and avoid further damage to himself,
13 Mihanovich-Murphy and Gibert, on April 13, 2013, he reached out by email to Gonzalez – at the
14 time UTI's most senior lawyer responsible for Argentina - to offer his services. Gonzalez
15 declined.

16 68. On April 15, 2016, Rattagan again emailed Gonzalez and asked to be replaced as
17 the legal representative of the Foreign Shareholders and asked Gonzalez to provide the address of
18 the new legal domicile for the two Uber entities "in formation" in the City. Gonzalez failed to
19 immediately act on this request. Rattagan, Mihanovich-Murphy, and Gibert therefore resigned
20 (Rattagan is informed and believes that more than two months elapsed until IGJ's records were
21 updated with the new information). But the damage was done.

22 69. On April 15, 2016, a Buenos Aires city inspector came to Rattagan's offices with
23 orders "to immediately cease [Uber's] activities." Later that day, the police raided Rattagan's
24 offices armed with an "acta" (a search warrant) and issued an order to shut down "Uber."
25 According to the warrant, the raid was the result of a charge that Rattagan, as the legal
26 representative of "Uber," was using public space for commercial gain, without a permit.
27 Television cameras filmed the police raid. The prime-time news programs displayed the Rattagan
28 firm logo and reported that his offices were the location of Uber's illegal activities, which

1 included tax evasion. The police also conducted raids at the homes of Mihanovich-Murphy and
2 Gibert.

3 70. On April 16, 2016, Rattagan wrote Gonzalez an email to notify him of the office
4 raid and demand that he address UTI's inexplicable failure to timely disclose its launch plans in
5 advance and to inquire how UTI planned to rectify the situation. By this point, the prospect of
6 potential civil and criminal liability related to UTI's Uber Ridesharing launch was known -
7 indeed, City tax authorities had already formally requested documents from Rattagan's
8 colleagues.

9 71. On May 12, 2016, a month after the Uber Ridesharing launch and nearly four
10 weeks after the raids on Rattagan's offices, Gonzalez finally met Rattagan for the first time.
11 Gonzalez made it clear that UTI would not back off its war-like approach to dealing with the City.
12 Rattagan reiterated to Gonzalez that he, Mihanovich and Gibert had resigned and Rattagan
13 demanded that UTI immediately replace them in all official documents filed with the IGJ. Instead
14 of complying with this request, Gonzalez caused to be delivered to City officials an informal
15 letter that continued to use Rattagan's firm's name and address, thereby falsely implying that
16 Rattagan was part of, consented to or ratified UTI's unlawful actions.

17 72. Rattagan is informed and believes that one or more of the Buenos Aires officials
18 who earlier in the year met with UTI's government relations team and warned them not to
19 proceed with a launch unless and until it was fully compliant with all City transportation
20 regulations, were furious. The day after the letter was delivered, a city official called Rattagan
21 demanding an explanation he obviously could not provide.

22 73. On May 26, 2016, Rattagan emailed Yoo, explained the situation and sought her
23 direct involvement. Among other things, Rattagan asked Yoo to promptly designate someone he
24 could coordinate with to hand over his "Uber"-related files in an orderly manner and to instruct
25 her team to immediately refrain from mentioning or invoking Rattagan's name and from using his
26 offices as legal domicile in any future communications with the Argentine government (national,
27 provincial or city levels) or with any third parties without Rattagan's prior written consent. Yoo
28 responded that same day and did not dispute that UTI was responsible to Rattagan for the harm

1 caused by the unlawful launch. To the contrary, Yoo assigned Todd Hamblet, Uber's Managing
2 Counsel, Corporate, also based in San Francisco, to handle the matter "from HQ."

3 74. Because the formation process for Uber S.R.L. and Hinter Argentina, S.R.L. had
4 not been completed, they could not apply for or obtain a taxpayer ID, which is necessary to open
5 a bank account, hire staff, lease an office, and transact business. Despite this, Rattagan is
6 informed and believes and thereon alleges that Gonzalez, Otero and Orlanski had arranged to hire
7 employees to recruit, train, and equip drivers, and contract with intermediate payment companies
8 that would process credit card charges and transfer the related funds outside Argentina, a *modus*
9 *operandi* granting the local entities a de facto tax-free advantage *vis-à-vis* licensed taxi drivers.
10 UTI concealed all these activities from Rattagan.

11 75. Plaintiff is informed and believes and thereon alleges that for approximately two
12 months following Rattagan's resignation, UTI operated Uber Ridesharing with a full cadre of
13 drivers (racking up millions in alleged unpaid taxes) while Rattagan remained, as far as the IGJ
14 and the City authorities knew, the sole legal representative of the Foreign Shareholders of Uber
15 S.R.L.

16 76. Although Rattagan had no role in or knowledge of UTI's actions leading up to and
17 following its launch of Uber Ridesharing, Rattagan is informed and believes and thereon alleges
18 that UTI's conscious disregard of the warnings by Buenos Aires government officials, its
19 inexcusable delay in appointing a new legal representative of the two Foreign Shareholders before
20 the launch, and its failure to advise City officials immediately after the launch that Rattagan had
21 no responsibility, resulted in the City prosecutor concluding that Rattagan helped design, plan and
22 implement UTI's Uber Ridesharing launch.

23 77. In April 2017, Mr. Rattagan, as former legal representative of the two Foreign
24 Shareholders, was formally charged with the unauthorized use of public space with a commercial
25 aim. More significantly, because UTI had failed to complete Uber S.R.L.'s and/or Hinter
26 Argentina, S.R.L.'s corporate and tax registrations prior to the launch and failed to pay
27 appropriate sales tax, the prosecutor broadened the scope of his investigations.

28 78. In November 2017, the City Prosecutor charged Mr. Rattagan with aggravated tax

1 evasion. In December 2017, Rattagan had to appear before the City Prosecutor where he was
 2 interrogated about the preparation, launch, and subsequent operations of UTI in Argentina (again,
 3 of which he knew nothing). He had his mugshot and fingerprints taken - thirteen separate times so
 4 original prints could be sent to each interested government agency.

5 79. The alleged tax evasion charges were aggravated due to the uninterrupted and
 6 increasing volume of Uber Ridesharing's sales in the year after the launch. Rattagan is informed
 7 and believes and thereon alleges that had UTI timely replaced him as the legal representative of
 8 the Foreign Shareholders or temporarily suspended its operations after the police raid or made
 9 clear to the authorities that Rattagan was unaware of and uninvolved in the illegal launch, the City
 10 prosecutor would not have taken the actions he took against Rattagan.

11 80. The Argentine court temporarily banned Rattagan from traveling abroad,
 12 preventing him from freely conducting his professional activities and jeopardizing his key and
 13 essential contribution to the Rattagan firm. The Prosecutor labeled Rattagan a flight risk and
 14 publicly announced that he would be detained and imprisoned if he attempted to leave the
 15 country. The news went viral and exacerbated the name-bashing, severe embarrassment, and
 16 anguish that Rattagan already was suffering.

17 81. Rattagan's success as an international business lawyer and name partner of a
 18 highly respected international law firm was the product of a lifetime spent building a reputation of
 19 competence and integrity. As a result of UTI's Uber Ridesharing launch in Buenos Aires,
 20 Rattagan's name became synonymous with aggravated tax evasion and illegal commercial
 21 operations by a foreign multinational. Taxi drivers, labor unions, and politicians had a local public
 22 face to direct their ire and Rattagan was it. He was smeared in the local media for his alleged role
 23 in UTI's launch of Uber Ridesharing.

24 **FIRST CLAIM FOR RELIEF**
 25 **Fraudulent Concealment**

26 82. Rattagan repeats and realleges paragraphs 1 through 81 of this Third Amended
 27 Complaint as though reproduced in full herein.

28 83. Based on the direct attorney-client relationship between UTI and Rattagan starting

1 in 2015, UTI's principal/agent relationship in 2013 and Rattagan's role as legal representative of
 2 the Foreign Shareholders at the request and for the benefit of UTI directly and as principal, UTI
 3 both directly and as principal owed Rattagan a duty to disclose all facts known to UTI that were
 4 material to both Rattagan's legal representation and his role as legal representative of the Foreign
 5 Entities.

6 84. UTI directly and as principal of the Dutch Entities knowingly and intentionally
 7 failed to disclose, concealed and/or suppressed material facts from Rattagan, including but not
 8 limited to: (1) UTI's plans to launch Uber Ridesharing in Buenos Aires in a manner that it knew
 9 would be disruptive and that authorities would deem to be illegal; (2) UTI's intention to launch
 10 Uber Ridesharing despite express directives from Buenos Aires authorities not to unless and until
 11 it was fully compliant with the law; (3) UTI had a war-like strategic plan to battle challenging
 12 regulatory environments like Buenos Aires; and (4) UTI would disavow any responsibility to
 13 Rattagan for its conduct, leaving him to look solely to the Dutch Entities.

14 85. UTI directly and as principal of the Dutch Entities had sole and exclusive
 15 knowledge of the facts alleged in paragraph 84. Rattagan was not aware of these facts and could
 16 not through reasonable diligence have discovered such facts.

17 86. Rattagan is informed and believes and thereon alleges that UTI directly and as
 18 principal of the Dutch Entities intentionally concealed these facts from Rattagan because it knew
 19 that its actions would be deemed unlawful under Argentine law and did not want Rattagan taking
 20 any steps that might interfere with or delay the launch of Uber Ridesharing in Buenos Aires. Had
 21 Rattagan been apprised of these facts, Rattagan would not have agreed to serve as, and/or would
 22 not have continued to serve as, legal representative.

23 87. As a direct and proximate result of UTI's concealment of material facts described
 24 herein, Rattagan has suffered money and reputational damages.

25 **SECOND CLAIM FOR RELIEF**
 26 **Negligence**

27 88. Rattagan repeats and realleges paragraphs 1 through 87 of this Third Amended
 28 Complaint as though reproduced in full herein.

89. Based on the direct attorney-client relationship between UTI and Rattagan starting in 2015, UTI's principal/agent relationship in 2013 and Rattagan's role as legal representative of the Foreign Shareholders at the request and for the benefit of UTI directly and as principal, UTI both directly and as principal owed Rattagan duties of care and full disclosure.

90. UTI breached these duties by, among other things, failing to advise Rattagan of its intention to launch Uber Ridesharing in Buenos Aires in a manner that it knew would be disruptive and that authorities would claim to be illegal; failing to replace Rattagan as legal representative prior to the launch; continuing operations despite directives from Argentine authorities that its operations were in violation of the law while knowing that Rattagan remained the public face of the company in Argentina as legal representative; and disavowing any responsibility to Rattagan for its conduct, leaving him to look solely to the Dutch Entities.

91. As a direct and proximate result of UTI's breach of its duties described herein, Rattagan has suffered money and reputational damages.

THIRD CLAIM FOR RELIEF
Breach of the Implied Covenant of Good Faith and Fair Dealing

92. Rattagan repeats and realleges paragraphs 1 through 91 of this Third Amended Complaint as though reproduced in full herein.

93. A covenant of good faith and fair dealing is implied by law in contracts. That covenant requires a party to a contract to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain.

94. UTI and Rattagan were in express and/or implied contractual relationships arising from UTI and Rattagan's direct attorney-client relationship starting in 2015, UTI's principal/agent relationship in 2013, and Rattagan's role as legal representative of the Foreign Shareholders at the request and for the benefit of UTI directly and as principal.

95. UTI breached the implied covenant of good faith and fair dealing by failing to apprise Rattagan of its plans to launch Uber Ridesharing in Buenos Aires in a manner that it knew would be disruptive and that authorities would claim to be illegal; failing to replace Rattagan as legal representative prior to the launch; continuing operations despite directives from Argentine

1 authorities that its operations were in violation of the law while knowing that Rattagan remained
 2 the public face of the company in Argentina as legal representative; and disavowing any
 3 responsibility to Rattagan for its conduct, leaving him to look solely to the Dutch Entities.

4 96. As a direct and proximate result of UTI's breach of the implied covenant of good
 5 faith and fair dealing described herein, Rattagan has suffered money and reputational damages.

6 **FOURTH CLAIM FOR RELIEF**
 7 **Aiding and Abetting Fraudulent Concealment**

8 97. Rattagan repeats and realleges paragraphs 1 through 96 of this Third Amended
 9 Complaint as though reproduced in full herein. This Claim for Relief is asserted in the alternative
 10 and is applicable if and to the extent the trier of fact determines that UTI had no direct
 11 relationship with Rattagan and/or was not the principal of the Dutch Entities liable for their acts.

12 98. The Dutch Entities knowingly and intentionally failed to disclose, concealed
 13 and/or suppressed material facts from Rattagan, including but not limited to: (1) UTI's plans to
 14 launch Uber Ridesharing in Buenos Aires in a manner that it knew would be disruptive and that
 15 authorities would deem to be illegal; (2) UTI's intention to launch Uber Ridesharing despite
 16 express directives from Buenos Aires authorities not to unless and until it was fully compliant
 17 with the law; (3) UTI had a war-like strategic plan to battle challenging regulatory environments
 18 like Buenos Aires; and (4) UTI would disavow any responsibility to Rattagan for its conduct,
 19 leaving him to look solely to the Dutch Entities.

20 99. Because of the Dutch Entity's confidential, attorney-client relationship with
 21 Rattagan, the Dutch Entities owed a duty to Rattagan to disclose these material facts.

22 100. Rattagan was not aware of these facts and could not through reasonable diligence
 23 have discovered such facts.

24 101. UTI aided and abetted the Dutch Entities' fraudulent nondisclosure as set forth
 25 herein. UTI knew that the Dutch Entities' conduct constituted a breach of their duty of disclosure
 26 to Rattagan and UTI provided substantial assistance and/or encouragement to the Dutch Entities
 27 to engage in the fraudulent conduct described herein. Rattagan is informed and believes and
 28 thereon alleges that UTI expressly or impliedly directed the Dutch Entities to conceal these facts

1 from Rattagan because it knew that its actions would be deemed unlawful under Argentine law
 2 and did not want Rattagan taking any steps that might interfere with or delay the launch of Uber
 3 Ridesharing in Buenos Aires. Had Rattagan been apprised of these facts, Rattagan would not have
 4 agreed to serve as, and/or would not have continued to serve as, legal representative.

5 102. As a direct and proximate result of UTI's aiding and abetting the wrongful conduct
 6 described herein, Rattagan has suffered money and reputational damages.

7 PRAYER

8 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 9 1. Entry of judgment for Plaintiff on each of his claims;
- 10 2. For damages, direct and consequential, in an amount according to proof in excess
 11 of the jurisdictional limit;
- 12 3. For punitive damages;
- 13 4. For such other and further relief as the Court may deem just and proper.

14 Dated: April 2, 2020

STEYER LOWENTHAL BOODROOKAS
 15 ALVAREZ & SMITH LLP

16 By: /s/ Andrew A. August

17 Andrew A. August
 18 Allan Steyer
 19 Jill K. Cohoe
 Attorneys for Plaintiff
 Michael R. Rattagan

20 DEMAND FOR JURY

21 Michael R, Rattagan demands a trial by jury for all issues so triable.

22 Dated: April 2, 2020

STEYER LOWENTHAL BOODROOKAS
 24 ALVAREZ & SMITH LLP

25 By: /s/ Andrew A. August

26 Andrew A. August
 27 Allan Steyer
 28 Jill K. Cohoe
 Attorneys for Plaintiff
 Michael R. Rattagan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. 19-cv-01988-EMC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE THIRD
AMENDED COMPLAINT**

Docket No. 58

Plaintiff Michael Rattagan is a lawyer based in Argentina. He filed this lawsuit against Defendant Uber Technologies, Inc. (“Uber Technologies”), alleging that Uber Technologies retained him to provide legal support for the launch of new operations in Buenos Aires, but then proceeded without engaging his services, thereby subjecting him to intense public backlash and ultimately criminal prosecution in Argentina. He has filed a Motion for Leave to File a Third Amended Complaint, which Uber Technologies opposes; for the reasons outlined below, the Court **GRANTS** the motion.

I. BACKGROUND

The Court has already discussed much of the history of this case in its Order Granting Defendant’s Motion for Sanctions and Dismissing Plaintiff’s First Amended Complaint. *See* Docket No. 36. For context, it repeats some of that history here. Plaintiff Michael Rattagan alleges that he was retained by Defendant Uber Technologies, Inc. to help it prepare to launch operations in Buenos Aires. Mr. Rattagan now sues Uber Technologies, alleging that Uber Technologies continued to present him as its legal representative in Argentina even though it ultimately launched its Buenos Aires operations without his help or knowledge, causing Rattagan

1 to be personally exposed to public backlash and criminal prosecution for Uber Technologies’
2 flouting of Argentine law.

3 This case was filed in April 2019. *See* Docket No. 1. In his original complaint, Rattagan
4 named three Uber entities as defendants: the U.S.-based Uber Technologies, Inc. as well as Uber
5 International, BV (“UIBV”) and Uber International Holdings, BV (“UIHBV”), companies formed
6 under the laws of the Netherlands with their principal place of business in Amsterdam. *Id.* ¶ 5.
7 (UIBV and UIHBV are hereinafter collectively referred to as the “Uber International Entities.”)
8 He alleged that “[Uber Technologies] controls UIBV and UIHBV, and [Uber Technologies]
9 directed and authorized all of UIBV’s and UIHBV’s operational decisions . . . from Uber
10 [Technologies’] San Francisco headquarters.” *Id.* The complaint explained that Rattagan was
11 hired as the “legal representative of certain Uber subsidiaries in [Argentina],” *id.* ¶ 1, apparently
12 referring to the Uber International Entities which became foreign shareholders of the Argentinian
13 Subsidiary, Docket No. 1 ¶¶ 14–15. However, the remainder of the allegations in that complaint
14 were directed simply at “Uber” generally, without differentiation between the three entities.

15 Shortly after Mr. Rattagan initiated this suit, the three Uber entities notified his counsel of
16 their belief that that the complaint contained a “fatal jurisdictional defect,” namely that “[d]iversity
17 jurisdiction does not encompass a foreign plaintiff, such as Mr. Rattagan, suing foreign
18 defendants,” such as the Uber International Entities. Docket No. 27 at 2; *see* Docket No. 27-1 ¶ 8.
19 Rattagan thereafter filed the First Amended Complaint (“FAC”), removing the Uber International
20 Entities as defendants and redefining “Uber” to mean only Uber Technologies. FAC at 1.
21 Otherwise, the FAC was largely unchanged from the original complaint with one exception – Mr.
22 Rattagan removed the part of the original complaint that explained “Uber International, BV
23 (‘UIBV’) is a company formed under the laws of the Netherlands with its principal place of
24 business in Amsterdam. Uber International Holdings, BV (‘UIHBV’) is a company formed under
25 the laws of the Netherlands with its principal place of business in Amsterdam. On information
26 and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and
27 UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.” Docket

No. 1, ¶ 5; Docket No. 15, ¶ 5. The import of the amendment was that all of the allegations previously directed at the three Uber entities collectively were now asserted solely against Uber Technologies.

After Rattagan filed the FAC, Uber Technologies filed a Motion to Dismiss and a Motion for Sanctions. *See* Docket Nos. 23, 27. In August 2019, the Court granted Uber Technologies' Motion for Sanctions and dismissed the Complaint, explaining:

On this record, the Court concludes that Rattagan presented the Court with a complaint that was inaccurate and misleading. While Mr. Rattagan could have advanced a theory that Uber Technologies was somehow legally responsible based on its indirect control over Uber International Entities with whom Mr. Rattagan contracted (whether via an alter ego or other theory), Mr. Rattagan deleted that allegation and worded the FAC so as to imply a direct relationship with Uber Technologies. As a result, Uber Technologies has met its burden of showing that Rattagan's "complaint is . . . factually baseless from an objective perspective."

Docket No. 36. After the dismissal of the FAC, Rattagan's counsel filed a Second Amended Complaint, adding back the allegation that Uber Technologies controlled and directed the Uber International Entities. *See* Docket No. 38. Shortly thereafter, Rattagan's counsel withdrew and new counsel entered. *See* Docket Nos. 49–51. Mr. Rattagan's new counsel now seeks to file a Third Amended Complaint, which further bolsters the "control and direct" theory and adds the allegation that Mr. Rattagan had a direct attorney/client relationship with Uber Technologies. *See* Docket No. 58.

II. ANALYSIS

A. Legal Standard

Under Federal Rule of Civil Procedure 15(a), a plaintiff may amend his or her complaint once as a matter of course before being served with an answer; otherwise, a plaintiff may amend only with the consent of the defendant or the court's leave. *See* Fed. R. Civ. P. 15(a). Rule 15(a) instructs that a "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a). Rule 15(a) provides for liberal pleading standards, mandating that leave to amend "shall be freely given when justice so requires." *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quoting

Fed. R. Civ. P. 15(a)(2)). The Ninth Circuit has interpreted this rule to mandate that leave to amend is “to be applied with extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir.2001) (citation omitted).

B. Analysis

It would be obvious to anyone reading the three previous complaints and the proposed Third Amended Complaint that Plaintiff’s claims have been inconsistently pled throughout the early stages of this lawsuit. For example, Plaintiff’s allegations relating to the existence of an attorney-client relationship between Mr. Rattagan and Uber Technologies have changed significantly between various iterations of the complaint:

- **Original and First Amended Complaints:** “Several years then passed [after early 2013] without any meaningful activity, and the relationship between Mr. Rattagan and Uber went dormant. Then, in April 2016 – without consulting or even notifying Mr. Rattagan – Uber launched its service in Buenos Aires with the help of different advisors.” *See* Docket No. 1 ¶ 2; Docket No. 15 ¶ 2.
- **Original and First Amended Complaints:** “In fact, during the latter half of 2013, all of 2014, and most of 2015, neither Mr. Rattagan nor the Law Firm was asked to (or did) provide any counsel or services related to Uber’s future Argentine expansion. The Law Firm’s Uber file was, for all intents and purposes, dead.” *See* Docket No. 1 ¶ 18; Docket No. 15 ¶ 18.
- **Second Amended Complaint:** Notes that Rattagan completed the registration of the Shareholders in 2013, commenced the process of incorporation in January 2015, and exchanged emails with Uber Technologies in May and June 2015 concerning legal and tax issues, but notes that “[o]ther than these ‘bread and butter’ errands, no meaningful activity went on for Uber at the Law Firm during 2013,

2014 and 2015, and the relationship between Mr. Rattagan and Uber went dormant.” *See* Docket No. 38 ¶¶ 21, 22.

- **Proposed Third Amended Complaint:** “Throughout 2013, Rattagan and his colleagues provided legal advice to Uber IBV.” Then in 2014, the attorney-client relationship with the Dutch entities apparently went dormant. “In February 2015, UTI resumed its active efforts to have Rattagan work on the corporate formation of a local Buenos Aires entity. This time it did so directly rather than through its Dutch Entity agents.” “Beginning in March 2015, and continuing throughout the year, Rattagan and his firm colleagues exchanged hundreds of emails with Black and his colleague Shirin Schokrpur (also a senior paralegal at UTI in San Francisco) and had numerous telephone conferences.” *See* Docket No. 58-2 ¶¶ 43, 46, 48.

In addition, there have also been significant changes in Mr. Rattagan’s various complaints with respect to whether Uber Technologies directed and controlled the international Uber entities:

- **Original Complaint:** “On information and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.” *See* Docket No. 1 ¶ 5.
- **First Amended Complaint:** Removed the above sentence. *See* Docket No. 15 ¶ 5.
- **Second Amended Complaint:** “Uber directed and authorized all of Uber IBV’s operational decisions from Uber’s San Francisco headquarters.” Docket No. 38 ¶ 13.
- **Proposed Third Amended Complaint:** “As a practical matter, UTI not only established the policy and direction for expanding in Argentina and elsewhere in the world through the Dutch entities, in effect it controlled their day-to-day operations in hiring and directing Rattagan. In fact, UTI exercised such complete dominion and control over the Dutch entities that but for their existence, UTI

would have had to perform the identical ‘services’ provided by the Entities.” And “Plaintiff is informed and believes that Uber IBV functioned as UTI’s agent in that it performed services that were essential to UTI such that if UTI did not have Uber IBV to perform them, UTI would have had to undertake to perform substantially similar services.” Docket No. 58-2 ¶¶ 2, 32.

Nonetheless, the Ninth Circuit has made clear that “district court has no free-standing authority to strike pleadings simply because it believes that a party has taken inconsistent positions in the litigation.” *PAE Gov’t Servs., Inc. v. MPRI, Inc.*, 514 F.3d 856, 859 (9th Cir. 2007). In *PAE*, the Ninth Circuit explained that where a district court “strik[es] the allegations in [an] amended complaint as a ‘sham,’” it impermissibly resolves a plaintiff’s allegations on the merits. *Id.* at 858; *see also id.* (“Even assuming that the two pleadings were irreconcilably at odds with each other, this would not, by itself, establish that the later pleading is a sham.”). In fact, “there is nothing in the Federal Rules of Civil Procedure to prevent a party from filing successive pleadings that make inconsistent or even contradictory allegations.” *Stanislaus Food Prod. Co. v. USS-POSCO Indus.*, 782 F. Supp. 2d 1059, 1076 (E.D. Cal. 2011) (citing *PAE*, 514 F.3d at 860). Where the allegations in a complaint are frivolous or filed in bad faith, the proper mechanism for addressing such conduct is Rule 11. *See id.* at 859. However, where a party or a court invokes Rule 11, “the rule’s procedural safeguards . . . [and] substantive standard, which would have required a finding that . . . counsel acted in bad faith” must be invoked. *Id.* Rule 11 has not been invoked here.

Thus, despite the fact that the allegations in the proposed Third Amended Complaint relating to an attorney-client relationship between Mr. Rattagan and Uber Technologies appear to contradict Plaintiff’s earlier factual allegations on that topic, the Court will not strike those allegations, nor will it deny Plaintiff’s motion on those grounds. Likewise, although the Court notes that there have also been inconsistencies in Plaintiff’s allegations relating to Uber Technologies’ alleged direction and control over the Uber International Entities, the Court will permit Mr. Rattagan to file his proposed Third Amended Complaint with those allegations. In

fact, on that issue, the pleading of a “direct and control” theory is precisely what the Court contemplated in its prior order (on Uber Technologies’ Motion to Dismiss the First Amended Complaint), when it noted: “Mr. Rattagan could have advanced a theory that Uber Technologies was somehow legally responsible based on its indirect control over Uber International Entities with whom Mr. Rattagan contracted (whether via an alter ego or other theory).” *See* Docket No. 36 at 8. That theory was subsequently added to the Second Amended Complaint, *see* Docket No. 38 ¶ 13, and then fleshed out in greater detail in the proposed Third Amended Complaint, *see, e.g.*, Docket No. 58-2 ¶¶ 2, 32.

III. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff’s Motion for Leave to File a Third Amended Complaint.

This order disposes of Docket No. 58.

IT IS SO ORDERED.

Dated: May 5, 2020



EDWARD M. CHEN
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC. ,

Defendant.

Case No. 3:19-cv-01988-EMC

SECOND AMENDED COMPLAINT FOR:

**(1) BREACH OF FIDUCIARY DUTY;
(2) DECEIT;
(3) FRAUD;
(4) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
(5) NEGLIGENCE**

DEMAND FOR JURY TRIAL

1 Plaintiff Michael R. Rattagan (“Mr. Rattagan”), by and through his undersigned
 2 attorneys, as and for his Second Amended Complaint against defendant Uber Technologies, Inc.
 3 (“Uber”), states as follows:

4 **PRELIMINARY STATEMENT**

5 1. This lawsuit arises out of Uber’s recklessly orchestrated entry into the Argentine
 6 ride-sharing market and the unimaginable harm it inflicted on Mr. Rattagan, a highly respected
 7 business attorney in Buenos Aires and the former legal representative of certain Uber
 8 subsidiaries in the country. As has been a pattern in Uber’s entry into new markets, Uber took
 9 the approach that it is better to ask for forgiveness than for permission. One marketing journal
 10 later explained Uber’s approach as follows:

11 Uber’s fatal mistake was being out of balance with the *zeitgeist*. Its myopic intent
 12 to grow, and bravado as an ‘extreme disruptor’ blinded it to culturally acceptable
 “right behaviors” as a member of human society.¹

13 Its launches are typically tumultuous with the hope that Uber can later make it all right.
 14 However, Uber could not do so in Buenos Aires. Uber’s launch in Buenos Aires was disastrous
 15 and continues to be so for Mr. Rattagan. Because of Uber’s callous attitude, Mr. Rattagan has
 16 endured and continues to endure years of criminal prosecution (facing many years in prison and
 17 the loss of his law license), has suffered through Argentine authorities raiding his offices, has
 18 had his civil liberties severely curtailed, and has sustained a staggering blow to his reputation
 19 both professionally and personally because of this widely publicized ordeal.

20 2. In early 2013, years before its catastrophic launch, Uber arranged for the retention
 21 of Mr. Rattagan and his Buenos Aires law firm for the very preliminary steps of establishing a
 22 future corporate presence in Argentina. In that connection, Uber asked Mr. Rattagan to be local
 23 legal representative of two of its Dutch wholly owned subsidiaries. Two years later, Uber asked
 24 Mr. Rattagan and his firm to incorporate a wholly owned subsidiary in Argentina (with the Dutch
 25 subsidiaries as its sole shareholders) and for his law firm to be the Argentine subsidiary’s
 26 registered local domicile. Then, in April 2016 – while the Argentine subsidiary remained “in
 27

28 ¹ “‘What CEOs Can Learn from Uber’ – Elsie Maio.” The Marketing Journal, 27 June 2017,
www.marketingjournal.org/what-ceos-can-learn-from-uber-elsie-maio/.

1 formation” and without consulting or even notifying Mr. Rattagan or changing the registered
2 legal domicile of the Argentine subsidiary or the foreign shareholders’ local legal representative
3 – Uber suddenly launched its service in Buenos Aires, knowing Argentine authorities would
4 claim Uber was in violation of Argentine laws. Public reaction to Uber’s ill-advised launch was
5 immediate, negative, and entirely foreseeable. Under intense pressure to act, authorities targeted
6 the only public face of Uber in Argentina: Mr. Rattagan, a number of trusted colleagues, and his
7 law firm. Police raided their office and homes, and they were vilified in the media, subjected to
8 scorn and ridicule in social and professional gatherings, and ultimately charged with serious
9 crimes – including aggravated tax evasion (carrying a prison term from three-and-a-half to nine
10 years) – all due to Uber’s actions. As a result, Mr. Rattagan’s competency and ethics have been
11 wrongfully called into question in the most public of forums.

12 3. Although Uber has publicly and privately acknowledged its mistakes in its
13 Buenos Aires launching, that does not, and cannot, compensate Mr. Rattagan for the severe
14 emotional, consequential, and reputational harm he has suffered and continues to suffer. Nor
15 does Uber’s widely reported subsequent admission that it needed a change in its reportedly
16 unethical culture that promoted disruption and confrontation. The “mea culpa” Uber offered its
17 customers, regulators, and investors does nothing to erase its responsibilities for the damages
18 caused while its DNA was to aggressively enter new countries in total disregard of local laws.
19 This lawsuit seeks compensation for the substantial damages Uber brought upon Mr. Rattagan
20 and also punitive damages for Uber’s intentional and malicious conduct to punish Uber and stop
21 it from repeating this pattern in future launchings in other parts of the world.

22 **THE PARTIES**

23 4. Mr. Rattagan is a citizen of Argentina. He is a founding partner of a highly
24 respected business law firm, based in Buenos Aires, Argentina, that serves multinational clients
25 from the United States, Latin America, Europe, and Asia. He is an experienced business lawyer,
26 and, before Uber’s launch in Buenos Aires, was one of the most respected advisors in the City.

5. Uber is a Delaware corporation with its principal place of business in San Francisco, California. It acts internationally either directly or through a large network of subsidiaries it fully controls and owns either directly or indirectly.

VENUE AND JURISDICTION

6. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332 because: (a) Mr. Rattagan is a citizen of a different state and/or country than Uber; and (b) the amount in controversy exceeds \$75,000, exclusive of costs and interest.

7. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because Uber is subject to personal jurisdiction in this District, and because all or substantially all of the planning and a substantial part of the actions or inactions giving rise to Mr. Rattagan's claims occurred in this District.

8. Upon information and belief, Uber plans, oversees, conducts, and operates all of its international activities from and through its headquarters in San Francisco, California.

ALLEGATIONS

A. Mr. Rattagan's Background

9. As a lawyer licensed in Argentina and in the State of New York, Mr. Rattagan maintains an active practice counseling large multinational companies in various business matters, with an emphasis on transactions, investments, and interests in Argentina. After spending 17 years practicing in two law firms with an international reach, including the New York office of Rogers & Wells (now Clifford Chance), he co-founded a law firm in Buenos Aires in 2005, where he co-heads its Mergers & Acquisitions and Natural Resources & Energy Groups, and is one of its primary sources of business development and origination (the "Law Firm"). In addition to his Argentine law degree, Mr. Rattagan has an LLM from New York University School of Law, a post-graduate degree in oil and gas law, and speaks Spanish, English, French, Portuguese and Japanese.

10. For nearly 30 years in practice, Mr. Rattagan has carefully built and maintained an impeccable reputation for honesty and integrity and for advising his clients to adhere to the

1 same in the conduct of their own businesses. This unyielding approach to compliance with the
 2 law placed Mr. Rattagan in a unique and prominent class of legal professionals in Argentina.

3 11. Mr. Rattagan's sterling reputation as a skilled lawyer and honest broker made him
 4 ideal counsel for multinational companies looking to do business in Argentina. As one of the top
 5 and most renowned business lawyers in Buenos Aires, much of his practice came from
 6 international referrals. As the main business generator of his firm for more than 13 consecutive
 7 years, an essential part of Mr. Rattagan's role was to travel extensively abroad to develop
 8 professional relations and create awareness of the investment climate and opportunities in
 9 Argentina while promoting the Law Firm and its abilities.

10 **B. Mr. Rattagan's Limited, Pre-Launch Engagement by Uber**

11 12. In February of 2013, Liesbeth ten Brink – a former classmate from New York
 12 University School of Law – contacted Mr. Rattagan. Ms. ten Brink explained that she was a
 13 legal director for Uber International, BV ("Uber IBV") – a company wholly owned by Uber,
 14 formed under the laws of the Netherlands, and acting out of a small office in Amsterdam – and
 15 that Uber had tasked her with organizing its expansion into a number of Latin American
 16 countries, including Argentina.

17 13. Uber directed and authorized all of Uber IBV's operational decisions from Uber's
 18 San Francisco headquarters. Ms. ten Brink herself reported directly to Uber's Chief Legal
 19 Officer, General Counsel and Corporate Secretary, Salle Yoo ("Yoo"), based in San Francisco.
 20 In addition to receiving direct communications from Uber, Mr. Rattagan received some early
 21 contact from Ms. ten Brink and a few Amsterdam-based paralegals (all using @uber.com email
 22 addresses) related to administrative issues concerning the registration as "foreign shareholders"
 23 of two Dutch entities, Uber IBV and another wholly owned Dutch subsidiary, Uber International
 24 Holdings BV ("Uber IHBV"). Uber IBV and Uber IHBV are collectively referred to herein as
 25 the "Shareholders." All relevant contacts with and instructions to Mr. Rattagan or the Law Firm
 26 concerning the actual incorporation of Uber Argentina came solely from Uber's personnel out of
 27 its San Francisco headquarters.

1 14. As it had done on multiple occasions in the past, Uber sought to use Uber IHBV
2 simply as a vehicle to hold its foreign entities. By June 2015, Uber IHBV either held 100% or
3 99% of about 70 foreign Uber entities created around the world.

4 15. The 2013 registration of the Shareholders as “foreign shareholders” with the
5 Argentine Office of Corporations allowed Uber to, in the future, set up and operate an Argentine
6 subsidiary.

7 16. In connection with that process, Uber and Mr. Rattagan agreed that Mr. Rattagan
8 would act as the legal representative for the Shareholders in Argentina. Under Argentine law,
9 every foreign shareholder is required to have a local resident acting as its legal representative.
10 The role of the legal representative is limited to registering a shareholder locally, incorporating a
11 subsidiary on its behalf, attending shareholder meetings upon written instructions, and acting as
12 the face of the shareholder at any legal proceedings, such as trial. The role of the legal
13 representative is not to make decisions for the shareholders or to ensure that the shareholders or
14 their affiliates, if any, comply with Argentine law (practically speaking, the legal representative
15 has little to no ability to do so).

16 17. Mr. Rattagan completed the registration of the Shareholders in 2013. But it was
17 not until much later, in January 2015, that Uber asked Mr. Rattagan to actually commence the
18 process of incorporation of Uber Argentina, its first Argentine subsidiary.

19 18. Mr. Rattagan and/or colleagues of the Law Firm received direct instructions and
20 all the necessary documentation and information from Uber officials and employees based in its
21 headquarters at 1455 Market Street, 4th Floor, San Francisco, CA 94103. Uber employees
22 specifically advised the Law Firm that they were dealing with all matters concerning the future
23 Argentine subsidiary and it was Uber (in San Francisco) that, among other things: (i) determined
24 to move forward with the incorporation and structure of the entity; (ii) directed all actions with
25 respect to the establishment of Uber Argentina; and (iii) asked Mr. Rattagan to act as local legal
26 representative of the Shareholders and to recommend local residents to fill in the positions of
27 interim local managers of Uber Argentina. In fact, Uber proposed to the Law Firm that its then-
28

1 Corporate Controller and then-Vice President of Treasury act as foreign directors of Uber
2 Argentina.

3 19. At Uber's request, Mr. Rattagan provided Uber with the names and resumes of
4 two of his trusted colleagues. Uber retained them as interim manager and interim alternate
5 manager shortly thereafter.

6 20. It was clear in discussions with Uber and its representatives that it was Uber that
7 wanted to hire Mr. Rattagan and these two individuals and that Uber was only using its
8 international entities as corporate conduits to pursue its worldwide expansion agenda. Indeed,
9 Mr. Rattagan clearly and reasonably understood (as did Uber) that he had an attorney-client and
10 principal-agent relationship with not only Uber IBV and Uber IHBV but also (or mainly) with
11 Uber itself. Throughout the engagement, Ms. ten Brink and everyone else at Uber with whom
12 Mr. Rattagan and the Law Firm interacted were clear – he was working for Uber and in
13 furtherance of Uber's apparent desire to operate in Argentina "sometime in the future." And the
14 Law Firm provided advice at the request of Uber and directly to Uber concerning Argentine law
15 about operational structure and registration requirements (including tax issues). For example,
16 Ryan Black and Shirin Schokrpur – senior corporate paralegals at Uber (in San Francisco) –
17 exchanged emails with the Law Firm in May and June 2015 concerning legal and tax issues. It
18 was Uber who requested this advice and received the advice – after providing direction to the
19 Law Firm and Mr. Rattagan.

20 21. In addition, and also as a typical accommodation to new clients setting foot in
21 Argentina, the address of the Law Firm – in which Mr. Rattagan is a founding and name partner
22 – was cited in all relevant paperwork filed in 2013 as the Shareholders' legal domicile in Buenos
23 Aires. The same was done when both entities, through Mr. Rattagan and pursuant to Uber's
24 written instructions, signed the incorporation deed for Uber Argentina in 2015 and filed the
25 necessary documentation with the Office of Corporations seeking registration, a prerequisite to
26 obtain a tax ID and regularly carry out its future business in Argentina.

27 22. Other than these "bread and butter" errands, no meaningful activity went on for
28 Uber at the Law Firm during 2013, 2014 and 2015, and the relationship between Mr. Rattagan

1 and Uber went dormant. He had no idea (and learned only after the fact) that Uber had been
2 flying employees down to Argentina to search, select, train, and recruit drivers; to set up future
3 payment mechanisms; and even to meet government officials to tell them to their face (to their
4 total dismay and indignation) that Uber intended to launch in Buenos Aires in total disregard of
5 local laws.

6 23. When a law firm is asked to assist in setting up a subsidiary in Argentina, that
7 same law firm typically will be asked how to operate in full compliance with local laws,
8 including the corporate, tax, labor, social security and regulatory frameworks. This is how and
9 why the relationship partner (in this case, Mr. Rattagan) may reasonably feel comfortable that a
10 client will be compliant with tax laws and local regulations at the time its new subsidiary starts
11 operating in the land. Uber disrupted and frustrated this dynamic of checks and balance by
12 presenting Mr. Rattagan a façade of feet-dragging while (as it became obvious only upon
13 launching) acting at full steam behind the scenes.

14 **C. Uber's Prominence Grows Worldwide**

15 24. While the file was dormant, Uber was active and – unbeknownst to Mr. Rattagan
16 and the Law Firm – secretly planning to launch in Argentina. Uber was even conducting
17 preparatory actions to launch below the radar of the Argentine authorities.

18 25. Although Uber boasts about its innovation, its launches in new jurisdictions have
19 been characterized by a less-admirable pattern: initial, immediate, and often severe tension and
20 conflict with local officials and unions, caused by its alleged disregard of local laws and customs
21 (thus creating havoc and exposing people who are dragged into the quagmire), followed by
22 negotiations that ultimately lead to a truce and legally compliant operations. But Uber, almost
23 three-and-a-half years since its launch in Buenos Aires, still has yet to achieve such peace.

24 26. Mr. Rattagan learned too late and at great personal expense that Uber's rapid
25 growth followed this pattern throughout the United States and around the world. Prior to the
26 launch, he and his colleagues awaited further contact and instructions concerning Uber's
27 apparent stalled expansion into the City. Those instructions would never come. So while Mr.
28 Rattagan and the Law Firm had no opportunity to advise Uber about how to conduct a launch in

1 Argentina in a way that would be prudent and peaceful, he and his offices were “conveniently
 2 used” (or abused) as a “front” for activities that Uber knew from its past experience would be
 3 chaotic at best. Mr. Rattagan was therefore extremely vulnerable – he was entirely dependent on
 4 Uber to act in his best interests with respect to the legality of Uber’s operations in Argentina.
 5 Uber, empowered in this relationship with Mr. Rattagan, simply betrayed Mr. Rattagan.

6 **D. Uber’s Launch In Argentina**

7 27. In March 2016, Mr. Rattagan attended an International Bar Association
 8 conference in Rio de Janeiro, Brazil. While there, he observed a panel discussion focusing on
 9 the challenge new technology companies face when confronted with traditional regulations.

10 28. Among the speakers was one Enrique Gonzalez (“Gonzalez”), an attorney based
 11 in San Francisco who at the time was Uber’s Latin America Legal Director (after the events that
 12 are the basis of this complaint, in which he had a decisive and leading role, he was not censored
 13 but rather promoted to Associate General Counsel, Latin America). During his talk, Gonzalez
 14 indicated that the day before he had met with all of Uber’s legal advisors in the region. Mr.
 15 Rattagan had had no prior communications with Gonzalez, and in fact he had no knowledge of
 16 Gonzalez’s existence prior to the Rio de Janeiro conference.

17 29. Puzzled and concerned, Mr. Rattagan emailed Gonzalez shortly after the
 18 conference to explain that there must be some mistake because, in Mr. Rattagan’s mind, only
 19 members of the Law Firm had been acting for Uber in Argentina (even in a very limited way).
 20 Mr. Rattagan proposed to meet or speak with Gonzalez and offered the Law Firm’s expertise to
 21 help Uber navigate the regulatory issues surrounding the launch. Likely because of Mr.
 22 Rattagan’s vulnerable position and the fact that Uber had exclusive knowledge of material facts
 23 concerning its plans to launch (which Mr. Rattagan did not know), Uber never took Mr. Rattagan
 24 up on his offer.

25 30. On April 12, 2016, Mr. Rattagan received a spam email announcing that Uber had
 26 officially launched its operations in the City.

27 31. Mr. Rattagan was shocked to learn this crucial development in such an impersonal
 28 manner. As the Argentine legal representative of two Uber entities in the process of setting up

1 Uber Argentina, *i.e.*, the platform through which Uber had hinted it would operate “sometime in
2 the future”, he had received no communication that Uber had begun preparing to launch in the
3 country, let alone that it was in fact launching with what the City would immediately claim
4 publicly was a lack of a basic legal infrastructure, including the lack of a proper corporate
5 registration and the very basic tax identification number. Uber made the decision to launch and
6 concealed its plans from Mr. Rattagan despite the obvious and massive adverse effects it knew it
7 would have on Mr. Rattagan, his trusted colleagues, and the Law Firm.

8 32. On information and belief, Uber had engaged another attorney in Buenos Aires to
9 assist in Uber’s launching preparations. At no point before the launch did Uber inform Mr.
10 Rattagan that it had engaged a new attorney for expansion into Argentina in his stead.

11 33. Nor did Uber cause the new attorney to publicly announce his relationship with
12 Uber, much less update the Office of Corporations records that showed Mr. Rattagan and the
13 address of the Law Firm as the only links to the Shareholders and to Uber Argentina “in
14 formation.” Consequently, when Uber launched in Argentina, the public records reflected that
15 Mr. Rattagan, his colleagues, and the Law Firm’s offices were the Shareholders’ legal
16 representative, the interim managers of Uber Argentina, and their legal domicile in the country,
17 respectively – despite the fact that none of them had ever been consulted about or even made
18 aware of Uber’s secret plans. Uber, in other words, allowed its new attorney to remain
19 concealed while Mr. Rattagan, his colleagues, and the Law Firm unknowingly became the public
20 names and faces of an ill-advised launch in which, obviously, they had played no part. Uber
21 camouflaged its actual decision-makers in the shadows of anonymity while callously exposing
22 Mr. Rattagan, his family, his colleagues, and the Law Firm to the hellish consequences of its
23 traumatic and controversial launch.

24 34. Uber alone made the decision to launch in Argentina, including its timing and
25 modality. Uber knew the position Mr. Rattagan and his colleagues were in both before and
26 immediately after the launch but did nothing to avoid or mitigate its impact on them. Uber never
27 told Mr. Rattagan that it planned to launch despite failing to complete the corporate registration
28 of Uber Argentina, *i.e.*, that it would move forward in this new market even knowing it had no

1 tax ID, no local offices, no bank account, no registered staff and no basic infrastructure to do so.
 2 It did so by having another Uber controlled entity, Uber BV, make the Uber app available in the
 3 city of Buenos Aires and metropolitan area. It is clear that Uber was (and is) “the ultimate brain”
 4 behind its Argentine operations and directed all actions that caused Mr. Rattagan harm.

5 35. Uber never told Mr. Rattagan that it planned to refuse to comply with local
 6 authorities, in other words, to pursue a course of open civil disobedience. It was Uber that
 7 (despite having been warned) made the decision to continue operations while knowingly placing
 8 Mr. Rattagan in harm’s way. Dismayed by the lack of communication, and deeply concerned
 9 about the liability they faced in their official positions as a result of Uber’s secretive conduct and
 10 sudden launch, Mr. Rattagan and the interim manager and interim alternate manager tendered
 11 their resignations to Uber immediately after learning of the launch and had numerous
 12 communications with Uber about the deleterious position in which Uber had placed Mr. Rattagan
 13 and its other agents.

14 36. Instead of taking immediate action to protect Mr. Rattagan and despite its
 15 knowledge that Argentine officials had “declared war” on Uber and were seeking to impose
 16 criminal liability on anyone truly or apparently linked to a traumatic and confrontational launch,
 17 Uber maintained the course – putting Mr. Rattagan in increasingly dire straits. More than two
 18 months elapsed until Mr. Rattagan’s replacement was made effective, leaving him exposed to
 19 liability as a result of Uber’s callous attitude. However, even Mr. Rattagan’s replacement as the
 20 registered agent did not end Uber’s continued course of conduct that caused increasingly
 21 unimaginable harm to Mr. Rattagan.

22 **E. Fallout From Uber’s Launch**

23 37. The reaction of taxi drivers and labor unions to Uber’s launch in Argentina was
 24 immediate, hostile and – for Uber – entirely predictable. As with Uber’s launches in London,
 25 Mexico City, Barcelona, and Sao Paulo, the launch in Buenos Aires was met with negative press,
 26 violent labor union demonstrations and protests, and street blockades throughout the City. In
 27 fact, right before Uber’s launch in Argentina, its launch in Colombia foretold the fallout that
 28 would result from the failure to properly register and become legally compliant in a South

1 American country: amid protests from cab drivers and fines instituted by the nation's transport
2 superintendent, the president of Colombia warned Uber that it could be banned from the country
3 for its failure to formally register its operations. Indeed, unlike in other cities and countries
4 where Uber's initially tumultuous launches evolved into peaceful and legally compliant
5 operations, its launch in Buenos Aires was especially confrontational, and as of this day, Uber
6 still faces threats, fines, and its drivers are exposed not only to the revocation of their drivers'
7 licenses and the seizure of their cars but also to gangs calling themselves "Uber hunters" who
8 search, detect and chase Uber drivers to attack them.

9 38. Because public records showed the Law Firm's office as the legal domicile for the
10 two Shareholders and Uber Argentina, taxi drivers in April 2016 surrounded the Law Firm's
11 building and protesters blocked its exits, preventing employees and clients from entering or
12 exiting for hours. Additionally, local media outlets were filled with angry interviews and
13 negative coverage concerning Uber and all those associated with it, notably including Mr.
14 Rattagan and the Law Firm.

15 39. On April 13, 2016, the day after the disastrous launch, Mr. Rattagan emailed
16 Gonzalez (an Uber employee whose LinkedIn account shows works in the San Francisco Bay
17 area), again requesting an urgent meeting to address the public outcry and backlash against Mr.
18 Rattagan and the Law Firm. Gonzalez simply responded that someone from his team at Uber
19 would contact Mr. Rattagan soon. No one ever did. Instead, Uber acted (and continues to act) as
20 if it was/is content to let Mr. Rattagan, his colleagues, and the Law Firm bear the brunt of the
21 negative public and local government reaction and potential criminal consequences.

22 40. Early on Friday, April 15, 2016, Mr. Rattagan again emailed Gonzalez and asked
23 to be replaced as the legal representative of the Shareholders and asked Gonzalez to provide the
24 address of the new legal domicile for the Uber entities in the City. Gonzalez did not act on this
25 request.

26 41. Just as Mr. Rattagan and his team became the targets of severe public animosity,
27 Argentine authorities quickly engaged their law enforcement arms to investigate how to stop
28 Uber.

1 42. Midday on April 15, 2016, a City inspector came to the Law Firm's offices with
2 orders "to immediately cease [Uber's] activities." After lengthy discussions with City officials, a
3 partner of Mr. Rattagan narrowly avoided having the Law Firm's offices closed. But the ordeal
4 was far from over.

5 43. Later that day, in the early evening hours, a small army of City inspectors and
6 police officers stormed into the Law Firm's offices, announcing an order to shut down Uber.
7 According to the "acta" (akin to a search warrant) that the officers carried, the raid was the result
8 of a charge of "contravention," *i.e.*, the alleged private use of public space, for commercial gain,
9 without a permit.

10 44. To the shock of the Law Firm lawyers and staff, television reporters evaded
11 security and filmed inside the offices while the police carried out the raid. The prime-time news
12 programs displayed the Law Firm logo and name, which prominently includes Mr. Rattagan's
13 name, and falsely reported that the Law Firm's offices were the location of Uber's illegal
14 activities, which they said included tax evasion.

15 45. Compounding the trauma of the raid on the Law Firm's offices, authorities
16 searched the homes of Mr. Rattagan's trusted colleagues who had agreed to serve as interim
17 manager and interim alternate manager of Uber Argentina while in formation, as their spouses
18 and children watched in horror. Although Mr. Rattagan's home has not yet been raided, the
19 threat remains, causing a constant fear that his family will be the next victim of the natural
20 consequences of Uber's actions and omissions.

21 46. On April 16, 2016, Mr. Rattagan wrote Gonzalez a pointed email to notify him of
22 the office raid, address Uber's inexplicable failure to timely disclose its ongoing activities and
23 ultimate launch to Mr. Rattagan, and inquire how Uber planned to rectify the situation.

24 47. On April 18, 2016, Mr. Rattagan finally spoke with Gonzalez who, however, was
25 dismissive of the trauma inflicted on Mr. Rattagan, his colleagues, and the Law Firm, and sought
26 to minimize the gravity of the situation. Gonzalez never even apologized, and Uber maintains
27 this callous disregard of its continuing outrageous conduct to this day.

1 48. By this point, the prospect of potential civil and criminal liability related to Uber's
2 launch was known – indeed, City tax authorities had already formally requested documents from
3 Mr. Rattagan's colleagues.

4 49. On May 12, 2016, a month after Uber's launch and nearly four weeks after the
5 raids on the Law Firm, Gonzalez finally came to Argentina and met with Mr. Rattagan for the
6 first and last time. Despite being aware of the trauma that Mr. Rattagan and his colleagues
7 suffered and continued to suffer, Gonzalez maintained Uber's approach of showing no concern
8 for the harm Uber's ill-conceived launch was causing them.

9 50. Gonzalez made it clear that Uber had no interest in cooperating with Mr. Rattagan
10 or the Law Firm. According to Gonzalez, assisting with Uber's activities in Argentina was none
11 of Mr. Rattagan's business, as Uber then had other legal counsel and consultants advising it in
12 the country.

13 51. Mr. Rattagan reiterated that his resignation and those of his colleagues should be
14 acknowledged at once and all of them immediately replaced. Undeterred, and notwithstanding
15 the risk posed to Mr. Rattagan and his colleagues, Uber delivered a letter concerning the launch
16 to City officials that showed the Law Firm office address and name, clearly – but falsely –
17 implying that the Law Firm was behind it. Officials (the same ones who Uber had upset with the
18 confrontational launching and who Uber claimed it was trying to appease) were furious, and the
19 day after the letter was delivered, they called the Law Firm demanding an explanation that the
20 Law Firm could obviously not provide.

21 52. Having received nothing but contempt, inaction, and open hostility from
22 Gonzalez, on May 26, 2016, Mr. Rattagan reached Yoo, Uber's Chief Legal Officer based in San
23 Francisco, to explain the situation and seek her direct involvement to handle a situation that had
24 clearly gone astray in the hands of Gonzalez. Among other things, Mr. Rattagan asked Yoo "to
25 promptly designate someone [the Law Firm could] talk to with the purpose of handing over of all
26 [its Uber] files in an orderly manner," and "instruct [her] team to immediately refrain from
27 mentioning or invoking [the Law Firm's] name and from using [its] offices as legal domicile in
28

1 any future communications with the Argentine government (national, provincial or city levels) or
2 with any third parties without [its] prior written consent.”

3 53. Yoo responded that same day and expressed concern for the “inconvenience” Mr.
4 Rattagan and the Law Firm experienced since Uber’s launch in Argentina, and she subsequently
5 assigned Todd Hamblet (Uber’s Managing Counsel, Corporate, also based in San Francisco) to
6 handle the matter “from HQ.”

7 54. Despite Yoo’s professed concern about the position in which Mr. Rattagan and
8 the Law Firm had been placed by Uber’s ill-advised launch, Uber continued to carry out its
9 Argentine operations in exactly the same manner, thus further exposing Mr. Rattagan, his
10 colleagues, and the Law Firm to the ongoing and increasingly severe danger of additional public
11 scrutiny and criminal liability. Yoo, Hamblet, Gonzalez, and Uber all knew that Argentine
12 authorities were investigating Mr. Rattagan for serious crimes involving allegations that Uber
13 failed to register to do business in Buenos Aires, failed to comply with applicable laws and
14 regulations pertaining to the transportation of people, and failed to pay appropriate local taxes
15 and social security contributions. But Uber nevertheless continued to operate and generate
16 profits without change or apparent concern for the adverse consequences on Mr. Rattagan, seen
17 by Uber as mere “collateral damage.”

18 55. For approximately two months after Mr. Rattagan tendered his resignation, Uber
19 operated with its full cadre of drivers (racking up millions in alleged unpaid taxes) while Mr.
20 Rattagan remained, at the Office of Corporations, as the formal legal representative of the
21 Shareholders. During that time, Uber knowingly left Mr. Rattagan (and his colleagues) as the
22 sacrificial lambs for the scorn of the public and the criminal investigations of the Argentine
23 authorities.

24 56. Even after Mr. Rattagan’s resignation became final, Uber’s continued course of
25 conduct further breached their duties to Mr. Rattagan and continued to cause him damage.
26 Among other things, Uber continued its course of conduct that it knew authorities considered
27 illegal and did nothing publicly or with city authorities that adequately separated Mr. Rattagan
28 from the conception or continuation of its disruptive conduct. Indeed, the continuation of such

1 conduct exacerbated public opinion and the authorities' motivation to chase and prosecute Mr.
 2 Rattagan. The harm to Mr. Rattagan from these on-going breaches of its duties to him continue
 3 to this day.

4 57. Uber has openly admitted its error in the press in Argentina, stating that it now
 5 says to itself "before we start, let's take a deep breath, we will talk with the authorities and will
 6 explain in detail what it is that we want to do. . . . and work with the cities and the governments
 7 to cooperate and do things the right way, jointly We regret the way in which we entered
 8 Argentina [W]e should have done things better."²

9 **F. The Criminal Charges**

10 58. When Uber launched in Argentina, the process to incorporate its subsidiary Uber
 11 Argentina had not been completed. As a result, the entity "in formation" could not apply for or
 12 obtain a tax ID, which is necessary to open a bank account, hire staff, lease an office, and
 13 transact business. That did not stop Uber.

14 59. Upon information and belief, Uber's secretive preparations for the launch were
 15 significant. Uber had to send foreign employees into Argentine territory to recruit, train, and
 16 equip drivers, and contract with intermediate payment companies that would process credit card
 17 charges and transfer the related funds outside Argentina, a *modus operandi* granting Uber a *de*
 18 *facto* tax-free advantage. Mr. Rattagan was never informed that these activities were going on
 19 behind his back, and he obviously did not participate in them in any way.

20 60. Although Mr. Rattagan had no role in Uber's conduct leading up to and following
 21 the launch in Argentina, Uber's shadow operation and failure to appoint a different legal
 22 representative led a City prosecutor (the "Prosecutor") to wrongly associate Mr. Rattagan with
 23 those who were involved in that covert pre-launch and post-launch behavior.

24 61. In April 2017, approximately one year after the disastrous launch, and despite
 25 having no involvement in Uber's activities, Mr. Rattagan, as former legal representative of
 26

27 ² Balbi, Muriel. "Uber: 'Cometimos Un Error En La Argentina, Pero Queremos Enmendarlo.'" Infobae,
 28 27 Sept. 2017, www.infobae.com/sociedad/2017/09/27/uber-cometimos-un-error-en-la-argentina-pero-queremos-enmendarlo/.

1 Uber's two foreign entities in Argentina, was personally charged with the unauthorized use of
2 public space with a commercial aim.

3 62. The Prosecutor was not done. Because the Prosecutor claimed Uber had failed to
4 register locally and pay appropriate sales tax, the Prosecutor quickly broadened the scope of his
5 investigations to include more serious criminal issues.

6 63. In November 2017, the Prosecutor charged Mr. Rattagan with a second crime
7 based on what he asserted was Uber's clandestine launch: aggravated tax evasion. Conviction on
8 that charge carries a three-and-a-half to nine-year prison sentence.

9 64. Compounding the already massive problem for Mr. Rattagan, the alleged tax
10 evasion charges were aggravated due to the volume of Uber's uninterrupted and increasing sales
11 in the year after the launch. Had Uber taken steps to replace Mr. Rattagan as the legal
12 representative of the Shareholders in Argentina prior to the launch, or suspended its operations
13 upon learning that the Prosecutor was claiming that Uber was acting illegally, or taken
14 responsibility for the actions instead of leaving Mr. Rattagan exposed, the amount of the
15 supposedly unpaid taxes while Mr. Rattagan was legal representative of the Shareholders would
16 have been far lower – and thus the tax evasion charge against him would not have been
17 “aggravated,” and may not have been filed at all. In other words, Uber's reckless and
18 unmitigated conduct both before and after his resignation as its agent caused the charges against
19 Mr. Rattagan to become aggravated and much more severe. Its continued conduct post-charging
20 further provoked the Prosecutor and caused increased scrutiny and further attacks on Mr.
21 Rattagan.

22 65. In December 2017, Mr. Rattagan was summoned to appear before the Prosecutor.
23 It was the worst, most humiliating ordeal of his life. Prior to being interrogated in connection
24 with the preparation, launch, and subsequent operations of Uber in Argentina (of which he knew
25 nothing), he was taken to a small and poorly lit room to have his mugshot and fingerprints taken
26 – thirteen separate times so original prints could be sent to each interested government agency.

27 66. Adding insult to injury, and all because of Uber's actions and omissions, the
28 Argentine court temporarily banned Mr. Rattagan from traveling abroad, preventing him from

1 freely conducting his professional activities and jeopardizing his key and essential contribution
2 to the Law Firm. The Prosecutor labeled Mr. Rattagan a flight risk and publicly announced that
3 he would be detained and imprisoned if he attempted to leave the country. The news went viral
4 and exacerbated the name-bashing, severe embarrassment, and anguish that Mr. Rattagan already
5 was suffering.

6 67. While taxi drivers, labor unions, and politicians sought a public face to direct their
7 ire, Mr. Rattagan was smeared in the local media for his supposed role in Uber's conduct. His
8 name became inseparable from Uber's claimed illegal operations and aggravated tax evasion.

9 **G. Harm Mr. Rattagan Suffered As A Result of Uber's Actions**

10 68. Mr. Rattagan's success as a name partner of a respected international law firm is
11 the product of a lifetime spent building a reputation based on integrity and ethical conduct.

12 69. As a result of Uber's launch in Argentina, Mr. Rattagan's name became
13 synonymous with tax evasion and illegal commercial operations by a foreign business. His
14 reputation has been dragged through the proverbial mud. Indeed, due to the publicity
15 surrounding the raids and charges against him, Mr. Rattagan has – in effect – been walking
16 around with a sign across his chest that he is an accused felon. Although he attempts to explain
17 to colleagues, friends, and family that, despite the allegations against him, he is innocent, such
18 protestations cannot alleviate the reputational stigma.

19 70. Instead of stopping its operations that officials were charging were illegal and that
20 were exacerbating the criminal charges against Mr. Rattagan, Uber simply offered Mr. Rattagan
21 that it could help pay for a reputation management firm.

22 71. Worse, while Mr. Rattagan was the target of two criminal proceedings, which
23 impacted and continue to threaten his and his family lifestyle, his Argentine legal advisors have
24 warned him that he may yet face additional charges for Uber's actions, such as money
25 laundering, VAT and income tax evasion, and failure to make social security contributions. He
26 lives – and will continue to live for many years, as events unfold – under the constant threat and
27 fear of further humiliation, wasted time and energy, and the physically exhausting emotions of
28 facing charges that jeopardize his freedom, reputation, peace of mind, and livelihood. All of that

1 and more hang in the balance – all because Uber schemed to launch operations in Buenos Aires
2 without any concern for the effect they would have on Mr. Rattagan and continued that conduct
3 despite knowing about the on-going and increasing harm it was causing Mr. Rattagan.

4 72. Having expanded across the globe, Uber was and is intimately aware of the fallout
5 that occurs when it enters a new market using its established methods of disruption and
6 confrontation. Uber knew of the harm that would – and did – befall Mr. Rattagan upon its
7 launch, yet it failed to disclose its plans or take any steps to protect Mr. Rattagan, his colleagues,
8 or the Law Firm from the foreseeable result. Nor did it act to mitigate the damaging effects of
9 that harm after being specifically warned by Mr. Rattagan of the injury it was inflicting on them.

10 73. Instead, Uber, a multi-billion dollar international behemoth with near-limitless
11 resources, allowed Mr. Rattagan, who played no role in its operations, to be thrown to the wolves
12 and bear the brunt of the eminently predictable public outcry, labor union and taxi driver rage,
13 political pressure, police actions, and criminal charges. With Mr. Rattagan as a scapegoat,
14 Uber's real Argentine counsel and an army of Uber officials, employees and advisors continued
15 to operate behind the scenes unscathed (most of them from a safe distance away from the chaos
16 in Buenos Aires).

17 74. Indeed, Uber's internal approval of the way its launch in Argentina unfolded is
18 evidenced not only by its refusal to alter its conduct but also by its promotion of Gonzalez – the
19 architect of Uber's Argentine campaign and Mr. Rattagan's misery.

20 75. The harm that Mr. Rattagan suffered and continues to suffer could have been
21 avoided or diminished if Uber: (i) stopped operations while the Argentine authorities were
22 charging that it was operating illegally; (ii) replaced Mr. Rattagan as legal representative before
23 its launch; (iii) advised Mr. Rattagan of its intentions pre-launch and heeded his advice; or
24 (iv) took actions to ensure post-launch and post-charging that it was not exacerbating the focus
25 on and harm to Mr. Rattagan.

26 76. Acknowledging the harm its actions caused him, Uber (through Uber IBV) has –
27 up until the filing of this litigation – paid for Mr. Rattagan's criminal defense and his time in
28 responding to the fallout from the launch. That partial indemnification, however, does not

1 compensate Mr. Rattagan for the significant emotional trauma and serious damage to his
 2 reputation that he has endured. Nor does it compensate him for the significant loss in future
 3 revenue resulting from such reputational damage. Such compensatory damages alone constitute
 4 many millions of dollars.

5 77. Mr. Rattagan also seeks punitive damages, in addition to compensatory damages,
 6 to punish Uber for its intentional and malicious conduct, and deter it from similar conduct in the
 7 future.

8 **FIRST CAUSE OF ACTION**
 9 **Breach of Fiduciary Duty**

10 78. Mr. Rattagan repeats and realleges paragraphs 1 through 77 of this Amended
 11 Complaint as though reproduced in full herein.

12 79. Under Argentine law, the legal representative of a foreign company has a
 13 legitimate interest in ensuring the good operation and standing of such company, because he or
 14 she conceivably could be exposed to personal criminal and civil liabilities for unlawful conduct
 15 by the company. Indeed, no reasonable and reputable individual would agree to act in such a
 16 capacity if there were any possibility that such harm would befall them for corporate conduct
 17 that is entirely outside of their control.

18 80. A company owes such legal representative a fiduciary duty not to subject that
 19 legal representative to personal liability.

20 81. By asking Mr. Rattagan to serve as the legal representative of the Shareholders
 21 and thus exposing him to personal liability for any alleged noncompliance with the law, Uber
 22 assumed a fiduciary duty to Mr. Rattagan to, among other things:

23 (a) inform him of its planned activities in Argentina and provide him with the
 24 information necessary to ensure Uber's good operations in the country and protect himself, his
 25 Law Firm, and his colleagues from any liability and reputational harm;

26 (b) operate its business within the constraints of the local laws;

27 (c) immediately cease any allegedly unlawful business practices;

1 (d) replace or remove Mr. Rattagan as legal representative as soon as it
 2 determined that it no longer desired to communicate with him and/or heed his advice so as to
 3 reduce or eliminate the risk and potential legal liability to which Mr. Rattagan might be exposed
 4 as a result of its business practices, or, in the alternative, to cease operations in Argentina until
 5 such time as Uber could remove Mr. Rattagan as its legal representative; and

6 (e) take whatever actions it could within its power to prevent personal liability
 7 of its agent.

8 82. Uber breached its fiduciary duty to Mr. Rattagan by, among other things:

9 (a) failing to notify him in advance of its planned expansion activities,
 10 strategy, timeline, and business practices in Argentina;

11 (b) failing to consult with him before launching in Argentina regarding the
 12 various statutory and regulatory requirements for operating in the country;

13 (c) preventing him from ensuring the good operations of the companies for
 14 which he had been named legal representative and its affiliates;

15 (d) denying him an opportunity to protect himself from legal liability and
 16 reputational harm as a result of its entry into the Argentine market when it kept him in the dark
 17 about its plans;

18 (e) ignoring early warnings from regulators and other Argentine authorities
 19 that its business practices were claimed to be unlawful;

20 (f) denying Mr. Rattagan an opportunity to mitigate any damages;

21 (g) exacerbating the liability Mr. Rattagan faced by continuing its business
 22 practices that Argentine authorities claimed were unlawful notwithstanding the warnings it
 23 received;

24 (h) exposing Mr. Rattagan to significant public scorn and reputational damage
 25 by falsely associating him with Uber's conduct; and

26 (i) failing to remove or replace Mr. Rattagan as a legal representative as soon
 27 as it determined that it no longer wished to communicate with him and/or heed his advice.

83. As a direct and proximate result of Uber's breaches of its fiduciary duty, Mr. Rattagan has suffered considerable damages. Among other things, he has been charged with aggravated tax evasion and other crimes, threatened with imprisonment and the loss of his law license if convicted, lost business opportunities and revenues, endured severe emotional distress, been subject to harsh public scorn and ridicule, and suffered serious damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on Count I, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys' fees, punitive damages, and such other and further relief as is appropriate.

SECOND CAUSE OF ACTION **Deceit**

84. Mr. Rattagan repeats and realleges paragraphs 1 through 83 of this Amended Complaint as though reproduced in full herein.

85. Uber willfully and intentionally engaged in fraud and deceit as defined by California Civil Code § 1709 - 1710.

86. Uber induced Mr. Rattagan to continue serving as the legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that it knew would be disruptive and that authorities would claim to be illegal; and (c) would neither cease operations nor change its practices to comply with directives of Argentine authorities before replacing him as legal representative.

87. Uber further concealed that it intended to continue operating in violation of directives from Argentine authorities that its operations were in violation of the law during such period.

88. Uber was obligated to disclose the concealed facts due to its attorney/client relationship with Mr. Rattagan (established through its direct communications with Mr. Rattagan as set forth above), because it had a fiduciary relationship with Mr. Rattagan, because it had exclusive knowledge of material facts not known to Mr. Rattagan, because it actively concealed

1 material facts from Mr. Rattagan, and because of the fact that it had appointed Mr. Rattagan as
 2 the legal representative of its Shareholders in Argentina, a position that might – and did – expose
 3 him to substantial criminal and civil penalties based on Uber’s conduct.

4 89. Uber knowingly and intentionally concealed these facts.

5 90. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts and was
 6 justified in doing so due to, among other things, their attorney/client relationship and the official
 7 position of legal representative of the Shareholders to which Uber had specifically asked him to
 8 accept.

9 91. Uber’s concealment of those facts from Mr. Rattagan placed him at risk of
 10 conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law
 11 license, and did in fact cause him loss of business opportunities and revenues, severe emotional
 12 distress, and serious damage to his most important personal and professional asset – his good
 13 name and reputation.

14 WHEREFORE, on Count II, Mr. Rattagan respectfully requests that the Court enter
 15 judgment in his favor against Uber for damages in an amount to be determined at trial, court
 16 costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

17 **THIRD CAUSE OF ACTION**
 18 **Fraud**

19 92. Mr. Rattagan repeats and realleges paragraphs 1 through 91 of this Amended
 20 Complaint as though reproduced in full herein.

21 93. Uber knowingly and fraudulently induced Mr. Rattagan to continue serving as the
 22 legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had
 23 hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos
 24 Aires in a manner that it knew would be disruptive and that authorities would claim to be illegal;
 25 and (c) would neither cease operations nor change its practices to comply with directives of
 26 Argentine authorities before replacing him as legal representative.
 27
 28

1 100. Uber's continuing conduct in exposing Mr. Rattagan, as former legal
2 representative of the Shareholders, to police raids, serious criminal charges, public humiliation,
3 and reputational harm by concealing its actions in preparing for and launching in Argentina and
4 through its post-launch conduct was and is outrageous and extreme. Uber's continuing extreme
5 and outrageous conduct extended up to and beyond the Prosecutors' actions in December 2017.

6 101. Uber's continuation of business activities that exposed Mr. Rattagan to serious
7 criminal charges, public humiliation and reputational harm even after authorities had publicly
8 advised Uber of the consequences of its ongoing activities and had charged Mr. Rattagan in
9 December 2017 is outrageous and extreme.

10 102. Uber recklessly disregarded the probability that its secretive and reckless launch
11 in Argentina would result in police raids, serious criminal charges, public humiliation, and
12 reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

13 103. Even after being publicly warned of the possible consequences of its conduct,
14 Uber continued to recklessly disregard the probability that its ongoing business practices would
15 result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr.
16 Rattagan and thus cause severe emotional distress to him.

17 104. Mr. Rattagan has suffered, and continues to suffer, severe and extreme emotional
18 distress because of Uber's conduct, and (a) he lives under constant fear that he, his wife, and his
19 children will be exposed to similar raids at home; (b) he faces the deeply unsettling prospect of
20 devoting years to defend himself from criminal charges that expose him to nearly a decade in
21 prison and the loss of his law license; and (c) his reputation in the community has been seriously
22 harmed.

23 105. As a direct and proximate result of Uber's secretive preparation and launch in
24 Argentina, and its unabated operations and conduct even after authorities publicly advised Uber
25 of the consequences of those activities, Mr. Rattagan suffered, and continues to suffer, severe
26 and extreme emotional distress.

27 106. Mr. Rattagan has been damaged by Uber's intentional infliction of emotional
28 distress in an amount to be determined at trial.

1 WHEREFORE, on Count V, Mr. Rattagan respectfully requests that the Court enter
2 judgment in his favor against Uber for damages in an amount to be determined at trial, court
3 costs, punitive damages, attorneys' fees, and such other and further relief as is appropriate.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 6 1. Entry of judgment for Plaintiff on each of his claims;
7 2. For damages, direct and consequential, in an amount according to proof in excess
8 of the jurisdictional limit;
9 3. For punitive damages;
10 4. For such other and further relief as the Court may deem just and proper.
11

12 **DEMAND FOR JURY**

13 Michael R. Rattagan demands a trial by jury for all issues so triable.

14 Dated: September 18, 2019

MCDONALD HOPKINS LLC

16 By: /s/ Stephen J. Rosenfeld
17 STEPHEN J. ROSENFELD

18 Attorneys for Plaintiff
MICHAEL R. RATTAGAN

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Docket No. 20-16796

In the
UNITED STATES COURT OF APPEALS
For the
NINTH CIRCUIT

Michael R. Rattagan,
Plaintiff-Appellant,

vs.

Uber Technologies, Inc.,
Defendant-Appellee.

APPEAL FROM JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
CASE No. 3:19-cv-01988-EMC
HON. EDWARD M. CHEN, UNITED STATES DISTRICT JUDGE

EXCERPTS OF RECORD – VOLUME THREE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. [19-cv-01988-EMC](#)

**ORDER GRANTING DEFENDANT’S
MOTION FOR SANCTIONS AND
DISMISSING PLAINTIFF’S FIRST
AMENDED COMPLAINT**

Docket Nos. 23, 27

Plaintiff Michael Rattagan is a lawyer based in Argentina. He asserts five causes of action—breach of fiduciary duty, deceit, fraud, intentional infliction of emotional distress, and negligence—stemming from allegations that Defendant Uber Technologies, Inc. retained him to provide legal support for the launch of new operations in Buenos Aires, proceeded without engaging his services, and subjected him to intense public backlash and ultimately criminal prosecution. Uber moves for sanctions against Rattagan, contending that his claims are based on a false factual premise. It also moves to dismiss the First Amended Complaint (“FAC”).

I. BACKGROUND

Plaintiff Michael Rattagan alleges that he was retained by Defendant Uber Technologies, Inc. to help it prepare to launch operations in Buenos Aires. Rattagan now sues Uber Technologies, alleging that Uber Technologies continued to present him as its legal representative in Argentina even though it ultimately launched its Buenos Aires operations without his help or knowledge, causing Rattagan to be personally exposed to public backlash and criminal prosecution for Uber Technologies’ flouting of Argentine law. Rattagan asserts five causes of action: (1) breach of fiduciary duty, (2) deceit, (3) fraud, (4) intentional infliction of emotional distress, and (5) negligence.

1 In his original complaint, Rattagan named three Uber entities as defendants: the U.S.-based
 2 Uber Technologies, Inc. as well as Uber International, BV (“UIBV”) and Uber International
 3 Holdings, BV (“UIHBV”), companies formed under the laws of the Netherlands with their
 4 principal place of business in Amsterdam. Docket No. 1 ¶ 5. (UIBV and UIHBV are hereinafter
 5 collectively referred to as the “Uber International Entities.”) He alleged that “[Uber Technologies]
 6 controls UIBV and UIHBV, and [Uber Technologies] directed and authorized all of UIBV’s and
 7 UIHBV’s operational decisions . . . from Uber [Technologies’] San Francisco headquarters.” *Id.*
 8 The complaint explained that Rattagan was hired as the “legal representative of certain Uber
 9 subsidiaries in [Argentina],” *id.* ¶ 1, apparently referring to the Uber International Entities which
 10 became foreign shareholders (“Shareholders”) of the Argentinian Subsidiary, Docket No. 1 ¶¶ 14–
 11 15. However, the remainder of the allegations in that complaint were directed simply at “Uber”
 12 generally, without differentiation between the three entities.

13 Shortly after Rattagan initiated this suit, the three Uber entities notified his counsel of their
 14 belief that that the complaint contained a “fatal jurisdictional defect,” namely that “[d]iversity
 15 jurisdiction does not encompass a foreign plaintiff, such as Mr. Rattagan, suing foreign
 16 defendants,” such as the Uber International Entities. Sanctions Mot. at 2; *see* Docket No. 27-1 ¶ 8.
 17 Rattagan thereafter filed the FAC, removing the Uber International Entities as defendants and
 18 redefining “Uber” to mean only Uber Technologies. FAC at 1. Otherwise, the FAC was largely
 19 unchanged from the original complaint with one exception – Mr. Rattagan had removed the part of
 20 the original complaint that explained “Uber International, BV (‘UIBV’) is a company formed
 21 under the laws of the Netherlands with its principal place of business in Amsterdam. Uber
 22 International Holdings, BV (‘UIHBV’) is a company formed under the laws of the Netherlands
 23 with its principal place of business in Amsterdam. On information and belief, UTI controls UIBV
 24 and UIHBV, and UTI directed and authorized all of UIBV’s and UIHBV’s operational decisions
 25 relevant hereto from Uber’s San Francisco headquarters.” Docket No. 1, ¶ 5; Docket No. 15, ¶ 5.
 26 The import of the amendment was that all of the allegations previously directed at the three Uber
 27 entities collectively were now asserted solely against Uber Technologies.

28 Uber Technologies attacks Rattagan’s FAC in two ways. First, it moves for sanctions

1 against Rattagan, contending that his claims are based on a factual premise—that there was an
 2 attorney-client and contractual relationship between Rattagan and Uber Technologies—that is
 3 false, because it was Uber’s international subsidiaries that retained and contracted with Rattagan.
 4 *See* Docket No. 27 (“Sanctions Mot.”). It alleges that his claims in the FAC—that he had a
 5 contractual relationship with Uber Technologies—are “demonstrably untrue.” *Sanctions Mot.* at
 6 2. Second, Uber Technologies moves to dismiss the FAC under Rule 12(b)(6), arguing that even
 7 taking Rattagan’s allegations as true, they fail to state a claim. *See* Docket No. 23 (“MTD”).

8 **II. MOTION FOR SANCTIONS**

9 Uber contends the FAC is predicated upon “on factual contentions that [he] and his
 10 counsel know to be untrue.” *Sanctions Mot.* at 1. Uber believes that the FAC contains “at least
 11 two allegations that Mr. Rattagan knows to be untrue: (1) that Uber Technologies ‘and Mr.
 12 Rattagan agreed that Mr. Rattagan would’ serve as the ‘legal representative’ for a new Argentine
 13 entity . . . ; and (2) the existence of an attorney-client relationship between Mr. Rattagan and Uber
 14 Technologies.” *Id.* at 4. Uber contends that all of Mr. Rattagan’s claims are predicated on these
 15 false factual allegations. Uber therefore seeks an order from this Court dismissing the Amended
 16 Complaint and awarding Uber the fees it incurred in connection with the sanctions motion and the
 17 motion to dismiss. *Id.* at 1.

18 **A. Legal Standard**

19 Federal Rule of Civil Procedure 11 states that “[b]y presenting to the court a pleading,
 20 written motion, or other paper . . . an attorney or unrepresented party [is] certif[ying] that to the
 21 best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under
 22 the circumstances: . . . the factual contentions have evidentiary support or, if specifically so
 23 identified, will likely have evidentiary support after a reasonable opportunity for further
 24 investigation or discovery.” Fed. R. Civ. P. 11(b)(3). Where Rule 11 is violated, “the court may
 25 impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is
 26 responsible for the violation.” Fed. R. Civ. P. 11(c)(1). The moving party bears the burden to
 27 demonstrate that sanctions are justified. *See Tom Growney Equip., Inc. v. Shelly Irrigation Dev.,*
 28 *Inc.*, 834 F.2d 833, 837 (9th Cir. 1987).

Where a Rule 11 motion is directed at a complaint, the court must determine that: (1) the complaint is legally or factually baseless from an objective perspective, and (2) the attorney has not conducted a reasonable and competent inquiry before signing and filing it. *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005). A claim that has some plausible basis, even a weak one, is sufficient to avoid sanctions under Rule 11. *See United Nat'l Ins. Co. v. R&D Latex Corp.*, 242 F.3d 1102, 1117–18 (9th Cir. 2001). However, the existence of a non-frivolous claim in a complaint does not immunize it from Rule 11 sanctions. *Holgate*, 425 F.3d at 677.

Rule 11 also contemplates a safe harbor provision that requires that parties filing for Rule 11 sanctions “give the opposing party 21 days first to withdraw or otherwise correct the offending paper.” *Holgate*, 425 F.3d at 678 (internal quotations omitted). This ensures that “a party will not be subject to sanctions on the basis of another party’s motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation.” *Id.* Here, Uber filed the motion for sanctions on July 2, 2019, at which point the safe harbor period commenced. *See id.*; Docket No. 27. Rattagan filed an opposition brief two weeks later on July 16, 2019. *See* Docket No. 30. Far from withdrawing or otherwise correcting the FAC, Rattagan continued to assert that “Uber [Technologies] appointed Mr. Rattagan to be its legal representative in connection with Uber’s expansion into Argentina” and to marshal evidence in support of that claim. Docket No. 30 at 3. Furthermore, at no other point before (or after) July 23, 2019 (21 days after the motion for sanctions was filed) did Rattagan withdraw his FAC or take other curative steps.

III. ANALYSIS

A. Rattagan’s Allegations

The FAC alleges that “Uber [Technologies] named Mr. Rattagan as its official legal representative in [Argentina].” FAC ¶ 2. It also alleges that Uber Technologies took specific actions to engage Rattagan’s services in Argentina. *See, e.g., id.* ¶ 13 (“Uber [Technologies] enlisted Mr. Rattagan to assist in the creation of an Argentine subsidiary . . .”), ¶ 15 (“Uber [Technologies] and Mr. Rattagan agreed that Mr. Rattagan would act as the Shareholders’ legal representative in Argentina.”).

Based on these allegations, the FAC explicitly asserts that Uber Technologies had a direct attorney-client and contractual relationship with Rattagan. *See* FAC ¶¶ 80, 87 (“Uber [Technologies] was obligated to disclose the concealed facts due to its attorney/client and contractual relationship with Mr. Rattagan”); *id.* ¶ 100 (“Uber [Technologies] owed a duty of care to Mr. Rattagan based on . . . their attorney/client and contractual relationship”). The assertion of such a direct relationship – rather than an indirect relationship through Uber Technologies’ control over the Uber International Entities – is corroborated by the deletion of the allegation in the original complaint. “On information and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.” Docket No. 1, ¶ 5; Docket No. 15, ¶ 5.

B. Uber Technologies’ Evidence

Uber asserts that Rattagan knew the above allegations to be false. Sanctions Mot. at 5–6. Uber submits several exhibits to substantiate its contention that Rattagan knew from the beginning that it was the Uber International Entities, not Uber Technologies, that engaged him in preparation for the Argentina launch:

- A legal document from May 2013 showing that Rattagan registered with the Argentine government as legal representative for “Uber International Holding B.V.” Docket No. 27-1 (“Shin Decl.”), Exh. E.
- Invoices that Rattagan addressed to “Uber International Holding BV” for his services. *Id.*, Exh. F.
- An April 2016 email from Rattagan to Enrique Gonzalez in which Rattagan clarified, “For the record, we were not hired by [Uber Technologies employee] Ryan Black but by Liesbeth ten Brink, Director Legal – Europe, Uber International B.V.” *Id.*, Exh. D.
- A March 2013 email from Rattagan to Liesbeth ten Brink stating, “We are glad to hear about Uber International B.V.’s expansion plans in to Argentina. We will be delighted to provide you and your company with all the necessary support.” *Id.*, Exh. B at 1. His email further states, “I look forward to working with you in Uber International’s South American expansion.” *Id.* at 2.

- A legal memorandum from Rattagan addressed to Liesbeth ten Brink at “Uber International B.V.” *Id.*, Exh. C.

C. Rattagan’s Response

In his opposition brief, Rattagan doubles down on the FAC’s allegations. He continues to insist that “Uber [Technologies] appointed Mr. Rattagan to be its legal representative in connection with Uber’s expansion into Argentina.” Docket No. 30 (“Sanctions Opp.”) at 3. He marshals several pieces of evidence purporting to support his claims.

First, Rattagan relies on two news articles to assert that “[i]t is common knowledge that Uber [Technologies] directs expansion into new markets” and that “Uber [Technologies] directs its foreign subsidiaries – such as the Uber International Entities – to facilitate its expansion abroad.” *Id.* at 3–4. However, neither article provides direct support for Rattagan’s allegation that Uber Technologies had a direct legal relationship with him; they merely discuss the corporate relationship between Uber Technologies and its international subsidiaries. While the article may bolster his prior allegation that Uber controlled the Uber International Entities and directed their operations, he deleted that allegation in the FAC.

Second, Rattagan claims that his allegations are substantiated by the fact that when the “fallout from the launch came to fruition,” it was Salle Yoo, Uber Technologies’ Chief Legal Officer, and Todd Hamblet, Uber Technologies’ Managing Counsel, who “handle[d] Mr. Rattagan’s situation.” Sanctions Opp. at 4 (citing FAC ¶¶ 46–47). According to Rattagan, “[i]t is the conduct of Uber, as directed by these individuals, that forms the basis of much of Mr. Rattagan’s complaint.” *Id.* Rattagan’s claims in this action primarily arise from Uber Technologies’ alleged conduct leading up to and immediately following the Buenos Aires launch. By Rattagan’s own account, Yoo and Hamblet did not become involved until May 26, 2016, after Rattagan “s[ought] [their] direct involvement” by “reach[ing] out” to them. FAC ¶ 46. Rattagan’s interactions with Yoo and Hamblet after the launch do not prove a direct attorney-client relationship between Uber Technologies and Mr. Rattagan, especially prior to the Argentina launch. Indeed, Hamblet’s declaration “to support Mr. Rattagan in his criminal defense,” Sanctions Opp. at 5, states that Hamblet’s “responsibilities include managing the corporate

governance for Uber Technologies, Inc. and its related entities, including Uber B.V., a Dutch entity.” Docket No. 30-1 (“Rosenfeld Decl.”), Exh. B ¶ 1. Mr. Hamblet makes clear that “Rattagan and his firm did [work] for *Uber International B.V. and Uber International Holding B.V.*,” and that “Rattagan was appointed solely and exclusively to act as the legal representative of the *two foreign entities*.” *Id.* ¶¶ 3, 5 (emphases added).

Third, Rattagan submits emails of “pre-litigation discussions” between the parties, in which Uber Technologies’ Senior Litigation Counsel “demand[ed] that Mr. Rattagan delete from any complaint he may file any reference to, or information derived from, communications with Uber personnel (including any of Uber’s in-house lawyers), legal conclusions, and references to purported unlawful or illegal conduct, all of which violate his duty of loyalty.” Sanctions Mot. at 4–5 (quoting Rosenfeld Decl., Exh. C at 2). Rattagan contends that Uber Technologies’ references to a “duty of loyalty” and “attorney client privilege” in this email concede the existence of an attorney-client relationship. Rosenfeld Decl., Exh. C at 1–2. It is true that there is some ambiguity in this email as to which Uber entities are in an attorney-client relationship with Rattagan, because the email throughout refers to the Uber International Entities and Uber Technologies collectively as “Uber.” *Id.* at 1. But the email’s second sentence clarifies that:

As Mr. Rattagan well knows, Uber International Holdings, BV and Uber International, BV (these entities and Uber Technologies, Inc. are referred to herein as “Uber”) retained him and his law firm to provide legal advice in connection with the registration of an entity in Argentina. As an attorney, he owes the duty of utmost loyalty, and cannot put his interests before his clients’.

Id. at 1. This sentence indicates that it was “Uber International Holdings, BV and Uber International, BV,” as distinguished from “Uber Technologies, Inc.,” that “retained [Rattagan] and his law firm to provide legal advice.” *Id.* It is also notable that Rattagan himself clarified any ambiguity on this point in his April 2016 email to Enrique Gonzalez: “For the record, we were not hired by [Uber Technologies employee] Ryan Black but by Liesbeth ten Brink, Director Legal – Europe, *Uber International B.V.*” Shin Decl., Exh. D (emphasis added).

The bottom line is that Rattagan has produced no evidence to substantiate his allegations of a direct “attorney/client and contractual relationship” with Uber Technologies. Instead, the

evidence introduced by Uber Technologies shows that the direct legal relationship that existed was between the Uber International Entities and Rattagan, and further that Rattagan was fully aware of this fact, as demonstrated by his communications and billing invoices. *See Shin Decl., Exhs. B–E.*

D. Summary

On this record, the Court concludes that Rattagan presented the Court with a complaint that was inaccurate and misleading. While Mr. Rattagan could have advanced a theory that Uber Technologies was somehow legally responsible based on its indirect control over Uber International Entities with whom Mr. Rattagan contracted (whether via an alter ego or other theory), Mr. Rattagan deleted that allegation and worded the FAC so as to imply a direct relationship with Uber Technologies. As a result, Uber Technologies has met its burden of showing that Rattagan’s “complaint is . . . factually baseless from an objective perspective.” *Holgate*, 425 F.3d at 676; *see also Song FI, Inc. v. Google, Inc.*, No. C 14-5080 CW, 2016 WL 4180214, at *3 (N.D. Cal. Aug. 8, 2016) (holding that allegations in complaint were “objectively baseless” where “[p]laintiffs present no evidence to support” them). Further, the record suggests that Rattagan’s counsel did not “conduct[] a reasonable and competent inquiry before signing and filing [the FAC].” *Holgate*, 425 F.3d at 676. Rattagan’s lawyers had access to all the evidence submitted in connection with this motion, and they should have been aware that the evidence did not support Rattagan’s claims of a contractual relationship with Uber Technologies. Rattagan’s counsel thus violated its duty under Rule 11(b)(3) to ensure that Rattagan’s “factual contentions have evidentiary support . . . to the best of the [their] knowledge, information, and belief.” Accordingly, the Court **GRANTS** Uber Technologies’ Motion for Sanctions and will “impose an appropriate sanction.” Fed. R. Civ. P. 11(c)(1).

E. Remedy

A sanction under Rule 11 “may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney’s fees and other expenses directly resulting from the violation.” Fed. R. Civ. P. 11(c)(4). Examples of nonmonetary sanctions include “striking the offending paper; issuing an admonition, reprimand, or censure; requiring

1 participation in seminars or other educational programs; . . . [and] referring the matter to
2 disciplinary authorities.” Fed. R. Civ. P. 11, Advisory Committee Notes (1993).

3 Uber Technologies asks the Court for an order dismissing the FAC and awarding the fees
4 Uber Technologies incurred in preparing the motion for sanctions and motion to dismiss. Because
5 false factual premises underpin the FAC as it is currently framed, the Court **DISMISSES** the FAC
6 in its entirety. *See Hunt v. Sunny Delight Beverages Co.*, No. 818CV00557JLSDFM, 2018 WL
7 6786265, at *4 (C.D. Cal. Dec. 18, 2018) (“Striking the entire First Amended Complaint is
8 appropriate because Plaintiffs’ sanctionable misrepresentations taint the entire pleading.”); *see*
9 *also* Fed. R. Civ. P. 11, Advisory Committee Notes (1993) (one factor to consider is “whether [the
10 improper conduct] infected the entire pleading”). However, Rattagan is given leave to amend,
11 because the Court cannot rule out the possibility that one or more legal claims may be properly
12 stated against Uber Technologies, even if Uber did not have a formal contractual relationship with
13 Mr. Rattagan. *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396 (1990) (“Even if a district
14 court indicated that a complaint was not legally tenable or factually well founded for Rule 11
15 purposes, the resulting Rule 11 sanction would nevertheless not preclude the refiling of a
16 complaint.”).

17 As for monetary sanctions, Rule 11 instructs that an award of “reasonable attorney’s fees
18 and other expenses directly resulting from the violation” is permissible where “warranted for
19 effective deterrence.” Fed. R. Civ. P. 11(c). In this case, Uber Technologies notified Rattagan on
20 three occasions prior to filing the motion for sanctions that Rattagan’s key allegations lacked a
21 factual basis. *See Shin Decl.* ¶ 8. Undeterred, Rattagan persisted in pressing his claims without
22 attempting to allege accurate facts and reframe his legal claims. As a result, the parties and the
23 Court have had to suffer a needless round of motion work. Monetary sanctions may be assessed
24 where “Plaintiffs’ counsel continued to make . . . factual assertions even when confronted with
25 evidence presented by Defendants that their assertions were wrong.” *Brown v. Royal Power*
26 *Mgmt., Inc.*, No. C-11-4822 EMC, 2012 WL 298315, at *3 (N.D. Cal. Feb. 1, 2012).

Although, Uber Technologies requested an award that would cover the work its attorneys completed in preparing both the Motion for Sanctions and the Motion to Dismiss (for a total of \$86,415), the Court finds it reasonable to order an award for the fees Uber Technologies incurred in connection with the sanctions briefing only. The total amount of that award will be \$28,731.50. Counsel for Uber Technologies represents that the following table shows the fees associated with that work; it reflects the “two attorneys who worked on briefing and preparing the Motions,” and “discounted rates for each of the two timekeepers.” *Id.* ¶ 4.

Timekeeper	Title	Rate	Hours	Total
Clara Shin	Partner	\$895	13.7	\$12,261.50
Lindsey Barnhart	Associate	\$675	24.4	\$16,470.00
		Total	38.1	\$28,731.50

Shin Decl. ¶¶ 5–6.


IV. CONCLUSION

For the forgoing reasons, the Court **GRANTS** Uber Technologies’ motion for sanctions, **DISMISSES** the FAC with leave to amend, and **AWARDS** Uber Technologies fees in the amount of \$28,731.50. Because the complaint is dismissed pursuant to the granting of Rule 11 sanctions, the Court does not reach Defendant’s motion to dismiss. The amended complaint shall be filed within thirty (30) days from the date of this order.

This order disposes of Docket Nos. 23 and 27.

IT IS SO ORDERED.

Dated: August 19, 2019


 EDWARD M. CHEN
 United States District Judge

Pages 1 - 32

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

MICHAEL R. RATTAGAN,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 19-01988 EMC
)	
UBER TECHNOLOGIES, INC.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Thursday, August 8, 2019

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

Thursday - August 8, 2019

3:06 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil action 19-1988, Rattagan versus Uber Technologies, Inc., et al.

Counsel, please approach the podium and state your appearances for the record.

MS. SHIN: Good afternoon, Your Honor. Clara Shin, Covington & Burling, on behalf of Uber Technologies, and with me is my colleague Jeff Davidson.

THE COURT: All right. Good afternoon, Ms. Shin.

MR. ROSENFELD: Good afternoon, Your Honor. Stephen Rosenfeld on behalf of the plaintiff, Michael Rattagan.

THE COURT: All right. Good afternoon, Mr. Rosenfeld.

There's kind of a fundamental question here and that is: Is there -- what exactly is the relationship being alleged here? The plaintiff in filing an amended complaint substitutes Uber Technologies, U.S. Uber, as the sole defendant here and then eliminated as defendants -- or any express reference to the various international entities --

MR. ROSENFELD: Right.

THE COURT: -- and perhaps because of jurisdictional issues or whatever.

And, yet, I don't think it's disputed that the retainer agreement -- that a formal contractual agreement existed only

1 between Mr. Rattagan and the international entities. Is that
2 right?

3 **MR. ROSENFELD:** That's correct, Your Honor.

4 **THE COURT:** Okay. So then the question is -- and it
5 appears that the amendment to the complaint was a rather
6 shortcut simplistic way of substituting what the definition of
7 "Uber" is and doesn't completely jive with what I understand
8 your theory, and that is although Uber -- I'll just say "Uber
9 Technologies" -- I'll just say "Uber" at this point for
10 reference. We mean U.S.

11 **MR. ROSENFELD:** Sure.

12 **THE COURT:** -- was the invisible hand. It was the
13 moving force behind this and that the entities, the
14 subsidiaries, were all sort of just I don't want to say pawns,
15 but instrumentalities of all the decision that was all made by
16 Uber.

17 And I take it it was Uber, then, who enticed and convinced
18 Mr. Rattagan to sign up for this duty and do so formally
19 through these subsidiaries but really responding in actuality
20 to Uber. Is that your theory?

21 **MR. ROSENFELD:** That's right, Your Honor. We're
22 not -- this is not a case where we're seeking, for example, the
23 parent to cover liability of a subsidiary. This is the case,
24 as Your Honor said, where while there might be some formal
25 relationships, all the actions we're complaining about happened

1 at Uber U.S.; right? So the decisions -- the enticement, the
2 decisions that were made as to how to launch -- the
3 communications that occurred post-launch where Mr. Rattagan
4 said to Uber, "This is going to cause me substantial liability.
5 You need to stop what you're doing," all of those decisions to
6 keep on keeping on were done at Uber U.S. So --

7 **THE COURT:** So let me ask you. So you're not saying
8 this is an alter-ego, pierce-the-corporate-veil kind of
9 situation where you're trying to get through the Dutch
10 international entities to get to Uber U.S.?

11 **MR. ROSENFELD:** That's right.

12 **THE COURT:** But what you are saying is that they are
13 the real force. Are you saying that there was a contractual
14 relationship, or what is the -- how would -- is it a -- it's
15 not a contractual relationship between Uber and Mr. Rattagan;
16 is that right?

17 **MR. ROSENFELD:** That's right. What it is is that they
18 took -- they understood that Mr. Rattagan was in the position
19 he was. They initially enticed him to set up this subsidiary.
20 They understood the position that he was in.

21 He was -- this was -- this was Uber launching in
22 Argentina. This wasn't Uber International BV launching. This
23 was Uber launching, and everyone understood it. And it was run
24 by Uber in the U.S., and the decisions that were made -- once
25 they understood that he was in this vulnerable position, that

1 he was this -- he was this representative that was being held
2 out that was going to be personally liable, they then made
3 decisions and put him in a position where he was caused
4 incredible harm. So it is those tortious actions that they
5 did.

6 **THE COURT:** So is the idea that they incur some
7 liability, duty, responsibility because they were the inducer,
8 they induced him to sign up and do this work? Even though
9 technically informally it was for a subsidiary, he was induced
10 by Uber and Uber then controlled all the circumstances perhaps
11 through these subsidiaries; and, therefore, there is some -- is
12 it like a common law duty is owed? Not a contractual duty but
13 a tort-type duty?

14 **MR. ROSENFELD:** It's a tort duty and it's a tort duty
15 because of two things, Your Honor. Number one, because of the
16 initial inducement; and I think number two, because once it
17 learned from Mr. Rattagan after the launch what was going on
18 and Uber U.S. was controlling those actions, it then continued
19 it's conduct, which we -- which was clearly against what at
20 least the Argentine authorities thought was legal and put --
21 they put Mr. Rattagan in an untenable position.

22 So they -- it was their initial inducement and it's also
23 their knowledge once they understood the position that he was
24 in because of their actions that they continued those actions
25 and continued to put him in a worse and worse position.

1 **THE COURT:** So when you allege with the new
2 substitutions in there that -- among other things, the
3 existence of an attorney-client relationship between
4 Mr. Rattagan and Uber Technologies, without a contract, how is
5 there an attorney-client relationship?

6 **MR. ROSENFELD:** Mr. Rattagan was dealing with Uber
7 U.S. He was having discussions with Uber U.S. He was talking
8 with Sally Yoo, the chief legal officer. He was talking with
9 Todd Hamblet, the associate general counsel U.S. And they were
10 doing this in connection with -- he was doing this in
11 connection with a strategy.

12 And, frankly, what's --

13 **THE COURT:** How do you have an attorney-client
14 relationship if there was no retainer? The retainer is only by
15 the subsidiary or by another corporation. How do you form --
16 is there some -- is there something called a virtual or a
17 *de facto* attorney-client relationship?

18 **MR. ROSENFELD:** Well, I don't think you need,
19 frankly -- I don't think you need a formal agreement to have an
20 attorney-client relationship. I mean, if you were to come to
21 me and ask me advice and I give you advice, whether we have a
22 retainer or not, I think there's an attorney-client
23 relationship.

24 But what's really interesting, Your Honor, is that --
25 let's take a step back. When I initially sent the complaint --

1 a draft copy of the complaint, which, by the way, only included
2 Uber U.S. in it, to Uber itself, Uber claimed an
3 attorney-client privilege. So --

4 **THE COURT:** No, I understand that. I understand
5 there's a notion of perhaps *estoppel* or inconsistency, but I'm
6 just trying to ask a theoretical matter.

7 Can you have an attorney-client relationship let's say
8 with the holding company where the formal agreement is
9 retention by the subsidiary? But you're saying that as a
10 result of -- in the course of discussions in the course of
11 actual conduct, an attorney -- another attorney-client
12 relationship evolves between, even though they're not signatory
13 to a formal retainer agreement, an attorney-client relationship
14 can evolve between, let's say, the attorney and the holding
15 company?

16 **MR. ROSENFELD:** Yes, Your Honor, and I think what's
17 emblematic of this is kind of what would happen after the
18 launch.

19 In the complaint we detail the allegation that when
20 Mr. Enrique Gonzalez comes down -- and, by the way, Enrique
21 Gonzalez holds himself out as an attorney for Uber, not as an
22 attorney for Uber International or whatever. He holds himself
23 out as an attorney for Uber, and he comes down and he actually
24 sends a letter on behalf of my client without my client's
25 approval, but that's a whole different story, but he sends a

1 letter to the Argentine authorities.

2 So he's actually -- so this is Uber post-launch who's
3 involved, and they are -- they are, in essence, using my
4 client's good name as an attorney to try to further their
5 interest.

6 I think it is unquestionable that despite a formal
7 retainer agreement or the lack -- excuse me -- the lack of a
8 formal retainer agreement, that Uber U.S. had a relationship --
9 frankly, an attorney-client relationship with my client.

10 **THE COURT:** What did Gonzalez do to exemplify a
11 relationship with Uber Technologies?

12 **MR. ROSENFELD:** What he did, let me find the specific
13 allegation so I can point to it.

14 What he did, it is right around... I think it's around the
15 40s.

16 **THE COURT:** Mr. Rattagan went to him to try to
17 terminate, cut ties.

18 **MR. ROSENFELD:** Right. And then what happened was
19 Gonzalez wanted my client on behalf of Uber to send a letter to
20 the Argentine authorities, and they drafted a letter.

21 And, again, Your Honor, it's -- let me try to find that
22 particular allegation.

23 (Pause in proceedings.)

24 **MR. ROSENFELD:** Unfortunately just on the spur, I
25 can't find it.

1 **THE COURT:** Well, all right.

2 **MR. ROSENFELD:** But what the action is, and I -- is
3 that Uber wanted my client to send a letter post-launch when
4 Uber -- when its personnel was there to the Argentine
5 authorities. My client did not want to, and they sent it
6 anyway with my client's name and his firm name on this letter,
7 and that caused even more consternation on the part of the
8 Argentine authorities.

9 **THE COURT:** All right. Ms. Shin, let me ask you. I
10 understand you claim that the Rule 11 sanctions should be
11 awarded because of ignoring the fact that there was no
12 attorney-client relationship between Uber Technologies and
13 Mr. Rattagan, and --

14 **MR. ROSENFELD:** Your Honor, I don't mean -- I don't
15 mean to interrupt you, but I just found the reference. It's
16 paragraph 45. And I do apologize for interrupting you,
17 Your Honor, but I did want to make that.

18 (Pause in proceedings.)

19 **MS. SHIN:** And understanding the Court is probably at
20 paragraph 45, there's no naming, there's no identifying,
21 there's no specifying of Mr. Gonzalez in that paragraph.

22 **THE COURT:** All right. It isn't but it does say Uber
23 delivered the letter and "Uber" is defined as Uber
24 Technologies.

25 But I want to get to the larger question, and that is:

1 Understanding that there's been a shift now at least in the way
2 the complaint is drafted, nonetheless, there seems to be a
3 theory -- and maybe I interpret it as sort of a two-prong
4 theory -- that even though the contractual relationship, as has
5 been admitted here, was formally and on paper with
6 Uber International and not with Uber, nonetheless, Uber was the
7 inducing, controlling, invisible hand, et cetera, et cetera;
8 and as the inducer and the promiser may have incurred some
9 legal liability, which we can discuss whether it really does
10 obtain or not or does it obtain perhaps for some cause of
11 action and not another cause of action, but there's also
12 another prong that says even though there wasn't a formal
13 retainer agreement, that what amounts to a kind of *de facto*
14 attorney-client relationship arose in the course of dealings
15 between Uber Technologies U.S. and Mr. Rattagan.

16 Why isn't that, at least, a plausible theory upon which
17 the various causes of action might be based?

18 **MS. SHIN:** Sure. One is because it's not alleged at
19 all. There's no -- backing up, Mr. Rattagan signed on as the
20 legal representative for a Dutch entity in 2013. There's no
21 allegation, there's no evidence that I know of that
22 Mr. Rattagan spoke with anyone from Uber Technologies. There's
23 no allegation that Uber Technologies was inducing the Dutch
24 entities. In fact, all the evidence is otherwise as submitted.

25 So, for example, Exhibit E to the Shin declaration to the

1 Rule 11 motion -- and I feel a little sheepish. I'm not
2 referring to myself in the third person, but that's the name of
3 the declaration --

4 **THE COURT:** Yes, I understand.

5 **MS. SHIN:** -- Mr. Rattagan certifies to the government
6 of Buenos Aires, he says that he was appointed -- well, he
7 accepted the position of legal representative in the Republic
8 of Argentina, the foreign company, Uber International Holding
9 BV, and then he goes on to say "for which I was appointed in a
10 timely manner by the meeting of the board of Uber International
11 Holding BV."

12 **THE COURT:** Right.

13 **MS. SHIN:** Later in August 2016, August 15, he sends
14 an e-mail to Mr. Gonzalez and he very specifically says, and
15 this is on page 2 of 6 of the docketing pagination, he says --

16 **MR. ROSENFELD:** I'm sorry. Which exhibit? Of D?

17 **MS. SHIN:** Exhibit D.

18 **THE COURT:** D?

19 **MS. SHIN:** D as in Danny.

20 **THE COURT:** Going before E, then.

21 **MS. SHIN:** Exactly.

22 **THE COURT:** What page?

23 **MS. SHIN:** Page 2 of 6. He clarifies, he takes pains
24 to clarify (reading):

25 "For the record, we were not hired by Ryan Black" --

1 who is an Uber Technologies employee -- he says, "but by
2 Liesbeth ten Brink, Director Legal - Europe,
3 Uber International BV."

4 And I say this for a couple of reasons. One, is counsel
5 today admits, and I'm glad he does, that there is no
6 contractual relationship with Uber Technologies. However, one
7 of the reasons why we brought our Rule 11 motion is that's not
8 what the amended complaint says.

9 The amended complaint very specifically says -- and let me
10 find the paragraph number -- paragraph 80 states that Uber
11 Technologies had, quote, "an attorney-client and contractual
12 relationship with Mr. Rattagan."

13 **THE COURT:** Wait. 80?

14 **MS. SHIN:** 80, eight zero.

15 **THE COURT:** On page 16?

16 **MS. SHIN:** Of the amended complaint.

17 **THE COURT:** Yeah.

18 **MS. SHIN:** Let me go to it. Right? (reading)

19 "Uber was obligated to disclose the concealed facts
20 due to its" -- and we know that the only defendant is Uber
21 Technologies -- "attorney-client and contractual
22 relationship with Mr. Rattagan."

23 That allegation is repeated in paragraph 87 (reading):

24 "Uber was obligated to disclose the concealed facts
25 due to its" -- which is Uber Technologies --

1 "attorney-client and contractual relationship with
2 Mr. Rattagan."

3 That allegation is again repeated in paragraph 100
4 (reading):

5 "Uber owed a duty of care" -- and Uber again is only
6 Uber Technologies -- "owed a duty of care to Mr. Rattagan
7 based on their attorney-client and contractual
8 relationship."

9 So as counsel just admitted today, what is alleged in the
10 amended complaint is factually incorrect.

11 That's not the only example. Also in paragraph 80, eight
12 zero, Mr. Rattagan alleges that it -- and again "it" is Uber
13 Technologies -- had appointed Mr. Rattagan as the legal
14 representative of its shareholders in Argentina.

15 The certification that we just looked at, Exhibit E to the
16 Shin declaration -- this is not Uber's words, this is
17 Mr. Rattagan's declaration -- he says, quote (reading):

18 "I accept the position of legal representative of the
19 foreign company Uber International Holding BV for which I
20 was appointed in a timely manner by the meeting of the
21 board of International Holding BV."

22 The documents directly contradict the allegations made in
23 the amended complaint and counsel's own representations today
24 directly conflict with the representations made in the amended
25 complaint.

1 And if it's correct that there's no contractual
2 relationship, even assuming that there is an attorney-client
3 relationship -- and the documents that Mr. Rattagan himself
4 submitted show that there is not, and I will go there -- that
5 eviscerates the claims, the state law claims, as pled. If
6 there's no transactional relationship, the fraud and deceit
7 claims are based on omissions.

8 **THE COURT:** Well, let me ask about that.

9 **MS. SHIN:** Sure.

10 **THE COURT:** I understand your point about actual
11 factual representations here not being accurate. The next
12 point is the whole house of cards falls on that --

13 **MS. SHIN:** Correct.

14 **THE COURT:** -- and that's why I asked for
15 clarification what the theory is even if not pled here.

16 **MS. SHIN:** That's right.

17 **THE COURT:** That's why I wanted to explore that.
18 Because if the theory, as I understood it, not as pled but in
19 his response, is that even if there's no contractual
20 relationship between Uber and Mr. Rattagan, if, for instance,
21 it was the inducer to get Mr. Rattagan involved, get him to
22 sign up with Uber International, getting him to do the work in
23 Argentina, even though it's through the arms of a subsidiary
24 and that was done with withholding certain information, I don't
25 know that there's no -- there's not a, quote, "transaction"

1 there, that the whole theory has to completely be eliminated
2 absent an attorney-client relationship or contractual
3 relationship.

4 **MS. SHIN:** It does have to be eliminated and here's
5 why. So, first of all, let me just back up for one second.

6 Counsel also acknowledged that there is no alter ego
7 liability here, and so this idea of Uber Technologies as an
8 inducer or as the hand that controls the Dutch companies --
9 right? I mean, that is essentially an alter ego liability
10 claim. Even if it's not, what the factual bases, the
11 underlying premises of a complaint are this: One is that there
12 was a fiduciary -- some kind of a relationship, either an
13 attorney-client or a contractual. It's --

14 **THE COURT:** Well, does that have to be? I guess
15 that's the question. If there is not a contractual
16 relationship and let's say an attorney-client relationship had
17 not yet formed but somebody induces another to contract with a
18 third party, a subsidiary or whatever it is, knowing that there
19 are dangers there, even though that third party is an
20 independent agent, I don't know that there's no possible cause
21 of action.

22 **MS. SHIN:** Well, not the ones as pled. And let me
23 back up because there's another underlying factual home base
24 that has to be considered as we look at the theory of the case.

25 The theory of the case is based on one alleged wrong, and

1 that one alleged wrong is on April 12th Uber launched its
2 operations in Argentina and then continued those operations
3 until relieving Mr. Rattagan of his legal duty in June 2016.

4 **THE COURT:** The launch was when?

5 **MS. SHIN:** April 12th, 2016.

6 **THE COURT:** Okay.

7 **MS. SHIN:** The first injury flowing from there is
8 April 15th, 2016, and that's when the offices were raided. But
9 the underlying premise is that the operations in Argentina were
10 illegal.

11 Another basis for our Rule 11 motion is that the trial and
12 appellate courts in Argentina have issued four different
13 decisions rejecting that theory. Three trial court decisions
14 were issued before Mr. Rattagan's first complaint was filed.

15 **THE COURT:** Well, I think the theory is that it was
16 perceived as being either illegal or unfair, overaggressive.
17 So the fact that it was ultimately held to be legal, I don't
18 know if that answers the question. Because if you do something
19 that is extremely controversial, if you make -- if you enter a
20 situation and you make statements that inflame -- let's say you
21 stir up hatred and you're protected by the First Amendment and
22 some court says you're protected by the First Amendment, that's
23 not to say that the people you have now insinuated as part of
24 that or put at the head of that or perceived, wrongly
25 perceived, I'm not sure the judgment of legality really answers

1 the question.

2 **MS. SHIN:** Well, except here it does, and here's why,
3 Your Honor. It answers the question here because even as
4 alleged by Mr. Rattagan, there was no reason for foreseeability
5 or for Uber to believe it was illegal.

6 In fact, the allegations are that in other countries there
7 was some controversy that resulted in peaceful operations.
8 Even in the example of Colombia, which, by the way, I don't --

9 **THE COURT:** Legal or controversial? Favorable or
10 disfavored? Is your theory just legality, that the problem is
11 because it was perceived as being illegal?

12 **MR. ROSENFELD:** No. No. The theory is that they came
13 in and that they knew that this was going to stir huge issues.
14 It was disruptive. It was -- as we say in the complaint, it
15 was, you know, instead of they'd rather ask forgiveness than
16 ask for permission.

17 So they come in with an extraordinarily disruptive
18 approach, which, you know, for a billion-dollar company maybe
19 they can handle that kind of disruption and that kind of harm
20 that follows from such disruption; but it put Mr. Rattagan, an
21 individual, unknowingly in the position to face the backlash
22 from that disruption.

23 **MS. SHIN:** Again, that's contradicted by the amended
24 complaint, which in terms of talking about foreseeability
25 refers to other rollouts where it says after initial

1 negative --

2 **THE COURT:** Where are you? Which paragraph?

3 **MS. SHIN:** Paragraph 31, Your Honor.

4 (Pause in proceedings.)

5 **MS. SHIN:** (reading)

6 "Indeed" -- the amended complaint says -- "unlike in
7 other cities and countries where Uber's initially
8 tumultuous launches evolved into peaceful and legally
9 compliant operations..."

10 So any obligation with foreseeability with respect to the
11 causation element that's required in all five claims.

12 Mr. Rattagan says -- right? -- that's the example, that's the
13 example given about other countries, they all evolved into
14 peaceful and he says also "legally compliant operations."

15 After initially tumultuous launches, "its launch in
16 Buenos Aires was especially confrontational" and refers to
17 facing threats, fines, and the revocation of its drivers'
18 licenses.

19 These cases, including a Court of Appeal decision that
20 came down before the amended complaint was filed, has weighed
21 in and said that Uber's operations were legal.

22 Now, I would like to go back and talk about the duty
23 that's required. So with respect to Count 1, which is the
24 breach of fiduciary duty, to be liable, Uber Technologies must
25 either have knowingly undertaken a relationship to benefit

1 Mr. Rattagan --

2 **THE COURT:** For which claim?

3 **MS. SHIN:** Count 1, breach of the fiduciary duty
4 (reading):

5 "Uber Technologies had to have either knowingly
6 undertaken to act for the benefit of Mr. Rattagan --
7 there's no plausible factual allegation that could be made
8 to support that legal requirement -- "or must have entered
9 into a relationship which imposes that undertaking as a
10 matter of law."

11 And those kind of relationships are where there's some
12 kind of a vulnerability: A guardian and a ward, a trustee and
13 a beneficiary.

14 Here Mr. Rattagan himself says he was an attorney with 30
15 years of experience. It really turns things on its head to say
16 that the client owes -- a client owes the attorney, even
17 assuming there was an attorney-client relationship -- and we'll
18 show you that there wasn't -- it turns it on its head to say
19 that a client would have to owe its purported attorney a
20 fiduciary duty.

21 Counts 2 and 3 also require a special duty of disclosure
22 because the fraud and deceit claims are based on alleged
23 omissions, and these allegations can be found in paragraphs 78
24 and 79, as well as 85 and 86 of the amended complaint.

25 And these allegations of omissions are that Uber

1 Technologies suppressed that it hired other legal advisers,
2 that it was preparing to launch in an illegal manner.

3 So, again, the representations made today are different
4 than what's actually alleged. The allegation is that Uber knew
5 and failed to disclose that it was launching in an illegal
6 manner.

7 And, finally, that "I would not seize operations or comply
8 with directives of the Argentine authorities before replacing
9 him as legal representative."

10 The law requires in a situation of an omission either some
11 kind of a fiduciary duty or a transaction between the parties.
12 And that's in *LiMandri* as well as *Deteresa* -- I don't know how
13 to pronounce that case, but that's how it sounds
14 phonetically -- which basically says that under four
15 circumstances in which a defendant has a duty to disclose,
16 first is a fiduciary relationship or for the other three
17 circumstances there has to be some kind of a transaction. And
18 counsel has conceded that there was no transactional
19 relationship between Uber Technologies.

20 **THE COURT:** Well, I'm not sure it's alleged, but I
21 think the argument here is that there may not have been a
22 formal transaction in terms of retention as an attorney for
23 Uber, but there was a transaction because Uber -- it was the
24 inducement by Uber of Mr. Rattagan that brought him into
25 these -- into this larger context.

1 **MS. SHIN:** Well, that's not only alleged but even if
2 it were alleged, as part of the Rule 11 motion, for instance,
3 Mr. Rattagan had the opportunity to submit a declaration
4 swearing to his subjective belief. There's no declaration.

5 Mr. Rattagan or counsel could have submitted a declaration
6 talking about the due diligence or the basis on which the
7 amended complaint asserts an attorney-client relationship.
8 There's no such allegation.

9 Counsel instead submitted three declarations to the
10 Rosenfeld declaration -- three exhibits. I saw you trying to
11 correct me so I got there before you.

12 This is the evidence that Mr. Rattagan is relying on. So
13 Exhibit B is the Todd Hamblet declaration. Counsel referred to
14 Todd Hamblet. And, by the way, all the conversations with
15 Ms. Yoo and Mr. Hamblet, both as alleged and in real life, were
16 all after the engagement as a legal representative in 2013. It
17 was after the launch of Uber in April 2016. And so these are
18 all after the fact.

19 And so any idea --

20 **THE COURT:** I take it part of the value of these is an
21 assertion of sort of a confirmation of a relationship that
22 existed prior because if there was no relationship at all and
23 it was purely a bilateral deal between International and
24 Mr. Rattagan and Uber Technologies had nothing to do with it
25 whatsoever, there wouldn't even be a need for any intervention

1 or discussions with Ms. Yoo or Mr. --

2 **MS. SHIN:** Hamblet.

3 **THE COURT:** -- Hamblet.

4 **MS. SHIN:** Well, there would be because Mr. Rattagan
5 reached out directly to them, and this is the basis of the
6 intentional infliction of emotional distress. This is the
7 shock-the-conscience conduct that's the premise for the
8 intentional infliction.

9 Mr. Rattagan reaches out to Ms. Yoo and says, "I want your
10 help."

11 And she says, "All right. We're going to help you."

12 That's not the conscious or outrageous conduct that can
13 form the basis of an intentional infliction.

14 And here's what Todd Hamblet says. He says (reading):

15 "I'm familiar with the work" -- this is paragraph 3 --

16 "I'm familiar with the work Mr. Rattagan and his firm did
17 for Uber International BV and Uber International Holding
18 BV."

19 And then in paragraph 5, he says (reading):

20 "On 22 April 2013, the two Uber International entities
21 decided to register as foreign shareholders."

22 And then he goes on to say (reading):

23 "Mr. Rattagan was appointed solely and exclusively to
24 act as the legal representative of the two foreign
25 entities."

1 To the extent this document is probative of anything, it's
2 probative of Uber Technologies making clear the limited role
3 Uber Technologies played, which was no role.

4 Mr. Rattagan was appointed solely and exclusively to act
5 as the legal representative of the two foreign entities.

6 Let's go to Exhibit C of the Rosenfeld declaration.
7 Again, an attorney for Uber Technologies says (reading):

8 "Steve, thank you for speaking with us about your
9 client Michael Rattagan's claims. As Mr. Rattagan well
10 knows, Uber International Holdings BV and
11 Uber International BV" -- and then there's a parenthetical
12 that defines "Uber," but looking at the sentence it
13 says -- "Uber International Holdings BV and
14 Uber International BV retained him and his law firm to
15 provide legal advice in connection with the registration
16 of an entity in Argentina."

17 There is nothing in here that could plausibly or remotely
18 be probative of Uber Technologies being the inducer or the
19 invisible hand.

20 **THE COURT:** All right. Where in the complaint,
21 Mr. Rosenfeld, is there an invisible hand allegation here?

22 **MR. ROSENFELD:** Sure. We can start at I believe it's
23 paragraph 8 where we talk about (reading):

24 "Uber plans, oversees, conducts, and operates all of
25 its international activities from and through its

1 headquarters in San Francisco, California."

2 **THE COURT:** That's pretty general. Let's -- where is
3 there something specific? And especially about the inducement.

4 **MR. ROSENFELD:** About the -- about the inducement?

5 **THE COURT:** Uber's role of masterminding this whole
6 thing.

7 **MR. ROSENFELD:** We talk about that. I mean, if you
8 look at paragraph --

9 **THE COURT:** 13 and 15?

10 **MR. ROSENFELD:** 13, right. Let's see, it's throughout
11 the complaint, Your Honor. 13 did. 15 did.

12 If you look at paragraph I believe it's 64, we talk about
13 (reading):

14 "Having expanded across the globe, Uber has to be
15 intimately" -- I apologize for talking so fast for the
16 court reporter -- "Uber has to be intimately aware of the
17 fallout that occurs when it enters a new market. Using
18 its established methods of disruption and confrontation,
19 Uber knew of the harm that would and did befall
20 Mr. Rattagan upon its launch. It had failed to disclose
21 its plans or take any steps to protect Mr. Rattagan, his
22 colleagues, or his law firm from the foreseeable result in
23 order to act to mitigate," et cetera.

24 So throughout the complaint, Your Honor, I could cite
25 paragraph after paragraph, that it talks about this is Uber

1 who's running the show. Uber was the -- Uber was the invisible
2 hand, Your Honor.

3 **THE COURT:** Well, the only place I see the invisible
4 hand about inducing -- this whole thing is -- if he had just
5 signed -- if Rattagan had just signed a contract with Dutch
6 Uber and Uber is doing all these things behind the scenes --
7 right? -- telling the Dutch company what to do, telling the
8 Argentinians, you'd have to pierce the corporate veil to get to
9 Uber; right?

10 **MR. ROSENFELD:** We understand.

11 **THE COURT:** So -- and you're not doing that. So this
12 whole thing is contingent on there being a, quote,
13 "transaction," quote, "relationship," quote, "*de facto*" perhaps
14 attorney-client relationship between Uber directly -- a line
15 direct between Uber Technologies and Mr. Rattagan.

16 **MR. ROSENFELD:** Right.

17 **THE COURT:** The closest it comes is paragraph 13 and
18 15 (reading):

19 "Uber enlisted Rattagan to assist in the creation of
20 the subsidiary," which is not exactly explained since he
21 was directly working for the International so I'm not sure
22 what that means. "In connection with that process, Uber
23 and Rattagan agreed that Mr. Rattagan would act as
24 shareholders' legal representative in Argentina."

25 Again, I'm not sure what that means. "Shareholders" means

1 the International; right?

2 **MR. ROSENFELD:** "Shareholders" means the
3 International, yes.

4 **THE COURT:** International. But, I mean, there's no
5 specification about, you know, how this came about, how Uber
6 approached -- from up very top how that evolved. And the way
7 this complaint was done by simply -- the way it evolved by
8 simply redefining "Uber" makes it look like there was a -- when
9 one reads this, it looks like there was a -- it's alleged that
10 there was a direct retention agreement.

11 You'd have to parse this very closely to figure out
12 shareholders. You know, it's never actually -- I don't even
13 think "shareholders" is actually defined in here.

14 But, in any event, that's one problem. If you're going to
15 allege an invisible hand theory, a *de facto* attorney-client
16 theory, a duty-type theory, this is not clear. And, frankly, I
17 could see why one could be led in a different direction saying,
18 "Well, this whole thing is predicated on the actual retention
19 of Mr. Rattagan by Uber," and that's just not the case as we've
20 all agreed here. That he wasn't directly retained by them and
21 the documents say that too.

22 So that's the problem. If there's a Rule 11 problem, it's
23 because of the way this thing is drafted. On the other hand,
24 it's hard for me to sit here and say there's -- if this is
25 worded -- if there were to be an amendment, I couldn't say now

1 it would be futile necessarily.

2 **MS. SHIN:** Well, actually, Your Honor, the one
3 substantive change that was made, I mean, beyond the definition
4 and the attribution of all conduct to Uber Technologies is in
5 paragraph 5. In fact, Mr. Rattagan struck the allegation that
6 comes closest to the invisible hand, and the redline can be
7 found in Exhibit A to the Shin declaration.

8 And if one goes to paragraph 5, the allegation that was
9 struck --

10 **THE COURT:** I'm almost there. Yeah.

11 **MS. SHIN:** -- this is the final sentence, quote,
12 (reading):

13 "On information and belief, UTI" -- which is Uber
14 Technologies -- "controls UIBV and UIHBV" -- which are the
15 Dutch companies -- "and Uber Technologies directed and
16 authorized all of" -- I'll use shorthand -- "the Dutch
17 companies' operational decisions relevant hereto from
18 Uber's San Francisco headquarters."

19 The very allegation, the very underlying premise that
20 counsel is saying forms the theory of the case was struck.

21 **MR. ROSENFELD:** Well, can I address why, Your Honor?

22 **THE COURT:** Yeah. I'd like to --

23 **MS. SHIN:** They can't be given the opportunity to then
24 go back --

25 **THE COURT:** All right.

1 **MS. SHIN:** -- and then allege the same thing on an
2 amendment.

3 **THE COURT:** So what about that?

4 **MR. ROSENFELD:** All right. The only reason it was
5 struck is because we thought it was unnecessary because we were
6 pleading -- instead of -- instead of pleading -- instead of
7 including UTI or UIHBV and UIBV, instead of including those, we
8 alleged it directly for Uber because of the invisible hand as
9 Your Honor said.

10 **THE COURT:** I'm not sure that makes sense. I mean,
11 you allege it because you seem to imply that there was a direct
12 relationship. You didn't need the invisible hand. He's saying
13 there was a direct relationship and yet there wasn't a direct
14 relationship. It was an indirect relationship.

15 **MR. ROSENFELD:** Well, Your Honor, we are happy to -- I
16 mean, that was obviously an allegation. We did not remove it
17 because we thought it was incorrect. Frankly I thought it was
18 superfluous in conjunction with the other things.

19 I would be happy to replead that. I mean, that's --
20 obviously we've pled it, it's a judicial admission, and we'll
21 replead it. Because it was taken out, it was taken out only
22 what I thought because it was superfluous based on the way that
23 the new complaint is pled, but I'd be happy to replead that.

24 **MS. SHIN:** Your Honor, repleading it is not going to
25 do a thing. The paragraphs that we just went through, whether

1 it's paragraph 13, 15, paragraph 2, which says Uber --
2 paragraph 2 says (reading):

3 "Uber Technologies retained Mr. Rattagan to establish
4 its initial corporate presence in Argentina."

5 We've gone through and we know that that's inaccurate.

6 Paragraph 80 says (reading):

7 "Uber Technologies appointed Mr. Rattagan as the legal
8 representative in Argentina."

9 We just went through Mr. Rattagan --

10 **THE COURT:** Well, but that's not to say it can't be --
11 if it can be alleged consistent with Rule 11, that Uber,
12 through its universal powers and within this complex, arranged
13 to have, or however the wording is, Uber or Mr. Rattagan acting
14 through the international subsidiaries become the legal
15 representative of Argentina.

16 I mean, you know, there may have to be some very specific
17 allegations here if you're going to go this invisible hand
18 route, and that's not to say that there may not be a cause of
19 action. It may not be enough to give rise to a fiduciary duty,
20 to a duty of disclosure.

21 There may be -- I'm not saying there's problems here, but
22 I tell you what I'm inclined. I mean, my inclination at this
23 point, number one, is to say that the complaint as alleged and
24 the way it was amended is misleading in a way that has now
25 caused this whole round of litigation, which could have been

1 obviated had this thing been pled with the invisible hand
2 theory -- as I'm calling it shorthand or whatever you want to
3 call it -- and put front and center. Then we could have gone
4 directly to the issues of -- well, under that theory, can you
5 have a fiduciary duty absent a formal fiduciary relationship?
6 Can one arise under those circumstances? Is there a duty to
7 disclose when somebody is in the position of the procurer or
8 the inducer or the arranger but not the actual contractee?

9 And I don't -- but now we've got to go through another
10 round because I don't know what the complaint properly pled is
11 going to look at.

12 **MR. ROSENFELD:** Well, Your Honor, I do have to say
13 that I had significant discussions with both Uber and counsel,
14 and while I apologize if Your Honor thinks that the complaint
15 was not clear, but we explained. There's been no question,
16 there's been no assertion at all that Uber U.S. signed any
17 contracts. The invisible hand theory, as you have stated it,
18 has -- that's the theory that we've been asserting all along.

19 And, you know, so --

20 **THE COURT:** Well, the fact it was in there and you
21 took it out doesn't help your claim of clarity because that
22 suggests when you take something out --

23 **MR. ROSENFELD:** Well, I only took it out because those
24 entities weren't part of the complaint, and I thought it was
25 superfluous. But we continued to have those discussions with

1 opposing counsel and no one -- there was never an assertion on
2 our part that there was that direct contract signed by Uber
3 Technologies.

4 **MS. SHIN:** Your Honor, this is exactly why the
5 requested relief is dismissal without leave to amend, is that
6 there's no confusion here. We wrote many letters. We wrote a
7 Rule 11 letter, which led to the first dismissal of the
8 Uber International entities.

9 **THE COURT:** Well, I'll cut to the chase. I'm not
10 going to grant the ultimate sanction, and I'm not sure you can
11 under Rule 11 dismiss without leave to amend. That's an
12 extreme remedy, but you certainly can -- the Court can award
13 other sanctions, such as attorneys' fees, as a result of having
14 to go through this process on a complaint that was deficient
15 and misleading.

16 **MS. SHIN:** And we did request an allocation and a
17 request for fees, which is attached to my declaration.

18 **THE COURT:** I understand that. I understand that.
19 And that's something I'm going to consider, and I'm also going
20 to consider dismissal of the complaint with leave because I
21 think it does not state a theory; and if it's going to advance
22 any further, it's going to have to articulate more precisely
23 and more transparently what this theory actually is. You can't
24 just conclusory say, "Well, there was an attorney-client
25 relationship" as it does without establishing some basis for

1 it, again consistent with Rule 11.

2 So I'm going to take this matter under submission, but
3 that's my inclination, that I'm going to dismiss with leave to
4 amend, and there very well may be sanctions involved with
5 respect to the time and effort that's been incurred I think
6 needlessly as a result of the -- some of the statements that
7 were not consistent with the record in this complaint.

8 But you should keep in mind if you're going to allege the
9 same theories, same causes of action under this, again I'll
10 call it the invisible hand theory or the *de facto* theory,
11 you're going to have to meet -- you're going to have to
12 anticipate how are you going to prove, for instance, a duty to
13 disclose or the existence of a fiduciary relationship so as to
14 give rise to a fiduciary duty and all those things. It's not
15 obvious to me, you know, how that's done, but I can't say that
16 that can't be done at this point.

17 So with that, I'll take the matter under submission.

18 **MS. SHIN:** Thank you, Your Honor.

19 **MR. ROSENFELD:** Thank you, Your Honor.

20 **THE COURT:** Thank you.

21 (Proceedings adjourned at 3:55 p.m.)

22 ---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, August 20, 2019

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", is written over a horizontal line.

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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**
18

19 MICHAEL R. RATTAGAN,

20 Plaintiff,

21 v.

22 UBER TECHNOLOGIES, INC.,

23 Defendant.
24
25
26
27
28

Civil Case No.: 3:19-CV-01988-EMC

**DEFENDANT'S REPLY IN SUPPORT OF
MOTION FOR RULE 11 SANCTIONS**

Date: August 8, 2019
Time: 1:30 PM
Location: Courtroom 5 - 17th Floor
Judge: Hon. Edward M. Chen

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INTRODUCTION

As a tactic to manufacture diversity jurisdiction so that he could stay in federal court, Plaintiff Michael Rattagan falsely alleged that the contractual relationships that form the basis for his claims in the Amended Complaint existed between him and Uber Technologies, Inc.—the only remaining defendant in this lawsuit. As Uber Technologies established in its opening brief, those contractual relationships in fact existed between Mr. Rattagan and two foreign Uber International Entities.¹ Specifically, Mr. Rattagan served as the “legal representative” under Argentine law on behalf of the Uber International Entities, who were to be the foreign shareholders of Uber Argentina SRL. To the extent Mr. Rattagan had an attorney-client relationship with any Uber entity, that relationship was likewise with the Uber International Entities, not with Uber Technologies.

Although Mr. Rattagan originally named the Uber International Entities as defendants in this lawsuit, he dismissed them after being informed that the presence of these foreign entities destroyed this Court’s diversity jurisdiction. Mr. Rattagan did not, however, change any of the underlying factual allegations in the Complaint—he merely attributed all of the acts alleged against those foreign entities to Uber Technologies. The result is an Amended Complaint that advances demonstrably false allegations about Mr. Rattagan’s supposed relationship with the only remaining defendant, Uber Technologies. Those false allegations render four of Mr. Rattagan’s five claims in the Amended Complaint untenable, since his claims derive from fiduciary duties and obligations allegedly arising from contractual relationships that Mr. Rattagan had with the Uber International Entities, not with Uber Technologies. Because Mr. Rattagan insists on proceeding in the wrong forum with claims based on false allegations, dismissal and sanctions are warranted.

Mr. Rattagan’s Opposition fails to substantively address the evidence presented by Uber Technologies disproving the allegations in the Amended Complaint. Mr. Rattagan instead either cites nothing to support his conclusory statements, or he cites to unproven allegations in his Amended Complaint—the very allegations that Uber Technologies contends are false. Mr. Rattagan does not

¹ As in the Motion, “Uber Technologies” refers to defendant Uber Technologies, Inc.; “Uber International Entities” refers to Uber International BV and Uber International Holding BV; and “Uber” refers to the group of subsidiaries and affiliates that conducts Uber’s global operations.

1 submit any agreement between him and Uber Technologies, because there is none, and he does not
 2 submit a declaration swearing to the truth of his allegations. Rather, the scant evidence Mr. Rattagan
 3 does provide shows that Mr. Rattagan worked for the Uber International Entities, not Uber
 4 Technologies, confirming that the contrary allegations in the Amended Complaint are false. Though
 5 Mr. Rattagan's Opposition argues that he has a viable claim against one or more Uber entities, the issue
 6 for purposes of this Motion is not the viability of Mr. Rattagan's legal theories, but rather the accuracy
 7 of his factual contentions.

8 Uber Technologies has overwhelming defenses to the merits of Mr. Rattagan's claims. But
 9 before the litigation can proceed to that point, there must first be a proper complaint that is based on
 10 accurate allegations, that includes the proper parties, and that is submitted in a forum that possesses
 11 subject matter jurisdiction. Mr. Rattagan's Amended Complaint does not satisfy any of these
 12 prerequisites, and so the Court should dismiss the Amended Complaint and award Uber Technologies
 13 the reasonable fees and expenses incurred in presenting this Motion and its Rule 12(b)(6) Motion to
 14 Dismiss, Dkt. 23.

15 ARGUMENT

16 **I. MR. RATTAGAN'S ALLEGATIONS ARE DEMONSTRABLY UNTRUE.**

17 As described in the Motion, Dkt. 27 ("Mot.") at 4-6, the documentary evidence establishes that at
 18 least the following allegations in Mr. Rattagan's Amended Complaint are false:

- 19 • "Uber [Technologies] and Mr. Rattagan agreed that Mr. Rattagan would" serve as the
 20 "legal representative" in Argentina, Am. Compl. ¶ 15;
- 21 • "Uber [Technologies] retained Mr. Rattagan . . . to establish its initial corporate presence
 22 in Argentina," *id.* ¶ 2;
- 23 • "Uber [Technologies] enlisted Mr. Rattagan to assist in the creation of an Argentine
 24 subsidiary," *id.* ¶ 13;
- 25 • Mr. Rattagan registered the Uber International Entities as shareholders "on Uber
 26 [Technologies'] behalf," *id.* ¶ 14;
- 27 • "Uber [Technologies] . . . appointed Mr. Rattagan as the legal representative . . . in
 28 Argentina," *id.* ¶¶ 80, 87.

- An attorney-client relationship existed between Mr. Rattagan and Uber Technologies. *See id.* ¶¶ 78, 80, 85, 87, 100.

These allegations are the crux of Mr. Rattagan’s claims, and they are demonstrably untrue. First, Mr. Rattagan knows that, as required by the Argentine regulations regarding foreign shareholders, he served as the legal representative for the Uber International Entities—the shareholders of the contemplated Argentine entity—not Uber Technologies, which was not a shareholder. Second, Mr. Rattagan knows that no relevant attorney-client or other contractual relationship existed between Uber Technologies and Mr. Rattagan. The Opposition does not challenge any of the evidence identified in the Motion establishing these facts. Instead, the Opposition relies on citations to Mr. Rattagan’s unsubstantiated Amended Complaint, unsupported statements, legal argument by Mr. Rattagan’s counsel, two unrelated news articles, and three documents that on their face support Uber Technologies’ position, not Mr. Rattagan’s.

A. Mr. Rattagan Does Not Challenge Uber Technologies’ Evidence Demonstrating That His Allegations Are False.

Mr. Rattagan does not challenge—or even address—the documentary evidence included with the Motion that demonstrates his allegations are untrue. That evidence establishes that, *first*, the Uber International Entities—and only the Uber International Entities—contacted, retained, and entered into agreements with Mr. Rattagan to form a new corporate entity in Argentina and to act as their legal representative, as required under Argentina law. *See* Dkt. 27-3 at 1-2 (email from Mr. Rattagan to Liesbeth ten Brink, a resident of the Netherlands and the Legal Director for Europe at Uber International, stating that he would be “delighted” to advise on “Uber International’s South American expansion”); Dkt. 27-4 at 1 (Mr. Rattagan addressed legal memoranda to “Liesbeth ten Brink, Uber International B.V.”); Dkt. 27-6 (Mr. Rattagan’s registration with the Argentine government as legal representative of Uber International Holding); Dkt. 27-7 (invoices for Mr. Rattagan’s services as legal representative addressed to Uber International Holding). Confirming that the Amended Complaint’s misstatements are knowing rather than inadvertent, on April 15, 2016, during the time period in which the events underlying Mr. Rattagan’s claims occurred, Mr. Rattagan himself expressly stated: “For the

1 record, we were not hired by Ryan Black [an employee of Uber Technologies] but by Liesbeth ten
2 Brink, Director Legal—Europe, Uber International B.V. (February 2013).” Dkt. 27-5 at 1.

3 *Second*, there is no evidence of any attorney-client engagement between Mr. Rattagan and Uber
4 Technologies. To the extent Mr. Rattagan had an attorney-client relationship with *any* Uber entity, Uber
5 Technologies’ evidence established that any such relationship existed solely between Mr. Rattagan and
6 the Uber International Entities. *See* Dkt. 27-7 (invoices for Mr. Rattagan’s legal services addressed to
7 Uber International Holding).

8 Mr. Rattagan’s failure to challenge any of this evidence, or Uber Technologies’ interpretation of
9 that evidence, concedes its accuracy. *See Shakur v. Schriro*, 514 F.3d 878, 892 (9th Cir. 2008)
10 (arguments not raised in opposition brief are waived).

11 **B. Mr. Rattagan Fails To Offer Any Contrary Evidence.**

12 Though Mr. Rattagan claims that his allegations are “demonstrably true,” Opp. at 6, he fails to
13 identify any “evidentiary support” for the challenged allegations, as the rules require. Fed. R. Civ. P.
14 11(b)(3); *see Patterson v. Apple Comput., Inc.*, No. C 04-0405PJH, 2005 WL 2277005, at *36 (N.D.
15 Cal. Sept. 19, 2005) (awarding Rule 11 sanctions when plaintiff “provided no facts” to show that the
16 causes of action alleged in her complaint were “well-grounded in fact or law,” and when “[o]n more
17 than one occasion, defendants put plaintiff on notice that her claims against [the defendant] were
18 frivolous, but plaintiff persisted”). Nothing in Mr. Rattagan’s Opposition supports his allegations that
19 he had a legal representative or attorney-client relationship with Uber Technologies that could justify the
20 causes of action alleged in the Amended Complaint.

21 *First*, Mr. Rattagan’s Opposition relies on unsupported statements and citation to the very
22 allegations in the Amended Complaint that the Motion contends are false. *See* Opp. at 3-5. For
23 example, without citation to any supporting evidence, the Opposition claims that “there is no question
24 that Uber [Technologies] directed both Mr. Rattagan and its own expansion efforts,” Opp. at 3; that
25 “when the [Argentina] launch went awry, Uber [Technologies] was in control and directing the
26 response,” *id.* at 4; and that “Uber [Technologies] has paid for Mr. Rattagan’s criminal defense and time
27 spent responding to the fallout from the launch,” *id.* at 5. As another example, the only support cited for
28 Mr. Rattagan’s assertions that “Uber [Technologies] appointed Mr. Rattagan to be its legal

1 representative in connection with Uber [Technologies'] expansion into Argentina," and that "it was Salle
 2 Yoo, Uber [Technologies'] Chief Legal Officer, General Counsel, and Corporate Secretary, who
 3 engaged with Mr. Rattagan following Uber [Technologies'] launch in Argentina," are allegations in the
 4 Amended Complaint. *See* Opp. at 3-4 (citing Am. Compl. ¶¶ 13-15, 46-47). These bare assertions have
 5 no evidentiary value and should be disregarded. *See* N.D. Cal. Civ. R. 7-5(a) ("Factual contentions
 6 made . . . in opposition to any motion must be supported by an affidavit or declaration and by
 7 appropriate references to the record."); *Briggs v. Blomkamp*, 70 F. Supp. 3d 1155, 1166 (N.D. Cal.
 8 2014) ("[A]llegations in a complaint are not evidence[.]").

9 What's more, Mr. Rattagan's unsupported assertions in the Opposition are contradicted by his
 10 Amended Complaint in key respects. For example, Mr. Rattagan claims that "Uber [Technologies]
 11 appointed Mr. Rattagan to be *its* legal representative in connection with Uber's expansion in Argentina,"
 12 citing as support certain paragraphs in the Amended Complaint. Opp. at 3 (emphasis added). But the
 13 Amended Complaint actually alleges that Mr. Rattagan was the "legal representative of certain Uber
 14 subsidiaries"—*i.e.*, the Uber International Entities, not Uber Technologies. Am. Compl. ¶¶ 1, 14
 15 (emphasis added). As another example, in an effort to convey the impression that Mr. Rattagan had an
 16 attorney-client relationship with Uber Technologies, Mr. Rattagan's Opposition asserts that Uber
 17 Technologies' Chief Legal Officer "engaged" with Mr. Rattagan following the Uber Argentina launch,
 18 citing only to allegations in the Amended Complaint. *See* Opp. at 4. Those allegations actually say that
 19 it was Mr. Rattagan who "reached out to" Uber's Chief Legal Officer "to explain the situation and seek
 20 her direct involvement"—an allegation that does not suggest a pre-existing attorney-client or legal
 21 representative relationship. Am. Compl. ¶ 46. The fact that certain personnel at Uber Technologies had
 22 some contact with Mr. Rattagan after he reached out to them is also entirely irrelevant to the thrust of the
 23 Motion: that Mr. Rattagan's causes of action are premised on fiduciary and other duties arising from his
 24 legal representative relationship and attorney-client relationship with the Uber International Entities, not
 25 with Uber Technologies, contrary to the allegations in the Amended Complaint.²

26 _____
 27 ² It is unsurprising that Mr. Rattagan cites nothing in support of his empty assertion that "[i]t is the
 28 conduct of Uber [Technologies], as directed by [Uber Technologies' Chief Legal Officer and Managing

1 *Second*, the two websites Mr. Rattagan arbitrarily cites in support of his assertions that “[i]t is
 2 common knowledge that Uber [Technologies] directs expansion into new markets” and that “Uber
 3 [Technologies] directs its foreign subsidiaries—such as the Uber International Entities—to facilitate its
 4 expansion abroad,” Opp. at 3-4, do nothing to rehabilitate Mr. Rattagan’s false allegations that he had a
 5 legal representative or attorney-client relationship with Uber Technologies. The first website is a
 6 hearsay, 200-word *Reuters* Internet post, in which the only reference to Uber Technologies is the
 7 statement that “Argentina’s biggest city vowed to punish Uber Technologies Inc on Thursday[.]” Opp.
 8 at 3 n.1. This article says nothing about Mr. Rattagan’s alleged relationships with Uber Technologies,
 9 and whether or not Buenos Aires officials had a dispute with Uber Technologies is irrelevant to the
 10 allegations challenged in this Motion: that Mr. Rattagan acted as legal representative and had an
 11 attorney-client relationship with Uber Technologies. The second website is a *Fortune* article describing
 12 the non-controversial proposition that Uber—like many other large multinational corporations—
 13 conducts global operations using a network of international affiliates and subsidiaries. Opp. at 4 n.2; *see*
 14 Dkt. 23 at 3 (Defendant’s Mot. to Dismiss) (“As with virtually all multinational companies, Uber is
 15 structured as a group of separate corporate entities connected through subsidiary and affiliate
 16 relationships.”). This article has no bearing on the allegations challenged by the Motion. Moreover, Mr.
 17 Rattagan deleted the allegation from his original complaint that Uber Technologies “directed and
 18 authorized” the “operational decisions” of the Uber International Entities. *See* Dkt. 27-2.

19 *Third*, Mr. Rattagan did not submit a declaration or any other direct evidence to support his
 20 argument that he “understood” or “belie[ved]” that he was forming a relationship with Uber
 21 Technologies. Opp. at 4; *see Patterson*, 2005 WL 2277005, at *36 (awarding Rule 11 sanctions when
 22 plaintiff “provided no facts” to show that the causes of action alleged in her complaint were “well-
 23 grounded in fact or law”). Attorney argument, supported only by citation to two websites unrelated to
 24 the allegations in question, does not suffice to establish “evidentiary support” for Mr. Rattagan’s false
 25

26 Counsel], that forms the basis of much of Mr. Rattagan’s complaint.” Opp. at 4. That assertion is belied
 27 by the Amended Complaint, which purports to base Mr. Rattagan’s claims on duties and obligations
 28 arising from contractual relationships formed with the Uber International Entities long before
 Mr. Rattagan had any contact with personnel at Uber Technologies.

1 allegation that he acted as the legal representative for Uber Technologies. Fed. R. Civ. P. 11(b)(3). This
 2 is particularly true given Mr. Rattagan's express admission in April 2016, immediately following Uber's
 3 launch in Argentina, that, "[f]or the record, we were not hired by Ryan Black [an employee of Uber
 4 Technologies] but by Liesbeth ten Brink, Director Legal—Europe, Uber International B.V. (February
 5 2013)." Dkt. 27-5 at 1. This contemporaneous evidence wholly discredits the argument of Mr.
 6 Rattagan's counsel that "Mr. Rattagan understood and continues to understand that his appointment and
 7 efforts were at the direction of and for Uber [Technologies]." Opp. at 4; *see Hendrix v. Naphtal*, 971
 8 F.2d 398, 400 (9th Cir. 1992) (attorney's blind reliance on client's assertions not sufficient to oppose
 9 Rule 11 motion); *Regents of Univ. of Cal. v. Stidham Trucking, Inc.*, No. 16-cv-02835-MCE-CKD, 2017
 10 WL 3840259, at *7-9 (E.D. Cal. Sept. 1, 2017) (imposing Rule 11 sanctions for false allegations where
 11 an attorney's alleged "reasonable belief" in the truth of the allegations was contradicted by documents in
 12 her possession). Nor can Mr. Rattagan claim that the inaccuracies are the product of mere negligence;
 13 Mr. Rattagan, an attorney experienced in corporate affairs and structuring international business
 14 operations, *see* Am. Compl. ¶¶ 9-10, should be assumed to understand the concepts of separate corporate
 15 personhood and that a parent company is legally distinct from its subsidiaries.

16 *Fourth*, the three documents attached to the Opposition do not evidence a legal representative or
 17 attorney-client relationship between Uber Technologies and Mr. Rattagan. Mr. Rattagan does not
 18 identify any contract or engagement letter with Uber Technologies, or even a *communication* with Uber
 19 Technologies during the relevant April-June 2016 timeframe. The documents he does identify confirm
 20 that Mr. Rattagan was the legal representative for, and engaged by, the Uber International Entities. The
 21 Todd Hamblet Declaration, which Mr. Hamblet executed at Mr. Rattagan's request to aid in his defense
 22 against legally unsupported charges brought by Argentine authorities, attests that "Mr. Rattagan and his
 23 firm" did work "*for Uber International B.V. and Uber International Holding B.V.*"; that in February
 24 2013, Liesbeth ten Brink, "at the time Director Legal-Europe, for *Uber B.V.*," contacted Mr. Rattagan to
 25 discuss setting up an Uber entity in Argentina; that in April 2013, "*Uber International Holding B.V. and*
 26 *Uber International B.V.* decided to register as foreign shareholders" with the Argentine government; and
 27 that Mr. Rattagan served "as the legal representative of the two foreign entities." Dkt. 30-3 at 1
 28 (emphases added).

1 Similarly, the pre-litigation letter from Uber Technologies’ in-house counsel states, “As Mr.
 2 Rattagan well knows, *Uber International Holdings, BV and Uber International, BV* . . . retained him and
 3 his law firm to provide legal advice in connection with the registration of an entity in Argentina.” Dkt.
 4 30-4 at 1 (emphasis added). There is no reference in the letter to any retention or engagement of Mr.
 5 Rattagan or his law firm *by Uber Technologies*. In the letter, “Uber” asserts privilege “over all
 6 confidential communications and information provided to Mr. Rattagan and/or his law firm,” with
 7 “Uber” defined as the Uber International Entities and Uber Technologies. The use of a shorthand and
 8 catch-all definition does not remotely evidence any attorney-client relationship between Mr. Rattagan
 9 and Uber Technologies, given the letter’s express statement that the attorney-client relationship at issue
 10 existed between the Uber International Entities and Mr. Rattagan. None of the three documents
 11 identified in the Opposition evidence the existence of any legally material relationship between
 12 Mr. Rattagan and Uber Technologies in the April-June 2016 timeframe at issue. *See* Dkt. 30-2 (dated
 13 December 2017); Dkt. 30-3 (dated January 2018); Dkt. 30-4 (dated March 2019).

14 Uber Technologies “has submitted evidence to the Court” showing that the alleged legal
 15 representative and attorney-client relationships that form the basis of Mr. Rattagan’s claims were
 16 between Mr. Rattagan and the Uber International Entities, not Uber Technologies as he falsely alleged.
 17 *Gionis v. Cal. Bureau for Private Postsecondary Educ.*, No. 2:13-cv-912-MCE-CKD, 2014 WL 466276,
 18 at *3 (E.D. Cal. Feb. 5, 2014). In order to respond to this evidence, it was incumbent upon Mr. Rattagan
 19 to submit sufficient evidence to show that the allegations of the Amended Complaint were made in good
 20 faith. But Mr. Rattagan “has submitted absolutely no evidence, even in the form of a declaration [], to
 21 call that fact into question.” *Id.* Accordingly, the Motion should be granted. *Id.* at *3-4 (granting
 22 Rule 11 motion and dismissing complaint with prejudice).

23 **II. MR. RATTAGAN’S UNSUPPORTED ALLEGATIONS RENDER HIS CLAIMS** 24 **UNTENABLE.**

25 Mr. Rattagan does not dispute that four of his five causes of action depend on the existence of a
 26 fiduciary or other relationship of trust between Mr. Rattagan and Uber Technologies, the only defendant.
 27 *See* Mot. at 6-7. Count 1 (Breach of Fiduciary Duty) depends on Mr. Rattagan’s allegation that Uber
 28 *Technologies* assumed a fiduciary duty “[b]y asking Mr. Rattagan to serve as the legal representative of

the Shareholders.” Am. Compl. ¶ 73; *see* Mot. at 7. And the viability of Count 2 (Deceit), Count 3 (Fraud), and Count 5 (Negligence) depends on the existence of an “attorney/client and contractual relationship” between Mr. Rattagan and Uber *Technologies*, the “appoint[ment] [of] Mr. Rattagan as . . . legal representative” by Uber *Technologies*, and a purported “contractual relationship” with Uber *Technologies*. *See* Am. Compl. ¶¶ 80, 87, 100; Mot. at 7. Accordingly, the challenged false allegations infect the entire pleading.

The distinction between corporations is not a mere formality. The *only* reason this case is in federal court is because Mr. Rattagan dismissed the foreign entities, whose continued presence in the caption would have destroyed diversity jurisdiction. *See Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 991 (9th Cir. 1994); Mot. at 2. The *only* claims pled by Mr. Rattagan arose from specific contractual relationships with specific international Uber affiliates. It is thus entirely appropriate for the Court to demand precision and accuracy in allegations that go to the existence of its subject-matter jurisdiction, and to demand that Mr. Rattagan accurately plead the relationships that form the basis for his claims.

III. MR. RATTAGAN’S UNPLED OSTENSIBLE AGENCY THEORY IS IRRELEVANT TO UBER TECHNOLOGIES’ RULE 11 MOTION.

Mr. Rattagan also argues that his allegations are not false because, he claims, he had an ostensible agency relationship with Uber Technologies. *See* Opp. at 6. But this argument confuses the viability of Mr. Rattagan’s legal theories³ with the accuracy of his factual contentions; this Rule 11 Motion is based on the latter. Specifically, Mr. Rattagan alleged that Uber Technologies retained him and that he served as Uber Technologies’ legal representative in Argentina. *See* Am. Compl. ¶¶ 2, 13-15, 80, 87; Mot. at 5. Uber Technologies submitted evidence that these claims are false and that Mr.

³ Mr. Rattagan’s invocation of the ostensible agency doctrine as a basis for Uber Technologies owing Mr. Rattagan a duty to disclose certain information fails for all of the reasons explained in Uber Technologies’ Reply in Support of Motion to Dismiss. *See* Dkt. 29 at 7-8. An ostensible agency theory exists to protect a third party’s reasonable understanding about a principal-agent relationship. However, whatever a *third party* might have thought about the relationship between Mr. Rattagan and Uber Technologies has no bearing on the obligations of the supposed principal and supposed agent to each other.

Rattagan knew they were false. *See supra* at 2-4. No “ostensible” agency relationship could relieve Mr. Rattagan of pleading the correct *actual* relationship between him and the Uber International Entities.

IV. THE COURT SHOULD DISMISS THE AMENDED COMPLAINT AND AWARD MONETARY SANCTIONS TO UBER TECHNOLOGIES.

Mr. Rattagan does not dispute that Uber Technologies has satisfied the procedural requirements of Federal Rule of Civil Procedure 11. *See Mot.* at 7-8. Nor does Mr. Rattagan dispute that he and his counsel are experienced attorneys; that Uber Technologies timely informed him and his counsel of the false allegations in the Amended Complaint and provided him an opportunity to respond, which he did not take; that he dismissed the Uber International Entities in order to remain in federal court; or that the challenged allegations form the basis for four of the five causes of action alleged. *See id.* at 8-9. Each of these factors supports an award of sanctions. Fed. R. Civ. P. 11 advisory committee notes to 1993 amendment; *see Mot.* at 8-9.

Mr. Rattagan’s continued refusal to withdraw the Amended Complaint despite uncontested evidence that it is based on untrue allegations of fact has protracted this litigation and required Uber Technologies and this Court to expend the time and resources necessary to bring and resolve this Motion and Uber Technologies’ Motion to Dismiss, Dkt. 23. Under these circumstances, sanctions are appropriate. *See H.P.D. Consolidation, Inc. v. Pina*, No. 15-cv-05309-EMC, 2017 WL 1046960, at *3-4 (N.D. Cal. Mar. 20, 2017) (Chen, J.) (imposing sanctions on plaintiff who filed an amended complaint after being put on notice by the defendant that the initial complaint lacked evidentiary support). Uber Technologies seeks to recover \$86,415, a sum discounted from its actual fees, for the briefing of this Motion and the Motion to Dismiss. Decl. of Clara J. Shin in Supp. of Def.’s Reply in Supp. of Mot. for Rule 11 Sanctions ¶ 7. The Court should order Mr. Rattagan and his counsel to pay that sum as sanctions. *See Gaskell v. Weir*, 10 F.3d 626, 629 (9th Cir. 1993) (affirming award of Rule 11 sanctions for “attorney fees reasonably incurred by the defendants in defending the lawsuit” when, as here, the complaint “is the improper pleading”).⁴

⁴ Mr. Rattagan’s retaliatory request for fees is untenable and should be rejected. A request for fees for the prevailing party under Rule 11(c)(2) requires a substantive “showing similar to that required for a

CONCLUSION

For the foregoing reasons, Uber Technologies respectfully requests that the Court dismiss the Amended Complaint, award its reasonable fees, and deny Mr. Rattagan's request for fees.

Dated: July 23, 2019

Respectfully submitted,

/s/ Clara J. Shin

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 Uber Technologies, Inc.*

motion brought under Rule 11.” *See Simpson v. Cal. Pizza Kitchen, Inc.*, 2013 WL 12114487, at *5 (S.D. Cal. Oct. 23, 2013). That standard is not met here. Mr. Rattagan identifies no misstatement of fact or law in the Motion. To the contrary, Uber Technologies submitted evidence that Mr. Rattagan's allegations of a contractual or legal representative relationship with Uber Technologies were false, and Mr. Rattagan offered nothing to dispute that evidence in response.

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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Civil Case No.: 3:19-cv-01988-EMC

**DECLARATION OF CLARA J. SHIN IN
 SUPPORT OF DEFENDANT'S REPLY IN
 SUPPORT OF MOTION FOR RULE 11
 SANCTIONS**

Date: August 8, 2019
 Time: 1:30 PM
 Location: Courtroom 5 - 17th Floor
 Judge: Hon. Edward M. Chen

I, Clara J. Shin, declare as follows:

1. I am a partner at the law firm of Covington & Burling LLP (“Covington”), counsel of record for Defendant Uber Technologies, Inc. I am licensed to practice law in the State of California and have been admitted to the United States District Court for the Northern District of California. The matters set forth herein are true and correct of my own personal knowledge. If called as a witness, I could and would testify competently thereto.

2. Uber Technologies seeks attorneys’ fees for work performed by Covington in bringing Uber Technologies’ Motion for Rule 11 Sanctions, Reply in Support of Motion for Rule 11 Sanctions, Motion to Dismiss, and Reply in Support of Motion to Dismiss (collectively, “Motions”). I have reviewed Covington’s records documenting the fees charged for that work, time entry by time entry. In calculating this fees request, significant efforts were made to include only time directly attributable to the Motions. For example, time spent researching and analyzing legal arguments that were not ultimately made in the Motions has not been included.

3. Litigation tasks were assigned among team members to maximize efficiency and cost-effectiveness. For example, junior lawyers conducted legal research and wrote first drafts of pleadings. As a further example, paralegals handled assignments, such as checking citations, that did not require the skill of an attorney.

4. For purposes of Covington’s fees estimates, I discounted the total fees incurred by limiting the request to two attorneys who worked on briefing and preparing the Motions. The hourly rates identified below also reflect discounted rates for each of the two timekeepers.

5. Covington estimates its discounted fees associated with the Motion for Rule 11 Sanctions and Reply in Support of Motion for Rule 11 Sanctions as \$28,731.50:

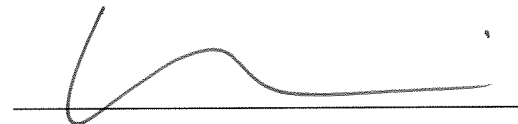
Timekeeper	Title	Rate	Hours	Total
Clara Shin	Partner	\$895	13.7	\$12,261.50
Lindsey Barnhart	Associate	\$675	24.4	\$16,470.00
		Total	38.1	\$28,731.50

6. Covington estimates its discounted fees associated with the Motion to Dismiss and Reply in Support of Motion to Dismiss as \$57,684.00:

Timekeeper	Title	Rate	Hours	Total
Clara Shin	Partner	\$895	19.2	\$17,184.00
Lindsey Barnhart	Associate	\$675	60	\$40,500.00
		Total	79.2	\$57,684.00

7. In total, the amount of discounted attorneys' fees Uber Technologies seeks to recover for bringing the Motions, as described above in Paragraphs 5 and 6, is \$86,415.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is executed this 23rd day of July, 2019, in San Francisco, California.



Clara J. Shin

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.;

Defendant.

Case No. 3:19-CV-01988-EMC

JUDGE EDWARD M. CHEN

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR RULE 11
SANCTIONS**

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<i>In re Yagman</i> , 796 F.2d 1165 (9th Cir.1986), amended by 803 F.2d 1085	6

Other Authorities

Brian O'Keefe & Marty Jones, <i>How Uber Plays the Tax Shell Game</i> , Fortune, October 22, 2015, https://fortune.com/2015/10/22/uber-tax-shell/	4
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1 Reuters, *Argentina's Macri Sides With Taxis as Uber Arrives in Buenos Aires*
2 (April 14, 2016, 4:10 p.m.), [https://www.reuters.com/article/us-uber-tech-](https://www.reuters.com/article/us-uber-tech-argentina/argentinas-macri-sides-with-taxis-as-uber-arrives-in-buenos-aires-idUSKCN0XB2MG)
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4 [idUSKCN0XB2MG](https://www.reuters.com/article/us-uber-tech-argentina/argentinas-macri-sides-with-taxis-as-uber-arrives-in-buenos-aires-idUSKCN0XB2MG)3

INTRODUCTION

The Amended Complaint exposes Uber's recklessly orchestrated entry into the Argentine ride-sharing market and the unimaginable harm it inflicted on Mr. Rattagan as a result. (Dkt. 15). Having previously experienced violent protests and legal repercussions time and again as it launched across the globe, Uber was well aware of the disastrous fallout that would result from its ill-prepared launch in Buenos Aires. Undeterred, Uber made Mr. Rattagan the face of the company's operations in Argentina then secretly moved to launch without his knowledge or counsel and with complete disregard for the inevitable consequences that would befall him.

Uber continues these tactics in filing a baseless motion for sanctions against Mr. Rattagan. In its motion, Uber erroneously argues that Mr. Rattagan made knowingly untrue allegations that (a) he was the legal representative for Uber in Argentina and (b) an attorney-client relationship existed between Uber and Mr. Rattagan. Uber is well aware that such allegations are properly grounded in law and fact. Uber even demanded that Mr. Rattagan delete from a draft complaint sent to Uber certain communications between Mr. Rattagan and Uber personnel (that is, communications between Mr. Rattagan and personnel of defendant Uber Technologies, Inc.) because Uber claimed that the attorney-client privilege protected such communications from disclosure. Mr. Rattagan complied with this request, yet Uber now is claiming that it is sanctionable for Mr. Rattagan to allege in his complaint that an attorney-client relationship ever existed with Uber. Uber is wrong. Indeed, Mr. Rattagan agreed to amend his original complaint to remove any mention of the international entities because they are irrelevant to his claims.

Simply put, Uber's motion fails because Mr. Rattagan's allegations are demonstrably true – it was Uber that expressly directed expansion efforts in Argentina, and Uber had an admitted attorney-client relationship with Mr. Rattagan. Moreover, even if Uber were able to establish

1 that it somehow did not have an attorney-client relationship with Mr. Rattagan, such a
 2 relationship is not even necessary for Mr. Rattagan to succeed on his claims because of the
 3 undeniable principle-agent relationship that existed between Uber and Mr. Rattagan.

4 For these reasons, and those set forth more fully below, the Court should deny Uber's
 5 Motion for Sanctions and award Mr. Rattagan the reasonable fees incurred in providing this
 6 Opposition to Uber's Motion for Sanctions.
 7

8 ARGUMENT

9 **I. LEGAL STANDARD**

10 Rule 11 of the Federal Rules of Civil Procedure "imposes a duty on attorneys to certify
 11 that they have conducted a reasonable inquiry and have determined that any papers filed with the
 12 court are well grounded in fact, legally tenable, and 'not interposed for any improper purpose.'" *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). The Ninth Circuit has held that
 13 sanctions are only warranted on the signer of a paper if (a) the paper is filed for an improper
 14 purpose, or (b) the paper is frivolous. *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358,
 15 1362 (9th Cir. 1990). A complaint is "frivolous" if "it lacks an arguable basis in law or in fact."
 16 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
 17

18 Rule 11 sanctions are limited to situations where a competent attorney, after reasonable
 19 inquiry, would not have had a good faith belief in the merit of the legal arguments he or she
 20 presented. *Amwest Mortgage Corp. v. Grady*, 925 F.2d 1162, 1164 (9th Cir. 1991). "Rule 11 is
 21 an extraordinary remedy, one to be exercised with extreme caution." *Operating Eng's Pension*
 22 *Trust v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir.1988). It should be reserved for "rare and
 23 exceptional case[s] where the action is clearly frivolous, legally unreasonable or without legal
 24 foundation, or brought for an improper purpose." *Id.* at 1344. "Rule 11 must not be construed so
 25 as to conflict with the primary duty of an attorney to represent his or her client zealously." *Id.*;
 26
 27
 28

1 *see GN Resound A/S v. Callpod, Inc.*, No. C 11-04673 SBA, 2013 WL 5443046, at *2 (N.D. Cal.
 2 Sept. 30, 2013). And, it “was intended to be a shield for the abused, not a sword for the
 3 aggressive” as it is being used here. *See, e.g., Heller Fin., Inc. v. Peavy*, No. 86 C 7802, 1987
 4 WL 12943, at *3 (N.D. Ill. June 23, 1987).

5 **II. MR. RATTAGAN’S AMENDED COMPLAINT DOES NOT VIOLATE RULE 11.**

6 **A. Mr. Rattagan’s Factual Allegations Are Demonstrably True.**

7
 8 Uber argues that Mr. Rattagan’s claims rest on two allegations that Mr. Rattagan knows
 9 are untrue: (1) that Uber appointed Mr. Rattagan to be its legal representative in Argentina; and
 10 (2) that an attorney-client relationship existed between Uber and Mr. Rattagan. (Mot. Sanctions
 11 at 4). Uber is wrong on both fronts.

12
 13 Uber appointed Mr. Rattagan to be its legal representative in connection with Uber’s
 14 expansion into Argentina. (Am. Compl. ¶¶ 13-15.) Although Uber created certain foreign
 15 entities – such as Uber International BV and Uber International Holding BV (the “Uber
 16 International Entities”) – as formalities in facilitating its international expansion, there is no
 17 question that Uber directed both Mr. Rattagan and its own expansion efforts. Yet, Uber asks this
 18 Court to suspend disbelief and accept that it is not directing its own international expansion but
 19 that rogue subsidiaries in the Netherlands are orchestrating those efforts.

20
 21 First off, it is important to appreciate the general base of knowledge that informed Mr.
 22 Rattagan’s initial understanding that it was Uber that actually engaged him. Uber’s own actions
 23 then confirmed this initial impression. It is common knowledge that Uber directs expansion into
 24 new markets.¹ It is also a common understanding that Uber directs its foreign subsidiaries –

25
 26
 27 ¹ Reuters, *Argentina’s Macri Sides With Taxis as Uber Arrives in Buenos Aires* (April 14, 2016,
 28 4:10 p.m.), <https://www.reuters.com/article/us-uber-tech-argentina/argentinas-macri-sides-with-taxis-as-uber-arrives-in-buenos-aires-idUSKCN0XB2MG>.

1 such as the Uber International Entities – to facilitate its expansion abroad.² That belief informed,
 2 and continues to inform, Mr. Rattagan’s allegation that he was appointed legal representative of
 3 Uber in Argentina, and that he therefore was engaged in an attorney-client and contractual
 4 relationship with Uber. (Am. Compl. ¶ 15, 78, 80, 85, 87, 100). Regardless of the name of the
 5 company on the contract, invoices, or email signatures, Mr. Rattagan understood and continues
 6 to understand that his appointment and efforts were at the direction of and for Uber.
 7

8 Mr. Rattagan’s belief is further supported by Uber’s actions following its launch in
 9 Argentina. When the inevitable fallout from the launch came to fruition, it was not the Uber
 10 International Entities responding to Mr. Rattagan, but rather Uber itself. Indeed, it was Salle
 11 Yoo, Uber’s Chief Legal Officer, General Counsel, and Corporate Secretary, who engaged with
 12 Mr. Rattagan following Uber’s launch in Argentina. (Am. Compl. ¶ 46-47). She then assigned
 13 Todd Hamblet, Uber’s Managing Counsel, to handle Mr. Rattagan’s situation. (Am Compl. ¶
 14 47). It is the conduct of Uber, as directed by these individuals, that forms the basis of much of
 15 Mr. Rattagan’s complaint.
 16

17 Clearly Uber’s Managing Counsel and Chief Legal Officer, General Counsel, and
 18 Corporate Secretary felt that Uber had a relationship with Mr. Rattagan that required apology
 19 and action on its part. Ms. Yoo did not direct Mr. Rattagan to contact counsel for the Uber
 20 International Entities. She did not advise Mr. Rattagan that Uber had no relationship with him.
 21 Instead, when the launch went awry, Uber was in control and directing the response (or lack
 22 thereof).
 23

24 Moreover, in connection with pre-litigation discussions concerning Mr. Rattagan’s
 25 claims, Uber’s Senior Litigation Counsel “demand[ed] that Mr. Rattagan delete from any
 26 complaint he may file any reference to, or information derived from, communications with Uber
 27

28 ² Brian O’Keefe & Marty Jones, *How Uber Plays the Tax Shell Game*, Fortune, October 22, 2015, <https://fortune.com/2015/10/22/uber-tax-shell/>.

1 personnel (including any of Uber’s in-house lawyers), legal conclusions, and references to
 2 purported unlawful or illegal conduct, all of which violate his duty of loyalty.” *See* Declaration
 3 of Stephen J. Rosenfeld in Support of Plaintiff’s Opposition to Motion for Rule 11 Sanctions
 4 (“Rosenfeld Decl.”), Ex. C.³ Uber specifically called out certain paragraphs of the draft
 5 complaint that referenced communications between Mr. Rattagan and Uber legal personnel (*i.e.*,
 6 Uber Technologies, Inc. personnel) and advised that “[a]ny disclosure of Uber’s confidential and
 7 privileged information constitutes a breach of the duty of loyalty owed to Uber by Mr. Rattagan .
 8 . . .” *Id.* It further stated that it “asserts privilege over all communications and information
 9 provided to Mr. Rattagan and/or his law firm, which were for the purpose of obtaining legal
 10 advice.” *Id.* Uber thus admitted its relationship to Mr. Rattagan before Mr. Rattagan filed this
 11 lawsuit.
 12

13
 14 In addition, Uber has paid for Mr. Rattagan’s criminal defense and time spent responding
 15 to the fallout from the launch, further evidencing Uber’s understanding of its relationship with
 16 Mr. Rattagan. Mr. Hamblet approved the terms of those payments. *See* Rosenfeld Decl., Ex. A
 17 (Am. Compl. ¶ 68.) In fact, in attempting to support Mr. Rattagan in his criminal defense, Mr.
 18 Hamblet provided a signed declaration on Mr. Rattagan’s behalf. *See* Rosenfeld Decl. Ex. B.
 19 Within the declaration, Mr. Hamblet admits that he is Associate General Counsel for Uber, and
 20 that his responsibilities include managing the corporate governance for Uber B.V. *Id.* Mr.
 21 Hamblet further admits that Lisbeth ten Brink was Director Legal-Europe for Uber B.V. at the
 22 time she contacted Mr. Rattagan to set up a subsidiary for Uber in Argentina. *Id.* Thus, Mr.
 23 Hamblet’s own declaration acknowledges that Uber manages corporate governance for the entity
 24 that contacted Mr. Rattagan.
 25
 26

27
 28 ³ Certain portions of the exhibits to the Rosenfeld Declaration irrelevant to the present case or
 protected by attorney-client privilege have been redacted.

1 Mr. Rattagan's allegations concerning his relationship with Uber are therefore
2 demonstrably true.

3 **B. Mr. Rattagan's Claims Are Supported Regardless Of A Contractual**
4 **Attorney-Client Relationship With Uber.**

5 As set forth in Mr. Rattagan's Opposition to Uber's Motion to Dismiss (Dkt. 28), an
6 ostensible agency relationship existed between Mr. Rattagan and Uber (Opp'n to MTD at 9).
7 There can be no serious debate that third parties understood that Uber was expanding into
8 Argentina, not that unknown Uber International Entities were doing so. It defies credulity to
9 suggest otherwise. Thus, where Uber has taken actions to hold Mr. Rattagan out to third parties
10 as its agent, it cannot deny that relationship. *Lee v. Helmco, Inc.*, 199 Cal. App. 2d 820, 834
11 (1962); *see Marcelos v. Dominguez*, No. C 08-00056 WHA, 2008 WL 2788173, at *8 (N.D. Cal.
12 July 18, 2008). Uber owed Mr. Rattagan a fiduciary duty and a duty to disclose because of that
13 ostensible agency relationship. Accordingly, the claims set forth in the Amended Complaint are
14 well supported regardless of the existence of a contractual attorney-client relationship between
15 Uber and Mr. Rattagan.
16

17
18 In light of the foregoing, given that (1) common knowledge and belief supported Mr.
19 Rattagan's understanding that all expansion efforts in Argentina were being directed and
20 controlled by Uber and therefore any agreement with the Uber International Entities was at the
21 direction of Uber, and (2) an ostensible agency relationship existed creating the duties that Uber
22 breached, Mr. Rattagan's allegations are legally and factually supported.

23 **III. THE COURT SHOULD DENY THE MOTION AND AWARD MONETARY**
24 **SANCTIONS TO MR. RATTAGAN**

25 Rule 11's purpose is not to deter zealous advocacy. *See In re Yagman*, 796 F.2d 1165,
26 1182 (9th Cir.1986), *amended by* 803 F.2d 1085. The Rule is reserved for situations where
27 filings are truly not grounded in law or fact or are used to harass. *Hudson*, 836 F.2d at 1159. Rule
28

1 11 should not itself be used as an offensive, retaliatory device. *Roberts v. Peat, Marwick,*
2 *Mitchell & Co.*, 857 F.2d 646, 654 (9th Cir. 1988).

3 “Rule 11 authorizes a court to sanction a party who submits a pleading for an improper
4 purpose.” *Smith v. Psychiatric Sols., Inc.*, 750 F.3d 1253, 1260 (11th Cir. 2014) (citing
5 Fed.R.Civ.P. 11(b)(1)). Upon the filing of a Rule 11 motion, “the court may award to
6 the *prevailing party* the reasonable expenses, including attorney’s fees incurred for the motion.”
7 Fed.R.Civ.P. 11(c)(2) (emphasis added). “[T]he filing of a motion for sanctions is itself subject
8 to the requirements of the rule and can lead to sanctions.” Fed.R.Civ.P. 11(b), (c) advisory
9 committee’s note to 1993 amendment. “Ordinarily, this does not require a cross-motion for
10 sanctions, since a court is authorized to award fees to a party that successfully opposes a Rule 11
11 sanctions motion.” *Smith*, 750 F.3d at 1260. “Thus, when a party files a Rule 11 motion for an
12 improper purpose, the court may award fees to the target of the motion.” *Id.*

13
14
15 As set forth above, in the Amended Complaint (Dkt. 15), and in Mr. Rattagan’s
16 Opposition to Uber’s Motion to Dismiss (Dkt. 28), Mr. Rattagan’s Amended Complaint is
17 grounded in law and fact. Uber’s Motion for Sanctions, however, is plainly filed for an improper
18 purpose and intended to harass and retaliate against Mr. Rattagan in an effort to intimidate him
19 into withdrawing his claims in order to avoid liability for its actions. Uber is fully aware that it
20 directed and controlled the expansion into Argentina, as set forth above. Hiding behind foreign
21 entities which it is directing does not alter that fact, nor does it relieve Uber of responsibility for
22 its own actions.
23

CONCLUSION

For the reasons set forth herein, Mr. Rattagan respectfully requests this Court enter an Order denying Uber's Motion for Rule 11 sanctions and awarding Mr. Rattagan the reasonable fees and expenses incurred in presenting this Opposition to Uber's Motion.

Dated: July 16, 2019

Respectfully submitted,

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Attorney for Defendant
Michael R. Rattagan

CERTIFICATE OF SERVICE

This is to certify that on July 16, 2019, Stephen J. Rosenfeld, an attorney, caused to be served a true and correct copy of the foregoing document via electronic mail on all counsel of record who have consented to electronic service.

/s/ Stephen J. Rosenfeld

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Attorneys for Plaintiff
MICHAEL R. RATTAGAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,

Defendant.

Case No. 3:19-CV-01988-EMC

JUDGE EDWARD M. CHEN

**DECLARATION OF STEPHEN J.
ROSENFELD IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR RULE 11
SANCTIONS**

{8216920: }

Case No. 3:19-CV-01988-EMC

DECLARATION OF STEPHEN J.
ROSENFELD IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR RULE 11
SANCTIONS

ER-327

1 I, Stephen J. Rosenfeld, declare as follows:

2 1. I am counsel of record for Plaintiff Michael R. Rattagan. I am over the age of 18
3 and the facts recited herein are true and accurate based on my personal knowledge. If called as a
4 witness, I am competent to testify on the matters stated herein.
5

6 2. Attached as **Exhibit A** is a true and accurate copy of email communications
7 between Michael Rattagan and Todd Hamblet, Associate General Counsel to Uber, dated
8 December 18, 2017 – December 20, 2017.

9 3. Attached as **Exhibit B** is a true and accurate copy of a declaration executed by
10 Todd Hamblet, Associate General Counsel to Uber, dated January 5, 2018.

11 4. Attached as **Exhibit C** is a true and accurate copy of a letter I received from
12 Morgan Jackson, Sr. Counsel, Litigation to Uber, dated March 20, 2019.
13

14 **PURSUANT TO 28 USC § 1746, I DECLARE UNDER PENALTY OF PERJURY**
15 **THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON THIS 16TH**
16 **DAY OF JULY 2019.**

17
18
19 /s/ Stephen J. Rosenfeld
20 Stephen J. Rosenfeld
21
22
23
24
25
26



De: Todd Hamblet <thamblet@uber.com>

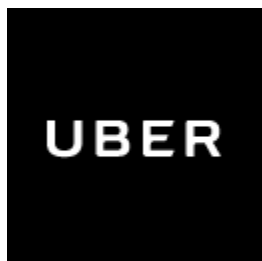
Enviado el: miércoles, 20 de diciembre de 2017 05:12 p.m.

Para: M. R. Rattagan <mrr@rmlex.com>

Asunto: Re: Uber Argentina / Hourly rates

Dear Michael, I missed this email earlier - my apologies. Thank you for the explanation and I agree that this latest work merits the proposed hourly rates. I believe you may need to make adjustments in the Serengeti system and I will alert the team that I have approved this arrangement.

Best,
Todd



Todd A. Hamblet

Associate General Counsel, Global Corporate and M&A

thamblet@uber.com | EA: jakea@uber.com

On Mon, Dec 18, 2017 at 1:45 PM, M. R. Rattagan <mrr@rmlex.com> wrote:

Dear Todd,

Once again, I thank you for having involved Randy in connection with the affidavit and also for you being personally available to help. As I mentioned, I will follow up with him later this week on a few changes or additions to the wording which may help my defense without compromising the company's interests.

Since a few weeks ago I wanted to bring this matter to your attention and get your reaction or feedback, but of course more urgent matters kept coming in and postponing it. It relates to the hourly rates we are applying for work relating or connected to Uber.

Our original fee quote was intended to remunerate quite standard corporate and ancillary work. As it usually happens with what is perceived as "commoditized" work, they were substantially below our general or standard rates.

They were not increased following the urgent and more complex work generated by the Uber launch in Buenos Aires in April 2016 and the simultaneous fronts that resulted, and only a 15% increase to our August 2015 rates was applied starting January 2017 on account of the high inflation in Argentina during 2016 (it reached 34.8% while the peso/US dollar exchange rate remained substantially unaltered).

And while our hourly rates were not adjusted in connection with the work conducted in the contravention claim earlier this year, I feel that the delicate nature, the urgency, and the sophistication of the matters at issue under this aggravated tax evasion claim (based on the City's tax authorities assessment) do justify applying higher hourly rates.

With the above in mind, and effective December, the hourly rates I wanted to propose applying are as follows;

Partner and counsel US\$350

Senior associate US\$300

Semi-senior associate US\$270

Junior associate US\$210

Paralegal US\$150

While I can see that the hours devoted to this aggravated tax evasion claim will hike in December, I expect them to also drop starting January.

I hope you find the above reasonable. I look forward to hearing from you.

Kind regards,

Michael

MR Rattagan
RATTAGAN
MACCHIAVELLO
AROCENA
Abogados
Torre Alem Plaza
[Avenida Leandro N. Alem 855](#), piso 8
C1001AAD Buenos Aires
54-11 4010 5001

Todd Hamblet Declaration

I, Todd Hamblet, at the express request from Miguel Roberto Rattagan, hereby declare:

1. I am employed by Uber Technologies, Inc. as Associate General Counsel. My responsibilities include managing the corporate governance for Uber Technologies, Inc. and its related entities, including Uber B.V., a Dutch entity, with seat in Amsterdam, the Netherlands, Trade Register number 56317441.
2. I have been employed by Uber Technologies, Inc. since August 4, 2014.
3. I am familiar with the work Mr. Rattagan and his firm did for Uber International B.V. and Uber International Holding B.V.
4. On 27 February 2013, Lisbeth ten Brink, at the time Director Legal-Europe, for Uber B.V., contacted Mr. Rattagan about the steps and costs associated with setting up a limited liability company in Argentina.
5. On 22 April 2013, Uber International Holding B.V. and Uber International B.V. decided to register as foreign shareholders with the Office of Corporations in the City of Buenos Aires and later incorporated two limited liability companies (Uber Argentina SRL and Hinter Argentina SRL). Mr. Rattagan was appointed solely and exclusively to act as the legal representative of the two foreign entities. His role specifically excluded any managerial or operative functions or any day-to-day involvement in the Argentine subsidiaries.
6. On 12 April 2016, Uber B.V. officially launched its application in Buenos Aires. Mr. Rattagan and his firm were not involved with the launch of Uber BV's application in Buenos Aires. Mr. Rattagan and his firm did not provide advice on any legal or regulatory matter relating to the launch of Uber's application in Buenos Aires.
7. On 15 April 2016 Mr. Rattagan requested that he be replaced as legal representative of the two foreign shareholders and their legal domicile changed to a different address. Following internal procedures, his replacement was materialized on 24 June 2016.
8. None of the entities who were briefly represented by Mr. Rattagan own or owned the Uber application or directed the management of the business in Buenos Aires or any other place within Argentina.
9. To my knowledge, Uber Argentina SRL "in formation" and Hinter Argentina SRL "in formation" were never registered with the Office of Corporations, never obtained a tax ID number, leased offices, hired employees, offered driver recruiting courses or conducted any kind of activity or operation.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on December [new date], 2017.

A handwritten signature in black ink, appearing to read 'Todd Hamblet', is written over a horizontal line.

Todd Hamblet

The above signatures shall be certified by a notary public

The 1961 The Hague Convention "Apostille" shall be obtained and attached to the original.

A notary public or other officer completing this certificate certifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Francisco

Subscribed and sworn to (or affirmed) before me on this 5th day of January,
2018, by Todd Hamblet
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before
me.



(Seal)

Signature

A handwritten signature in cursive script, appearing to read "S. Goomar", written over a horizontal line.



Stephen J. Rosenfeld
McDonald Hopkins LLC
300 North LaSalle Street, Suite 1400
Chicago, IL 60654

via email <srosenfeld@mcdonaldhopkins.com>

March 20, 2019

Steve,

Thank you for speaking with us about your client Michael Rattagan's claims. As Mr. Rattagan well knows, Uber International Holdings, BV and Uber International, BV (these entities and Uber Technologies, Inc. are referred to herein as "Uber") retained him and his law firm to provide legal advice in connection with the registration of an entity in Argentina. As an attorney, he owes the duty of utmost loyalty, and cannot put his interests before his clients'. See Bar Association of the City of Buenos Aires Ethics Code, §§ 10(h) and 19(h) (noting lawyers may not put their interests before their clients' and must strictly respect professional secrets).

As discussed during our February 20, 2019 call, the Draft Complaint relies on and discloses information and communications protected by the attorney client privilege. Uber asserts privilege over all confidential communications and information provided to Mr. Rattagan and/or his law firm, which were for the purpose of obtaining legal advice.

Any disclosure of Uber's confidential and privileged information constitutes a breach of the duty of loyalty owed to Uber by Mr. Rattagan, his law firm, and those acting in concert with him.

The allegations in Mr. Rattagan's Draft Complaint (Draft Compl. ¶¶ 1-2, 20, 24, 26, 29, 31, 33, 35, 41-47, 51-53, 57-59, 62-68, 73-74, 78-79, 85-86, 93, 95, 97, 101-02), REDACTED

clearly violate this duty. See *People ex rel. Dep't of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1146-47 (1999) ("attorney's obligation of loyalty" is "distinct fundamental value of

Uber Technologies, Inc.
1455 Market Street
San Francisco, CA 94103
uber.com



our legal system”; “The courts will protect clients' legitimate expectations of loyalty to preserve this essential basis for trust and security in the attorney-client relationship.”); *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011) (after severing relationship with client, “[The attorney] may not do anything which will injuriously affect [the] former client in any matter in which [the attorney] formerly represented [the client] nor may [the attorney] at any time use against [the] former client knowledge or information acquired by virtue of the previous relationship.”); *Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1174 (2011) (“[T]he duties of loyalty and confidentiality bar an attorney not only from using a former client's confidences in representing another client, but also from taking a former client's confidences significantly into account in acting in the attorney's own interest even if there is no second client and no confidences are disclosed.”); *Solin v. O'Melveny & Myers, LLP*, 89 Cal. App. 4th 451, 458 (2001) (an attorney plaintiff may not prosecute a lawsuit if in doing so client confidences would be disclosed).

We hereby demand that Mr. Rattagan delete from any complaint he may file any reference to, or information derived from, communications with Uber personnel (including any of Uber's in-house lawyers), legal conclusions, and references to purported unlawful or illegal conduct, all of which violate his duty of loyalty. Uber reserves its right to pursue any and all available remedies, including but not limited to disqualification, in any appropriate forum against Mr. Rattagan or any lawyers that assist Mr. Rattagan in filing a complaint that improperly discloses and/or relies on privileged and confidential information. See *Rico v. Mitsubishi Motors Corp.*, 42 Cal. 4th 807 (2007); *Clark v. Superior Court*, 196 Cal. App. 4th 37 (2011).

Regards,

/s/ Morgan Jackson

Morgan Jackson
Sr. Counsel, Litigation
Uber Technologies, Inc.

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14 *Attorneys for Defendant*
Uber Technologies, Inc.

15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**
18

19 MICHAEL R. RATTAGAN,

20 Plaintiff,

21 v.

22 UBER TECHNOLOGIES, INC.,

23 Defendant.
24
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Civil Case No.: 3:19-CV-01988-EMC

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR RULE 11
SANCTIONS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: August 8, 2019
Time: 1:30 PM
Location: Courtroom 5 - 17th Floor
Judge: Hon. Edward M. Chen

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Rules

Fed. R. Civ. P. 11	<i>passim</i>
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Other Authorities

Mario Eduardo Castro Sammartino, 1 Digest of Commercial Laws of the World § 1:78 (June 2019).....	5
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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on Thursday, August 8, 2019, at 1:30 p.m., or as soon thereafter as counsel may be heard before the Honorable Edward M. Chen in Courtroom 5 of the United States District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, Defendant Uber Technologies, Inc. (“Uber Technologies”) will, and hereby does, move for this Court to impose sanctions on Plaintiff and his counsel under Federal Rule of Civil Procedure 11 and the Court’s inherent power. The Amended Complaint is premised on factual contentions that Plaintiff Michael Rattagan and his counsel know to be untrue. *See* Fed. R. Civ. P. 11(b)(3). Uber Technologies therefore seeks an order from the Court (1) dismissing the Amended Complaint; and (2) awarding to Uber Technologies the reasonable fees and expenses it incurred in presenting this Motion and the previously filed Motion to Dismiss. *See* Fed. R. Civ. P. 11(c)(1), (2), (4); *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1184 (2017).

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the accompanying declaration and exhibits thereto, the documents on file with the Court, and such further evidence and argument as the Court may permit.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On April 12, 2019, *one day* after Uber Technologies filed for its initial public offering, Plaintiff Michael Rattagan, “a citizen of Argentina,” sued Uber Technologies, Uber International BV, and Uber International Holding BV for an unspecified amount of damages. Dkt. 1 (“Compl.”) ¶¶ 4-5 & p.21. According to Mr. Rattagan, he had once been hired to be the Argentine “legal representative” of “certain Uber subsidiaries,” *i.e.*, Uber International BV and Uber International Holding BV (collectively, the “Uber International Entities”). *Id.* ¶ 1. According to Mr. Rattagan, he has suffered damages because “in April 2016—without consulting or even notifying Mr. Rattagan—Uber launched its service in Buenos Aires with the help of different advisors, who[m] Argentine authorities publicly claim either ignored or disregarded the particularities of Argentine law, policies and business practice.” *Id.* ¶ 2.

Four of Mr. Rattagan’s five claims pled in the Complaint purported to derive from fiduciary duties and obligations allegedly arising from contractual relationships with the Uber International

Entities, which were the only “shareholders” for whom Mr. Rattagan was the “legal representative.” This Court, however, had no subject matter jurisdiction over the asserted claims by Mr. Rattagan, a citizen of Argentina, against those entities, because the Uber International Entities are foreign companies—in the words of the Complaint, they were “formed under the laws of the Netherlands with [their] principal place of business in Amsterdam.” *Id.* ¶ 5. Diversity jurisdiction does not encompass a foreign plaintiff, such as Mr. Rattagan, suing foreign defendants, such as the Uber International Entities. *See Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 991 (9th Cir. 1994). This is so regardless of whether additional U.S. defendants, such as Uber Technologies, are joined. *Id.*

On May 3, 2019, the three Uber entities notified Mr. Rattagan and his counsel of the fatal jurisdictional defect in his claims and requested that Mr. Rattagan dismiss the Complaint. Rather than dismissing the Complaint as Mr. Rattagan should have done, he filed an Amended Complaint on May 8, 2019 that removed the Uber International Entities but did not add any factual allegations tying the alleged basis for his claims to Uber Technologies, the only remaining defendant. The only amendments Mr. Rattagan made to his original Complaint were to (1) redefine the term “Uber” from “Uber Technologies, Uber International BV, and Uber International Holdings BV,” to refer only to “Uber Technologies,” and (2) delete his allegation that Uber Technologies “directed and authorized” the “operational decisions” of the Uber International Entities. *See* Declaration of Clara J. Shin in Support of Defendant’s Motion for Rule 11 Sanctions (“Shin Decl.”) Ex. A.¹

The effect of this change is that Mr. Rattagan’s Amended Complaint now imputes *all* of the allegations previously lodged against the Uber International Entities to Uber Technologies—an entity with which Mr. Rattagan did not have the alleged contractual relationships that form the basis of Mr. Rattagan’s claims. The result is that Mr. Rattagan is now advancing factual allegations that are demonstrably untrue. For example, the Amended Complaint alleges that “Uber [Technologies] and Mr. Rattagan agreed that Mr. Rattagan would act as the Shareholders’ legal representative in Argentina,” Dkt. 15 (“Am. Compl.”) ¶ 15; that “Uber [Technologies] retained Mr. Rattagan . . . to

¹ Certain portions of the exhibits to the Shin Declaration irrelevant to the instant dispute have been redacted.

1 establish its initial corporate presence in Argentina,” *id.* ¶ 2; and that “Uber [Technologies] enlisted
 2 Mr. Rattagan to assist in the creation of an Argentine subsidiary,” *id.* ¶ 13. Yet Mr. Rattagan knows that
 3 there are no such agreements between him and Uber Technologies, and that these agreements exist only
 4 between him and the Uber International Entities.

5 Mr. Rattagan and his counsel should not be permitted to manufacture factual allegations, or sign
 6 a pleading that lacks evidentiary support, to invoke this Court’s jurisdiction. *See* Fed. R. Civ. P.
 7 11(b)(3). The demonstrably untrue allegations in the Amended Complaint are a byproduct of
 8 Mr. Rattagan’s improper attempt to secure a federal forum for a dispute that is actually between an
 9 Argentine citizen (Mr. Rattagan) and two Dutch companies (Uber International BV and Uber
 10 International Holding BV), exactly the type of dispute between foreign citizens that does not belong in
 11 federal court. On May 14, 2019, Uber Technologies gave written notice that Mr. Rattagan should never
 12 have filed the Amended Complaint and that counsel’s certification of Mr. Rattagan’s false allegations
 13 violates Rule 11. Mr. Rattagan did not provide a substantive response to this May 14, 2019 written
 14 notice, so Uber Technologies served a copy of this Motion on June 7, 2019. Mr. Rattagan failed to
 15 correct or dismiss the Amended Complaint within 21 days of service.

16 Uber Technologies brings this Motion and respectfully requests an order from this Court
 17 (1) dismissing the Amended Complaint; and (2) awarding Uber Technologies the reasonable fees and
 18 expenses incurred in presenting this Motion and its Rule 12(b)(6) Motion to Dismiss, Dkt. 23.

19 ARGUMENT

20 I. LEGAL STANDARD

21 “Filing a complaint in federal court is no trifling undertaking. An attorney’s signature on a
 22 complaint is tantamount to a warranty that the complaint is well grounded in fact and existing law”
 23 *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002) (internal quotation marks omitted).
 24 Specifically, Rule 11 requires an attorney who has “present[ed] to the court a pleading, written motion,
 25 or other paper—whether by signing, filing, submitting, or later advocating it” to certify “to the best of
 26 the person’s knowledge, information, and belief, formed after an inquiry reasonable under the
 27 circumstances” that the claims are warranted by existing law and that “the factual contentions have
 28

evidentiary support.” Fed. R. Civ. P. 11(b)(3). Reasonableness under Rule 11 is judged by an objective standard. *See Conn v. Borjorquez*, 967 F.2d 1418, 1421 (9th Cir. 1992).

A court “may impose an appropriate sanction on any attorney, law firm, or party” that violates Rule 11(b). *See* Fed. R. Civ. P. 11(c)(1). Sanctions may be imposed in the form of nonmonetary directives, penalties, or payment to the movant of the reasonable attorney’s fees and other expenses directly resulting from the violation. *See* Fed. R. Civ. P. 11(c)(4). Nonmonetary sanctions may include, where appropriate, the striking of allegations that are devoid of evidentiary support. *See, e.g., Song FI, Inc. v. Google, Inc.*, No. C 14-5080 CW, 2016 WL 4180214, at *2-5 (N.D. Cal. Aug. 8, 2016) (striking allegations lacking evidentiary support); *see also* Fed. R. Civ. P. 11 advisory committee notes to 1993 amendment (listing “striking the offending paper” as a possible nonmonetary sanction under Rule 11). In determining whether monetary sanctions are warranted, courts can consider a wide range of factors, including “[w]hether the improper conduct was willful, or negligent”; “whether it infected the entire pleading, or only one particular count or defense”; “what effect it had on the litigation process in time or expense”; “whether the responsible person is trained in the law”; and “what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case.” Fed. R. Civ. P. 11 advisory committee notes to 1993 amendment.

II. MR. RATTAGAN’S AMENDED COMPLAINT VIOLATES RULE 11.

A. Mr. Rattagan’s Factual Allegations Are Demonstrably Untrue.

Mr. Rattagan’s claims in the Amended Complaint rest on at least two allegations that Mr. Rattagan knows to be untrue: (1) that Uber Technologies “and Mr. Rattagan agreed that Mr. Rattagan would” serve as the “legal representative” for a new Argentine entity, Uber Argentina SRL, Am. Compl. ¶ 15; and (2) the existence of an attorney-client relationship between Mr. Rattagan and Uber Technologies, *see id.* ¶¶ 78, 80, 85, 87, 100. The documentary evidence establishes that each of these allegations is false. Fed. R. Civ. P. 11(b)(3).

1. Mr. Rattagan served as the “legal representative” for the Uber International Entities, not Uber Technologies.

Under Argentine law, each foreign shareholder of an Argentine corporate entity must name a local resident to act as its “legal representative” and supply a local address. *See generally* Mario

1 Eduardo Castro Sammartino, 1 Digest of Commercial Laws of the World § 1:78 (June 2019). Mr.
 2 Rattagan is not and never was a legal representative for Uber Technologies, and Uber Technologies is
 3 not and never was a foreign shareholder of an Argentine entity. Rather, the Uber International Entities
 4 contacted, retained, and entered into agreements with Mr. Rattagan to form Uber Argentina.

5 The Amended Complaint is premised on Mr. Rattagan’s untrue allegations that Uber
 6 Technologies took the actions and entered into the agreements that Mr. Rattagan knows are attributable
 7 to the Uber International Entities:

- 8 • “Uber [Technologies] and Mr. Rattagan agreed that Mr. Rattagan would” serve as the “legal
 9 representative” in Argentina, Am. Compl. ¶ 15;
- 10 • “Uber [Technologies] retained Mr. Rattagan . . . to establish its initial corporate presence in
 11 Argentina,” *id.* ¶ 2;
- 12 • “Uber [Technologies] enlisted Mr. Rattagan to assist in the creation of an Argentine
 13 Subsidiary,” *id.* ¶ 13;
- 14 • Mr. Rattagan registered the Uber International Entities as shareholders “on Uber
 15 [Technologies’] behalf,” *id.* ¶ 14;
- 16 • “Uber [Technologies] . . . appointed Mr. Rattagan as the legal representative . . . in
 17 Argentina,” *id.* ¶¶ 80, 87.

18 As Mr. Rattagan and his counsel know, each of these allegations is demonstrably untrue: any
 19 relationship relevant to Mr. Rattagan’s work in Argentina existed between Mr. Rattagan and the Uber
 20 International Entities, *not* Uber Technologies.

21 For example, the Amended Complaint alleges that “[i]n February of 2013, Liesbeth ten Brink—a
 22 former classmate from New York University School of Law who worked for Uber [Technologies]—
 23 contacted Mr. Rattagan.” *Id.* ¶ 12. But Mr. Rattagan knew Ms. ten Brink to be a resident of the
 24 Netherlands and the Legal Director for Europe at *Uber International*, and that Ms. ten Brink contacted
 25 him about forming an Argentina entity, Uber Argentina SRL, the two shareholders of which were to be
 26 the Uber International Entities. *See* Shin Decl. Ex. B at 1; Am. Compl. ¶ 4. Mr. Rattagan addressed
 27 legal memoranda to “Liesbeth ten Brink, *Uber International B.V.*,” Shin Decl. Ex. C at 3 (emphasis
 28 added), and he responded to Ms. ten Brink’s overture by stating that he was “delighted” to advise on

1 “*Uber International’s* South American expansion,” Shin Decl. Ex. B at 1-2 (emphasis added).

2 Mr. Rattagan erased any doubt about the Uber entity with which he had a relationship when, on April
3 15, 2016, he provided this written clarification: “For the record, we were not hired by Ryan Black [an
4 employee of Uber Technologies] but by Liesbeth ten Brink, Director Legal—Europe, Uber International
5 B.V. (February 2013).” Shin Decl. Ex. D at 1.

6 Additional documentation definitively establishes that no relevant legal relationship exists
7 between Uber Technologies and Mr. Rattagan. On May 16, 2013, Mr. Rattagan registered with the
8 Argentine government as the legal representative of Uber International Holding. Shin Decl. Ex. E.
9 And Mr. Rattagan submitted bills addressed to Uber International Holding—not Uber Technologies—
10 for his services as the legal representative. *See* Shin Decl. Ex. F.

11 Mr. Rattagan never served as the “legal representative” for Uber Technologies, and he knows
12 that each contrary allegation in the Amended Complaint is untrue.

13 **2. Any attorney-client relationship existed between Mr. Rattagan and the**
14 **Uber International Entities.**

15 Mr. Rattagan’s allegation in the Amended Complaint that Uber Technologies had an
16 “attorney/client and contractual relationship with Mr. Rattagan” is similarly untrue. Am. Compl. ¶¶ 80,
17 87; *see also id.* ¶¶ 78, 85, 100. First, no attorney engagement exists between Mr. Rattagan or his law
18 firm and Uber Technologies. To support his claim of an attorney-client relationship, Mr. Rattagan
19 points only to correspondence between himself and Ms. ten Brink of *Uber International*. That
20 correspondence confirms that Mr. Rattagan’s relationship was with the Uber International Entities.
21 Second, Mr. Rattagan addressed his invoices for legal services to Uber International Holding, not Uber
22 Technologies. *See* Shin Decl. Ex. F.

23 There is no evidence to support Mr. Rattagan’s allegations that an attorney-client relationship
24 existed between him or his law firm and Uber Technologies.

25 **B. The Unsupported Allegations Render Mr. Rattagan’s Claims Untenable.**

26 Mr. Rattagan’s demonstrably untrue allegations do not go to peripheral matters—they form the
27 basis of his case. Four of Mr. Rattagan’s five causes of action depend on the existence of a fiduciary or
28 other relationship of trust between Mr. Rattagan and the defendant. As a result, Mr. Rattagan’s incorrect

allegations regarding the entity with which he had the relevant relationship are necessary to his claims. Count 1 (Breach of Fiduciary Duty) is premised entirely on the purported fiduciary duty Uber Technologies allegedly assumed “[b]y asking Mr. Rattagan to serve as the legal representative of the Shareholders.” *See* Am. Compl. ¶ 73. But Mr. Rattagan knows that it was the Uber International Entities, not Uber Technologies, that asked him to serve as a legal representative. *Supra* at 4-6.

Count 2 (Deceit) and Count 3 (Fraud) are not based on any allegation of affirmative misrepresentations. Instead, Mr. Rattagan alleges that “Uber” failed to disclose certain facts. But there is no generalized duty in the law for one person to disclose information to another. Instead, such a duty can only exist if the parties are in a particular sort of legal relationship. *See LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336-37 (1997) (listing types of relationships that give rise to a duty to disclose); *see also Platt Elec. Supply, Inc. v. EOFF Elec., Inc.*, 522 F.3d 1049, 1159 n.3 (9th Cir. 2008) (citing *LiMandri* for proposition that there is no duty to disclose in the absence of a transactional relationship between the parties). Accordingly, the viability of Mr. Rattagan’s fraud and deceit claims depend on the existence of an “attorney/client and contractual relationship with Mr. Rattagan,” or the “appoint[ment] [of] Mr. Rattagan as . . . legal representative.” *See* Am. Compl. ¶¶ 80, 87. Assuming for the moment that these alleged relationships could give rise to an affirmative duty to disclose as a general matter, no such relationship ever existed between Mr. Rattagan and Uber Technologies. *Supra* at 4-6.

Count 5 (Negligence) similarly claims a purported duty of care based on an alleged “attorney/client and contractual relationship,” and Mr. Rattagan’s appointment as legal representative. *See* Am. Compl. ¶ 100. Again, even if those relationships could give rise to a duty of care, there are no such relationships between Mr. Rattagan and Uber Technologies.

III. UBER TECHNOLOGIES HAS SATISFIED THE PROCEDURAL REQUIREMENTS OF RULE 11.

Pursuant to Rule 11’s “safe harbor provision,” the party seeking sanctions must serve the sanctions motion on the opposing party at least 21 days before filing the motion, and sanctions may only be sought if the challenged pleading is not withdrawn or corrected within that time period. *See Gottschalk v. City & Cty. of San Francisco*, 964 F. Supp. 2d 1147, 1168 (N.D. Cal. 2013). Uber Technologies has satisfied those requirements.

Uber Technologies notified Mr. Rattagan of his Rule 11 violations on May 3, 2019 and again on May 14, 2019, and then served this Motion on June 7, 2019. Shin Decl. ¶ 8. When Mr. Rattagan's counsel failed to take corrective action within 21 days of that service, Uber Technologies was forced to file this Motion. Fed. R. Civ. P. 11(c)(2).

IV. THE COURT SHOULD DISMISS THE AMENDED COMPLAINT AND AWARD MONETARY SANCTIONS.

Uber Technologies seeks an order from this Court (1) dismissing the Amended Complaint, and (2) awarding Uber Technologies the reasonable fees and expenses incurred in presenting this Motion and its accompanying Motion to Dismiss. *See* Fed. R. Civ. P. 11(c)(1), (2), (4); *Goodyear Tire & Rubber*, 137 S. Ct. at 1184.

The factors listed in the Advisory Committee Notes to Rule 11 weigh in favor of imposing sanctions here. Mr. Rattagan's counsel are experienced practitioners, and Mr. Rattagan himself claims to be an experienced attorney. Mr. Rattagan's counsel signed the Amended Complaint knowing that it contained untrue allegations, given that Uber Technologies informed them of the factual inaccuracies in written correspondence. *See H.P.D. Consolidation, Inc. v. Pina*, No. 15-cv-05309-EMC, 2017 WL 1046960, at *3-4 (N.D. Cal. Mar. 20, 2017) (Chen, J.) (imposing sanctions on plaintiff who filed an amended complaint after being put on notice by the defendant that the initial complaint lacked evidentiary support); *Brown v. Royal Power Mgmt., Inc.*, No. C-11-4822-EMC, 2012 WL 298315, at *3 (N.D. Cal. Feb. 1, 2012) (Chen, J.) (imposing sanctions on plaintiff's counsel when "counsel continued to make . . . factual assertions even when confronted with evidence presented by Defendants that their assertions were wrong").

In addition, Mr. Rattagan's violation of Rule 11 was motivated by an apparent effort to remain in federal court. Mr. Rattagan's allegations were originally lodged against the Uber International Entities, and the decision to drop these foreign entities without changing the substance of the allegations is an effort to secure a federal forum by making knowingly incorrect allegations. That is improper forum shopping and a manipulation of this Court's jurisdiction that should not be countenanced. *See Carter v. Deutsche Bank Nat'l Tr. Co.*, No. 16-4163, 2017 WL 4740570, at *4 (6th Cir. Aug. 30, 2017) (affirming dismissal of action when plaintiff's "own actions—refiling his state-law claims but omitting Chase as a

1 named defendant to create diversity jurisdiction—indicate forum shopping”); *Zee Med. Distrib. Ass’n ,*
 2 *Inc. v. Zee Medical, Inc.*, 23 F. Supp. 2d 1151, 1158-59 (N.D. Cal. 1998) (explaining that dropping
 3 nondiverse parties to keep “ordinary business litigation” in federal court violated the “well settled
 4 principle behind” 28 U.S.C. § 1359, which seeks to prevent “parties from manufacturing diversity
 5 jurisdiction to inappropriately channel ordinary business litigation into the federal courts”) (quoting
 6 *Yokeno v. Mafnas*, 973 F.2d 803, 809 (9th Cir. 1992)).

7 Finally, the untrue factual allegations “infect[] the entire pleading,” Rule 11 advisory committee
 8 notes to 1993 amendment, given that the viability of Mr. Rattagan’s claims *depend* on the existence of
 9 the alleged contractual and other legal fiduciary relationships. *Supra* at 6-7. As a result, dismissal is
 10 warranted and no lesser sanction can remedy the wrong.

11 Fees are also warranted. Mr. Rattagan’s refusal to withdraw the Amended Complaint, in the face
 12 of undisputed evidence that it is based on untrue allegations of fact, unnecessarily protracted this
 13 litigation and required Uber Technologies and this Court to expend the time and resources necessary to
 14 address this Motion and the accompanying Rule 12(b)(6) Motion to Dismiss. Uber Technologies will
 15 submit a calculation of fees at the time it files its reply brief in support of this Motion.

16 CONCLUSION

17 For the foregoing reasons, Uber Technologies respectfully requests that the Court dismiss the
 18 Amended Complaint and award costs and fees.

1 Dated: July 2, 2019

Respectfully submitted,

2
3 /s/ Clara J. Shin

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15

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 MICHAEL R. RATTAGAN,
20

21 Plaintiff,

22 v.

23 UBER TECHNOLOGIES, INC.,
24

25 Defendant.
26
27
28

Civil Case No.: 3:19-cv-01988-EMC

**DECLARATION OF CLARA J. SHIN IN
SUPPORT OF DEFENDANT'S MOTION
FOR RULE 11 SANCTIONS**

Date: August 8, 2019
Time: 1:30 PM
Location: Courtroom 5 - 17th Floor
Judge: Hon. Edward M. Chen

1 I, Clara J. Shin, declare as follows:

2 1. I am a partner at the law firm of Covington & Burling LLP, counsel of record for
3 Defendant Uber Technologies, Inc. I am licensed to practice law in the State of California and have
4 been admitted to the United States District Court for the Northern District of California. The matters set
5 forth herein are true and correct of my own personal knowledge, and, if called as a witness, I could and
6 would testify competently thereto.

7 2. Attached as **Exhibit A** is a true and correct copy of a redlined document comparing
8 Plaintiff Michael Rattagan's Complaint, filed April 12, 2019, and his Amended Complaint, filed May 8,
9 2019.

10 3. Attached as **Exhibit B** is a true and correct copy of an email from Michael Rattagan to
11 Liesbeth ten Brink, Legal Director for Europe at Uber International, dated March 5, 2013.
12 Mr. Rattagan's counsel, Stephen Rosenfeld, provided this document in pre-litigation correspondence
13 with Uber Technologies' legal department.

14 4. Attached as **Exhibit C** is a true and correct copy of a legal memorandum from Michael
15 Rattagan's law firm to Liesbeth ten Brink, Legal Director for Europe at Uber International, dated March
16 5, 2013. Mr. Rattagan's counsel, Stephen Rosenfeld, provided this document in pre-litigation
17 correspondence with Uber Technologies' legal department.

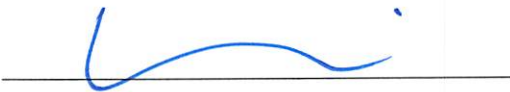
18 5. Attached as **Exhibit D** is a true and correct copy of email communications between
19 Michael Rattagan; Leonardo Orlanski, outside counsel to Uber BV; and Uber employees Ryan Black
20 and Enrique Gonzalez, dated March 29, 2016 – April 15, 2016.

21 6. Attached as **Exhibit E** is a true and correct copy of a document certifying Michael
22 Rattagan's registration as the legal representative of Uber International Holding with the Argentine
23 government, and a certified translation of the document.

24 7. Attached as **Exhibit F** are true and correct copies of a representative set of monthly
25 invoices from the law firm of Rattagan Macchiavello Arocena & Pena Robirosa Abogados SC to Uber
26 International Holding BV.

1 8. On May 3, 2019, and again on May 14, 2019, I corresponded with counsel for Plaintiff
2 Michael Rattagan and notified them that the Complaint and Amended Complaint were in violation of
3 Rule 11. On June 7, 2019, I served a copy of Uber Technologies' Motion for Rule 11 Sanctions, and the
4 exhibits attached hereto, on counsel for Plaintiff.

5
6 I declare under the penalty of perjury under the laws of the United States that the foregoing is
7 true and correct. This declaration is executed this 2nd day of July, 2019, in San Francisco, California.

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11 Clara J. Shin
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EXHIBIT A

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Attorneys for Plaintiff
MICHAEL R. RATTAGAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,
Plaintiff,

v.

UBER TECHNOLOGIES, INC.; ~~UBER-
INTERNATIONAL, BV; and UBER-
INTERNATIONAL HOLDINGS, BV,~~

~~Defendants.~~ Def
endant.

Case No. 3:19-cv-01988-EMC

AMENDED COMPLAINT FOR:

- (1) BREACH OF FIDUCIARY DUTY;
- (2) DECEIT;
- (3) FRAUD;
- (4) INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;
- (5) NEGLIGENCE

DEMAND FOR JURY TRIAL

Plaintiff Michael R. Rattagan (“Mr. Rattagan”), by and through his undersigned attorneys, as and for his Amended Complaint against ~~defendants~~defendant Uber Technologies, Inc., ~~Uber International, BV, and Uber International Holdings, BV (collectively~~ “Uber”), states as follows:

PRELIMINARY STATEMENT

1. This lawsuit arises out of Uber’s recklessly orchestrated entry into the Argentine ride-sharing market and the unimaginable harm it inflicted on Mr. Rattagan, a highly respected business attorney in Buenos Aires and the former legal representative of certain Uber subsidiaries in the country. As has been a pattern in Uber’s entry into new markets, Uber took the approach that it is better to ask for forgiveness than for permission. Its launches are typically tumultuous with the hope that Uber can later make it all right. However, Uber could not do so in Buenos Aires. Uber’s launch in Buenos Aires was disastrous and continues to be so for Mr. Rattagan. Because of Uber’s callous attitude, Mr. Rattagan has endured and continues to endure years of criminal prosecution (facing many years in prison and the loss of his law license), has suffered through Argentine authorities raiding his offices, has had his civil liberties severely curtailed, and has sustained a staggering blow to his reputation both professionally and personally because of this widely publicized ordeal.

2. In early 2013, years before its catastrophic launch, Uber retained Mr. Rattagan simply and solely to establish its initial corporate presence in Argentina. Uber named Mr. Rattagan as its official legal representative in the country, two of his trusted colleagues as interim managers, and the offices of his law firm – in which he is a founding and name partner (the “Law Firm”) – as Uber’s legal domicile in Buenos Aires. Several years then passed without any meaningful activity, and the relationship between Mr. Rattagan and Uber went dormant. Then, in April 2016 – without consulting or even notifying Mr. Rattagan – Uber launched its service in Buenos Aires with the help of different advisors, who Argentine authorities publicly claim either ignored or disregarded the particularities of Argentine law, politics and business practice. Public reaction to Uber’s ill-advised launch was immediate, negative and entirely foreseeable. Under intense pressure to act, authorities targeted the only public face of Uber in Argentina: Mr. Rattagan, his colleagues, and his Law Firm. Police raided their office and homes, and they were

vilified in the media, subjected to scorn and ridicule in social and professional gatherings, and ultimately charged with serious crimes – including aggravated tax evasion (carrying a prison term from three and a half to nine years) – all due to Uber’s actions. As a result, Mr. Rattagan’s competency and ethics have been wrongfully called into question in the most public of forums.

3. Although Uber has publicly and privately acknowledged its mistakes, and is paying for Mr. Rattagan’s criminal legal defense, that limited indemnification does not, and cannot, compensate Mr. Rattagan for the severe emotional, consequential, and reputational harm he has suffered and continues to suffer. This lawsuit seeks compensation for those substantial damages and also punitive damages for Uber’s intentional and malicious conduct.

THE PARTIES

4. Mr. Rattagan is a citizen of Argentina. He is a founding partner of a highly respected business law firm, based in Buenos Aires, Argentina, that serves multinational clients from the United States, Latin America, Europe, and Asia. He is an experienced business lawyer, and, before Uber’s launch in Buenos Aires, was one of the most respected advisors in the City.

5. Uber Technologies, Inc. (“~~UTI~~Uber”) is a Delaware corporation with its principal place of business in San Francisco, California. ~~Uber International, BV (“UIBV”) is a company formed under the laws of the Netherlands with its principal place of business in Amsterdam. Uber International Holdings, BV (“UIHBV”) is a company formed under the laws of the Netherlands with its principal place of business in Amsterdam. On information and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.~~

VENUE AND JURISDICTION

6. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332 because: (a) Mr. Rattagan is a citizen of a different state and/or country than Uber; and (b) the amount in controversy exceeds \$75,000, exclusive of costs and interest.

7. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because Uber is subject to personal jurisdiction in this District, and because a substantial part of the actions or inactions giving rise to Mr. Rattagan’s claims occurred in this District.

8. Upon information and belief, Uber plans, oversees, conducts, and operates all of its international activities from and through its headquarters in San Francisco, California.

ALLEGATIONS

A. Mr. Rattagan's Background

9. As a lawyer licensed in Argentina and in the State of New York, Mr. Rattagan maintains an active practice counseling large multinational companies in various business matters, with an emphasis on transactions, investments, and interests in Argentina. After spending 17 years practicing in law firms with an international reach, he co-founded the Law Firm in 2005, where he co-heads its Mergers & Acquisitions and Natural Resources & Energy Groups, and is one of its primary sources of business development and origination. In addition to his Argentine law degree, Mr. Rattagan has an LLM from New York University School of Law and speaks Spanish, English, French, Portuguese, and Japanese.

10. For nearly 30 years in practice, Mr. Rattagan has carefully built and maintained an impeccable reputation for honesty and integrity and for advising his clients to adhere to the same in the conduct of their own businesses. This unyielding approach to compliance with the law placed Mr. Rattagan in a unique and prominent class of legal professionals in Argentina.

11. Mr. Rattagan's sterling reputation as a skilled lawyer and honest broker made him ideal counsel for multinational companies looking to do business in Argentina. As one of the top and most renowned business lawyers in Buenos Aires, much of his practice came from international referrals. As the main business generator of his firm for more than 13 consecutive years, an essential part of Mr. Rattagan's role was to travel extensively abroad to develop professional relations and create awareness of the investment climate and opportunities in Argentina while promoting the Law Firm and its abilities.

B. Mr. Rattagan's Limited, Pre-Launch Engagement by Uber

12. In February of 2013, Liesbeth ten Brink – a former classmate from New York University School of Law who worked for Uber – contacted Mr. Rattagan. She explained that Uber tasked her with organizing its expansion into a number of Latin American countries, including Argentina.

13. In support of its anticipated expansion efforts, Uber enlisted Mr. Rattagan to assist in the creation of an Argentine subsidiary (the “Subsidiary”) for Uber’s future operations in Buenos Aires.

14. The first step was to register two Uber entities as foreign shareholders (“Shareholders”) of the Subsidiary, which Mr. Rattagan did on Uber’s behalf.

15. In connection with that process, Uber and Mr. Rattagan agreed that Mr. Rattagan would act as the Shareholders’ legal representative in Argentina. Under Argentine law, every foreign shareholder is required to have a local resident acting as its legal representative. The role of the legal representative is to register a shareholder locally, incorporate a subsidiary on its behalf, attend shareholder meetings upon written instructions, and act as the face of the shareholder at any legal proceedings, such as trial. The role of the legal representative is not to make decisions for the shareholders or to ensure that the shareholders or their affiliates, if any, comply with Argentine law (practically speaking, the legal representative has little to no ability to do so).

16. Mr. Rattagan also permitted the Subsidiary to use his Law Firm’s office as its pre-launch legal domicile until Uber could set up its own offices. Mr. Rattagan further introduced Uber to two individuals of his trust – both known to the Law Firm – to act as interim manager and interim alternate manager of the Subsidiary.

17. Pursuant to the agreed arrangement, in August 2013, the Law Firm registered the Shareholders of the Subsidiary with the Buenos Aires Office of Corporations.

C. Uber’s Prominence Grows Worldwide

18. Following the above registration, the Law Firm’s file on Uber went dormant. In fact, during the latter half of 2013, all of 2014, and most of 2015, neither Mr. Rattagan nor the Law Firm was asked to (or did) provide any counsel or services related to Uber’s future Argentine expansion. The Law Firm’s Uber file was, for all intents and purposes, dead.

19. But while the file was dormant, Uber was active and growing around the world, and – unbeknownst to Mr. Rattagan and the Law Firm – secretly planning to launch in Argentina.

20. Although Uber boasts about its innovation, its launches in new jurisdictions have been characterized by a less-admirable pattern: initial, immediate, and often severe tension and conflict with local officials and unions, caused by its alleged disregard of local laws and customs (thus creating havoc and exposing people who are dragged into the quagmire), followed by negotiations that ultimately lead to a truce and legally compliant operations.

21. Mr. Rattagan learned too late and at great personal expense that Uber's rapid growth followed this pattern throughout the United States and around the world. Prior to the launch, he and his colleagues awaited further contact and instructions concerning Uber's apparent stalled expansion into the City. That instruction would never come. So while Mr. Rattagan had no opportunity to advise Uber about how to conduct a launch in Argentina that would be prudent and peaceful, he and his offices were "conveniently used" (or abused) as a "front" for activities that Uber knew from its past experience would be chaotic at best.

D. Uber's Launch In Argentina

22. In March 2016, Mr. Rattagan attended an International Bar Association conference in Rio de Janeiro, Brazil. While there, he observed a panel discussion focusing on the challenge new technology companies face when confronted with traditional regulations.

23. Among the speakers was one Enrique Gonzalez ("Gonzalez"), an attorney from Mexico who at the time was Uber's Latin America Legal Director (after the events that are the basis of this complaint, in which he had a decisive and leading role, he was not censored but rather promoted to Associate General Counsel, Latin America). During his talk, Gonzalez indicated that the day before he had met with all of Uber's legal advisors in the region. Mr. Rattagan had had no prior communications with Gonzalez, and in fact he had no knowledge of Gonzalez's existence prior to the Rio de Janeiro conference.

24. Puzzled and concerned, Mr. Rattagan emailed Gonzalez shortly after the conference to explain that there must be some mistake because, in Mr. Rattagan's mind, only members of the Law Firm had been acting for Uber in Argentina (even in a very limited way). Mr. Rattagan proposed to meet or speak with Gonzalez and offered the Law Firm's expertise to help Uber navigate the issues surrounding the launch. Uber never took Rattagan up on his offer.

25. On April 12, 2016, Mr. Rattagan received a spam email announcing that Uber had officially launched its operations in the City.

26. Mr. Rattagan was shocked to learn this crucial development in such an impersonal manner. As the Argentine legal representative of two Uber entities in the process of setting up the Subsidiary through which Uber was to operate, he had received no communication that Uber had begun preparing to launch in the country, let alone that it was in fact launching without what the City would immediately claim publicly was a lack of a basic legal infrastructure, including the lack of a registration for tax identification numbers with the City.

27. On information and belief, Gonzalez was spearheading Uber's Latin America expansion and – without consulting or even informing Mr. Rattagan – had engaged another attorney in Buenos Aires to assist in Uber's preparations. At no point before the launch did Uber inform Mr. Rattagan that it had engaged a new attorney for expansion into Argentina.

28. Nor did Uber cause the new attorney to publicly announce his relationship with Uber, much less update the Office of Corporations records that showed Mr. Rattagan and the address of the Law Firm as the only links to the Shareholders and the Subsidiary “in formation.”

29. Consequently, when Uber launched in Argentina, the public records reflected that Mr. Rattagan, his colleagues, and the Law Firm's offices were Uber Shareholders' legal representative, the interim managers of the Subsidiary, and their legal domicile in the country, respectively – despite the fact that none of them had ever been consulted about or even made aware of Uber's plans. Uber, in other words, allowed its new attorney to remain concealed while Mr. Rattagan, his colleagues, and the Law Firm unknowingly became the public names and faces of an ill-advised launch in which, obviously, they had played no part. Uber camouflaged the actual Uber decision-makers in the shadows of anonymity while callously exposing Mr. Rattagan, his family, his colleagues, and the Law Firm to the hellish consequences of Uber's controversial launch strategy.

30. Dismayed by the lack of communication, and deeply concerned about the liability they faced in their official positions as a result of Uber's secretive conduct and sudden launch, Mr. Rattagan and the interim manager and interim alternate manager tendered their resignations

to Uber immediately thereafter. But more than two months elapsed until their removal and replacement was made effective, leaving them exposed to liability as a result of Uber's local and offshore pre- and post-launch activities that Uber continued despite its knowledge that Argentine officials had "declared war" on Uber and were seeking to impose criminal liability on anyone truly or apparently linked to a traumatic and confrontational launch, predictably perceived and thus treated by the City authorities as illegal.

E. Fallout From Uber's Launch

31. The reaction of taxi drivers and labor unions to Uber's launch in Argentina was immediate, hostile and – for Uber – entirely predictable. As with Uber's launches in London, Mexico City, Barcelona, and Sao Paulo, the launch in Buenos Aires was met with negative press, violent labor union demonstrations and protests, and street blockades throughout the City. In fact, right before Uber's launch in Argentina, its launch in Colombia foretold the fallout that would result from the failure to properly register a new subsidiary in a South American country: amid protests from cab drivers and fines instituted by the nation's transport superintendent, the president of Colombia warned Uber that it could be banned from the country for its failure to formally register its operations. Indeed, unlike in other cities and countries where Uber's initially tumultuous launches evolved into peaceful and legally compliant operations, its launch in Buenos Aires was especially confrontational, and Uber still faces threats, fines, and the revocation of its drivers' licenses.

32. Because public records showed the Law Firm's office as the legal domicile for the two Shareholders and the Subsidiary, taxi drivers surrounded the Law Firm's building and protesters blocked its exits, preventing employees and clients from entering or exiting for hours. Additionally, local media outlets were filled with angry interviews and negative coverage concerning Uber and all those associated with it, notably including Mr. Rattagan.

33. On April 13, 2016, the day after the disastrous launch, Mr. Rattagan emailed Gonzalez, again requesting an urgent meeting to address the public outcry and backlash against Mr. Rattagan and the Law Firm. Gonzalez simply responded that someone from his team would contact Mr. Rattagan soon. No one ever did. Instead, Uber acted (and continues to act) as if it

was/is content to let Mr. Rattagan, his colleagues, and the Law Firm bear the brunt of the negative public reaction and potential criminal consequences.

34. Early on Friday, April 15, 2016, Mr. Rattagan again emailed Gonzalez and asked to be replaced as the legal representative of the Shareholders and asked Gonzalez to provide the address of the new legal domicile for the Uber entities in the City. Gonzalez did not act on this request.

35. Just as Mr. Rattagan and his team became the targets of severe public animosity, Argentine authorities quickly engaged their law enforcement arms to investigate how to stop Uber.

36. Midday on April 15, 2016, a City inspector came to the Law Firm's offices with orders "to immediately cease [Uber's] activities." After lengthy discussions with City officials, a partner of Mr. Rattagan narrowly avoided having the Law Firm's offices closed. But the ordeal was far from over.

37. Later that day, in the early evening hours, a small army of City inspectors and police officers stormed into the Law Firm's offices, announcing an order to shut down Uber. According to the "acta" (akin to a search warrant) that the officers carried, the raid was the result of a charge of "contravention," *i.e.*, the alleged private use of public space, for commercial gain, without a permit.

38. To the shock of the Law Firm lawyers and staff, television reporters evaded security and filmed inside the offices while the police carried out the raid. The prime-time news programs displayed the Law Firm logo and name, which prominently includes Mr. Rattagan's name, and falsely reported that the Law Firm's offices were the location of Uber's illegal activities, which included tax evasion.

39. Compounding the trauma of the raid on the Law Firm's offices, authorities searched the homes of Mr. Rattagan's trusted colleagues who had agreed to serve as interim manager and interim alternate manager of the Subsidiary while in formation, as their spouses and children watched in horror. Although Mr. Rattagan's home has not yet been raided, the threat

remains, causing a constant fear that his family will be the next victim of the natural consequences of Uber's actions.

40. On April 16, 2016, Mr. Rattagan wrote Gonzalez a pointed email to notify him of the office raid, address Uber's inexplicable failure to timely disclose its ongoing activities and ultimate launch to Mr. Rattagan, and inquire how Uber planned to rectify the situation.

41. On April 18, 2016, Mr. Rattagan finally spoke with Gonzalez who, however, was dismissive of the trauma inflicted on Mr. Rattagan, his colleagues, and the Law Firm, and sought to minimize the gravity of the situation. Gonzalez never even apologized, and Uber maintains this callous disregard of its continuing outrageous conduct to this day.

42. By this point, the prospect of potential civil and criminal liability related to Uber's launch was known – indeed, City tax authorities had already formally requested documents from Mr. Rattagan's colleagues.

43. On May 12, 2016, a month after Uber's launch and nearly four weeks after the raids on the Law Firm, Gonzalez finally came to Argentina and met with Mr. Rattagan. Despite being aware of the trauma that was causing Mr. Rattagan and his colleagues suffered and continued to suffer, Gonzalez maintained Uber's approach of showing no concern for the harm Uber's ill-conceived launch was causing to Rattagan.

44. Gonzalez made it clear that Uber had no interest in cooperating with Mr. Rattagan or the Law Firm. According to Gonzalez, assisting with Uber's activities in Argentina was none of Mr. Rattagan's business, as Uber had other legal counsel and consultants advising it in the country.

45. Mr. Rattagan reiterated that his resignation and those of his colleagues should be acknowledged at once and all of them immediately replaced. Undeterred, and notwithstanding the risk posed to Mr. Rattagan and his colleagues, Uber delivered a letter concerning the launch to City officials that showed the Law Firm office address and name, clearly – but falsely – implying that the Law Firm was responsible for it. Officials (the same ones who Uber was trying to appease) were furious, and the day after the letter was delivered, they called the Law Firm demanding an explanation that the Law Firm could not provide.

46. Having received nothing but contempt, inaction, and open hostility from Gonzalez, on May 26, 2016, Mr. Rattagan reached out to Salle Yoo (“Yoo”), Uber’s Chief Legal Officer, General Counsel, and Corporate Secretary, to explain the situation and seek her direct involvement to handle a situation that had clearly gone astray in the hands of Gonzalez. Among other things, Mr. Rattagan asked Yoo “to promptly designate someone [the Law Firm could] talk to with the purpose of handing over of all [its Uber] files in an orderly manner,” and “instruct [her] team to immediately refrain from mentioning or invoking [the Law Firm’s] name and from using [its] offices as legal domicile in any future communications with the Argentine government (national, provincial or city levels) or with any third parties without [its] prior written consent.”

47. Yoo responded that day, and expressed concern for the “inconvenience” Mr. Rattagan and his firm experienced since Uber’s launch in Argentina, and she subsequently assigned Todd Hamblet (Uber’s Managing Counsel, Corporate) to handle the matter from “HQ.”

48. Despite Yoo’s professed concern about the position in which Mr. Rattagan and the Law Firm had been placed by Uber’s ill-advised launch, Uber continued to carry out its Argentine operations in exactly the same manner, thus further exposing Mr. Rattagan and the Law Firm to the ongoing and increasingly severe danger of additional public scrutiny and criminal liability. Yoo, Hamblet, Gonzalez, and Uber all knew that Argentine authorities were investigating Mr. Rattagan for serious crimes involving allegations that Uber failed to register to do business in Buenos Aires, failed to comply with applicable laws and regulations pertaining to the transportation of people, and failed to pay appropriate local taxes. But, Uber nevertheless continued to operate without change or apparent concern for the consequences.

49. For approximately two months after Mr. Rattagan tendered his resignation, Uber operated with its full cadre of drivers (racking up millions in alleged unpaid taxes) while Mr. Rattagan remained, at the Office of Corporations, as the formal legal representative of the Shareholders. During that time, Uber knowingly left Mr. Rattagan (and his colleagues) as the sacrificial lambs for the scorn of the public and the criminal investigations of the Argentine authorities.

F. The Criminal Charges

50. Argentine authorities claimed that when Uber launched in Argentina, the process to incorporate the Subsidiary had not been completed. As a result, the authorities claimed that the Subsidiary was still “in formation” – making its Shareholders liable for actions attributed to the company – and prohibiting Uber from applying for or obtaining a tax ID, which is necessary to open a bank account, hire staff, lease an office, and transact business. That did not stop Uber.

51. Upon information and belief, Uber’s secretive preparations for the launch were significant. Uber had to send foreign employees into Argentine territory to recruit, train, and equip drivers, and contract with intermediate payment companies that would process credit card charges and distribute the related funds. Mr. Rattagan was never informed that these activities were going on behind his back, and he did not participate in them in any way.

52. Although Mr. Rattagan had no role in Uber’s conduct leading up to and following the launch in Argentina, Uber’s shadow operation and failure to appoint a different legal representative led a City prosecutor (the “Prosecutor”) to wrongly associate Mr. Rattagan with those who were involved in that covert pre-launch behavior.

53. In April 2017, approximately one year after the disastrous launch, and despite having no involvement in Uber’s activities, Mr. Rattagan, as former legal representative of Uber’s two foreign entities in Argentina, was personally charged with unauthorized use of public space with a commercial aim.

54. The Prosecutor was not done. Because the Prosecutor claimed Uber had failed to register its Subsidiary and pay appropriate sales tax, the Prosecutor quickly broadened the scope of his investigations to include more serious criminal issues.

55. In November 2017, the Prosecutor charged Mr. Rattagan with a second crime based on Uber’s clandestine launch: aggravated tax evasion. Conviction on that charge carries a three-and-a-half to nine-year prison sentence.

56. Compounding the already massive problem for Mr. Rattagan, the alleged tax evasion was supposedly aggravated due to the volume of Uber’s sales in the year after the launch. Had Uber taken immediate steps to replace Mr. Rattagan as its legal representative in

Argentina prior to the launch, or stopped operating while the Prosecutor was claiming that Uber was acting illegally, the amount of the supposedly unpaid taxes while Mr. Rattagan was legal representative of the Shareholders would have been far less – and thus the charge against him would not have been “aggravated,” and may not have been filed at all. In other words, Uber’s reckless and unmitigated conduct caused the charges against Mr. Rattagan (which should not have been filed in the first place) to become aggravated and much more severe.

57. In December 2017, Mr. Rattagan was summoned to appear before the Prosecutor. It was the worst, most humiliating ordeal of his life. Prior to being interrogated in connection with the preparation, launch, and subsequent operations (of which he knew nothing), he was taken to a room to have his mugshot and fingerprints taken – thirteen separate times so original prints could be sent to each interested government agency.

58. Adding insult to injury, the Argentine court temporarily banned Mr. Rattagan from traveling abroad, preventing him from freely conducting his professional activities and jeopardizing his contribution to the Law Firm. The Prosecutor labeled Mr. Rattagan a flight risk and publicly announced that he would be detained and imprisoned if he attempted to leave the country. The news went viral and exacerbated the severe embarrassment and anguish that Mr. Rattagan already was suffering.

59. While taxi drivers, labor unions, and politicians sought a public face to direct their ire, Mr. Rattagan was smeared in the local media for his supposed role in Uber’s conduct. His name became inseparable from Uber’s claimed illegal operations and aggravated tax evasion.

G. Harm Mr. Rattagan Suffered As A Result of Uber’s Actions

60. Mr. Rattagan’s success as a name partner of a respected international law firm is the product of a lifetime spent building a reputation based on integrity and ethical conduct.

61. As a result of Uber’s fateful launch in Argentina, Mr. Rattagan’s name is synonymous with tax evasion and illegal commercial operations by a foreign business. His reputation has been dragged through the proverbial mud. Indeed, due to the publicity surrounding the raids and charges against him, Mr. Rattagan has – in effect – been walking around with a sign across his chest that he is an accused felon. Although he attempts to explain

to colleagues, friends, and family that, despite the allegations against him, he is innocent, such protestations cannot alleviate the reputational stigma.

62. Instead of stopping its operations that officials were charging were illegal and that were exacerbating the criminal charges against Mr. Rattagan, Uber simply offered Mr. Rattagan that it would help pay for a reputation management firm.

63. Worse, while Mr. Rattagan is already the target of two criminal proceedings, which have impacted and continue to threaten his and his family lifestyle, his Argentine legal advisors have warned him that he may yet face additional charges for Uber's actions, such as money laundering, VAT and income tax evasion, and failure to make social security contributions. He lives – and will continue to live for many years, as events unfold – under the constant threat and fear of further humiliation, wasted time and energy, and the physically exhausting emotions of facing charges that jeopardize his freedom, reputation, peace of mind, and livelihood. All of that and more hang in the balance – all because Uber schemed to launch operations in Buenos Aires without the knowledge of or care for the effect on Mr. Rattagan.

64. Having expanded across the globe, Uber has to be intimately aware of the fallout that occurs when it enters a new market using its established methods of disruption and confrontation. Uber knew of the harm that would – and did – befall Mr. Rattagan upon its launch, yet it failed to disclose its plans or take any steps to protect Mr. Rattagan, his colleagues, or his Law Firm from the foreseeable result. Nor did it act to mitigate the damaging effects of that harm after being specifically warned by Mr. Rattagan of the injury it was inflicting on them.

65. Instead, Uber, a multi-billion dollar international behemoth with near limitless resources, allowed Mr. Rattagan, who played no role in its operations, to be thrown to the wolves and bear the brunt of the eminently predictable public outcry, labor union and taxi driver rage, political pressure, police actions, and criminal charges. With Mr. Rattagan as a scapegoat, Uber's real Argentine counsel and advisors continued to operate behind the scenes unscathed.

66. Indeed, Uber's approval of the way its launch in Argentina unfolded is evidenced not only by its refusal to alter its conduct but also by its promotion of Gonzalez – the architect of Uber's Argentine campaign and Mr. Rattagan's misery.

67. The harm that Mr. Rattagan suffered could have been avoided if Uber: (i) stopped operations while the Argentine authorities were charging that it was illegally operating; (ii) replaced Mr. Rattagan as legal representative before its launch; or (iii) advised Mr. Rattagan of its intentions pre-launch.

68. Acknowledging the harm its actions caused him, Uber has, to date, paid for Mr. Rattagan's criminal defense and his time in responding to the fallout from the launch. That partial indemnification, however, does not compensate Mr. Rattagan for the significant emotional trauma and serious damage to his reputation that he has endured. Nor does it compensate him for the significant loss in future revenue resulting from such reputational damage. Such compensatory damages alone constitute many millions of dollars.

69. Mr. Rattagan also seeks punitive damages, in addition to compensatory damages, to punish Uber for its intentional and malicious conduct, and deter it from similar conduct in the future.

FIRST CAUSE OF ACTION **Breach of Fiduciary Duty**

70. Mr. Rattagan repeats and realleges paragraphs 1 through 69 of this [Amended](#) Complaint as though reproduced in full herein.

71. Under Argentine law, the legal representative of a foreign company has a legitimate interest in ensuring the good operation and standing of such company, because he or she conceivably could be exposed to personal criminal and civil liabilities for unlawful conduct by the company. Indeed, no reasonable and reputable individual would agree to act in such a capacity if there were any possibility that such harm would befall them for corporate conduct that is entirely outside of their control.

72. A company owes such legal representative a fiduciary duty not to subject that legal representative to personal liability.

73. By asking Mr. Rattagan to serve as the legal representative of the Shareholders and thus exposing him to personal liability for any alleged noncompliance with the law, Uber assumed a fiduciary duty to Mr. Rattagan to, among other things:

(a) inform him of its planned activities in Argentina and provide him with the information necessary to ensure Uber's good operations in the country and protect himself, his Law Firm, and his colleagues from any liability and reputational harm;

(b) operate its business within the constraints of the local laws;

(c) immediately cease any allegedly unlawful business practices; and

(d) remove Mr. Rattagan as its legal representative as soon as it determined that it no longer desired to communicate with him and/or heed his advice so as to reduce or eliminate the risk and potential legal liability to which Mr. Rattagan might be exposed as a result of its business practices, or, in the alternative, to cease operations in Argentina until such time as Uber could remove Mr. Rattagan as its legal representative.

74. Uber breached its fiduciary duty to Mr. Rattagan by, among other things:

(a) failing to notify him in advance of its planned expansion activities, strategy, timeline, and business practices in Argentina;

(b) failing to consult with him before launching in Argentina regarding the various statutory and regulatory requirements for operating in the country;

(c) preventing him from ensuring the good operations of the companies for which he had been named legal representative and its affiliates;

(d) denying him an opportunity to protect himself from legal liability and reputational harm as a result of its entry into the Argentine market when it kept him in the dark about its plans;

(e) ignoring early warnings from regulators and other Argentine authorities that its business practices were claimed to be unlawful;

(f) denying Mr. Rattagan an opportunity to mitigate any damages;

(g) exacerbating the liability Mr. Rattagan faced by continuing its business practices that Argentine authorities claimed were unlawful notwithstanding the warnings it received;

(h) exposing Mr. Rattagan to significant public scorn and reputational damage by falsely associating him with Uber's conduct; and

(i) failing to remove Mr. Rattagan as a legal representative as soon as it determined that it no longer wished to communicate with him and/or heed his advice.

75. As a direct and proximate result of Uber's breaches of its fiduciary duty, Mr. Rattagan has suffered considerable damages. Among other things, he has been charged with aggravated tax evasion and other crimes, threatened with imprisonment and the loss of his law license if convicted, lost business opportunities and revenues, endured severe emotional distress, been subject to harsh public scorn and ridicule, and suffered serious damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on ~~his First Cause of Action~~ Count I, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys' fees, punitive damages, and such other and further relief as is appropriate.

SECOND CAUSE OF ACTION

Deceit

76. Mr. Rattagan repeats and realleges paragraphs 1 through 75 of this Amended Complaint as though reproduced in full herein.

77. Uber willfully and intentionally engaged in fraud and deceit as defined by California Civil Code § 1709 - 1710.

78. Uber induced Mr. Rattagan to continue serving as the legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that authorities claimed was illegal; and (c) would neither cease operations nor change its practices to comply with directives of Argentine authorities before replacing him as legal representative.

79. Uber further concealed that it intended to continue operating in violation of directives from Argentine authorities that its operations were in violation of the law during such period.

80. Uber was obligated to disclose the concealed facts due to its attorney/client and contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr.

Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

81. Uber knowingly and intentionally concealed these facts.

82. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

83. Uber’s concealment of those facts from Mr. Rattagan placed him at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause him loss of business opportunities and revenues, severe emotional distress, and serious damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on ~~his Second Cause of Action~~Count II, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

THIRD CAUSE OF ACTION Fraud

84. Mr. Rattagan repeats and realleges paragraphs 1 through 83 of this Amended Complaint as though reproduced in full herein.

85. Uber knowingly and fraudulently induced Mr. Rattagan to continue serving as the legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that authorities claimed was illegal; and (c) would neither cease operations nor change its practices to comply with directives of Argentine authorities before replacing him as legal representative.

86. Uber further knowingly and fraudulently concealed that it intended to continue operating in violation of directives from Argentine authorities that its operations were in violation of the law during such period.

87. Uber was obligated to disclose the concealed facts due to its attorney/client and contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

88. Uber concealed those material facts to induce Mr. Rattagan to take no action to remove himself as legal representative of the Shareholders, leaving him as the target for both the general public and the Prosecutor.

89. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

90. Uber’s concealment placed Mr. Rattagan at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause Mr. Rattagan loss of business opportunities and revenues, severe emotional distress, and irreparable damage to his most important professional asset – his reputation.

WHEREFORE, on ~~his Third Cause of Action~~Count III, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

FOURTH CAUSE OF ACTION Intentional Infliction of Emotional Distress

91. Mr. Rattagan repeats and realleges paragraphs 1 through 90 of this Amended Complaint as though reproduced in full herein.

92. Uber’s continuing conduct in exposing Mr. Rattagan, the legal representative of the Shareholders, to police raids, serious criminal charges, public humiliation, and reputational harm by concealing its actions in preparing for and launching in Argentina and through its post- launch conduct was and is outrageous and extreme.

93. Uber’s continuation of business activities that exposed Mr. Rattagan to serious criminal charges, public humiliation and reputational harm even after authorities had publicly advised Uber of the consequences of its ongoing activities is outrageous and extreme.

94. Uber recklessly disregarded the probability that its secretive and reckless launch in Argentina would result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

95. Even after being publicly warned of the possible consequences of its conduct, Uber continued to recklessly disregard the probability that its ongoing business practices would result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

96. Mr. Rattagan has suffered, and continues to suffer, severe and extreme emotional distress because of Uber's conduct, and (a) he lives under constant fear that he, his wife, and his children will be exposed to similar raids at home; (b) he faces the deeply unsettling prospect of devoting years to defend himself from criminal charges that expose him to nearly a decade in prison and the loss of his law license; and (c) his reputation in the community has been seriously harmed.

97. As a direct and proximate result of Uber's secretive preparation and launch in Argentina, and its unabated operations and conduct even after authorities publicly advised Uber of the consequences of those activities, Mr. Rattagan suffered, and continues to suffer, severe and extreme emotional distress.

98. Mr. Rattagan has been damaged by Uber's intentional infliction of emotional distress in an amount to be determined at trial.

WHEREFORE, on ~~his Fourth Cause of Action~~Count IV, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, punitive damages, attorneys' fees, and such other and further relief as is appropriate.

FIFTH CAUSE OF ACTION

Negligence

(In the alternative to Causes of Action First through Fourth)

99. Mr. Rattagan repeats and realleges paragraphs 1 through 98 of this Amended Complaint as though reproduced in full herein.

100. Uber owed a duty of care to Mr. Rattagan based on: (a) their attorney/client and contractual relationship, including the covenant of good faith and fair dealing implicit in such

relationship; (b) the fact that Uber had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties for Uber’s conduct; and (c) Uber’s independent duty to replace Mr. Rattagan as its legal representative when it decided to exclude him from any communications and planning related to its launch, and also immediately upon his resignation.

101. Uber breached that duty by launching in Buenos Aires without contacting Mr. Rattagan and without regard for the authorities’ public claims that it was violating law, exposing Mr. Rattagan to substantial peril.

102. Uber further breached that duty by not ceasing or regularizing its operations and exposing Mr. Rattagan to greater damages and criminal prosecution.

103. As a direct and proximate result of Uber’s negligent breaches of its duty of care, Mr. Rattagan has suffered considerable damages. Among other things, Mr. Rattagan has been charged with aggravated tax evasion and other crimes, threatened with imprisonment if convicted and the loss of his law license, lost business opportunities and revenues, endured severe emotional distress, been subject to harsh public scorn and ridicule, and suffered irreparable damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on ~~his Fifth Cause of Action~~ Count V, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, punitive damages, attorneys’ fees, and such other and further relief as is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against ~~Defendants~~ Defendant as follows:

1. Entry of judgment for Plaintiff on each of his claims;
2. For damages, direct and consequential, in an amount according to proof in excess of the jurisdictional limit;
3. For punitive damages;
4. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY

Michael R. Rattagan demands a trial by jury for all issues so triable. Dated:

~~April 12, 2019~~

~~SHARTSIS FRIESE LLP~~

May 8, 2019

MCDONALD HOPKINS LLC

/s/ Stephen J. Rosenfeld

~~By: FRANK A. CIALONE~~

By: STEPHEN J. ROSENFELD

8384023

Attorneys for Plaintiff
MICHAEL R. RATTAGAN

EXHIBIT B

De: Michael R. Rattagan

Enviado el: martes, 05 de marzo de 2013 05:45 p.m.

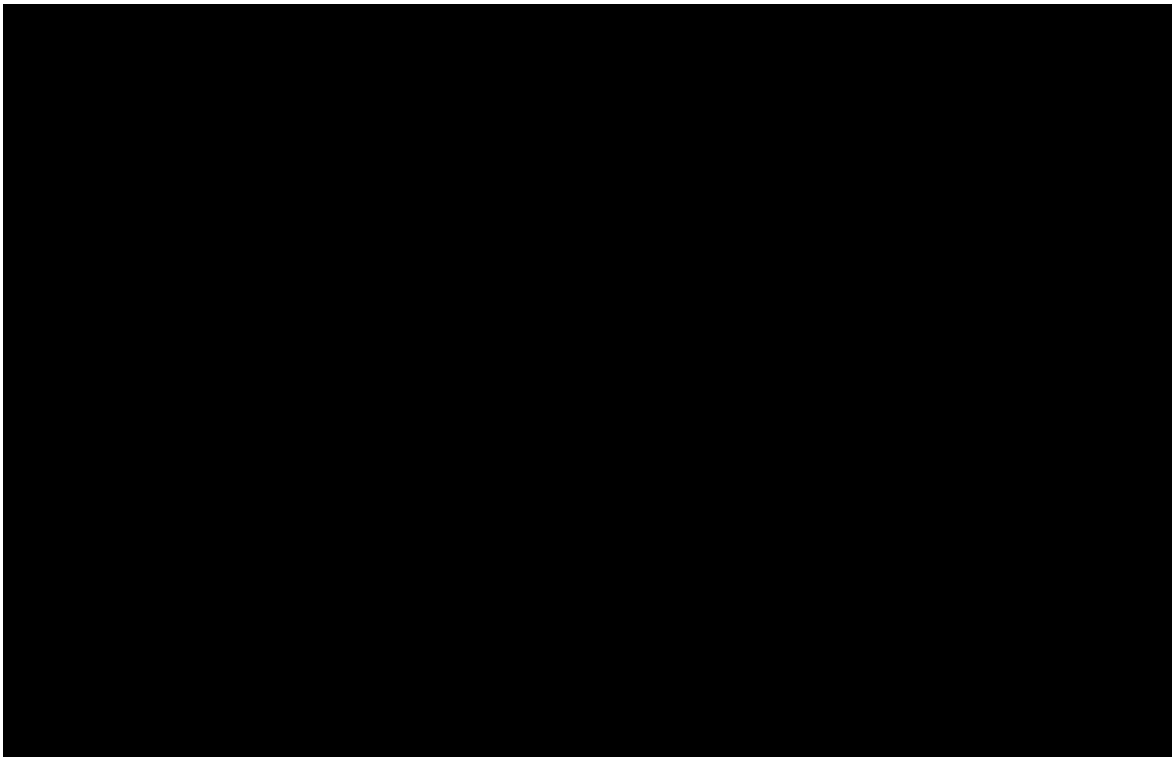
Para: Liesbeth

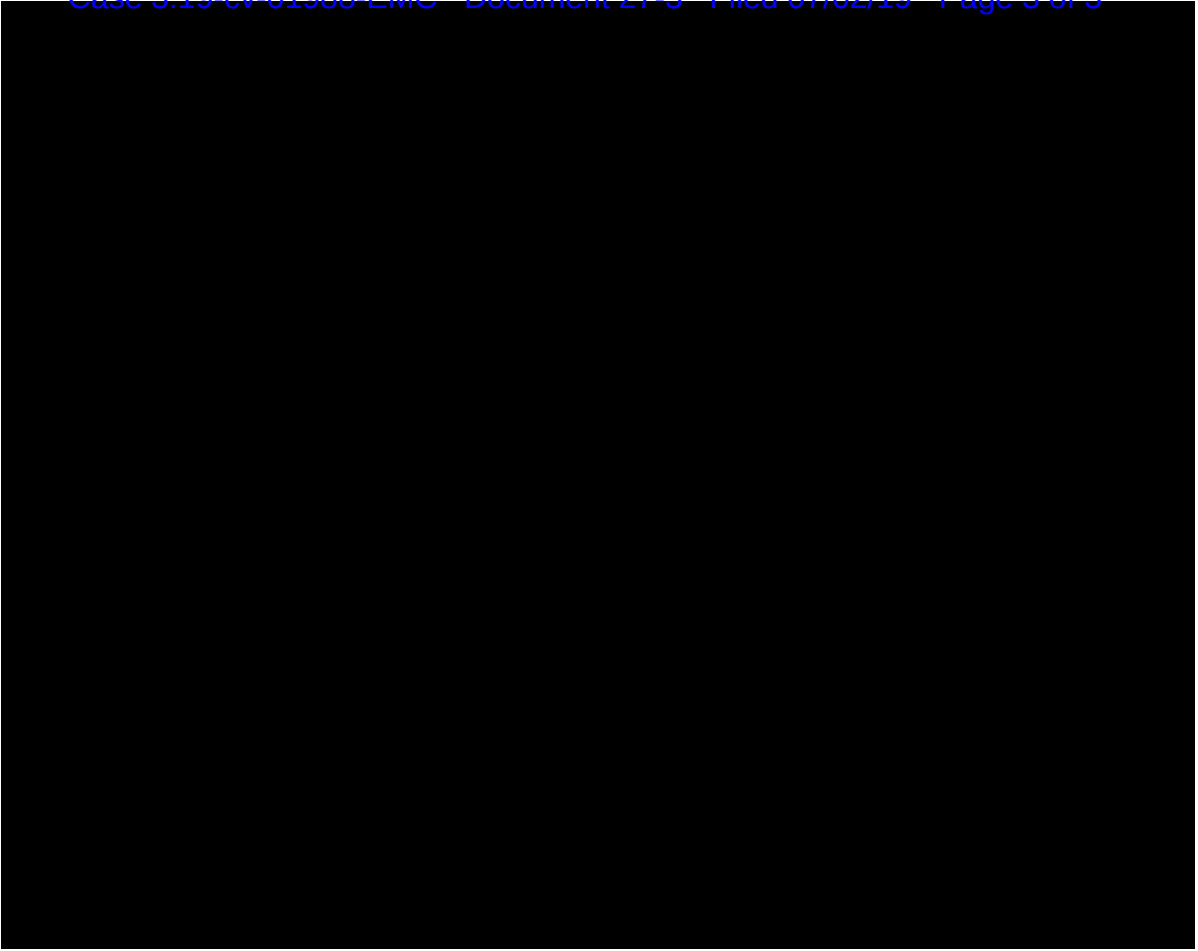
CC: Analía M. D'Oria

Asunto: Uber Argentina

Dear Liesbeth,

We are glad to hear about Uber International B.V.'s expansion plans into Argentina. We will be delighted to provide you and your company with all the necessary support.





Please do not hesitate to contact me with any questions you may have. I have asked Analía D'Oria, partner and co-head of Corporate (copied) to become fully involved.

I look forward to working with you in Uber International's South American expansion. Let me know if you need legal support in any other jurisdiction in the region.

Kindest regards,

Michael R

Michael R. Rattagan

EXHIBIT C



Av. Leandro N. Alem 855, piso 8º
(C1001AAD) Buenos Aires
Argentina
Direct: (+54 11) 4010 5013
Email: AMD@RMLex.com
www.RMLex.com

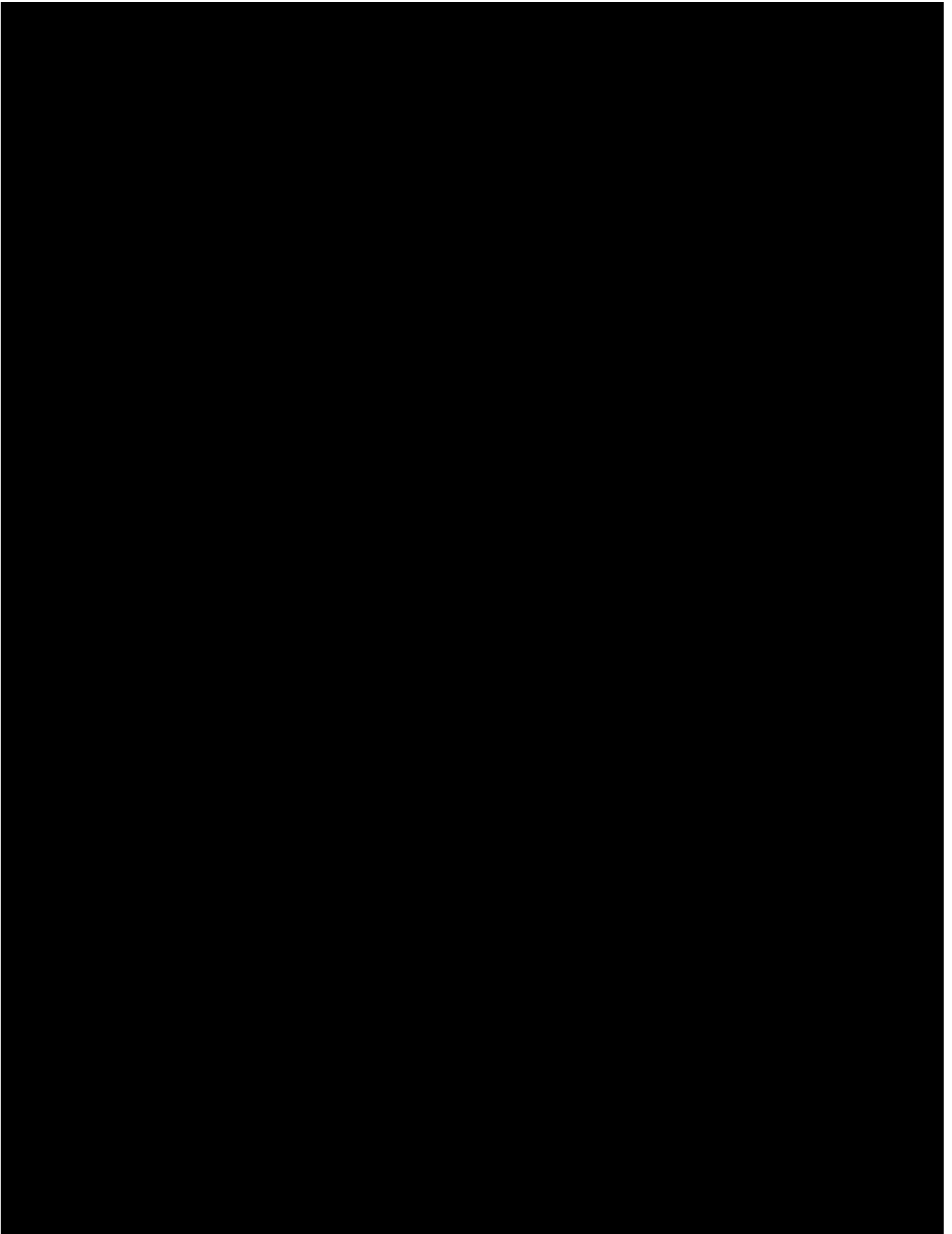
MEMORANDUM

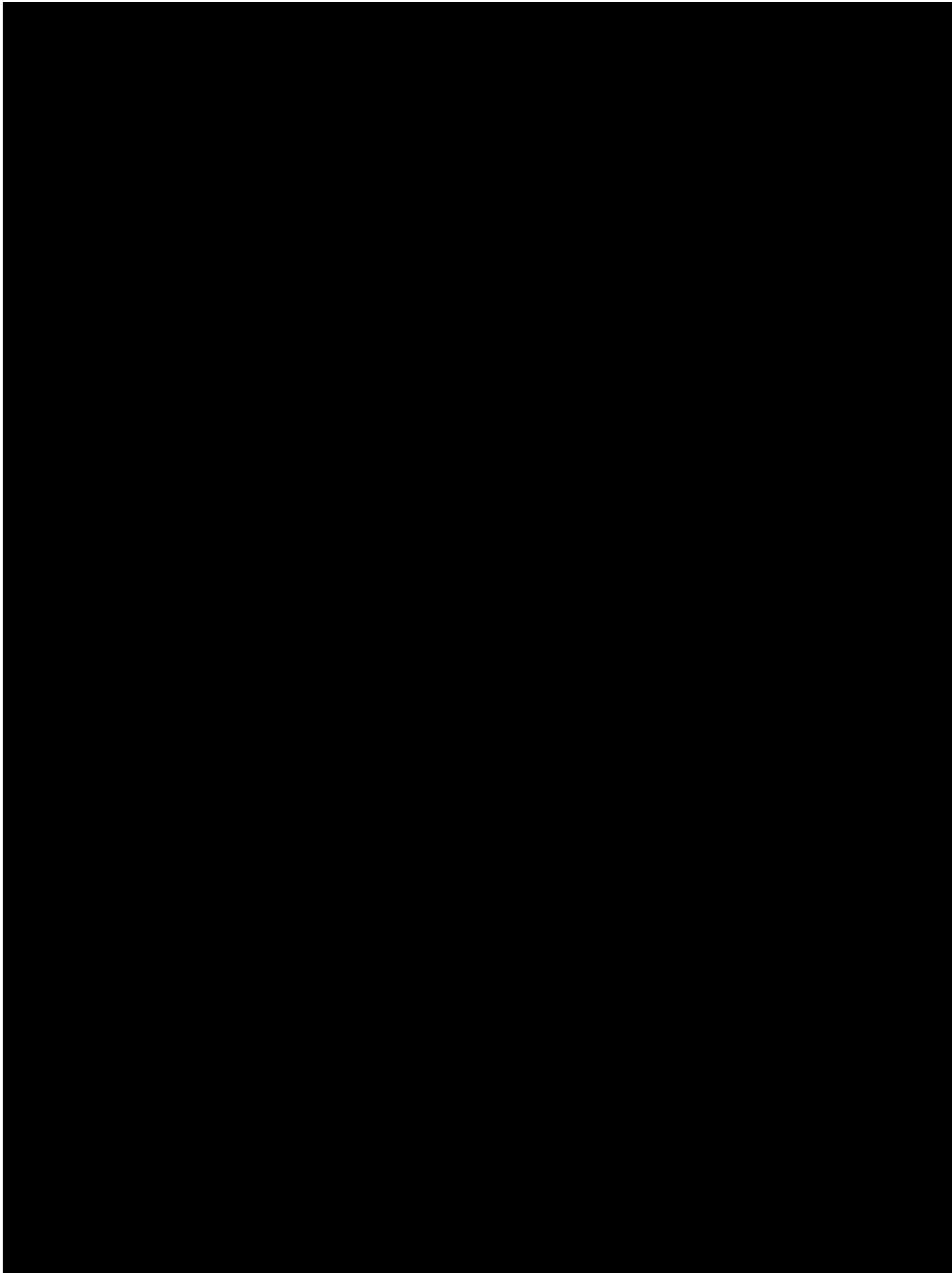
TO: Liesbeth ten Brink
Uber International B.V.

FROM: Michael R. Rattagan
Analía M. D'Oria

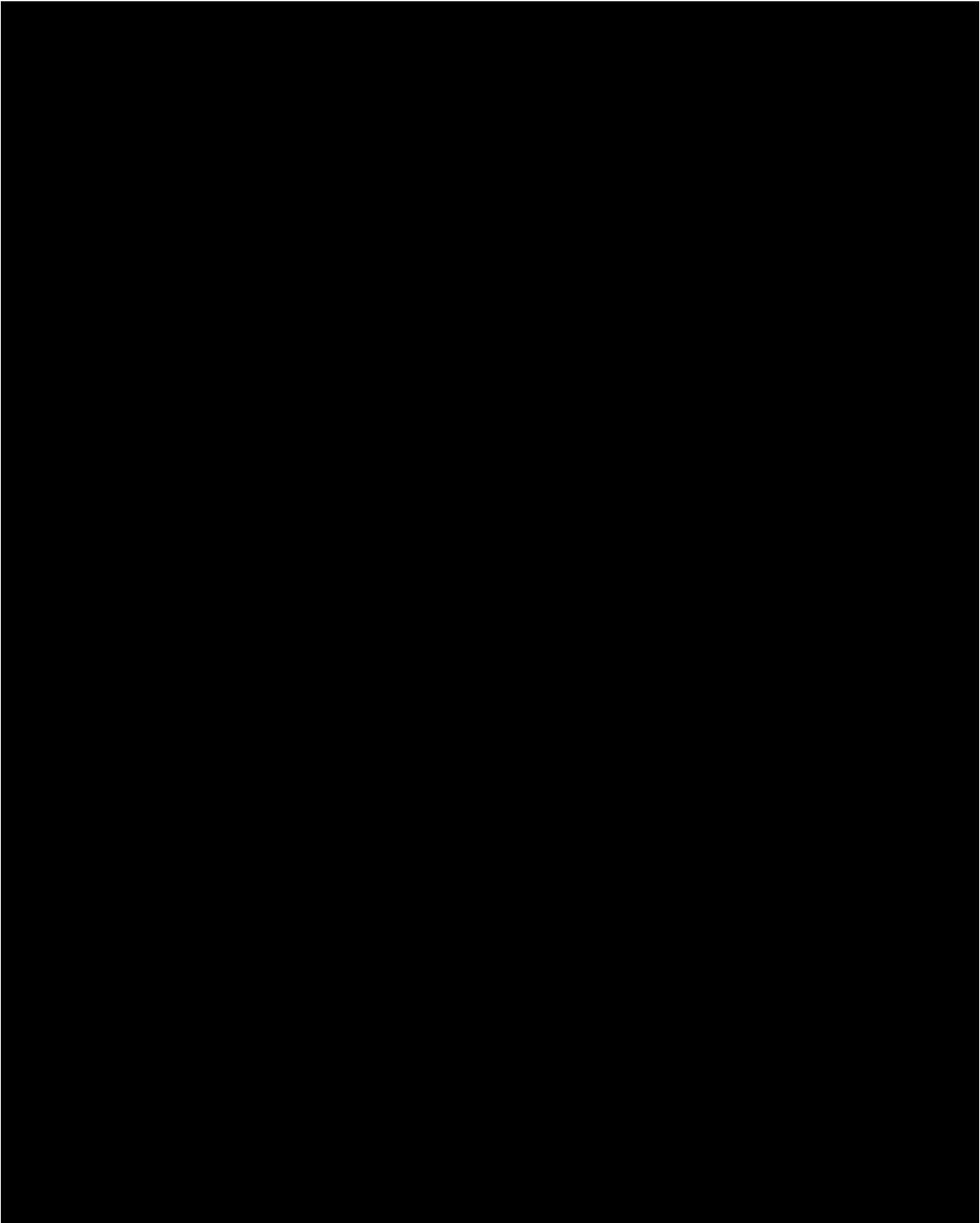
DATE: March 5th, 2013

RE: Incorporation of a limited liability company in Argentina









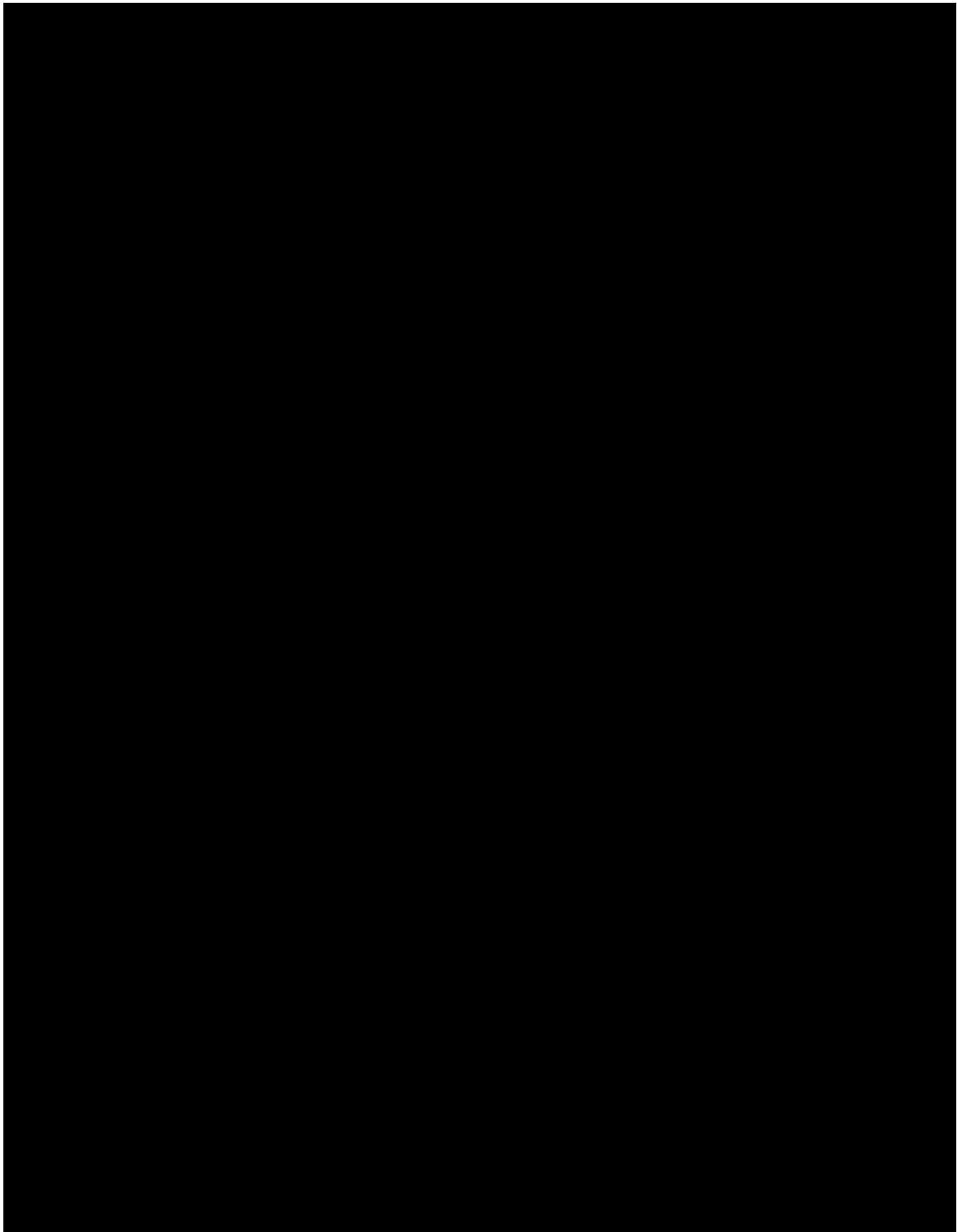


EXHIBIT D

Subject: Re: URGENTE / Uber en Argentina
From: Ryan Black [REDACTED]
Sent: Fri, 15 Apr 2016 10:55:51 -0700
Cc: Enrique Gonzalez [REDACTED] Leonardo Orlanski [REDACTED]
To: "M. R. Rattagan" [REDACTED]

Dear Michael,

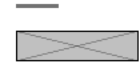
[REDACTED]

[REDACTED]

[REDACTED]

Kind regards,
Ryan

Ryan Black
Senior Paralegal, Corporate
[REDACTED]



1455 Market Street
San Francisco, CA 94103
uber.com

On Apr 15, 2016, at 8:52 AM, M. R. Rattagan [REDACTED] wrote:

Thank you, Enrique, for replying.

For the record, we were not hired by Ryan Black but by Liesbeth ten Brink, Director Legal – Europe, Uber International B.V. (February 2013).

[REDACTED]

[REDACTED]

Regards,

<image001.gif> RATTAGAN, MACCHIAVELLO
AROCENA & PEÑA ROBIROSA
ABOGADOS

Torre Alem Plaza, Avenida Leandro N. Alem 855, piso 8 | C1001AAD | Buenos Aires - Argentina
Dir. (54-11) 4010-5001 | TEL (54-11) 4010-5000 / 4316-1500 | FAX (54-11) 4010-5100 [REDACTED] www.RMLex.com

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De: Enrique Gonzalez [REDACTED]
Enviado el: viernes, 15 de abril de 2016 12:09 p.m.
Para: M. R. Rattagan
CC: [REDACTED]
Asunto: Re: URGENTE / Uber en Argentina

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2016-04-15 9:59 GMT-05:00 M. R. Rattagan [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

M. R. Rattagan

<image001.gif>RATTAGAN, MACCHIAVELLO
AROCENA & PEÑA ROBIROSA
ABOGADOS

Torre Alem Plaza, Avenida Leandro N. Alem 855, piso 8 | C1001AAD | Buenos Aires - Argentina
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De: Enrique Gonzalez [REDACTED]
Enviado el: jueves, 14 de abril de 2016 01:39 p.m.
Para: M. R. Rattagan
CC: Analía M. D'Oria; Juan R. Larrouy; Santiago L. Oliva Pinto; Juan Pablo De Luca
Asunto: Re: Uber en Argentina

[REDACTED]

Enrique

El 13/04/2016, a las 6:45 p.m., M. R. Rattagan [REDACTED] escribió:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Gracias.

Un saludo,

Michael

M. R. Rattagan

<image001.gif>RATTAGAN, MACCHIAVELLO
AROCENA & PEÑA ROBIROSA
ABOGADOS

Esta comunicación es de carácter confidencial y está amparada por el secreto profesional y se dirige exclusivamente al destinatario indicado. Todo lector del presente mensaje quedará debidamente notificado que la divulgación, modificación, reproducción o uso de la información aquí contenida por cualquier otra persona que no sea la indicada como destinataria del mismo, queda terminantemente prohibida. Si Ud. no fuera la persona a la que el presente e-mail está destinado, le agradeceremos nos lo informe a la brevedad respondiendo este e-mail a la dirección del remitente y elimine de su sistema el mensaje recibido. Muchas gracias.

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De: Enrique Gonzalez [REDACTED]
Enviado el: lunes, 11 de abril de 2016 07:32 p.m.
Para: M. R. Rattagan
CC: Analía M. D'Oria; Juan R. Larrouy
Asunto: Re: Saludos desde Buenos Aires / Visita a DF

Hola Michael

[REDACTED]

muchas gracias

Enrique

El 29/03/2016, a las 9:18 p.m., M. R. Rattagan [REDACTED] escribió:

[REDACTED]

[REDACTED]

Recibe un muy cordial saludo,

Michael R. Rattagan
RATTAGAN, MACCHIAVELLO
AROCENA & PEÑA ROBIROSA
ABOGADOS

Torre Alem Plaza, Avenida Leandro N. Alem 855, piso 8 | C1001AAD | Buenos Aires - Argentina

Dir. (54-11) 4010-5001 | TEL (54-11) 4010-5000 / 4316-1500 | FAX (54-11) 4010-5100 [REDACTED]

www.RMLex.com

--

Enrique Gonzalez

Legal Director LatAm

[REDACTED] [uber.com](https://www.uber.com)

EXHIBIT E



Ciudad A. de Buenos Aires, 16 de mayo de 2013

Al Señor Inspector de la
 Inspector General de Justicia
 S. / D.

De mi consideración:

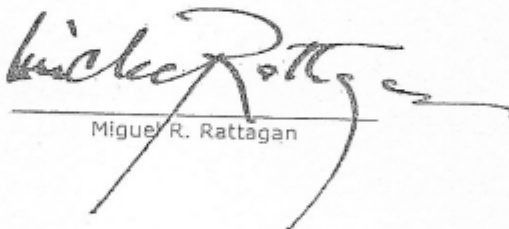
Por la presente acepto el cargo de representante legal en la República Argentina de la sociedad extranjera "Uber International Holding B.V.", sociedad que solicita su inscripción en los términos del art. 123 de la Ley de Sociedades Comerciales, para la cual fuera oportunamente designado por la reunión de directorio de Uber International Holding B.V. de fecha 22 de abril de 2013. A tal fin, informo a Uds. mis datos personales:

Nombres y Apellido:	Miguel Roberto Rattagan
Nº de Documento:	DNI 18.564.880
Estado civil:	Casado
Nacionalidad:	Argentino
Fecha de nacimiento:	11 de febrero de 1967
Profesión:	Abogado
Domicilio real:	Av. Callao 1755, 6º Piso, Ciudad de Buenos Aires

A los fines del artículo 256 de la Ley Nº 19.550, fijo domicilio especial en Av. Leandro N. Alem 855, Piso 8º, (C1001AAD), Ciudad de Buenos Aires.

Fijo domicilio de la representación en Av. Leandro N. Alem 855, Piso 8, (C1001AAC), Ciudad de Buenos Aires.

Atentamente,


 Miguel R. Rattagan

Firma (s) certificada(s) en el
 sello de Activación Notarial
 Nº E.0001019.071-.....

16 MAY 2013





[Faint, illegible handwritten text]



ACTA DE CERTIFICACION DE FIRMAS
LEY 404



F 009099021

1 Buenos Aires, 16 de Mayo de 2013 . En mi carácter de escribano
2 Adscripto al Registro Notarial número 2130 de esta Ciudad.-
3 CERTIFICO: Que la/s firma que obra/n en el
4 documento que adjunto a esta foja, cuyo requerimiento de certificación se
5 formaliza simultáneamente por ACTA número 031.- del LIBRO
6 número DOS.- , es/son puesta/s en mi presencia por la/s persona/s
7 cuyo/s nombre/s y documento/s de identidad se menciona/n a continuación así como
8 la justificación de su identidad. Miguel Roberto RATTAGAN, titular del
9 Documento Nacional de Identidad 18.564.880, domiciliado en Avenida
10 Leandro N. Alem 855, Piso 8º, de esta Ciudad; Justifica su identidad de
11 acuerdo al inciso a) del Artículo 1002 del Código Civil, doy fe. Interviene
12 por derecho propio y requiere la certificación de la firma que es puesta en
13 este acto en mi presencia, en el documento que consiste en: Nota acep-
14 tando el cargo de Representante Legal de UBER INTERNATIONAL
15 HOLDING B.V..- Queda la firma certificada por el Sellado F 009099021.-



[seal:] INSPECTORATE GENERAL OF JUSTICE
[handwritten:] 128

Autonomous City of Buenos Aires, May 16, 2013

To the Inspector of the
Inspectorate General of Justice
By Hand

To whom it may concern:

I hereby accept the position of legal representative in the Republic of Argentina of the foreign company "Uber International Holding B.V.", which company is applying for registration pursuant to the provisions set forth in Art. 123 of the Law of Commercial Companies, for which I was appointed in a timely manner by the meeting of the board of Uber International Holding B.V. dated April 22, 2013. Accordingly, I hereby provide you with my personal information:

First names and Last name:	Miguel Roberto Rattagan
Document Number	National Identity Document 18.564.880
Marital Status:	Married
Nationality:	Argentine
Date of birth:	February 11, 1967
Profession:	Attorney
Actual domicile:	Av. Callao 1756, 6° Piso, City of Buenos Aires

Pursuant to the provisions set forth in article 256 of Law No. 19.550, I hereby stipulate special domicile at Av. Leandro N. Alem 855, Piso 8°, (C1001AAD), City of Buenos Aires

I hereby stipulate domicile for the representation at Av. Leandro N. Alem 855, Piso 8°, (C1001AAC), City of Buenos Aires.

Sincerely,

[signature]

Miguel R. Rattagan

[stamp:]

Signature(s) certified under
Notarial Action seal No. [handwritten:] F009099021.

[stamp:]

MAY 1[6] 2013

[seal:]

PABLO CABALLERO
LICENSE 5311

[initials]

[illegible]

[seal:][illegible]	[letterhead:] COLLEGE OF NOTARIES [illegible]	RECORD OF CERTIFICATION OF SIGNATURES LAW 404 [national emblem]	[seal:] INSPECTORATE GENERAL OF JUSTICE [handwritten:] 128
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F 009099021

Buenos Aires, May 16, 2013. In my capacity as a notary assigned to Notarial Registry number 2130 of this City:

I HEREBY CERTIFY: That the signature contained in the document enclosed with this sheet, whose certification order is simultaneously formalized by ACT number 031 in BOOK number TWO, has/have been placed in my presence by the person(s) whose name(s) and identity document(s) is/are mentioned below together with his/her/their proof of identity. **Miguel Roberto RATTAGAN**, holder of National Identity Document 18.564.880, domiciled at Av. Leandro N. Alem 855, Piso 8°, in this City; he demonstrates his identity pursuant to paragraph a) of Article 1002 the Civil Code, which I attest. He intervenes on his own behalf and requires certification of the signature placed in this act in my presence, on the document consisting in: Memorandum accepting the position of Legal Representative of UBER INTERNATIONAL HOLDING B.V. The signature is certified by Seal F 009099021.

[seal:]
PABLO CABALLERO
LICENSE 5311
[initials]
[illegible]



TRANSPERFECT

City of New York, State of New York, County of New York

I, Aurora Landman, hereby certify that the document, "**Exhibit E to the Declaration of Clara J. Shin in Support of Defendant's Motion for Rule 11 Sanctions**" is, to the best of my knowledge and belief, a true and accurate translation from Spanish into English.

Aurora Landman

Sworn to before me this
June 7, 2019

Signature, Notary Public



Stamp, Notary Public

LANGUAGE AND TECHNOLOGY SOLUTIONS FOR GLOBAL BUSINESS

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OFFICES IN 90 CITIES WORLDWIDE

ER-398

EXHIBIT F

**Rattagan Macchiavello Arocena
& Peña Robirosa Abogados SC****P**

Código

PROFORMA

Nº: 0001 - 00005439

Torre Alem Plaza, Avenida Leandro N. Alem 855, pisos 7 y 8
 C1001AAD - Ciudad Autónoma de Buenos Aires
 Teléfono: 4010-5000 / Fax: 4010-5100
 E-mail: info@rmlex-com
 I.V.A. RESPONSABLE INSCRIPTO

Fecha de ingreso: 16/07/2005

Fecha: 09-10-2014

2224 - UBER INTERNATIONAL HOLDING BV

BARBARA STROZZILAAN 101. AMSTERDAM, THE NETHERLAND

- C.P. (1083)

*EXTERIOR

IVA: CONSUMIDOR FINAL

CONDICIONES DE VENTA: CONTADO

SERVICIOS DE ASESORAMIENTO LEGAL
 MONTHLY RETAINER
 LEGAL REPRESENTATIVES

USD774.40

Cheques cruzados a nombre de Rattagan Macchiavello Arocena & Peña Robirosa Abogados SC No a la orden

El tipo de cambio que corresponde al día de la emisión de la factura es sólo a efectos impositivos.

La cancelación de la misma se debe realizar al tipo de cambio del día de pago.

Artículo 49 del Decreto Reglamentario de la Ley de Iva (Nº 23349)

Tipo de Cambio Utilizado USD 8.48

Total \$ 6.566,91

Subtotal

Impuesto

Subtotal

I.V.A.

Total

USD 75.47

USD0.00

USD75.47

USD134.40

USD**774.40**

**Rattagan Macchiavello Arocena
& Peña Robirosa Abogados SC****B**

Código 06

FACTURA

Nº: 0003 - 00002027

Torre Alem Plaza, Avenida Leandro N. Alem 855, pisos 7 y 8
 C1001AAD - Ciudad Autónoma de Buenos Aires
 Teléfono: 4010-5000 / Fax: 4010-5100
 E-mail: info@rmlex.com
 I.V.A. RESPONSABLE INSCRIPTO

Fecha de ingreso: 16/07/2005

Fecha: 10-12-2015

2224 - UBER INTERNATIONAL HOLDING BV

BARBARA STROZZILAAN 101. AMSTERDAM, THE NETHERLAND

- C.P. (1083)

*EXTERIOR

IVA: CONSUMIDOR FINAL

CONDICIONES DE VENTA: CONTADO

SERVICIOS DE ASESORAMIENTO LEGAL
 MONTHLY RETAINER
 LEGAL REPRESENTATIVES
 NOVEMBER 2015

USD929.28

Cheques cruzados a nombre de Rattagan Macchiavello Arocena & Peña Robirosa Abogados SC No a la orden

Se aclara que el tipo de cambio al día de la emisión de la factura es al solo efecto del cálculo del IVA.
 La cancelación de la factura se debe hacer al tipo de cambio del día de pago.

Tipo de Cambio Utilizado 9.70

Total \$ 9.014,02

Subtotal

Impuesto

Subtotal

I.V.A.

Total

USD

929,28

CAE: 65504782732277

Fecha de Vto: 20/12/2015

ER-401

**Rattagan Macchiavello Arocena
& Peña Robirosa Abogados SC**
B

Código 06

FACTURA

Nº: 0003 - 00002183

Torre Alem Plaza, Avenida Leandro N. Alem 855, pisos 7 y 8
C1001AAD - Ciudad Autónoma de Buenos Aires
Teléfono: 4010-5000 / Fax: 4010-5100
E-mail: info@rmlex.com
I.V.A. RESPONSABLE INSCRIPTO


 Fecha de ingreso: 16/07/2005

Fecha: 04-05-2016

2224 - UBER INTERNATIONAL HOLDING BV

BARBARA STROZZILAN 101. AMSTERDAM, THE NETHERLAND

- C.P. (1083)

*EXTERIOR

IVA: CONSUMIDOR FINAL

CONDICIONES DE VENTA: CONTADO

FEES FOR LEGAL ADVICE

USD44,805.09

GENERAL ADVICE

APRIL 2016

EXPENSES INCURRED ON YOUR BEHALF

USD887.86

TRANSLATION EXPENSES

USD130.77

Cheques cruzados a nombre de Rattagan Macchiavello Arocena & Peña Robirosa Abogados SC No a la orden

Tipo de Cambio Utilizado USD 13,00

Total \$ 595.708,36

Subtotal

Impuesto

Subtotal

I.V.A.

Total

USD

45.823,72

El tipo de cambio que corresponde al día de la emisión de la factura es sólo a efectos impositivos.

La cancelación de la misma se debe realizar al tipo de cambio del día de pago.

Artículo 49 del Decreto Reglamentario de la Ley de Iva (Nº 23349)

CAE: 66184833952978

Fecha de Vto: 14/05/2016

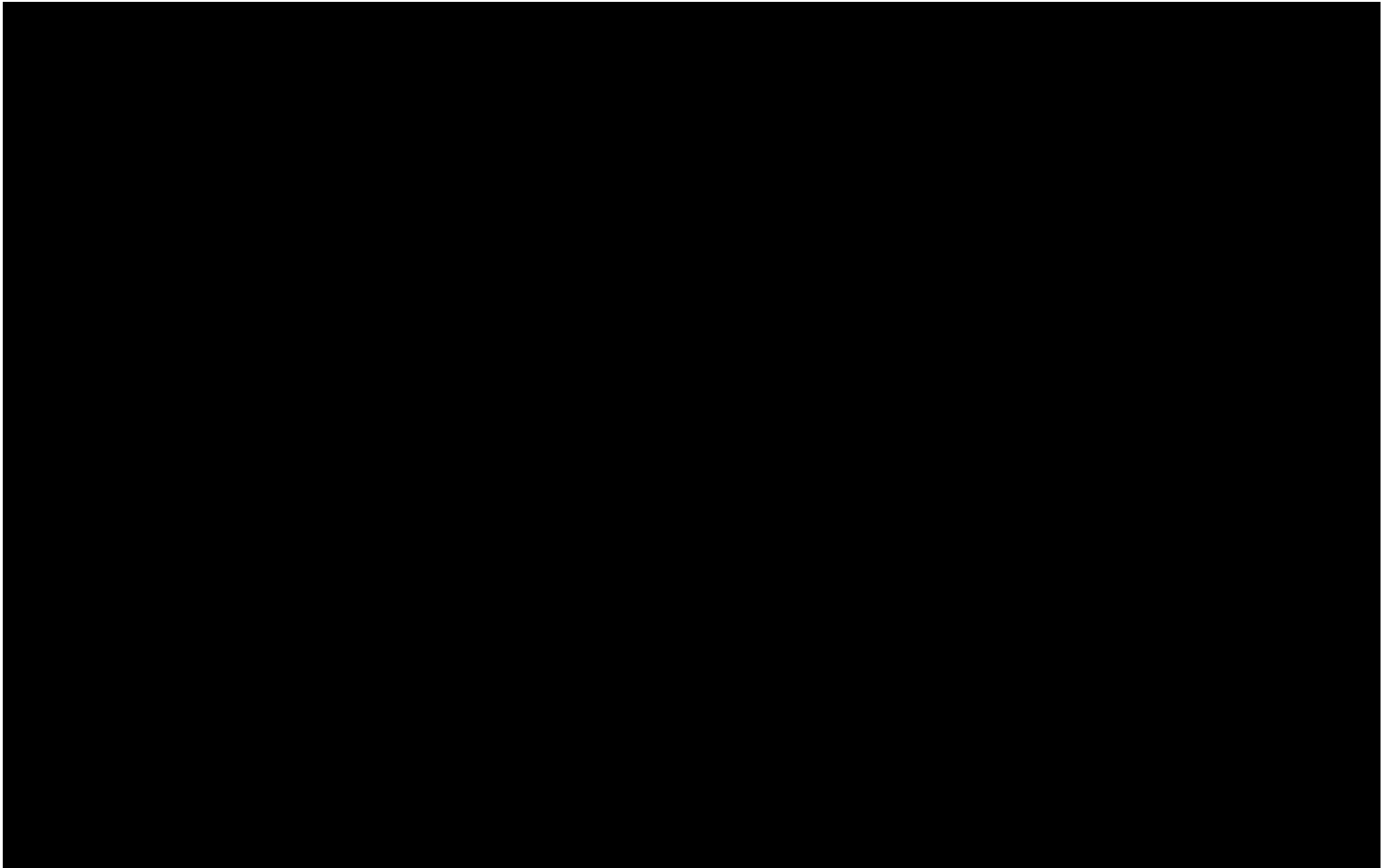
ER-402

RATTAGAN, MACCHIAVELLO, AROCENA & PENA ROBIROSA

TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183



TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183

Client: **2224 - Uber International Holding BV**
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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RATTAGAN, MACCHIAVELLO, AROCENA & PENA ROBIROSA

TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183

Client: **2224 - Uber International Holding BV**
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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RATTAGAN, MACCHIAVELLO, AROCENA & PENA ROBIROSA

TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183

Client: **2224 - Uber International Holding BV**

Matter: GENERAL ADVICE

Agreement: 1457

Date	Lawyer	Description	Time
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RATTAGAN, MACCHIAVELLO, AROCENA & PENA ROBIROSA

TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183

Client: **2224 - Uber International Holding BV**

Matter: GENERAL ADVICE

Agreement: 1457

Date	Lawyer	Description	Time
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TIME SHEET

04/05/2016 10:27:03a.m.

B000300002183

Client: **2224 - Uber International Holding BV**
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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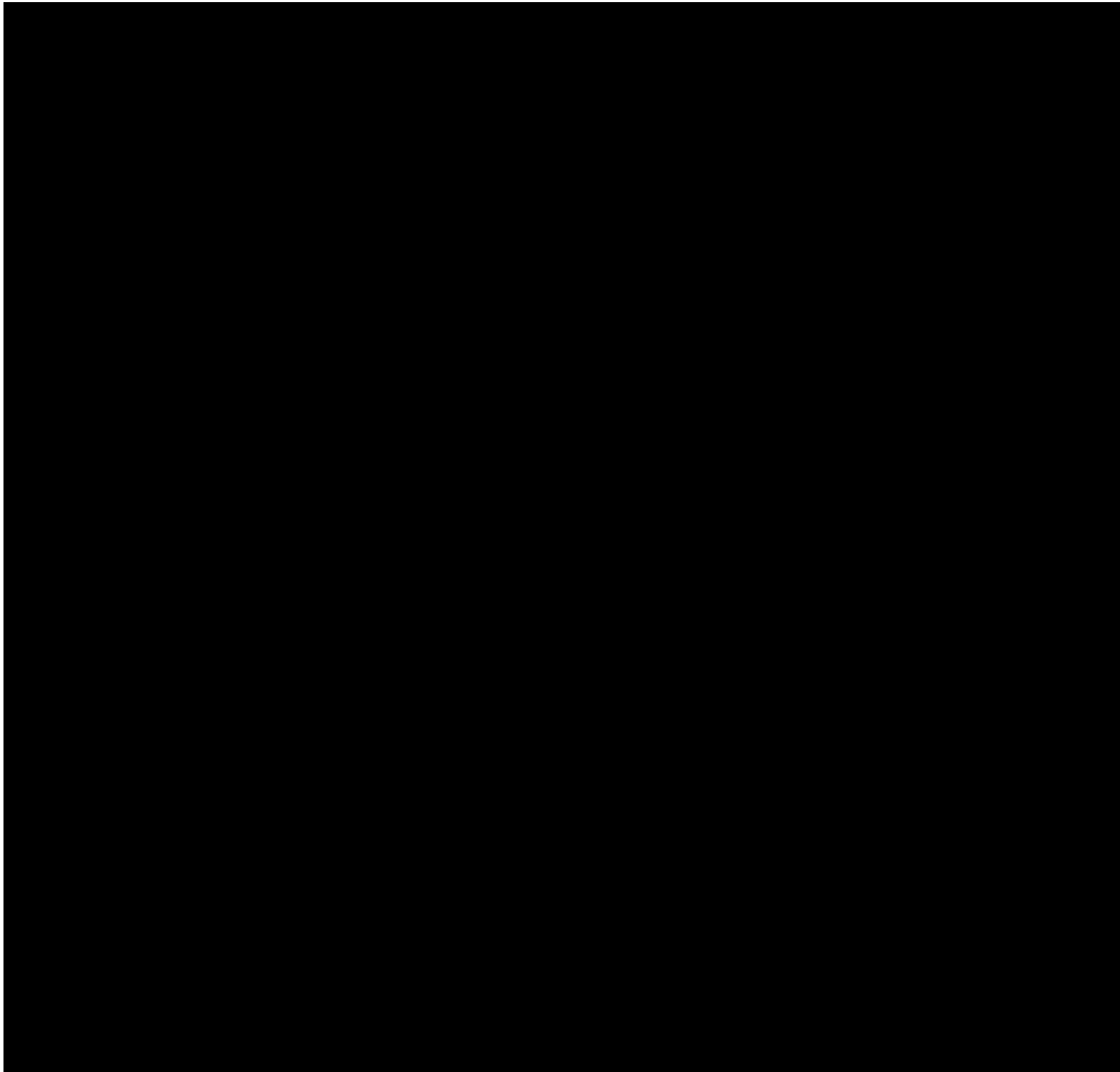
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04/05/2016 10:27:03a.m.

B000300002183

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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04/05/2016 10:27:03a.m.

Client: **2224 - Uber International Holding BV**
Matter: GENERALADVICE
Agreement: 1457

<i>Date</i>	<i>Lawyer</i>	<i>Description</i>	<i>Time</i>
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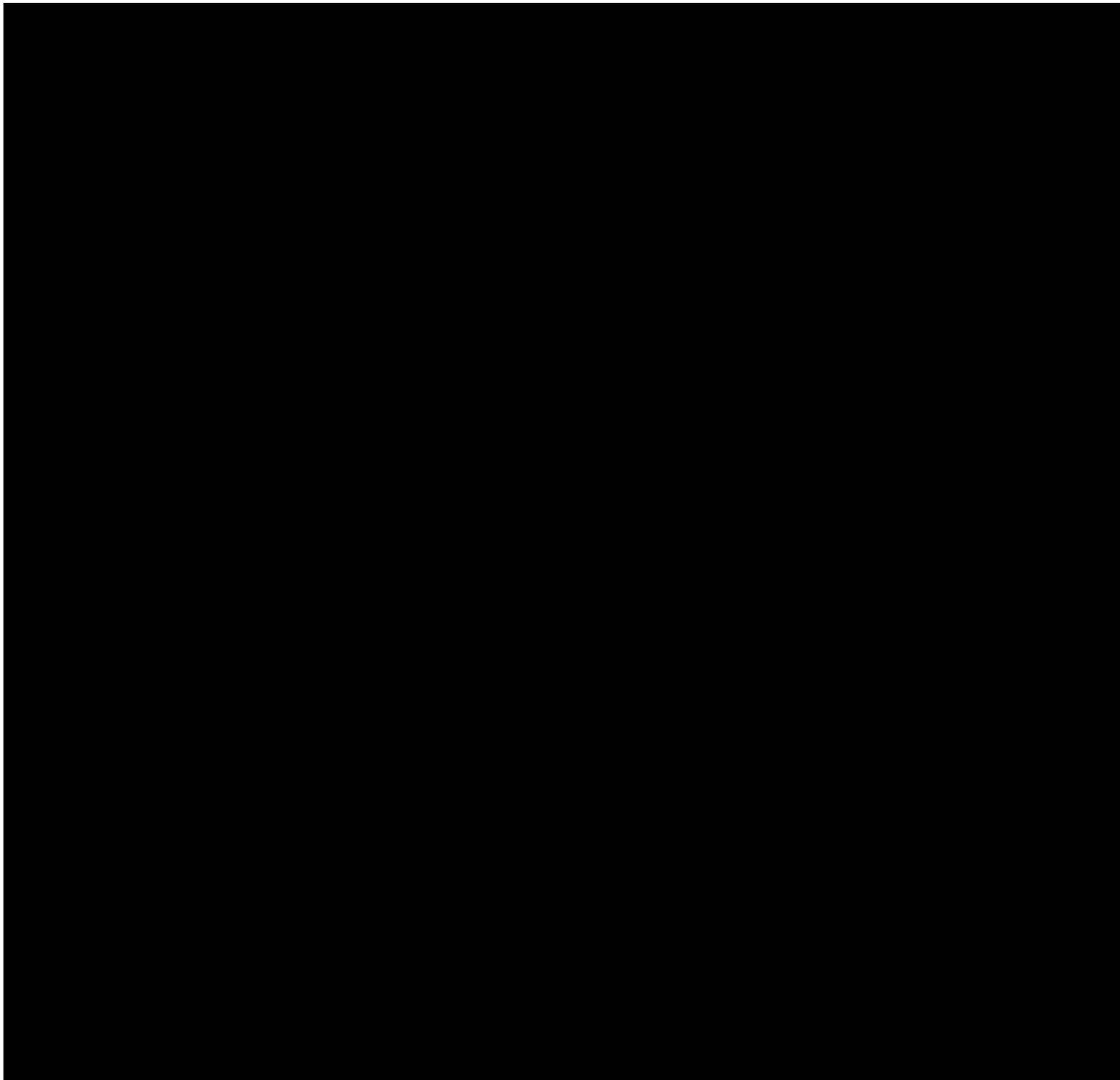
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B000300002183

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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04/05/2016 10:27:03a.m.

Client: **2224 - Uber International Holding BV**
Matter: GENERALADVICE
Agreement: 1457

<i>Date</i>	<i>Lawyer</i>	<i>Description</i>	<i>Time</i>
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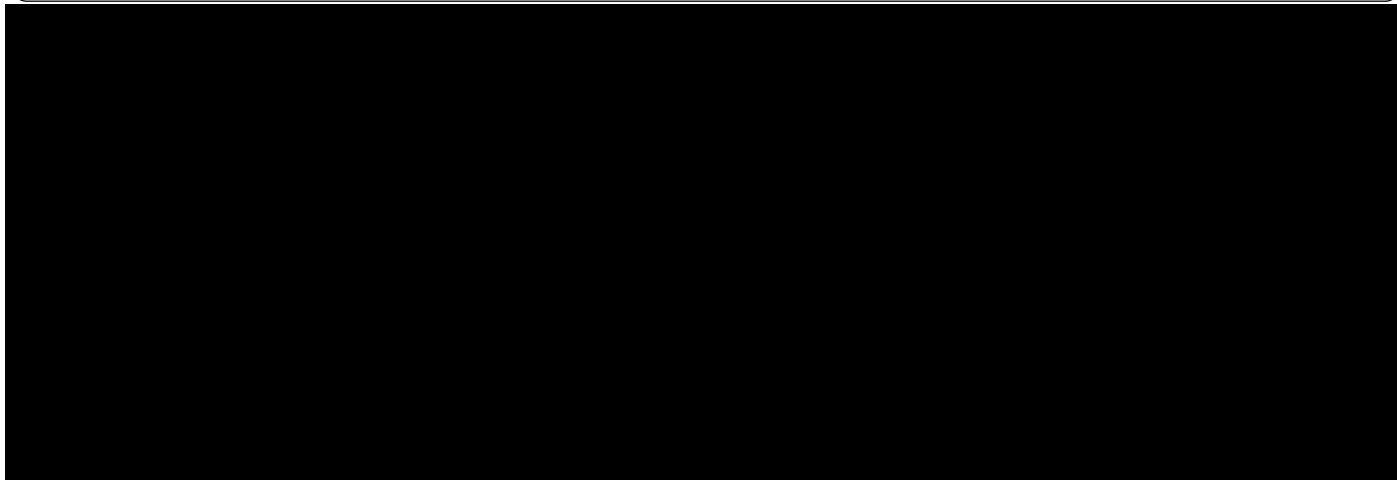
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B000300002183

Client: **2224 - Uber International Holding BV**

Matter: **EXPENSES**



**Rattagan Macchiavello Arocena
& Peña Robirosa Abogados SC**
B

Código 06

FACTURA

Nº: 0003 - 00002237

Torre Alem Plaza, Avenida Leandro N. Alem 855, pisos 7 y 8
C1001AAD - Ciudad Autónoma de Buenos Aires
Teléfono: 4010-5000 / Fax: 4010-5100
E-mail: info@rmlex.com
I.V.A. RESPONSABLE INSCRIPTO

Fecha de ingreso: 16/07/2005

Fecha: 06-06-2016

2224 - UBER INTERNATIONAL HOLDING BV

BARBARA STROZZILAAN 101. AMSTERDAM, THE NETHERLAND

- C.P. (1083)

*EXTERIOR

IVA: CONSUMIDOR FINAL

CONDICIONES DE VENTA: CONTADO

FEES FOR LEGAL ADVICE	USD29,183.39
GENERAL ADVICE	
MAY 2016	
EXPENSES INCURRED ON YOUR BEHALF	USD310.04
MAIL	USD89.87
NOTARY PUBLIC EXPENSES	USD114.62
LEGALIZATIONS	USD16.15

Cheques cruzados a nombre de Rattagan Macchiavello Arocena & Peña Robirosa Abogados SC No a la orden

Tipo de Cambio Utilizado USD 13,00

Total \$ 386.282,78

Subtotal	Impuesto	Subtotal	I.V.A.	Total
				USD 29.714,06

El tipo de cambio que corresponde al día de la emisión de la factura es sólo a efectos impositivos.

La cancelación de la misma se debe realizar al tipo de cambio del día de pago.

Artículo 49 del Decreto Reglamentario de la Ley de Iva (Nº 23349)

CAE: 66234396999692

Fecha de Vto: 16/06/2016

ER-414

TIME SHEET

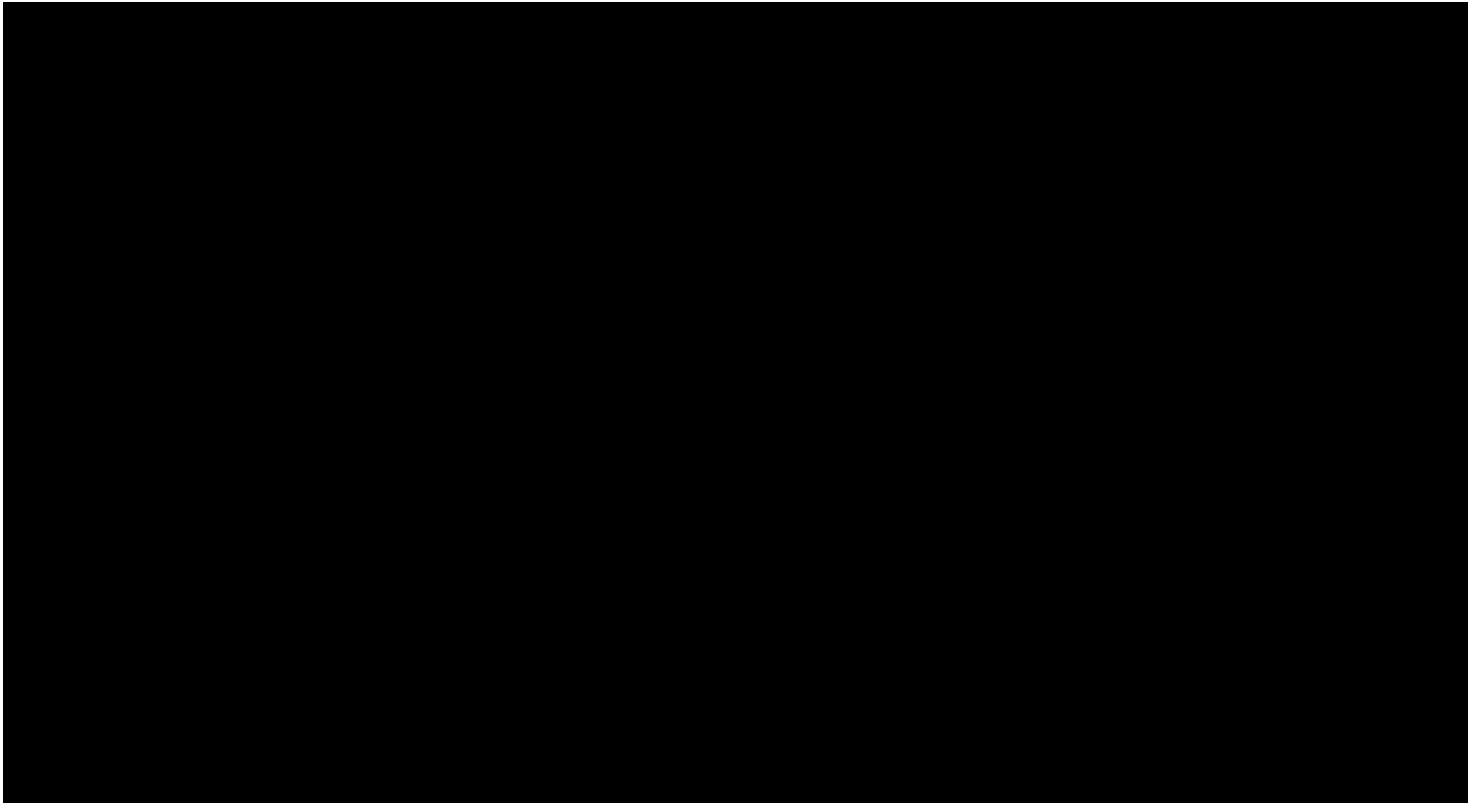
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Client: **2224 - Uber International Holding BV**

Matter: GENERAL ADVICE

Agreement: 1457



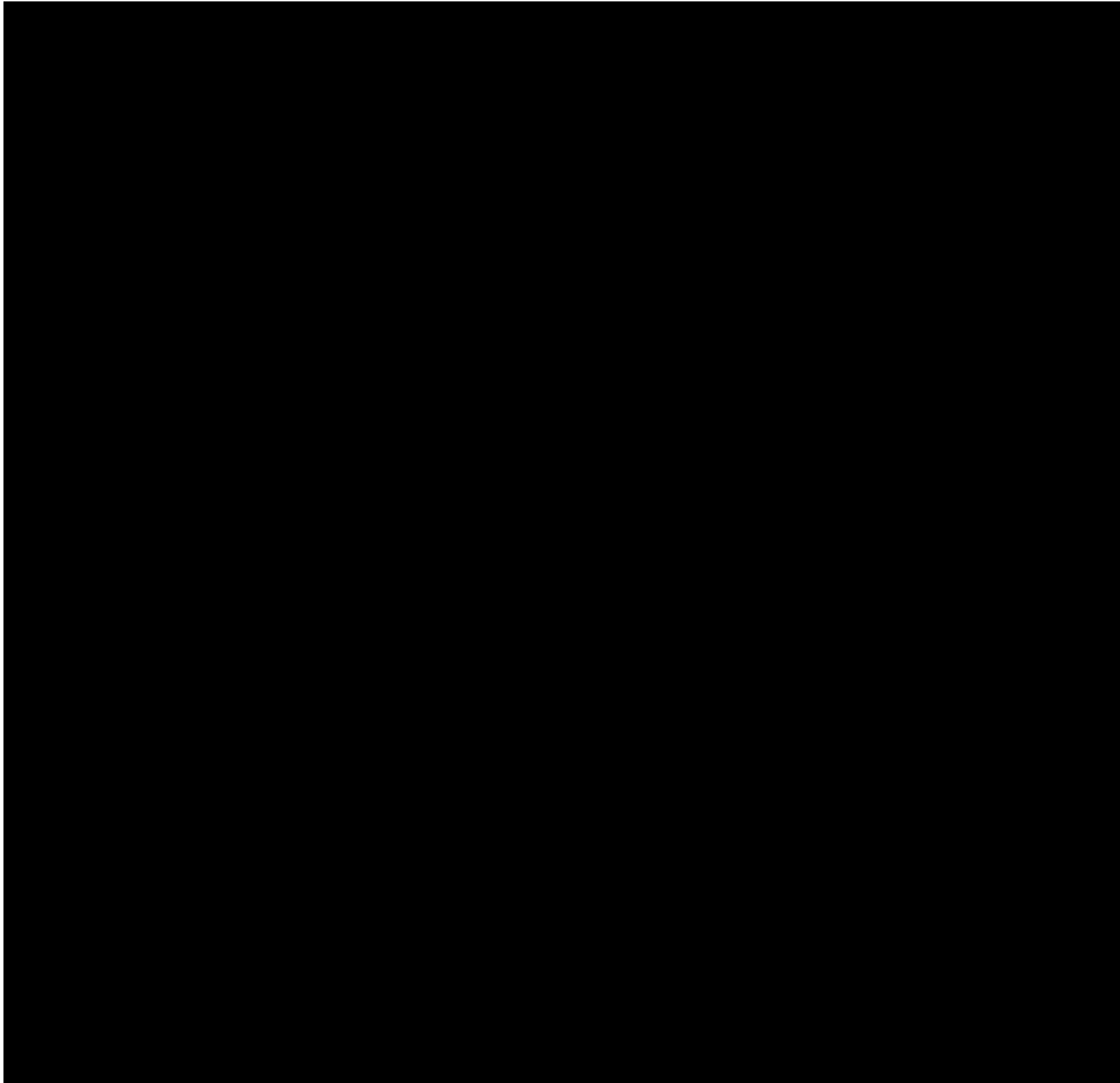
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06/06/2016 04:08:51p.m.

B000300002237

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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TIME SHEET

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Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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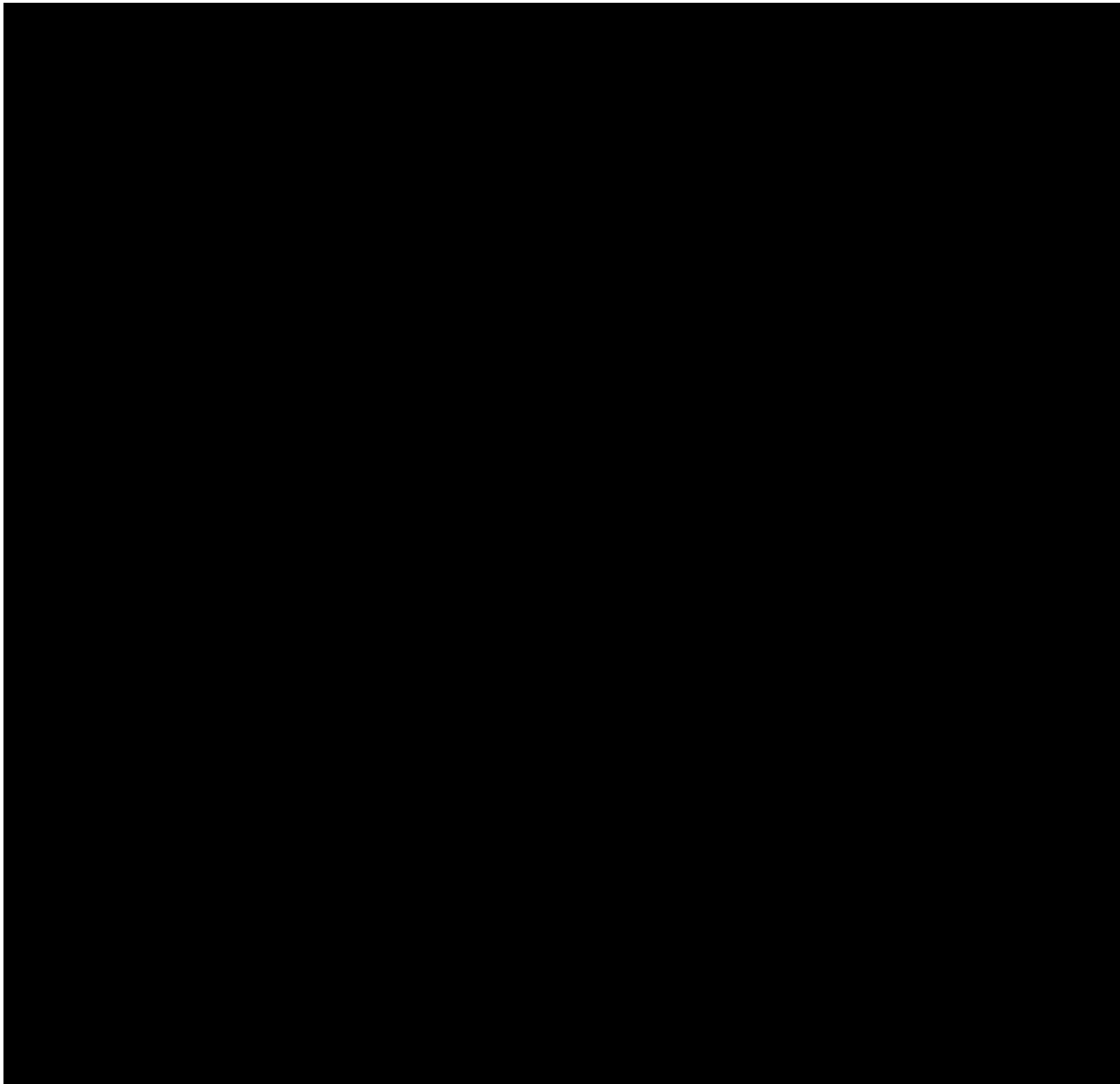
TIME SHEET

06/06/2016 04:08:51p.m.

B000300002237

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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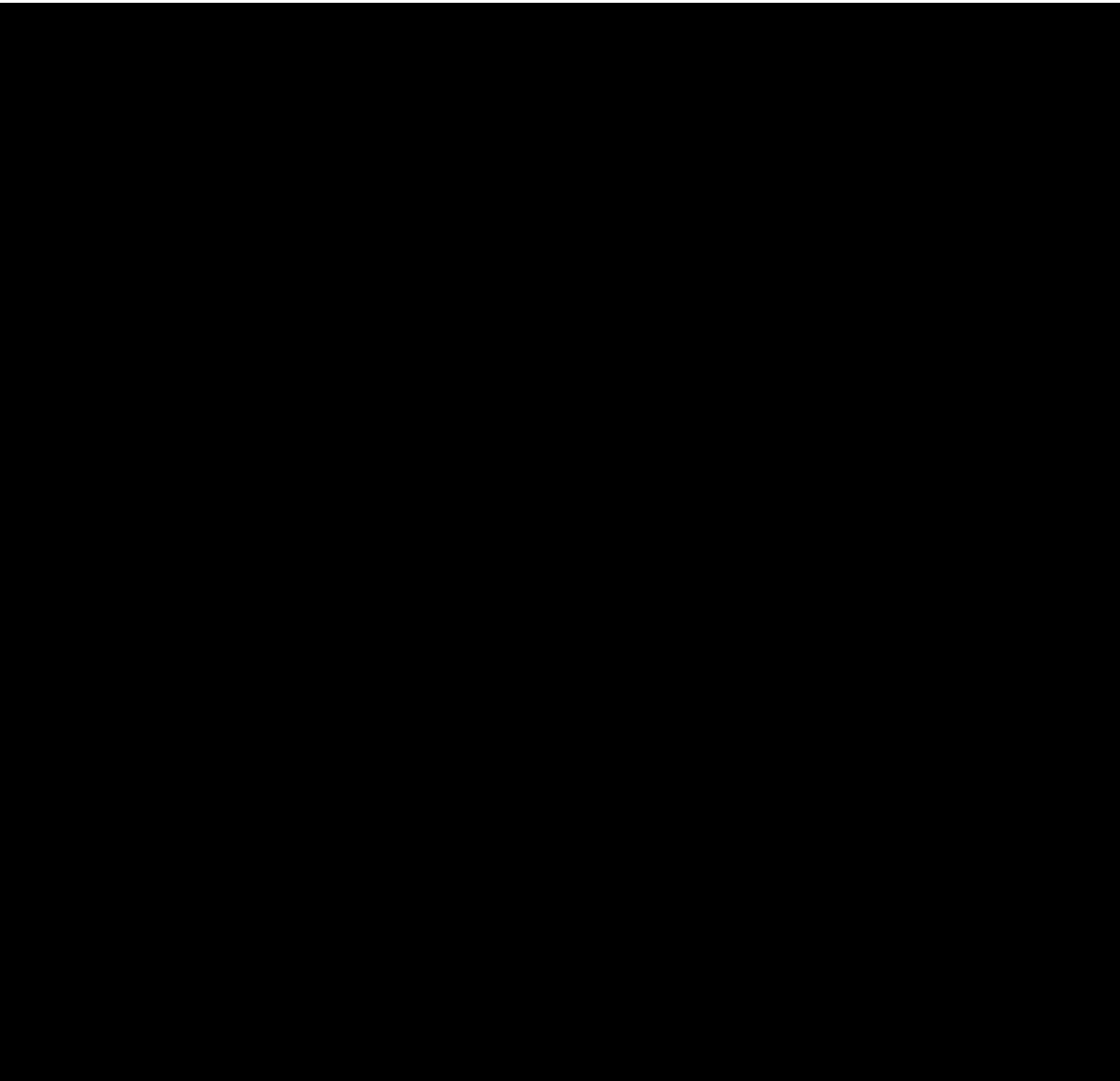
TIME SHEET

06/06/2016 04:08:51p.m.

B000300002237

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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06/06/2016 04:08:51p.m.

Client: **2224 - Uber International Holding BV**
Matter: GENERALADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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TIME SHEET

06/06/2016 04:08:51p.m.

B000300002237

Client: 2224 - Uber International Holding BV
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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TIME SHEET

06/06/2016 04:08:51p.m.

B000300002237

Client: **2224 - Uber International Holding BV**
Matter: GENERAL ADVICE
Agreement: 1457

Date	Lawyer	Description	Time
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RATTAGAN, MACCHIAVELLO, AROCENA & PEÑA ROBIROSA

TIME SHEET

06/06/2016 04:08:51p.m.

B000300002237

Client: **2224 - Uber International Holding BV**

Matter: **EXPENSES**



SHARTSIS FRIESE LLP
ONE MARITIME PLAZA
EIGHTEENTH FLOOR
SAN FRANCISCO, CA 94111-3598

MCDONALD HOPKINS LLC
STEPHEN J. ROSENFELD (pro hac vice)
srosenfeld@mcdonaldhopkins.com
CHRISTOPHER G. DEAN (pro hac vice)
cdean@mcdonaldhopkins.com
300 North LaSalle Street, Suite 1400
Chicago, IL 60654
Telephone: (312) 642-6103
Facsimile: (312) 280-8232

SHARTSIS FRIESE LLP
FRANK A. CIALONE (Bar #172816)
fcialone@sflaw.com
MILES S. WINDER (Bar #306780)
mwinder@sflaw.com
One Maritime Plaza, Eighteenth Floor
San Francisco, CA 94111-3598
Telephone: (415) 421-6500
Facsimile: (415) 421-2922

Attorneys for Plaintiff
MICHAEL R. RATTAGAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC. ,

Defendant.

Case No. 3:19-cv-01988-EMC

AMENDED COMPLAINT FOR:

- (1) BREACH OF FIDUCIARY DUTY;**
- (2) DECEIT;**
- (3) FRAUD;**
- (4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
- (5) NEGLIGENCE**

DEMAND FOR JURY TRIAL

1 Plaintiff Michael R. Rattagan (“Mr. Rattagan”), by and through his undersigned
 2 attorneys, as and for his Amended Complaint against defendant Uber Technologies, Inc.
 3 (“Uber”), states as follows:

4 **PRELIMINARY STATEMENT**

5 1. This lawsuit arises out of Uber’s recklessly orchestrated entry into the Argentine
 6 ride-sharing market and the unimaginable harm it inflicted on Mr. Rattagan, a highly respected
 7 business attorney in Buenos Aires and the former legal representative of certain Uber
 8 subsidiaries in the country. As has been a pattern in Uber’s entry into new markets, Uber took
 9 the approach that it is better to ask for forgiveness than for permission. Its launches are typically
 10 tumultuous with the hope that Uber can later make it all right. However, Uber could not do so in
 11 Buenos Aires. Uber’s launch in Buenos Aires was disastrous and continues to be so for Mr.
 12 Rattagan. Because of Uber’s callous attitude, Mr. Rattagan has endured and continues to endure
 13 years of criminal prosecution (facing many years in prison and the loss of his law license), has
 14 suffered through Argentine authorities raiding his offices, has had his civil liberties severely
 15 curtailed, and has sustained a staggering blow to his reputation both professionally and
 16 personally because of this widely publicized ordeal.

17 2. In early 2013, years before its catastrophic launch, Uber retained Mr. Rattagan
 18 simply and solely to establish its initial corporate presence in Argentina. Uber named Mr.
 19 Rattagan as its official legal representative in the country, two of his trusted colleagues as interim
 20 managers, and the offices of his law firm – in which he is a founding and name partner (the “Law
 21 Firm”) – as Uber’s legal domicile in Buenos Aires. Several years then passed without any
 22 meaningful activity, and the relationship between Mr. Rattagan and Uber went dormant. Then,
 23 in April 2016 – without consulting or even notifying Mr. Rattagan – Uber launched its service in
 24 Buenos Aires with the help of different advisors, who Argentine authorities publicly claim either
 25 ignored or disregarded the particularities of Argentine law, politics and business practice. Public
 26 reaction to Uber’s ill-advised launch was immediate, negative and entirely foreseeable. Under
 27 intense pressure to act, authorities targeted the only public face of Uber in Argentina: Mr.
 28 Rattagan, his colleagues, and his Law Firm. Police raided their office and homes, and they were

1 vilified in the media, subjected to scorn and ridicule in social and professional gatherings, and
 2 ultimately charged with serious crimes – including aggravated tax evasion (carrying a prison
 3 term from three and a half to nine years) – all due to Uber’s actions. As a result, Mr. Rattagan’s
 4 competency and ethics have been wrongfully called into question in the most public of forums.

5 3. Although Uber has publicly and privately acknowledged its mistakes, and is
 6 paying for Mr. Rattagan’s criminal legal defense, that limited indemnification does not, and
 7 cannot, compensate Mr. Rattagan for the severe emotional, consequential, and reputational harm
 8 he has suffered and continues to suffer. This lawsuit seeks compensation for those substantial
 9 damages and also punitive damages for Uber’s intentional and malicious conduct.

10 **THE PARTIES**

11 4. Mr. Rattagan is a citizen of Argentina. He is a founding partner of a highly
 12 respected business law firm, based in Buenos Aires, Argentina, that serves multinational clients
 13 from the United States, Latin America, Europe, and Asia. He is an experienced business lawyer,
 14 and, before Uber’s launch in Buenos Aires, was one of the most respected advisors in the City.

15 5. Uber Technologies, Inc. (“Uber”) is a Delaware corporation with its principal
 16 place of business in San Francisco, California.

17 **VENUE AND JURISDICTION**

18 6. This Court has subject matter jurisdiction over the claims asserted herein pursuant
 19 to 28 U.S.C. § 1332 because: (a) Mr. Rattagan is a citizen of a different state and/or country than
 20 Uber; and (b) the amount in controversy exceeds \$75,000, exclusive of costs and interest.

21 7. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because Uber is
 22 subject to personal jurisdiction in this District, and because a substantial part of the actions or
 23 inactions giving rise to Mr. Rattagan’s claims occurred in this District.

24 8. Upon information and belief, Uber plans, oversees, conducts, and operates all of
 25 its international activities from and through its headquarters in San Francisco, California.

ALLEGATIONS**A. Mr. Rattagan's Background**

9. As a lawyer licensed in Argentina and in the State of New York, Mr. Rattagan maintains an active practice counseling large multinational companies in various business matters, with an emphasis on transactions, investments, and interests in Argentina. After spending 17 years practicing in law firms with an international reach, he co-founded the Law Firm in 2005, where he co-heads its Mergers & Acquisitions and Natural Resources & Energy Groups, and is one of its primary sources of business development and origination. In addition to his Argentine law degree, Mr. Rattagan has an LLM from New York University School of Law and speaks Spanish, English, French, Portuguese, and Japanese.

10. For nearly 30 years in practice, Mr. Rattagan has carefully built and maintained an impeccable reputation for honesty and integrity and for advising his clients to adhere to the same in the conduct of their own businesses. This unyielding approach to compliance with the law placed Mr. Rattagan in a unique and prominent class of legal professionals in Argentina.

11. Mr. Rattagan's sterling reputation as a skilled lawyer and honest broker made him ideal counsel for multinational companies looking to do business in Argentina. As one of the top and most renowned business lawyers in Buenos Aires, much of his practice came from international referrals. As the main business generator of his firm for more than 13 consecutive years, an essential part of Mr. Rattagan's role was to travel extensively abroad to develop professional relations and create awareness of the investment climate and opportunities in Argentina while promoting the Law Firm and its abilities.

B. Mr. Rattagan's Limited, Pre-Launch Engagement by Uber

12. In February of 2013, Liesbeth ten Brink – a former classmate from New York University School of Law who worked for Uber – contacted Mr. Rattagan. She explained that Uber tasked her with organizing its expansion into a number of Latin American countries, including Argentina.

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1 13. In support of its anticipated expansion efforts, Uber enlisted Mr. Rattagan to assist
2 in the creation of an Argentine subsidiary (the “Subsidiary”) for Uber’s future operations in
3 Buenos Aires.

4 14. The first step was to register two Uber entities as foreign shareholders
5 (“Shareholders”) of the Subsidiary, which Mr. Rattagan did on Uber’s behalf.

6 15. In connection with that process, Uber and Mr. Rattagan agreed that Mr. Rattagan
7 would act as the Shareholders’ legal representative in Argentina. Under Argentine law, every
8 foreign shareholder is required to have a local resident acting as its legal representative. The role
9 of the legal representative is to register a shareholder locally, incorporate a subsidiary on its
10 behalf, attend shareholder meetings upon written instructions, and act as the face of the
11 shareholder at any legal proceedings, such as trial. The role of the legal representative is not to
12 make decisions for the shareholders or to ensure that the shareholders or their affiliates, if any,
13 comply with Argentine law (practically speaking, the legal representative has little to no ability
14 to do so).

15 16. Mr. Rattagan also permitted the Subsidiary to use his Law Firm’s office as its pre-
16 launch legal domicile until Uber could set up its own offices. Mr. Rattagan further introduced
17 Uber to two individuals of his trust – both known to the Law Firm – to act as interim manager
18 and interim alternate manager of the Subsidiary.

19 17. Pursuant to the agreed arrangement, in August 2013, the Law Firm registered the
20 Shareholders of the Subsidiary with the Buenos Aires Office of Corporations.

21 **C. Uber’s Prominence Grows Worldwide**

22 18. Following the above registration, the Law Firm’s file on Uber went dormant. In
23 fact, during the latter half of 2013, all of 2014, and most of 2015, neither Mr. Rattagan nor the
24 Law Firm was asked to (or did) provide any counsel or services related to Uber’s future
25 Argentine expansion. The Law Firm’s Uber file was, for all intents and purposes, dead.

26 19. But while the file was dormant, Uber was active and growing around the world,
27 and – unbeknownst to Mr. Rattagan and the Law Firm – secretly planning to launch in
28 Argentina.

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20. Although Uber boasts about its innovation, its launches in new jurisdictions have been characterized by a less-admirable pattern: initial, immediate, and often severe tension and conflict with local officials and unions, caused by its alleged disregard of local laws and customs (thus creating havoc and exposing people who are dragged into the quagmire), followed by negotiations that ultimately lead to a truce and legally compliant operations.

21. Mr. Rattagan learned too late and at great personal expense that Uber's rapid growth followed this pattern throughout the United States and around the world. Prior to the launch, he and his colleagues awaited further contact and instructions concerning Uber's apparent stalled expansion into the City. That instruction would never come. So while Mr. Rattagan had no opportunity to advise Uber about how to conduct a launch in Argentina that would be prudent and peaceful, he and his offices were "conveniently used" (or abused) as a "front" for activities that Uber knew from its past experience would be chaotic at best.

D. Uber's Launch In Argentina

22. In March 2016, Mr. Rattagan attended an International Bar Association conference in Rio de Janeiro, Brazil. While there, he observed a panel discussion focusing on the challenge new technology companies face when confronted with traditional regulations.

23. Among the speakers was one Enrique Gonzalez ("Gonzalez"), an attorney from Mexico who at the time was Uber's Latin America Legal Director (after the events that are the basis of this complaint, in which he had a decisive and leading role, he was not censored but rather promoted to Associate General Counsel, Latin America). During his talk, Gonzalez indicated that the day before he had met with all of Uber's legal advisors in the region. Mr. Rattagan had had no prior communications with Gonzalez, and in fact he had no knowledge of Gonzalez's existence prior to the Rio de Janeiro conference.

24. Puzzled and concerned, Mr. Rattagan emailed Gonzalez shortly after the conference to explain that there must be some mistake because, in Mr. Rattagan's mind, only members of the Law Firm had been acting for Uber in Argentina (even in a very limited way). Mr. Rattagan proposed to meet or speak with Gonzalez and offered the Law Firm's expertise to help Uber navigate the issues surrounding the launch. Uber never took Rattagan up on his offer.

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1 25. On April 12, 2016, Mr. Rattagan received a spam email announcing that Uber had
2 officially launched its operations in the City.

3 26. Mr. Rattagan was shocked to learn this crucial development in such an impersonal
4 manner. As the Argentine legal representative of two Uber entities in the process of setting up
5 the Subsidiary through which Uber was to operate, he had received no communication that Uber
6 had begun preparing to launch in the country, let alone that it was in fact launching without what
7 the City would immediately claim publicly was a lack of a basic legal infrastructure, including
8 the lack of a registration for tax identification numbers with the City.

9 27. On information and belief, Gonzalez was spearheading Uber's Latin America
10 expansion and – without consulting or even informing Mr. Rattagan – had engaged another
11 attorney in Buenos Aires to assist in Uber's preparations. At no point before the launch did Uber
12 inform Mr. Rattagan that it had engaged a new attorney for expansion into Argentina.

13 28. Nor did Uber cause the new attorney to publicly announce his relationship with
14 Uber, much less update the Office of Corporations records that showed Mr. Rattagan and the
15 address of the Law Firm as the only links to the Shareholders and the Subsidiary “in formation.”

16 29. Consequently, when Uber launched in Argentina, the public records reflected that
17 Mr. Rattagan, his colleagues, and the Law Firm's offices were Uber Shareholders' legal
18 representative, the interim managers of the Subsidiary, and their legal domicile in the country,
19 respectively – despite the fact that none of them had ever been consulted about or even made
20 aware of Uber's plans. Uber, in other words, allowed its new attorney to remain concealed while
21 Mr. Rattagan, his colleagues, and the Law Firm unknowingly became the public names and faces
22 of an ill-advised launch in which, obviously, they had played no part. Uber camouflaged the
23 actual Uber decision-makers in the shadows of anonymity while callously exposing Mr.
24 Rattagan, his family, his colleagues, and the Law Firm to the hellish consequences of Uber's
25 controversial launch strategy.

26 30. Dismayed by the lack of communication, and deeply concerned about the liability
27 they faced in their official positions as a result of Uber's secretive conduct and sudden launch,
28 Mr. Rattagan and the interim manager and interim alternate manager tendered their resignations

1 to Uber immediately thereafter. But more than two months elapsed until their removal and
 2 replacement was made effective, leaving them exposed to liability as a result of Uber's local and
 3 offshore pre- and post-launch activities that Uber continued despite its knowledge that Argentine
 4 officials had "declared war" on Uber and were seeking to impose criminal liability on anyone
 5 truly or apparently linked to a traumatic and confrontational launch, predictably perceived and
 6 thus treated by the City authorities as illegal.

7 **E. Fallout From Uber's Launch**

8 31. The reaction of taxi drivers and labor unions to Uber's launch in Argentina was
 9 immediate, hostile and – for Uber – entirely predictable. As with Uber's launches in London,
 10 Mexico City, Barcelona, and Sao Paulo, the launch in Buenos Aires was met with negative press,
 11 violent labor union demonstrations and protests, and street blockades throughout the City. In
 12 fact, right before Uber's launch in Argentina, its launch in Colombia foretold the fallout that
 13 would result from the failure to properly register a new subsidiary in a South American country:
 14 amid protests from cab drivers and fines instituted by the nation's transport superintendent, the
 15 president of Colombia warned Uber that it could be banned from the country for its failure to
 16 formally register its operations. Indeed, unlike in other cities and countries where Uber's
 17 initially tumultuous launches evolved into peaceful and legally compliant operations, its launch
 18 in Buenos Aires was especially confrontational, and Uber still faces threats, fines, and the
 19 revocation of its drivers' licenses.

20 32. Because public records showed the Law Firm's office as the legal domicile for the
 21 two Shareholders and the Subsidiary, taxi drivers surrounded the Law Firm's building and
 22 protesters blocked its exits, preventing employees and clients from entering or exiting for hours.
 23 Additionally, local media outlets were filled with angry interviews and negative coverage
 24 concerning Uber and all those associated with it, notably including Mr. Rattagan.

25 33. On April 13, 2016, the day after the disastrous launch, Mr. Rattagan emailed
 26 Gonzalez, again requesting an urgent meeting to address the public outcry and backlash against
 27 Mr. Rattagan and the Law Firm. Gonzalez simply responded that someone from his team would
 28 contact Mr. Rattagan soon. No one ever did. Instead, Uber acted (and continues to act) as if it

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1 was/is content to let Mr. Rattagan, his colleagues, and the Law Firm bear the brunt of the
2 negative public reaction and potential criminal consequences.

3 34. Early on Friday, April 15, 2016, Mr. Rattagan again emailed Gonzalez and asked
4 to be replaced as the legal representative of the Shareholders and asked Gonzalez to provide the
5 address of the new legal domicile for the Uber entities in the City. Gonzalez did not act on this
6 request.

7 35. Just as Mr. Rattagan and his team became the targets of severe public animosity,
8 Argentine authorities quickly engaged their law enforcement arms to investigate how to stop
9 Uber.

10 36. Midday on April 15, 2016, a City inspector came to the Law Firm's offices with
11 orders "to immediately cease [Uber's] activities." After lengthy discussions with City officials, a
12 partner of Mr. Rattagan narrowly avoided having the Law Firm's offices closed. But the ordeal
13 was far from over.

14 37. Later that day, in the early evening hours, a small army of City inspectors and
15 police officers stormed into the Law Firm's offices, announcing an order to shut down Uber.
16 According to the "acta" (akin to a search warrant) that the officers carried, the raid was the result
17 of a charge of "contravention," *i.e.*, the alleged private use of public space, for commercial gain,
18 without a permit.

19 38. To the shock of the Law Firm lawyers and staff, television reporters evaded
20 security and filmed inside the offices while the police carried out the raid. The prime-time news
21 programs displayed the Law Firm logo and name, which prominently includes Mr. Rattagan's
22 name, and falsely reported that the Law Firm's offices were the location of Uber's illegal
23 activities, which included tax evasion.

24 39. Compounding the trauma of the raid on the Law Firm's offices, authorities
25 searched the homes of Mr. Rattagan's trusted colleagues who had agreed to serve as interim
26 manager and interim alternate manager of the Subsidiary while in formation, as their spouses and
27 children watched in horror. Although Mr. Rattagan's home has not yet been raided, the threat
28

1 remains, causing a constant fear that his family will be the next victim of the natural
2 consequences of Uber's actions.

3 40. On April 16, 2016, Mr. Rattagan wrote Gonzalez a pointed email to notify him of
4 the office raid, address Uber's inexplicable failure to timely disclose its ongoing activities and
5 ultimate launch to Mr. Rattagan, and inquire how Uber planned to rectify the situation.

6 41. On April 18, 2016, Mr. Rattagan finally spoke with Gonzalez who, however, was
7 dismissive of the trauma inflicted on Mr. Rattagan, his colleagues, and the Law Firm, and sought
8 to minimize the gravity of the situation. Gonzalez never even apologized, and Uber maintains
9 this callous disregard of its continuing outrageous conduct to this day.

10 42. By this point, the prospect of potential civil and criminal liability related to Uber's
11 launch was known – indeed, City tax authorities had already formally requested documents from
12 Mr. Rattagan's colleagues.

13 43. On May 12, 2016, a month after Uber's launch and nearly four weeks after the
14 raids on the Law Firm, Gonzalez finally came to Argentina and met with Mr. Rattagan. Despite
15 being aware of the trauma that was causing Mr. Rattagan and his colleagues suffered and
16 continued to suffer, Gonzalez maintained Uber's approach of showing no concern for the harm
17 Uber's ill-conceived launch was causing to Rattagan.

18 44. Gonzalez made it clear that Uber had no interest in cooperating with Mr. Rattagan
19 or the Law Firm. According to Gonzalez, assisting with Uber's activities in Argentina was none
20 of Mr. Rattagan's business, as Uber had other legal counsel and consultants advising it in the
21 country.

22 45. Mr. Rattagan reiterated that his resignation and those of his colleagues should be
23 acknowledged at once and all of them immediately replaced. Undeterred, and notwithstanding
24 the risk posed to Mr. Rattagan and his colleagues, Uber delivered a letter concerning the launch
25 to City officials that showed the Law Firm office address and name, clearly – but falsely –
26 implying that the Law Firm was responsible for it. Officials (the same ones who Uber was trying
27 to appease) were furious, and the day after the letter was delivered, they called the Law Firm
28 demanding an explanation that the Law Firm could not provide.

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1 46. Having received nothing but contempt, inaction, and open hostility from
2 Gonzalez, on May 26, 2016, Mr. Rattagan reached out to Salle Yoo (“Yoo”), Uber’s Chief Legal
3 Officer, General Counsel, and Corporate Secretary, to explain the situation and seek her direct
4 involvement to handle a situation that had clearly gone astray in the hands of Gonzalez. Among
5 other things, Mr. Rattagan asked Yoo “to promptly designate someone [the Law Firm could] talk
6 to with the purpose of handing over of all [its Uber] files in an orderly manner,” and “instruct
7 [her] team to immediately refrain from mentioning or invoking [the Law Firm’s] name and from
8 using [its] offices as legal domicile in any future communications with the Argentine
9 government (national, provincial or city levels) or with any third parties without [its] prior
10 written consent.”

11 47. Yoo responded that day, and expressed concern for the “inconvenience” Mr.
12 Rattagan and his firm experienced since Uber’s launch in Argentina, and she subsequently
13 assigned Todd Hamblet (Uber’s Managing Counsel, Corporate) to handle the matter from “HQ.”

14 48. Despite Yoo’s professed concern about the position in which Mr. Rattagan and
15 the Law Firm had been placed by Uber’s ill-advised launch, Uber continued to carry out its
16 Argentine operations in exactly the same manner, thus further exposing Mr. Rattagan and the
17 Law Firm to the ongoing and increasingly severe danger of additional public scrutiny and
18 criminal liability. Yoo, Hamblet, Gonzalez, and Uber all knew that Argentine authorities were
19 investigating Mr. Rattagan for serious crimes involving allegations that Uber failed to register to
20 do business in Buenos Aires, failed to comply with applicable laws and regulations pertaining to
21 the transportation of people, and failed to pay appropriate local taxes. But, Uber nevertheless
22 continued to operate without change or apparent concern for the consequences.

23 49. For approximately two months after Mr. Rattagan tendered his resignation, Uber
24 operated with its full cadre of drivers (racking up millions in alleged unpaid taxes) while Mr.
25 Rattagan remained, at the Office of Corporations, as the formal legal representative of the
26 Shareholders. During that time, Uber knowingly left Mr. Rattagan (and his colleagues) as the
27 sacrificial lambs for the scorn of the public and the criminal investigations of the Argentine
28 authorities.

F. The Criminal Charges

50. Argentine authorities claimed that when Uber launched in Argentina, the process to incorporate the Subsidiary had not been completed. As a result, the authorities claimed that the Subsidiary was still “in formation” – making its Shareholders liable for actions attributed to the company – and prohibiting Uber from applying for or obtaining a tax ID, which is necessary to open a bank account, hire staff, lease an office, and transact business. That did not stop Uber.

51. Upon information and belief, Uber’s secretive preparations for the launch were significant. Uber had to send foreign employees into Argentine territory to recruit, train, and equip drivers, and contract with intermediate payment companies that would process credit card charges and distribute the related funds. Mr. Rattagan was never informed that these activities were going on behind his back, and he did not participate in them in any way.

52. Although Mr. Rattagan had no role in Uber’s conduct leading up to and following the launch in Argentina, Uber’s shadow operation and failure to appoint a different legal representative led a City prosecutor (the “Prosecutor”) to wrongly associate Mr. Rattagan with those who were involved in that covert pre-launch behavior.

53. In April 2017, approximately one year after the disastrous launch, and despite having no involvement in Uber’s activities, Mr. Rattagan, as former legal representative of Uber’s two foreign entities in Argentina, was personally charged with unauthorized use of public space with a commercial aim.

54. The Prosecutor was not done. Because the Prosecutor claimed Uber had failed to register its Subsidiary and pay appropriate sales tax, the Prosecutor quickly broadened the scope of his investigations to include more serious criminal issues.

55. In November 2017, the Prosecutor charged Mr. Rattagan with a second crime based on Uber’s clandestine launch: aggravated tax evasion. Conviction on that charge carries a three-and-a-half to nine-year prison sentence.

56. Compounding the already massive problem for Mr. Rattagan, the alleged tax evasion was supposedly aggravated due to the volume of Uber’s sales in the year after the launch. Had Uber taken immediate steps to replace Mr. Rattagan as its legal representative in

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Argentina prior to the launch, or stopped operating while the Prosecutor was claiming that Uber was acting illegally, the amount of the supposedly unpaid taxes while Mr. Rattagan was legal representative of the Shareholders would have been far less – and thus the charge against him would not have been “aggravated,” and may not have been filed at all. In other words, Uber’s reckless and unmitigated conduct caused the charges against Mr. Rattagan (which should not have been filed in the first place) to become aggravated and much more severe.

57. In December 2017, Mr. Rattagan was summoned to appear before the Prosecutor. It was the worst, most humiliating ordeal of his life. Prior to being interrogated in connection with the preparation, launch, and subsequent operations (of which he knew nothing), he was taken to a room to have his mugshot and fingerprints taken – thirteen separate times so original prints could be sent to each interested government agency.

58. Adding insult to injury, the Argentine court temporarily banned Mr. Rattagan from traveling abroad, preventing him from freely conducting his professional activities and jeopardizing his contribution to the Law Firm. The Prosecutor labeled Mr. Rattagan a flight risk and publicly announced that he would be detained and imprisoned if he attempted to leave the country. The news went viral and exacerbated the severe embarrassment and anguish that Mr. Rattagan already was suffering.

59. While taxi drivers, labor unions, and politicians sought a public face to direct their ire, Mr. Rattagan was smeared in the local media for his supposed role in Uber’s conduct. His name became inseparable from Uber’s claimed illegal operations and aggravated tax evasion.

G. Harm Mr. Rattagan Suffered As A Result of Uber’s Actions

60. Mr. Rattagan’s success as a name partner of a respected international law firm is the product of a lifetime spent building a reputation based on integrity and ethical conduct.

61. As a result of Uber’s fateful launch in Argentina, Mr. Rattagan’s name is synonymous with tax evasion and illegal commercial operations by a foreign business. His reputation has been dragged through the proverbial mud. Indeed, due to the publicity surrounding the raids and charges against him, Mr. Rattagan has – in effect – been walking around with a sign across his chest that he is an accused felon. Although he attempts to explain

1 to colleagues, friends, and family that, despite the allegations against him, he is innocent, such
2 protestations cannot alleviate the reputational stigma.

3 62. Instead of stopping its operations that officials were charging were illegal and that
4 were exacerbating the criminal charges against Mr. Rattagan, Uber simply offered Mr. Rattagan
5 that it would help pay for a reputation management firm.

6 63. Worse, while Mr. Rattagan is already the target of two criminal proceedings,
7 which have impacted and continue to threaten his and his family lifestyle, his Argentine legal
8 advisors have warned him that he may yet face additional charges for Uber's actions, such as
9 money laundering, VAT and income tax evasion, and failure to make social security
10 contributions. He lives – and will continue to live for many years, as events unfold – under the
11 constant threat and fear of further humiliation, wasted time and energy, and the physically
12 exhausting emotions of facing charges that jeopardize his freedom, reputation, peace of mind,
13 and livelihood. All of that and more hang in the balance – all because Uber schemed to launch
14 operations in Buenos Aires without the knowledge of or care for the effect on Mr. Rattagan.

15 64. Having expanded across the globe, Uber has to be intimately aware of the fallout
16 that occurs when it enters a new market using its established methods of disruption and
17 confrontation. Uber knew of the harm that would – and did – befall Mr. Rattagan upon its
18 launch, yet it failed to disclose its plans or take any steps to protect Mr. Rattagan, his colleagues,
19 or his Law Firm from the foreseeable result. Nor did it act to mitigate the damaging effects of
20 that harm after being specifically warned by Mr. Rattagan of the injury it was inflicting on them.

21 65. Instead, Uber, a multi-billion dollar international behemoth with near limitless
22 resources, allowed Mr. Rattagan, who played no role in its operations, to be thrown to the wolves
23 and bear the brunt of the eminently predictable public outcry, labor union and taxi driver rage,
24 political pressure, police actions, and criminal charges. With Mr. Rattagan as a scapegoat,
25 Uber's real Argentine counsel and advisors continued to operate behind the scenes unscathed.

26 66. Indeed, Uber's approval of the way its launch in Argentina unfolded is evidenced
27 not only by its refusal to alter its conduct but also by its promotion of Gonzalez – the architect of
28 Uber's Argentine campaign and Mr. Rattagan's misery.

67. The harm that Mr. Rattagan suffered could have been avoided if Uber: (i) stopped operations while the Argentine authorities were charging that it was illegally operating; (ii) replaced Mr. Rattagan as legal representative before its launch; or (iii) advised Mr. Rattagan of its intentions pre-launch.

68. Acknowledging the harm its actions caused him, Uber has, to date, paid for Mr. Rattagan's criminal defense and his time in responding to the fallout from the launch. That partial indemnification, however, does not compensate Mr. Rattagan for the significant emotional trauma and serious damage to his reputation that he has endured. Nor does it compensate him for the significant loss in future revenue resulting from such reputational damage. Such compensatory damages alone constitute many millions of dollars.

69. Mr. Rattagan also seeks punitive damages, in addition to compensatory damages, to punish Uber for its intentional and malicious conduct, and deter it from similar conduct in the future.

FIRST CAUSE OF ACTION **Breach of Fiduciary Duty**

70. Mr. Rattagan repeats and realleges paragraphs 1 through 69 of this Amended Complaint as though reproduced in full herein.

71. Under Argentine law, the legal representative of a foreign company has a legitimate interest in ensuring the good operation and standing of such company, because he or she conceivably could be exposed to personal criminal and civil liabilities for unlawful conduct by the company. Indeed, no reasonable and reputable individual would agree to act in such a capacity if there were any possibility that such harm would befall them for corporate conduct that is entirely outside of their control.

72. A company owes such legal representative a fiduciary duty not to subject that legal representative to personal liability.

73. By asking Mr. Rattagan to serve as the legal representative of the Shareholders and thus exposing him to personal liability for any alleged noncompliance with the law, Uber assumed a fiduciary duty to Mr. Rattagan to, among other things:

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(a) inform him of its planned activities in Argentina and provide him with the information necessary to ensure Uber's good operations in the country and protect himself, his Law Firm, and his colleagues from any liability and reputational harm;

(b) operate its business within the constraints of the local laws;

(c) immediately cease any allegedly unlawful business practices; and

(d) remove Mr. Rattagan as its legal representative as soon as it determined that it no longer desired to communicate with him and/or heed his advice so as to reduce or eliminate the risk and potential legal liability to which Mr. Rattagan might be exposed as a result of its business practices, or, in the alternative, to cease operations in Argentina until such time as Uber could remove Mr. Rattagan as its legal representative.

74. Uber breached its fiduciary duty to Mr. Rattagan by, among other things:

(a) failing to notify him in advance of its planned expansion activities, strategy, timeline, and business practices in Argentina;

(b) failing to consult with him before launching in Argentina regarding the various statutory and regulatory requirements for operating in the country;

(c) preventing him from ensuring the good operations of the companies for which he had been named legal representative and its affiliates;

(d) denying him an opportunity to protect himself from legal liability and reputational harm as a result of its entry into the Argentine market when it kept him in the dark about its plans;

(e) ignoring early warnings from regulators and other Argentine authorities that its business practices were claimed to be unlawful;

(f) denying Mr. Rattagan an opportunity to mitigate any damages;

(g) exacerbating the liability Mr. Rattagan faced by continuing its business practices that Argentine authorities claimed were unlawful notwithstanding the warnings it received;

(h) exposing Mr. Rattagan to significant public scorn and reputational damage by falsely associating him with Uber's conduct; and

1 (i) failing to remove Mr. Rattagan as a legal representative as soon as it
2 determined that it no longer wished to communicate with him and/or heed his advice.

3 75. As a direct and proximate result of Uber's breaches of its fiduciary duty, Mr.
4 Rattagan has suffered considerable damages. Among other things, he has been charged with
5 aggravated tax evasion and other crimes, threatened with imprisonment and the loss of his law
6 license if convicted, lost business opportunities and revenues, endured severe emotional distress,
7 been subject to harsh public scorn and ridicule, and suffered serious damage to his most
8 important personal and professional asset – his good name and reputation.

9 WHEREFORE, on Count I, Mr. Rattagan respectfully requests that the Court enter
10 judgment in his favor against Uber for damages in an amount to be determined at trial, court
11 costs, attorneys' fees, punitive damages, and such other and further relief as is appropriate.

12 **SECOND CAUSE OF ACTION**

13 **Deceit**

14 76. Mr. Rattagan repeats and realleges paragraphs 1 through 75 of this Amended
15 Complaint as though reproduced in full herein.

16 77. Uber willfully and intentionally engaged in fraud and deceit as defined by
17 California Civil Code § 1709 - 1710.

18 78. Uber induced Mr. Rattagan to continue serving as the legal representative of the
19 Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel
20 and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that
21 authorities claimed was illegal; and (c) would neither cease operations nor change its practices to
22 comply with directives of Argentine authorities before replacing him as legal representative.

23 79. Uber further concealed that it intended to continue operating in violation of
24 directives from Argentine authorities that its operations were in violation of the law during such
25 period.

26 80. Uber was obligated to disclose the concealed facts due to its attorney/client and
27 contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr.
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Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

81. Uber knowingly and intentionally concealed these facts.

82. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

83. Uber’s concealment of those facts from Mr. Rattagan placed him at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause him loss of business opportunities and revenues, severe emotional distress, and serious damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on Count II, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

THIRD CAUSE OF ACTION **Fraud**

84. Mr. Rattagan repeats and realleges paragraphs 1 through 83 of this Amended Complaint as though reproduced in full herein.

85. Uber knowingly and fraudulently induced Mr. Rattagan to continue serving as the legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that authorities claimed was illegal; and (c) would neither cease operations nor change its practices to comply with directives of Argentine authorities before replacing him as legal representative.

86. Uber further knowingly and fraudulently concealed that it intended to continue operating in violation of directives from Argentine authorities that its operations were in violation of the law during such period.

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87. Uber was obligated to disclose the concealed facts due to its attorney/client and contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

88. Uber concealed those material facts to induce Mr. Rattagan to take no action to remove himself as legal representative of the Shareholders, leaving him as the target for both the general public and the Prosecutor.

89. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

90. Uber’s concealment placed Mr. Rattagan at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause Mr. Rattagan loss of business opportunities and revenues, severe emotional distress, and irreparable damage to his most important professional asset – his reputation.

WHEREFORE, on Count III, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

FOURTH CAUSE OF ACTION **Intentional Infliction of Emotional Distress**

91. Mr. Rattagan repeats and realleges paragraphs 1 through 90 of this Amended Complaint as though reproduced in full herein.

92. Uber’s continuing conduct in exposing Mr. Rattagan, the legal representative of the Shareholders, to police raids, serious criminal charges, public humiliation, and reputational harm by concealing its actions in preparing for and launching in Argentina and through its post-launch conduct was and is outrageous and extreme.

93. Uber’s continuation of business activities that exposed Mr. Rattagan to serious criminal charges, public humiliation and reputational harm even after authorities had publicly advised Uber of the consequences of its ongoing activities is outrageous and extreme.

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94. Uber recklessly disregarded the probability that its secretive and reckless launch in Argentina would result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

95. Even after being publicly warned of the possible consequences of its conduct, Uber continued to recklessly disregard the probability that its ongoing business practices would result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

96. Mr. Rattagan has suffered, and continues to suffer, severe and extreme emotional distress because of Uber's conduct, and (a) he lives under constant fear that he, his wife, and his children will be exposed to similar raids at home; (b) he faces the deeply unsettling prospect of devoting years to defend himself from criminal charges that expose him to nearly a decade in prison and the loss of his law license; and (c) his reputation in the community has been seriously harmed.

97. As a direct and proximate result of Uber's secretive preparation and launch in Argentina, and its unabated operations and conduct even after authorities publicly advised Uber of the consequences of those activities, Mr. Rattagan suffered, and continues to suffer, severe and extreme emotional distress.

98. Mr. Rattagan has been damaged by Uber's intentional infliction of emotional distress in an amount to be determined at trial.

WHEREFORE, on Count IV, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, punitive damages, attorneys' fees, and such other and further relief as is appropriate.

FIFTH CAUSE OF ACTION

Negligence

(In the alternative to Causes of Action First through Fourth)

99. Mr. Rattagan repeats and realleges paragraphs 1 through 98 of this Amended Complaint as though reproduced in full herein.

100. Uber owed a duty of care to Mr. Rattagan based on: (a) their attorney/client and contractual relationship, including the covenant of good faith and fair dealing implicit in such

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relationship; (b) the fact that Uber had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties for Uber’s conduct; and (c) Uber’s independent duty to replace Mr. Rattagan as its legal representative when it decided to exclude him from any communications and planning related to its launch, and also immediately upon his resignation.

101. Uber breached that duty by launching in Buenos Aires without contacting Mr. Rattagan and without regard for the authorities’ public claims that it was violating law, exposing Mr. Rattagan to substantial peril.

102. Uber further breached that duty by not ceasing or regularizing its operations and exposing Mr. Rattagan to greater damages and criminal prosecution.

103. As a direct and proximate result of Uber’s negligent breaches of its duty of care, Mr. Rattagan has suffered considerable damages. Among other things, Mr. Rattagan has been charged with aggravated tax evasion and other crimes, threatened with imprisonment if convicted and the loss of his law license, lost business opportunities and revenues, endured severe emotional distress, been subject to harsh public scorn and ridicule, and suffered irreparable damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on Count V, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, punitive damages, attorneys’ fees, and such other and further relief as is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. Entry of judgment for Plaintiff on each of his claims;
2. For damages, direct and consequential, in an amount according to proof in excess of the jurisdictional limit;
3. For punitive damages;
4. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY

Michael R. Rattagan demands a trial by jury for all issues so triable.

Dated: May 8, 2019

MCDONALD HOPKINS LLC

By: /s/ Stephen J. Rosenfeld
STEPHEN J. ROSENFELD

Attorneys for Plaintiff
MICHAEL R. RATTAGAN

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Attorneys for Plaintiff
MICHAEL R. RATTAGAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL R. RATTAGAN,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.; UBER
INTERNATIONAL, BV; and UBER
INTERNATIONAL HOLDINGS, BV,

Defendants.

Case No.

COMPLAINT FOR:

**(1) BREACH OF FIDUCIARY DUTY;
(2) DECEIT;
(3) FRAUD;
(4) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
(5) NEGLIGENCE**

DEMAND FOR JURY TRIAL

1 Plaintiff Michael R. Rattagan (“Mr. Rattagan”), by and through his undersigned
 2 attorneys, as and for his Complaint against defendants Uber Technologies, Inc., Uber
 3 International, BV, and Uber International Holdings, BV (collectively “Uber”), states as follows:

4 **PRELIMINARY STATEMENT**

5 1. This lawsuit arises out of Uber’s recklessly orchestrated entry into the Argentine
 6 ride-sharing market and the unimaginable harm it inflicted on Mr. Rattagan, a highly respected
 7 business attorney in Buenos Aires and the former legal representative of certain Uber
 8 subsidiaries in the country. As has been a pattern in Uber’s entry into new markets, Uber took
 9 the approach that it is better to ask for forgiveness than for permission. Its launches are typically
 10 tumultuous with the hope that Uber can later make it all right. However, Uber could not do so in
 11 Buenos Aires. Uber’s launch in Buenos Aires was disastrous and continues to be so for Mr.
 12 Rattagan. Because of Uber’s callous attitude, Mr. Rattagan has endured and continues to endure
 13 years of criminal prosecution (facing many years in prison and the loss of his law license), has
 14 suffered through Argentine authorities raiding his offices, has had his civil liberties severely
 15 curtailed, and has sustained a staggering blow to his reputation both professionally and
 16 personally because of this widely publicized ordeal.

17 2. In early 2013, years before its catastrophic launch, Uber retained Mr. Rattagan
 18 simply and solely to establish its initial corporate presence in Argentina. Uber named Mr.
 19 Rattagan as its official legal representative in the country, two of his trusted colleagues as interim
 20 managers, and the offices of his law firm – in which he is a founding and name partner (the “Law
 21 Firm”) – as Uber’s legal domicile in Buenos Aires. Several years then passed without any
 22 meaningful activity, and the relationship between Mr. Rattagan and Uber went dormant. Then,
 23 in April 2016 – without consulting or even notifying Mr. Rattagan – Uber launched its service in
 24 Buenos Aires with the help of different advisors, who Argentine authorities publicly claim either
 25 ignored or disregarded the particularities of Argentine law, politics and business practice. Public
 26 reaction to Uber’s ill-advised launch was immediate, negative and entirely foreseeable. Under
 27 intense pressure to act, authorities targeted the only public face of Uber in Argentina: Mr.
 28 Rattagan, his colleagues, and his Law Firm. Police raided their office and homes, and they were

vilified in the media, subjected to scorn and ridicule in social and professional gatherings, and ultimately charged with serious crimes – including aggravated tax evasion (carrying a prison term from three and a half to nine years) – all due to Uber’s actions. As a result, Mr. Rattagan’s competency and ethics have been wrongfully called into question in the most public of forums.

3. Although Uber has publicly and privately acknowledged its mistakes, and is paying for Mr. Rattagan’s criminal legal defense, that limited indemnification does not, and cannot, compensate Mr. Rattagan for the severe emotional, consequential, and reputational harm he has suffered and continues to suffer. This lawsuit seeks compensation for those substantial damages and also punitive damages for Uber’s intentional and malicious conduct.

THE PARTIES

4. Mr. Rattagan is a citizen of Argentina. He is a founding partner of a highly respected business law firm, based in Buenos Aires, Argentina, that serves multinational clients from the United States, Latin America, Europe, and Asia. He is an experienced business lawyer, and, before Uber’s launch in Buenos Aires, was one of the most respected advisors in the City.

5. Uber Technologies, Inc. (“UTI”) is a Delaware corporation with its principal place of business in San Francisco, California. Uber International, BV (“UIBV”) is a company formed under the laws of the Netherlands with its principal place of business in Amsterdam. Uber International Holdings, BV (“UIHBV”) is a company formed under the laws of the Netherlands with its principal place of business in Amsterdam. On information and belief, UTI controls UIBV and UIHBV, and UTI directed and authorized all of UIBV’s and UIHBV’s operational decisions relevant hereto from Uber’s San Francisco headquarters.

VENUE AND JURISDICTION

6. This Court has subject matter jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1332 because: (a) Mr. Rattagan is a citizen of a different state and/or country than Uber; and (b) the amount in controversy exceeds \$75,000, exclusive of costs and interest.

7. Venue in this District is proper pursuant to 28 U.S.C. § 1391 because Uber is subject to personal jurisdiction in this District, and because a substantial part of the actions or inactions giving rise to Mr. Rattagan’s claims occurred in this District.

8. Upon information and belief, Uber plans, oversees, conducts, and operates all of its international activities from and through its headquarters in San Francisco, California.

ALLEGATIONS

A. Mr. Rattagan's Background

9. As a lawyer licensed in Argentina and in the State of New York, Mr. Rattagan maintains an active practice counseling large multinational companies in various business matters, with an emphasis on transactions, investments, and interests in Argentina. After spending 17 years practicing in law firms with an international reach, he co-founded the Law Firm in 2005, where he co-heads its Mergers & Acquisitions and Natural Resources & Energy Groups, and is one of its primary sources of business development and origination. In addition to his Argentine law degree, Mr. Rattagan has an LLM from New York University School of Law and speaks Spanish, English, French, Portuguese, and Japanese.

10. For nearly 30 years in practice, Mr. Rattagan has carefully built and maintained an impeccable reputation for honesty and integrity and for advising his clients to adhere to the same in the conduct of their own businesses. This unyielding approach to compliance with the law placed Mr. Rattagan in a unique and prominent class of legal professionals in Argentina.

11. Mr. Rattagan's sterling reputation as a skilled lawyer and honest broker made him ideal counsel for multinational companies looking to do business in Argentina. As one of the top and most renowned business lawyers in Buenos Aires, much of his practice came from international referrals. As the main business generator of his firm for more than 13 consecutive years, an essential part of Mr. Rattagan's role was to travel extensively abroad to develop professional relations and create awareness of the investment climate and opportunities in Argentina while promoting the Law Firm and its abilities.

B. Mr. Rattagan's Limited, Pre-Launch Engagement by Uber

12. In February of 2013, Liesbeth ten Brink – a former classmate from New York University School of Law who worked for Uber – contacted Mr. Rattagan. She explained that Uber tasked her with organizing its expansion into a number of Latin American countries, including Argentina.

1 13. In support of its anticipated expansion efforts, Uber enlisted Mr. Rattagan to assist
2 in the creation of an Argentine subsidiary (the “Subsidiary”) for Uber’s future operations in
3 Buenos Aires.

4 14. The first step was to register two Uber entities as foreign shareholders
5 (“Shareholders”) of the Subsidiary, which Mr. Rattagan did on Uber’s behalf.

6 15. In connection with that process, Uber and Mr. Rattagan agreed that Mr. Rattagan
7 would act as the Shareholders’ legal representative in Argentina. Under Argentine law, every
8 foreign shareholder is required to have a local resident acting as its legal representative. The role
9 of the legal representative is to register a shareholder locally, incorporate a subsidiary on its
10 behalf, attend shareholder meetings upon written instructions, and act as the face of the
11 shareholder at any legal proceedings, such as trial. The role of the legal representative is not to
12 make decisions for the shareholders or to ensure that the shareholders or their affiliates, if any,
13 comply with Argentine law (practically speaking, the legal representative has little to no ability
14 to do so).

15 16. Mr. Rattagan also permitted the Subsidiary to use his Law Firm’s office as its pre-
16 launch legal domicile until Uber could set up its own offices. Mr. Rattagan further introduced
17 Uber to two individuals of his trust – both known to the Law Firm – to act as interim manager
18 and interim alternate manager of the Subsidiary.

19 17. Pursuant to the agreed arrangement, in August 2013, the Law Firm registered the
20 Shareholders of the Subsidiary with the Buenos Aires Office of Corporations.

21 **C. Uber’s Prominence Grows Worldwide**

22 18. Following the above registration, the Law Firm’s file on Uber went dormant. In
23 fact, during the latter half of 2013, all of 2014, and most of 2015, neither Mr. Rattagan nor the
24 Law Firm was asked to (or did) provide any counsel or services related to Uber’s future
25 Argentine expansion. The Law Firm’s Uber file was, for all intents and purposes, dead.

26 19. But while the file was dormant, Uber was active and growing around the world,
27 and – unbeknownst to Mr. Rattagan and the Law Firm – secretly planning to launch in
28 Argentina.

20. Although Uber boasts about its innovation, its launches in new jurisdictions have been characterized by a less-admirable pattern: initial, immediate, and often severe tension and conflict with local officials and unions, caused by its alleged disregard of local laws and customs (thus creating havoc and exposing people who are dragged into the quagmire), followed by negotiations that ultimately lead to a truce and legally compliant operations.

21. Mr. Rattagan learned too late and at great personal expense that Uber's rapid growth followed this pattern throughout the United States and around the world. Prior to the launch, he and his colleagues awaited further contact and instructions concerning Uber's apparent stalled expansion into the City. That instruction would never come. So while Mr. Rattagan had no opportunity to advise Uber about how to conduct a launch in Argentina that would be prudent and peaceful, he and his offices were "conveniently used" (or abused) as a "front" for activities that Uber knew from its past experience would be chaotic at best.

D. Uber's Launch In Argentina

22. In March 2016, Mr. Rattagan attended an International Bar Association conference in Rio de Janeiro, Brazil. While there, he observed a panel discussion focusing on the challenge new technology companies face when confronted with traditional regulations.

23. Among the speakers was one Enrique Gonzalez ("Gonzalez"), an attorney from Mexico who at the time was Uber's Latin America Legal Director (after the events that are the basis of this complaint, in which he had a decisive and leading role, he was not censored but rather promoted to Associate General Counsel, Latin America). During his talk, Gonzalez indicated that the day before he had met with all of Uber's legal advisors in the region. Mr. Rattagan had had no prior communications with Gonzalez, and in fact he had no knowledge of Gonzalez's existence prior to the Rio de Janeiro conference.

24. Puzzled and concerned, Mr. Rattagan emailed Gonzalez shortly after the conference to explain that there must be some mistake because, in Mr. Rattagan's mind, only members of the Law Firm had been acting for Uber in Argentina (even in a very limited way). Mr. Rattagan proposed to meet or speak with Gonzalez and offered the Law Firm's expertise to help Uber navigate the issues surrounding the launch. Uber never took Rattagan up on his offer.

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1 25. On April 12, 2016, Mr. Rattagan received a spam email announcing that Uber had
2 officially launched its operations in the City.

3 26. Mr. Rattagan was shocked to learn this crucial development in such an impersonal
4 manner. As the Argentine legal representative of two Uber entities in the process of setting up
5 the Subsidiary through which Uber was to operate, he had received no communication that Uber
6 had begun preparing to launch in the country, let alone that it was in fact launching without what
7 the City would immediately claim publicly was a lack of a basic legal infrastructure, including
8 the lack of a registration for tax identification numbers with the City.

9 27. On information and belief, Gonzalez was spearheading Uber's Latin America
10 expansion and – without consulting or even informing Mr. Rattagan – had engaged another
11 attorney in Buenos Aires to assist in Uber's preparations. At no point before the launch did Uber
12 inform Mr. Rattagan that it had engaged a new attorney for expansion into Argentina.

13 28. Nor did Uber cause the new attorney to publicly announce his relationship with
14 Uber, much less update the Office of Corporations records that showed Mr. Rattagan and the
15 address of the Law Firm as the only links to the Shareholders and the Subsidiary “in formation.”

16 29. Consequently, when Uber launched in Argentina, the public records reflected that
17 Mr. Rattagan, his colleagues, and the Law Firm's offices were Uber Shareholders' legal
18 representative, the interim managers of the Subsidiary, and their legal domicile in the country,
19 respectively – despite the fact that none of them had ever been consulted about or even made
20 aware of Uber's plans. Uber, in other words, allowed its new attorney to remain concealed while
21 Mr. Rattagan, his colleagues, and the Law Firm unknowingly became the public names and faces
22 of an ill-advised launch in which, obviously, they had played no part. Uber camouflaged the
23 actual Uber decision-makers in the shadows of anonymity while callously exposing Mr.
24 Rattagan, his family, his colleagues, and the Law Firm to the hellish consequences of Uber's
25 controversial launch strategy.

26 30. Dismayed by the lack of communication, and deeply concerned about the liability
27 they faced in their official positions as a result of Uber's secretive conduct and sudden launch,
28 Mr. Rattagan and the interim manager and interim alternate manager tendered their resignations

1 to Uber immediately thereafter. But more than two months elapsed until their removal and
2 replacement was made effective, leaving them exposed to liability as a result of Uber's local and
3 offshore pre- and post-launch activities that Uber continued despite its knowledge that Argentine
4 officials had "declared war" on Uber and were seeking to impose criminal liability on anyone
5 truly or apparently linked to a traumatic and confrontational launch, predictably perceived and
6 thus treated by the City authorities as illegal.

7 **E. Fallout From Uber's Launch**

8 31. The reaction of taxi drivers and labor unions to Uber's launch in Argentina was
9 immediate, hostile and – for Uber – entirely predictable. As with Uber's launches in London,
10 Mexico City, Barcelona, and Sao Paulo, the launch in Buenos Aires was met with negative press,
11 violent labor union demonstrations and protests, and street blockades throughout the City. In
12 fact, right before Uber's launch in Argentina, its launch in Colombia foretold the fallout that
13 would result from the failure to properly register a new subsidiary in a South American country:
14 amid protests from cab drivers and fines instituted by the nation's transport superintendent, the
15 president of Colombia warned Uber that it could be banned from the country for its failure to
16 formally register its operations. Indeed, unlike in other cities and countries where Uber's
17 initially tumultuous launches evolved into peaceful and legally compliant operations, its launch
18 in Buenos Aires was especially confrontational, and Uber still faces threats, fines, and the
19 revocation of its drivers' licenses.

20 32. Because public records showed the Law Firm's office as the legal domicile for the
21 two Shareholders and the Subsidiary, taxi drivers surrounded the Law Firm's building and
22 protesters blocked its exits, preventing employees and clients from entering or exiting for hours.
23 Additionally, local media outlets were filled with angry interviews and negative coverage
24 concerning Uber and all those associated with it, notably including Mr. Rattagan.

25 33. On April 13, 2016, the day after the disastrous launch, Mr. Rattagan emailed
26 Gonzalez, again requesting an urgent meeting to address the public outcry and backlash against
27 Mr. Rattagan and the Law Firm. Gonzalez simply responded that someone from his team would
28 contact Mr. Rattagan soon. No one ever did. Instead, Uber acted (and continues to act) as if it

1 was/is content to let Mr. Rattagan, his colleagues, and the Law Firm bear the brunt of the
2 negative public reaction and potential criminal consequences.

3 34. Early on Friday, April 15, 2016, Mr. Rattagan again emailed Gonzalez and asked
4 to be replaced as the legal representative of the Shareholders and asked Gonzalez to provide the
5 address of the new legal domicile for the Uber entities in the City. Gonzalez did not act on this
6 request.

7 35. Just as Mr. Rattagan and his team became the targets of severe public animosity,
8 Argentine authorities quickly engaged their law enforcement arms to investigate how to stop
9 Uber.

10 36. Midday on April 15, 2016, a City inspector came to the Law Firm's offices with
11 orders "to immediately cease [Uber's] activities." After lengthy discussions with City officials, a
12 partner of Mr. Rattagan narrowly avoided having the Law Firm's offices closed. But the ordeal
13 was far from over.

14 37. Later that day, in the early evening hours, a small army of City inspectors and
15 police officers stormed into the Law Firm's offices, announcing an order to shut down Uber.
16 According to the "acta" (akin to a search warrant) that the officers carried, the raid was the result
17 of a charge of "contravention," *i.e.*, the alleged private use of public space, for commercial gain,
18 without a permit.

19 38. To the shock of the Law Firm lawyers and staff, television reporters evaded
20 security and filmed inside the offices while the police carried out the raid. The prime-time news
21 programs displayed the Law Firm logo and name, which prominently includes Mr. Rattagan's
22 name, and falsely reported that the Law Firm's offices were the location of Uber's illegal
23 activities, which included tax evasion.

24 39. Compounding the trauma of the raid on the Law Firm's offices, authorities
25 searched the homes of Mr. Rattagan's trusted colleagues who had agreed to serve as interim
26 manager and interim alternate manager of the Subsidiary while in formation, as their spouses and
27 children watched in horror. Although Mr. Rattagan's home has not yet been raided, the threat
28

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1 remains, causing a constant fear that his family will be the next victim of the natural
2 consequences of Uber's actions.

3 40. On April 16, 2016, Mr. Rattagan wrote Gonzalez a pointed email to notify him of
4 the office raid, address Uber's inexplicable failure to timely disclose its ongoing activities and
5 ultimate launch to Mr. Rattagan, and inquire how Uber planned to rectify the situation.

6 41. On April 18, 2016, Mr. Rattagan finally spoke with Gonzalez who, however, was
7 dismissive of the trauma inflicted on Mr. Rattagan, his colleagues, and the Law Firm, and sought
8 to minimize the gravity of the situation. Gonzalez never even apologized, and Uber maintains
9 this callous disregard of its continuing outrageous conduct to this day.

10 42. By this point, the prospect of potential civil and criminal liability related to Uber's
11 launch was known – indeed, City tax authorities had already formally requested documents from
12 Mr. Rattagan's colleagues.

13 43. On May 12, 2016, a month after Uber's launch and nearly four weeks after the
14 raids on the Law Firm, Gonzalez finally came to Argentina and met with Mr. Rattagan. Despite
15 being aware of the trauma that was causing Mr. Rattagan and his colleagues suffered and
16 continued to suffer, Gonzalez maintained Uber's approach of showing no concern for the harm
17 Uber's ill-conceived launch was causing to Rattagan.

18 44. Gonzalez made it clear that Uber had no interest in cooperating with Mr. Rattagan
19 or the Law Firm. According to Gonzalez, assisting with Uber's activities in Argentina was none
20 of Mr. Rattagan's business, as Uber had other legal counsel and consultants advising it in the
21 country.

22 45. Mr. Rattagan reiterated that his resignation and those of his colleagues should be
23 acknowledged at once and all of them immediately replaced. Undeterred, and notwithstanding
24 the risk posed to Mr. Rattagan and his colleagues, Uber delivered a letter concerning the launch
25 to City officials that showed the Law Firm office address and name, clearly – but falsely –
26 implying that the Law Firm was responsible for it. Officials (the same ones who Uber was trying
27 to appease) were furious, and the day after the letter was delivered, they called the Law Firm
28 demanding an explanation that the Law Firm could not provide.

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1 46. Having received nothing but contempt, inaction, and open hostility from
2 Gonzalez, on May 26, 2016, Mr. Rattagan reached out to Salle Yoo (“Yoo”), Uber’s Chief Legal
3 Officer, General Counsel, and Corporate Secretary, to explain the situation and seek her direct
4 involvement to handle a situation that had clearly gone astray in the hands of Gonzalez. Among
5 other things, Mr. Rattagan asked Yoo “to promptly designate someone [the Law Firm could] talk
6 to with the purpose of handing over of all [its Uber] files in an orderly manner,” and “instruct
7 [her] team to immediately refrain from mentioning or invoking [the Law Firm’s] name and from
8 using [its] offices as legal domicile in any future communications with the Argentine
9 government (national, provincial or city levels) or with any third parties without [its] prior
10 written consent.”

11 47. Yoo responded that day, and expressed concern for the “inconvenience” Mr.
12 Rattagan and his firm experienced since Uber’s launch in Argentina, and she subsequently
13 assigned Todd Hamblet (Uber’s Managing Counsel, Corporate) to handle the matter from “HQ.”

14 48. Despite Yoo’s professed concern about the position in which Mr. Rattagan and
15 the Law Firm had been placed by Uber’s ill-advised launch, Uber continued to carry out its
16 Argentine operations in exactly the same manner, thus further exposing Mr. Rattagan and the
17 Law Firm to the ongoing and increasingly severe danger of additional public scrutiny and
18 criminal liability. Yoo, Hamblet, Gonzalez, and Uber all knew that Argentine authorities were
19 investigating Mr. Rattagan for serious crimes involving allegations that Uber failed to register to
20 do business in Buenos Aires, failed to comply with applicable laws and regulations pertaining to
21 the transportation of people, and failed to pay appropriate local taxes. But, Uber nevertheless
22 continued to operate without change or apparent concern for the consequences.

23 49. For approximately two months after Mr. Rattagan tendered his resignation, Uber
24 operated with its full cadre of drivers (racking up millions in alleged unpaid taxes) while Mr.
25 Rattagan remained, at the Office of Corporations, as the formal legal representative of the
26 Shareholders. During that time, Uber knowingly left Mr. Rattagan (and his colleagues) as the
27 sacrificial lambs for the scorn of the public and the criminal investigations of the Argentine
28 authorities.

F. The Criminal Charges

50. Argentine authorities claimed that when Uber launched in Argentina, the process to incorporate the Subsidiary had not been completed. As a result, the authorities claimed that the Subsidiary was still “in formation” – making its Shareholders liable for actions attributed to the company – and prohibiting Uber from applying for or obtaining a tax ID, which is necessary to open a bank account, hire staff, lease an office, and transact business. That did not stop Uber.

51. Upon information and belief, Uber’s secretive preparations for the launch were significant. Uber had to send foreign employees into Argentine territory to recruit, train, and equip drivers, and contract with intermediate payment companies that would process credit card charges and distribute the related funds. Mr. Rattagan was never informed that these activities were going on behind his back, and he did not participate in them in any way.

52. Although Mr. Rattagan had no role in Uber’s conduct leading up to and following the launch in Argentina, Uber’s shadow operation and failure to appoint a different legal representative led a City prosecutor (the “Prosecutor”) to wrongly associate Mr. Rattagan with those who were involved in that covert pre-launch behavior.

53. In April 2017, approximately one year after the disastrous launch, and despite having no involvement in Uber’s activities, Mr. Rattagan, as former legal representative of Uber’s two foreign entities in Argentina, was personally charged with unauthorized use of public space with a commercial aim.

54. The Prosecutor was not done. Because the Prosecutor claimed Uber had failed to register its Subsidiary and pay appropriate sales tax, the Prosecutor quickly broadened the scope of his investigations to include more serious criminal issues.

55. In November 2017, the Prosecutor charged Mr. Rattagan with a second crime based on Uber’s clandestine launch: aggravated tax evasion. Conviction on that charge carries a three-and-a-half to nine-year prison sentence.

56. Compounding the already massive problem for Mr. Rattagan, the alleged tax evasion was supposedly aggravated due to the volume of Uber’s sales in the year after the launch. Had Uber taken immediate steps to replace Mr. Rattagan as its legal representative in

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1 Argentina prior to the launch, or stopped operating while the Prosecutor was claiming that Uber
2 was acting illegally, the amount of the supposedly unpaid taxes while Mr. Rattagan was legal
3 representative of the Shareholders would have been far less – and thus the charge against him
4 would not have been “aggravated,” and may not have been filed at all. In other words, Uber’s
5 reckless and unmitigated conduct caused the charges against Mr. Rattagan (which should not
6 have been filed in the first place) to become aggravated and much more severe.

7 57. In December 2017, Mr. Rattagan was summoned to appear before the Prosecutor.
8 It was the worst, most humiliating ordeal of his life. Prior to being interrogated in connection
9 with the preparation, launch, and subsequent operations (of which he knew nothing), he was
10 taken to a room to have his mugshot and fingerprints taken – thirteen separate times so original
11 prints could be sent to each interested government agency.

12 58. Adding insult to injury, the Argentine court temporarily banned Mr. Rattagan
13 from traveling abroad, preventing him from freely conducting his professional activities and
14 jeopardizing his contribution to the Law Firm. The Prosecutor labeled Mr. Rattagan a flight risk
15 and publicly announced that he would be detained and imprisoned if he attempted to leave the
16 country. The news went viral and exacerbated the severe embarrassment and anguish that Mr.
17 Rattagan already was suffering.

18 59. While taxi drivers, labor unions, and politicians sought a public face to direct their
19 ire, Mr. Rattagan was smeared in the local media for his supposed role in Uber’s conduct. His
20 name became inseparable from Uber’s claimed illegal operations and aggravated tax evasion.

21 **G. Harm Mr. Rattagan Suffered As A Result of Uber’s Actions**

22 60. Mr. Rattagan’s success as a name partner of a respected international law firm is
23 the product of a lifetime spent building a reputation based on integrity and ethical conduct.

24 61. As a result of Uber’s fateful launch in Argentina, Mr. Rattagan’s name is
25 synonymous with tax evasion and illegal commercial operations by a foreign business. His
26 reputation has been dragged through the proverbial mud. Indeed, due to the publicity
27 surrounding the raids and charges against him, Mr. Rattagan has – in effect – been walking
28 around with a sign across his chest that he is an accused felon. Although he attempts to explain

1 to colleagues, friends, and family that, despite the allegations against him, he is innocent, such
2 protestations cannot alleviate the reputational stigma.

3 62. Instead of stopping its operations that officials were charging were illegal and that
4 were exacerbating the criminal charges against Mr. Rattagan, Uber simply offered Mr. Rattagan
5 that it would help pay for a reputation management firm.

6 63. Worse, while Mr. Rattagan is already the target of two criminal proceedings,
7 which have impacted and continue to threaten his and his family lifestyle, his Argentine legal
8 advisors have warned him that he may yet face additional charges for Uber's actions, such as
9 money laundering, VAT and income tax evasion, and failure to make social security
10 contributions. He lives – and will continue to live for many years, as events unfold – under the
11 constant threat and fear of further humiliation, wasted time and energy, and the physically
12 exhausting emotions of facing charges that jeopardize his freedom, reputation, peace of mind,
13 and livelihood. All of that and more hang in the balance – all because Uber schemed to launch
14 operations in Buenos Aires without the knowledge of or care for the effect on Mr. Rattagan.

15 64. Having expanded across the globe, Uber has to be intimately aware of the fallout
16 that occurs when it enters a new market using its established methods of disruption and
17 confrontation. Uber knew of the harm that would – and did – befall Mr. Rattagan upon its
18 launch, yet it failed to disclose its plans or take any steps to protect Mr. Rattagan, his colleagues,
19 or his Law Firm from the foreseeable result. Nor did it act to mitigate the damaging effects of
20 that harm after being specifically warned by Mr. Rattagan of the injury it was inflicting on them.

21 65. Instead, Uber, a multi-billion dollar international behemoth with near limitless
22 resources, allowed Mr. Rattagan, who played no role in its operations, to be thrown to the wolves
23 and bear the brunt of the eminently predictable public outcry, labor union and taxi driver rage,
24 political pressure, police actions, and criminal charges. With Mr. Rattagan as a scapegoat,
25 Uber's real Argentine counsel and advisors continued to operate behind the scenes unscathed.

26 66. Indeed, Uber's approval of the way its launch in Argentina unfolded is evidenced
27 not only by its refusal to alter its conduct but also by its promotion of Gonzalez – the architect of
28 Uber's Argentine campaign and Mr. Rattagan's misery.

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67. The harm that Mr. Rattagan suffered could have been avoided if Uber: (i) stopped operations while the Argentine authorities were charging that it was illegally operating; (ii) replaced Mr. Rattagan as legal representative before its launch; or (iii) advised Mr. Rattagan of its intentions pre-launch.

68. Acknowledging the harm its actions caused him, Uber has, to date, paid for Mr. Rattagan's criminal defense and his time in responding to the fallout from the launch. That partial indemnification, however, does not compensate Mr. Rattagan for the significant emotional trauma and serious damage to his reputation that he has endured. Nor does it compensate him for the significant loss in future revenue resulting from such reputational damage. Such compensatory damages alone constitute many millions of dollars.

69. Mr. Rattagan also seeks punitive damages, in addition to compensatory damages, to punish Uber for its intentional and malicious conduct, and deter it from similar conduct in the future.

FIRST CAUSE OF ACTION
Breach of Fiduciary Duty

70. Mr. Rattagan repeats and realleges paragraphs 1 through 69 of this Complaint as though reproduced in full herein.

71. Under Argentine law, the legal representative of a foreign company has a legitimate interest in ensuring the good operation and standing of such company, because he or she conceivably could be exposed to personal criminal and civil liabilities for unlawful conduct by the company. Indeed, no reasonable and reputable individual would agree to act in such a capacity if there were any possibility that such harm would befall them for corporate conduct that is entirely outside of their control.

72. A company owes such legal representative a fiduciary duty not to subject that legal representative to personal liability.

73. By asking Mr. Rattagan to serve as the legal representative of the Shareholders and thus exposing him to personal liability for any alleged noncompliance with the law, Uber assumed a fiduciary duty to Mr. Rattagan to, among other things:

(a) inform him of its planned activities in Argentina and provide him with the information necessary to ensure Uber's good operations in the country and protect himself, his Law Firm, and his colleagues from any liability and reputational harm;

(b) operate its business within the constraints of the local laws;

(c) immediately cease any allegedly unlawful business practices; and

(d) remove Mr. Rattagan as its legal representative as soon as it determined that it no longer desired to communicate with him and/or heed his advice so as to reduce or eliminate the risk and potential legal liability to which Mr. Rattagan might be exposed as a result of its business practices, or, in the alternative, to cease operations in Argentina until such time as Uber could remove Mr. Rattagan as its legal representative.

74. Uber breached its fiduciary duty to Mr. Rattagan by, among other things:

(a) failing to notify him in advance of its planned expansion activities, strategy, timeline, and business practices in Argentina;

(b) failing to consult with him before launching in Argentina regarding the various statutory and regulatory requirements for operating in the country;

(c) preventing him from ensuring the good operations of the companies for which he had been named legal representative and its affiliates;

(d) denying him an opportunity to protect himself from legal liability and reputational harm as a result of its entry into the Argentine market when it kept him in the dark about its plans;

(e) ignoring early warnings from regulators and other Argentine authorities that its business practices were claimed to be unlawful;

(f) denying Mr. Rattagan an opportunity to mitigate any damages;

(g) exacerbating the liability Mr. Rattagan faced by continuing its business practices that Argentine authorities claimed were unlawful notwithstanding the warnings it received;

(h) exposing Mr. Rattagan to significant public scorn and reputational damage by falsely associating him with Uber's conduct; and

1 (i) failing to remove Mr. Rattagan as a legal representative as soon as it
2 determined that it no longer wished to communicate with him and/or heed his advice.

3 75. As a direct and proximate result of Uber's breaches of its fiduciary duty, Mr.
4 Rattagan has suffered considerable damages. Among other things, he has been charged with
5 aggravated tax evasion and other crimes, threatened with imprisonment and the loss of his law
6 license if convicted, lost business opportunities and revenues, endured severe emotional distress,
7 been subject to harsh public scorn and ridicule, and suffered serious damage to his most
8 important personal and professional asset – his good name and reputation.

9 WHEREFORE, on his First Cause of Action, Mr. Rattagan respectfully requests that the
10 Court enter judgment in his favor against Uber for damages in an amount to be determined at
11 trial, court costs, attorneys' fees, punitive damages, and such other and further relief as is
12 appropriate.

13 **SECOND CAUSE OF ACTION**
14 **Deceit**

15 76. Mr. Rattagan repeats and realleges paragraphs 1 through 75 of this Complaint as
16 though reproduced in full herein.

17 77. Uber willfully and intentionally engaged in fraud and deceit as defined by
18 California Civil Code § 1709 - 1710.

19 78. Uber induced Mr. Rattagan to continue serving as the legal representative of the
20 Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel
21 and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that
22 authorities claimed was illegal; and (c) would neither cease operations nor change its practices to
23 comply with directives of Argentine authorities before replacing him as legal representative.

24 79. Uber further concealed that it intended to continue operating in violation of
25 directives from Argentine authorities that its operations were in violation of the law during such
26 period.

27 80. Uber was obligated to disclose the concealed facts due to its attorney/client and
28 contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr.

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Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

81. Uber knowingly and intentionally concealed these facts.

82. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

83. Uber’s concealment of those facts from Mr. Rattagan placed him at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause him loss of business opportunities and revenues, severe emotional distress, and serious damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on his Second Cause of Action, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

THIRD CAUSE OF ACTION **Fraud**

84. Mr. Rattagan repeats and realleges paragraphs 1 through 83 of this Complaint as though reproduced in full herein.

85. Uber knowingly and fraudulently induced Mr. Rattagan to continue serving as the legal representative of the Shareholders in Argentina by suppressing the fact that Uber: (a) had hired different legal counsel and advisors in the country; (b) was preparing to launch in Buenos Aires in a manner that authorities claimed was illegal; and (c) would neither cease operations nor change its practices to comply with directives of Argentine authorities before replacing him as legal representative.

86. Uber further knowingly and fraudulently concealed that it intended to continue operating in violation of directives from Argentine authorities that its operations were in violation of the law during such period.

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87. Uber was obligated to disclose the concealed facts due to its attorney/client and contractual relationship with Mr. Rattagan, and also due to the fact that it had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties based on Uber’s conduct.

88. Uber concealed those material facts to induce Mr. Rattagan to take no action to remove himself as legal representative of the Shareholders, leaving him as the target for both the general public and the Prosecutor.

89. Mr. Rattagan reasonably relied on Uber’s omission of these crucial facts, and was justified in doing so due to, among other things, their attorney/client and contractual relationship, and the official position of legal representative to which Uber had appointed him.

90. Uber’s concealment placed Mr. Rattagan at risk of conviction for multiple crimes (including aggravated tax evasion), prison, and loss of his law license, and did in fact cause Mr. Rattagan loss of business opportunities and revenues, severe emotional distress, and irreparable damage to his most important professional asset – his reputation.

WHEREFORE, on his Third Cause of Action, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, attorneys’ fees, punitive damages, and such other and further relief as is appropriate.

FOURTH CAUSE OF ACTION **Intentional Infliction of Emotional Distress**

91. Mr. Rattagan repeats and realleges paragraphs 1 through 90 of this Complaint as though reproduced in full herein.

92. Uber’s continuing conduct in exposing Mr. Rattagan, the legal representative of the Shareholders, to police raids, serious criminal charges, public humiliation, and reputational harm by concealing its actions in preparing for and launching in Argentina and through its post-launch conduct was and is outrageous and extreme.

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1 93. Uber's continuation of business activities that exposed Mr. Rattagan to serious
2 criminal charges, public humiliation and reputational harm even after authorities had publicly
3 advised Uber of the consequences of its ongoing activities is outrageous and extreme.

4 94. Uber recklessly disregarded the probability that its secretive and reckless launch
5 in Argentina would result in police raids, serious criminal charges, public humiliation, and
6 reputational harm to Mr. Rattagan and thus cause severe emotional distress to him.

7 95. Even after being publicly warned of the possible consequences of its conduct,
8 Uber continued to recklessly disregard the probability that its ongoing business practices would
9 result in police raids, serious criminal charges, public humiliation, and reputational harm to Mr.
10 Rattagan and thus cause severe emotional distress to him.

11 96. Mr. Rattagan has suffered, and continues to suffer, severe and extreme emotional
12 distress because of Uber's conduct, and (a) he lives under constant fear that he, his wife, and his
13 children will be exposed to similar raids at home; (b) he faces the deeply unsettling prospect of
14 devoting years to defend himself from criminal charges that expose him to nearly a decade in
15 prison and the loss of his law license; and (c) his reputation in the community has been seriously
16 harmed.

17 97. As a direct and proximate result of Uber's secretive preparation and launch in
18 Argentina, and its unabated operations and conduct even after authorities publicly advised Uber
19 of the consequences of those activities, Mr. Rattagan suffered, and continues to suffer, severe
20 and extreme emotional distress.

21 98. Mr. Rattagan has been damaged by Uber's intentional infliction of emotional
22 distress in an amount to be determined at trial.

23 WHEREFORE, on his Fourth Cause of Action, Mr. Rattagan respectfully requests that
24 the Court enter judgment in his favor against Uber for damages in an amount to be determined at
25 trial, court costs, punitive damages, attorneys' fees, and such other and further relief as is
26 appropriate.

FIFTH CAUSE OF ACTION**Negligence****(In the alternative to Causes of Action First through Fourth)**

99. Mr. Rattagan repeats and realleges paragraphs 1 through 98 of this Complaint as though reproduced in full herein.

100. Uber owed a duty of care to Mr. Rattagan based on: (a) their attorney/client and contractual relationship, including the covenant of good faith and fair dealing implicit in such relationship; (b) the fact that Uber had appointed Mr. Rattagan as the legal representative of its Shareholders in Argentina, a position that might – and did – expose him to substantial criminal and civil penalties for Uber’s conduct; and (c) Uber’s independent duty to replace Mr. Rattagan as its legal representative when it decided to exclude him from any communications and planning related to its launch, and also immediately upon his resignation.

101. Uber breached that duty by launching in Buenos Aires without contacting Mr. Rattagan and without regard for the authorities’ public claims that it was violating law, exposing Mr. Rattagan to substantial peril.

102. Uber further breached that duty by not ceasing or regularizing its operations and exposing Mr. Rattagan to greater damages and criminal prosecution.

103. As a direct and proximate result of Uber’s negligent breaches of its duty of care, Mr. Rattagan has suffered considerable damages. Among other things, Mr. Rattagan has been charged with aggravated tax evasion and other crimes, threatened with imprisonment if convicted and the loss of his law license, lost business opportunities and revenues, endured severe emotional distress, been subject to harsh public scorn and ridicule, and suffered irreparable damage to his most important personal and professional asset – his good name and reputation.

WHEREFORE, on his Fifth Cause of Action, Mr. Rattagan respectfully requests that the Court enter judgment in his favor against Uber for damages in an amount to be determined at trial, court costs, punitive damages, attorneys’ fees, and such other and further relief as is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Entry of judgment for Plaintiff on each of his claims;
2. For damages, direct and consequential, in an amount according to proof in excess of the jurisdictional limit;
3. For punitive damages;
4. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY

Michael R. Rattagan demands a trial by jury for all issues so triable.

Dated: April 12, 2019

SHARTSIS FRIESE LLP

/s/ Frank A. Cialone

By: FRANK A. CIALONE

Attorneys for Plaintiff
MICHAEL R. RATTAGAN

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**
**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

Name of U.S. District Court: Northern District of California

U.S. District Court case number: 19-cv-01988-EMC

Date case was first filed in U.S. District Court: 04/12/2019

Date of judgment or order you are appealing: 08/19/2020

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

☒ Yes ☐ No ☐ IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

Michael R. Rattagan

Is this a cross-appeal? ☐ Yes ☒ No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? ☐ Yes ☒ No

If Yes, what is the prior appeal case number?

Your mailing address:

STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH, LLP

235 Pine Street, 15th Floor, San Francisco, CA 94104

City: San Francisco

State: CA

Zip Code: 94104

Prisoner Inmate or A Number (if applicable):

Signature

Jill Cohen

Date Sep 16, 2020

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Michael R. Rattagan

Name(s) of counsel (if any):

Andrew A. August, Allan Steyer, Jill K. Cohoe
STEYER LOWENTHAL BOODROOKAS ALVAREZ & SMITH, LLP

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Telephone number(s): 415-421-3400

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Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☒ No

Appellee(s) (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

Uber Technologies, Inc.

Name(s) of counsel (if any):

Clara J. Shin, Jeffrey M. Davidson, Amy S. Heath
COVINGTON & BURLING, LLP

Address: Salesforce Tower, 415 Mission St., Ste. 5400, San Francisco, CA 94105

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To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

Uber Technologies, Inc.

Name(s) of counsel (if any):

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Address: 3000 El Camino Real, 5 Palo Alto Sq., 10th Fl., Palo Alto, CA 94306

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Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

ADRMOP,APPEAL,CLOSED

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:19-cv-01988-EMC**

Rattagan v. Uber Technologies, Inc. et al
Assigned to: Judge Edward M. Chen
Case in other court: 9th Circuit, 20-16796
Cause: 28:1332 Diversity-Fraud

Date Filed: 04/12/2019
Date Terminated: 08/19/2020
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

Plaintiff

Michael R. Rattagan

represented by **Andrew A. August**
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V.

Defendant

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ATTORNEY TO BE NOTICED

Defendant

Uber International, BV
TERMINATED: 05/08/2019

Defendant

Uber International Holdings, BV
TERMINATED: 05/08/2019

Date Filed	#	Docket Text
04/12/2019	<u>1</u>	COMPLAINT <i>Breach of Fiduciary Duty, Deceit, Fraud, Intentional Infliction of Emotional Distress and Negligence</i> with jury demand against All Defendants (Filing fee \$ 400, receipt number 0971-13257457.). Filed by Michael R. Rattagan. (Attachments: # <u>1</u> Civil Cover Sheet)(Cialone, Frank) (Filed on 4/12/2019) Modified on 4/22/2019 (jmlS, COURT STAFF). (Entered: 04/12/2019)
04/12/2019	<u>2</u>	Proposed Summons. (Cialone, Frank) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/12/2019	<u>3</u>	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13257845.) filed by Michael R. Rattagan. (Attachments: # <u>1</u> Certificate of Good Standing)(Rosenfeld, Stephen) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/12/2019		Electronic filing error . Civil Cover Sheet missing information - please make a Nature of Suit selection. No judge assignment will be made until the document is e-filed. Submit you r document using Civil Events > Other Filings > Other Documents > Civil Cover Sheet Re: <u>1</u> Complaint, filed by Michael R. Rattagan (srnS, COURT STAFF) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/12/2019	<u>4</u>	Civil Cover Sheet by Michael R. Rattagan . (Cialone, Frank) (Filed on 4/12/2019) (Entered: 04/12/2019)

04/12/2019	5	<p>Case assigned to Magistrate Judge Kandis A. Westmore.</p> <p>Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 4/26/2019. (srnS, COURT STAFF) (Filed on 4/12/2019) (Entered: 04/12/2019)</p>
04/12/2019	6	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 310, receipt number 0971-13258488.) filed by Michael R. Rattagan. (Attachments: # 1 Exhibit Certificate of Good Standing)(Dean, Christopher) (Filed on 4/12/2019) (Entered: 04/12/2019)
04/15/2019	7	Order by Magistrate Judge Kandis A. Westmore granting 3 Motion for Pro Hac Vice as to Stephen Rosenfeld. (ivaS, COURTSTAFF) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/15/2019	8	Order by Magistrate Judge Kandis A. Westmore granting 6 Motion for Pro Hac Vice as to Christopher Dean. (ivaS, COURTSTAFF) (Filed on 4/15/2019) (Entered: 04/15/2019)
04/22/2019	9	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 7/23/2019. Initial Case Management Conference set for 7/30/2019 01:30 PM. (jmlS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/22/2019	10	Summons Issued as to Uber International Holdings, BV, Uber International, BV, Uber Technologies, Inc.. (jmlS, COURT STAFF) (Filed on 4/22/2019) (Entered: 04/22/2019)
04/24/2019	11	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Michael R. Rattagan.. (Cialone, Frank) (Filed on 4/24/2019) (Entered: 04/24/2019)
04/24/2019	12	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (ivaS, COURTSTAFF) (Filed on 4/24/2019) (Entered: 04/24/2019)</p>
04/25/2019	13	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Edward M. Chen for all further proceedings. Magistrate Judge Kandis A. Westmore no longer assigned

		to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by the Clerk on 04/25/2019. (Attachments: # 1 Notice of Eligibility for Video Recording)(ajsS, COURT STAFF) (Filed on 4/25/2019) (Entered: 04/25/2019)
04/25/2019	14	CASE MANAGEMENT ORDER IN REASSIGNED CASE: Initial Case Management Conference set for 8/29/2019 09:30 AM in San Francisco, Courtroom 05, 17th Floor. Joint Case Management Statement due by 8/22/2019. Signed by Judge Edward M. Chen on 4/25/2019. (afmS, COURT STAFF) (Filed on 4/25/2019) (Entered: 04/25/2019)
05/08/2019	15	AMENDED COMPLAINT against Uber Technologies, Inc.. Filed by Michael R. Rattagan. (Rosenfeld, Stephen) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/08/2019	16	SUMMONS Returned Executed by Michael R. Rattagan. Uber Technologies, Inc. served on 4/24/2019, answer due 5/15/2019. (Cialone, Frank) (Filed on 5/8/2019) (Entered: 05/08/2019)
05/22/2019	17	CERTIFICATE OF SERVICE by Michael R. Rattagan [<i>Cumulative Proofs of Service</i>] (Cialone, Frank) (Filed on 5/22/2019) (Entered: 05/22/2019)
05/23/2019	18	NOTICE of Appearance by Clara J. Shin (Shin, Clara) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	19	STIPULATION WITH PROPOSED ORDER <i>to Extend Time for Defendant Uber Technologies, Inc. to Respond to Amended Complaint</i> filed by Uber Technologies, Inc.. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	20	NOTICE of Appearance by Jeffrey Michael Davidson (Davidson, Jeffrey) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/23/2019	21	Certificate of Interested Entities by Uber Technologies, Inc. identifying Other Affiliate SoftBank Group Corp., Other Affiliate SB Cayman 2 Ltd. for Uber Technologies, Inc.. (Shin, Clara) (Filed on 5/23/2019) (Entered: 05/23/2019)
05/28/2019	22	Order by Judge Edward M. Chen granting 19 Stipulation to Extend Time for Defendant Uber Technologies, Inc. to Respond to Amended Complaint. Answer due 6/24/2019.(afmS, COURT STAFF) (Filed on 5/28/2019) (Entered: 05/28/2019)
06/24/2019	23	MOTION to Dismiss filed by Uber Technologies, Inc.. Motion Hearing set for 8/8/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 7/8/2019. Replies due by 7/15/2019. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/24/2019	24	Request for Judicial Notice re 23 MOTION to Dismiss filed by Uber Technologies, Inc.. (Attachments: # 1 Declaration of Miguel Lopez Forastier in Support of Uber Technologies' Request for Judicial Notice, # 2 Exhibit A to Declaration of Miguel Lopez Forastier, # 3 Exhibit B to Declaration of Miguel Lopez Forastier, # 4 Exhibit C to Declaration of Miguel Lopez Forastier, # 5 Exhibit D to Declaration of Miguel Lopez Forastier)(Related document(s) 23) (Shin, Clara) (Filed on 6/24/2019) (Entered: 06/24/2019)
06/27/2019	25	NOTICE of Appearance by Lindsey Catherine Barnhart <i>on behalf of Defendant Uber Technologies, Inc.</i> (Barnhart, Lindsey) (Filed on 6/27/2019) (Entered: 06/27/2019)

06/27/2019	26	NOTICE of Appearance by Amy S. Heath <i>on behalf of Defendant Uber Technologies, Inc.</i> (Heath, Amy) (Filed on 6/27/2019) (Entered: 06/27/2019)
07/02/2019	27	MOTION for Rule 11 Sanctions ; <i>Memorandum of Points and Authorities in Support Thereof</i> filed by Uber Technologies, Inc.. Motion Hearing set for 8/8/2019 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 7/16/2019. Replies due by 7/23/2019. (Attachments: # 1 Declaration of Clara J. Shin in Support of Defendant's Motion for Rule 11 Sanctions, # 2 Exhibit A to Declaration of Clara J. Shin, # 3 Exhibit B to Declaration of Clara J. Shin, # 4 Exhibit C to Declaration of Clara J. Shin, # 5 Exhibit D to Declaration of Clara J. Shin, # 6 Exhibit E to Declaration of Clara J. Shin, # 7 Exhibit F to Declaration of Clara J. Shin, # 8 Proposed Order)(Shin, Clara) (Filed on 7/2/2019) Modified on 7/3/2019 (slhS, COURT STAFF). (Entered: 07/02/2019)
07/08/2019	28	OPPOSITION/RESPONSE (re 23 MOTION to Dismiss) filed by Michael R. Rattagan. (Rosenfeld, Stephen) (Filed on 7/8/2019) (Entered: 07/08/2019)
07/15/2019	29	REPLY in Support (re 23 MOTION to Dismiss) filed by Uber Technologies, Inc.. (Shin, Clara) (Filed on 7/15/2019) Modified on 7/16/2019 (slhS, COURT STAFF). (Entered: 07/15/2019)
07/16/2019	30	OPPOSITION/RESPONSE (re 27 MOTION for Rule 11 Sanctions) filed by Michael R. Rattagan. (Attachments: # 1 Declaration of Stephen J. Rosenfeld, # 2 Exhibit A to Rosenfeld Declaration, # 3 Exhibit B to Rosenfeld Declaration, # 4 Exhibit C to Rosenfeld Declaration)(Rosenfeld, Stephen) (Filed on 7/16/2019) (Entered: 07/16/2019)
07/23/2019	31	REPLY in Support (re 27 MOTION for Rule 11 Sanctions) filed by Uber Technologies, Inc.. (Attachments: # 1 Declaration of Clara J. Shin in Support of Defendant's Reply in Support of Motion for Rule 11 Sanctions)(Shin, Clara) (Filed on 7/23/2019) Modified on 7/24/2019 (slhS, COURT STAFF). (Entered: 07/23/2019)
08/06/2019	32	STIPULATION WITH PROPOSED ORDER <i>to Continue Initial Case Management Conference and Related Deadlines</i> filed by Uber Technologies, Inc.. (Attachments: # 1 Proposed Order)(Barnhart, Lindsey) (Filed on 8/6/2019) (Entered: 08/06/2019)
08/08/2019	33	Order by Judge Edward M. Chen granting 32 Stipulation to Continue Initial Case Management Conference and Related Deadlines. Joint Case Management Statement due by 10/31/2019. Initial Case Management Conference set for 11/7/2019 09:30 AM in San Francisco, Courtroom 05, 17th Floor. Initial Disclosures, early settlement, ADR process selection, and discovery plan due 10/17/2019; ADR Certification due 10/17/2019; Rule 26(f) Report due 10/31/2019. (afmS, COURT STAFF) (Filed on 8/8/2019) (Entered: 08/08/2019)
08/08/2019	34	Minute Entry for proceedings held before Judge Edward M. Chen: Motion Hearing held on 8/8/2019; taking under submission 23 Motion to Dismiss; 27 Motion for Sanctions. Total Time in Court: 47 Minutes. Court Reporter: JoAnn Bryce. Plaintiff Attorney: Steven Rosenfeld. Defendant Attorneys: Clara Shin, Jeff Davidson.

		Attachment: Minute Order. (afmS, COURT STAFF) (Date Filed: 8/8/2019) (Entered: 08/09/2019)
08/09/2019	35	TRANSCRIPT ORDER for proceedings held on 08/08/2019 before Judge Edward M. Chen by Uber Technologies, Inc., for Court Reporter Jo Ann Bryce. (Barnhart, Lindsey) (Filed on 8/9/2019) (Entered: 08/09/2019)
08/19/2019	36	ORDER by Judge Edward M. Chen Granting 27 Defendant's Motion for Sanctions and Dismissing Plaintiff's First Amended Complaint. Amended Complaint due by 9/18/2019. (emcsec, COURT STAFF) (Filed on 8/19/2019) (Entered: 08/19/2019)
08/20/2019	37	Transcript of Proceedings held on 8/8/19, before Judge Edward M. Chen. Court Reporter Jo Ann Bryce, telephone number 510-910-5888, joann_bryce@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction after 90 days. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 35 Transcript Order) Release of Transcript Restriction set for 11/18/2019. (Related documents(s) 35) (jabS, COURTSTAFF) (Filed on 8/20/2019) (Entered: 08/20/2019)
09/18/2019	38	SECOND AMENDED COMPLAINT against Uber Technologies, Inc.. Filed by Michael R. Rattagan. (Rosenfeld, Stephen) (Filed on 9/18/2019) (Entered: 09/18/2019)
09/24/2019	39	STIPULATION WITH PROPOSED ORDER <i>to Extend Time for Uber Technologies, Inc. to Respond to Second Amended Complaint and to Continue Case Management Conference</i> filed by Uber Technologies, Inc.. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 9/24/2019) (Entered: 09/24/2019)
09/26/2019	40	Order by Judge Edward M. Chen granting 39 Stipulation to Extend Time For Uber Technologies, Inc. to Respond to Second Amended Complaint and to Continue Case Management Conference. Deadline to meet and confer is 11/21/2019; ADR certification is 11/21/2019; Joint Case Management Statement due by 12/5/2019. Initial Case Management Conference reset for 12/12/2019 09:30 AM in San Francisco, Courtroom 05, 17th Floor.(afmS, COURT STAFF) (Filed on 9/26/2019) (Entered: 09/26/2019)
10/02/2019	41	TRANSCRIPT ORDER for proceedings held on 8/8/19 before Judge Edward M. Chen by Michael R. Rattagan, for Court Reporter Jo Ann Bryce. (Rosenfeld, Stephen) (Filed on 10/2/2019) (Entered: 10/02/2019)
10/21/2019	42	STIPULATION WITH PROPOSED ORDER <i>to Extend Time for Uber Technologies, Inc. to Respond to Second Amended Complaint and to Continue Case Management Conference</i> filed by Uber Technologies, Inc.. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 10/21/2019) (Entered: 10/21/2019)
10/30/2019	43	Order by Judge Edward M. Chen granting 42 Stipulation to Extend For Uber Technologies, Inc. to Respond t Second Amended Complaint and to Continue Case Management Conference. Meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan due 2/6/2020; ADR Certification signed by parties and counsel due 2/6/2020. Joint Case Management Statement due by 2/20/2020. Initial Case Management Conference set for 2/27/2020 09:30 AM in San Francisco, Courtroom 05, 17th Floor.(afmS, COURT STAFF) (Filed on 10/30/2019)

		(Entered: 10/30/2019)
11/14/2019	44	STIPULATION WITH PROPOSED ORDER <i>to Extend Time for Uber Technologies, Inc. to Respond to Second Amended Complaint and to Continue Case Management Conference</i> filed by Michael R. Rattagan. (Attachments: # 1 Proposed Order) (Rosenfeld, Stephen) (Filed on 11/14/2019) (Entered: 11/14/2019)
11/14/2019	45	Order by Judge Edward M. Chen granting 44 Stipulation to Extend Time For Uber Technologies, Inc. to Respond to Second Amended Complaint and to Continue Case Management Conference. Joint Case Management Statement due by 3/19/2020. Initial Case Management Conference set for 3/26/2020 09:30 AM in San Francisco, Courtroom 05, 17th Floor.(afmS, COURT STAFF) (Filed on 11/14/2019) (Entered: 11/14/2019)
12/18/2019	46	MOTION to Withdraw as Attorney (<i>Unopposed</i>) filed by Michael R. Rattagan. Motion Hearing set for 1/16/2020 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 1/2/2020. Replies due by 1/9/2020. (Rosenfeld, Stephen) (Filed on 12/18/2019) (Entered: 12/18/2019)
12/18/2019	47	STIPULATION WITH PROPOSED ORDER <i>To Extend All Deadlines And To Continue Case Management Conference</i> filed by Uber Technologies, Inc.. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 12/18/2019) (Entered: 12/18/2019)
12/19/2019	48	Order by Judge Edward M. Chen granting 47 Stipulation. Deadline to response to Uber's Second Amended Complaint is 2/18/2020. Joint Case Management Statement due by 5/21/2020. Initial Case Management Conference set for 3/26/2020 is VACATED and RESCHEDULED for 5/28/2020 09:30 AM in San Francisco, Courtroom 05, 17th Floor.(afmS, COURT STAFF) (Filed on 12/19/2019) (Entered: 12/19/2019)
01/08/2020	49	NOTICE of Appearance by Andrew A. August <i>on Behalf of Plaintiff Michael R. Rattagan</i> (August, Andrew) (Filed on 1/8/2020) (Entered: 01/08/2020)
01/08/2020	50	NOTICE of Appearance by Allan Steyer <i>on Behalf of Plaintiff Michael R. Rattagan</i> (Steyer, Allan) (Filed on 1/8/2020) (Entered: 01/08/2020)
01/21/2020	51	Order by Judge Edward M. Chen granting 46 Motion to Withdraw as Attorney. (afmS, COURT STAFF) (Filed on 1/21/2020) (Entered: 01/21/2020)
02/13/2020	52	STIPULATION WITH PROPOSED ORDER filed by Michael R. Rattagan. (August, Andrew) (Filed on 2/13/2020) (Entered: 02/13/2020)
02/18/2020	53	Order as Modified by Judge Edward M. Chen granting 52 Stipulation Regarding Case Schedule. Motion filed by 3/2/2020; opposition due 3/31/2020; reply due 4/13/2020; hearing set for 4/23/2020 at 1:30 P.M.(afmS, COURT STAFF) (Filed on 2/18/2020) (Entered: 02/18/2020)
02/18/2020		Set/Reset Deadlines as to: Responses due by 3/31/2020. Replies due by 4/13/2020. Motion Hearing for leave to file third amended complaint set for 4/23/2020 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. (afmS, COURT STAFF) (Filed on 2/18/2020) (Entered: 02/18/2020)
02/20/2020	54	STIPULATION - <i>Further Stipulation and [Proposed] Order Regarding Case Schedule</i> filed by Michael R. Rattagan. (August, Andrew) (Filed on 2/20/2020) Modified on 2/23/2020 (afmS, COURT STAFF). (Entered: 02/20/2020)

02/21/2020	55	Order by Judge Edward M. Chen granting 54 Stipulation. Motion for Leave to File Third Amending Complaint due 3/19/2020; opposition due 4/28/2020; reply due 5/7/2020; hearing set 5/21/2020 at 1:30 p.m.(afmS, COURT STAFF) (Filed on 2/21/2020) (Entered: 02/23/2020)
02/23/2020		Set/Reset Deadlines as to Responses due by 4/28/2020. Replies due by 5/7/2020. Motion Hearing set for 5/21/2020 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. (afmS, COURT STAFF) (Filed on 2/23/2020) (Entered: 02/23/2020)
03/19/2020	56	STIPULATION WITH PROPOSED ORDER <i>REGARDING CASE SCHEDULE</i> filed by Michael R. Rattagan. (August, Andrew) (Filed on 3/19/2020) (Entered: 03/19/2020)
03/19/2020	57	Order by Judge Edward M. Chen granting 56 Stipulation. Plaintiff shall file the Motion for Leave to Amend ("Motion") by April 2, 2020; Defendant shall file its Opposition to the Motion by May 12, 2020; Plaintiff shall file its Reply on or before May 21, 2020; The hearing, if any, shall be held on a date to be set by the court at its convenience; Uber Technologies shall not be required to respond to Plaintiffs Second Amended Complaint until after the Court rules on the Motion, if necessary.(afmS, COURT STAFF) (Filed on 3/19/2020) (Entered: 03/19/2020)
04/02/2020	58	MOTION for Leave to File <i>Third Amended Complaint</i> filed by Michael R. Rattagan. (Attachments: # 1 Declaration of Andrew A. August in Support of Motion for Leave to File Third Amended Complaint, # 2 Exhibit A - [Proposed] Third Amended Complaint) (August, Andrew) (Filed on 4/2/2020) (Entered: 04/02/2020)
04/02/2020	59	CLERK'S NOTICE: Any response/opposition to Docket No. 58 is due by April 23, 2020. Any such response is limited to 5 pages. (This is a text-only entry generated by the court. There is no document associated with this entry.) (afmS, COURT STAFF) (Filed on 4/2/2020) (Entered: 04/02/2020)
04/02/2020	60	Proposed Order re 58 MOTION for Leave to File <i>Third Amended Complaint</i> by Michael R. Rattagan. (August, Andrew) (Filed on 4/2/2020) (Entered: 04/02/2020)
04/23/2020	61	OPPOSITION/RESPONSE (re 58 MOTION for Leave to File <i>Third Amended Complaint</i>) filed byUber Technologies, Inc.. (Shin, Clara) (Filed on 4/23/2020) (Entered: 04/23/2020)
04/27/2020	62	REPLY (re 58 MOTION for Leave to File <i>Third Amended Complaint</i>) - <i>Plaintiffs Reply to Defendants Statement in Response to Motion for Leave to File Third Amended Complaint</i> filed byMichael R. Rattagan. (August, Andrew) (Filed on 4/27/2020) (Entered: 04/27/2020)
05/05/2020	63	Order by Judge Edward M. Chen granting 58 Motion for Leave to File Third Amended Complaint.(afmS, COURT STAFF) (Filed on 5/5/2020) (Entered: 05/05/2020)
05/06/2020	64	AMENDED COMPLAINT <i>Third Amended Complaint</i> against Uber Technologies, Inc.. Filed byMichael R. Rattagan. (August, Andrew) (Filed on 5/6/2020) (Entered: 05/06/2020)
05/11/2020	65	STIPULATION WITH PROPOSED ORDER <i>TO EXTEND DEADLINE TO RESPOND TO THIRD AMENDED COMPLAINT</i> filed by Uber Technologies, Inc.. (Shin, Clara) (Filed on 5/11/2020) (Entered: 05/11/2020)

05/12/2020	66	Order by Judge Edward M. Chen granting 65 Stipulation to Extend Deadline to Respond to Third Amended Complaint. Answer due 6/19/2020.(afmS, COURT STAFF) (Filed on 5/12/2020) (Entered: 05/12/2020)
06/19/2020	67	MOTION to Dismiss <i>Third Amended Complaint</i> filed by Uber Technologies, Inc.. Motion Hearing set for 7/30/2020 01:30 PM in San Francisco, Courtroom 05, 17th Floor before Judge Edward M. Chen. Responses due by 7/6/2020. Replies due by 7/13/2020. (Attachments: # 1 Proposed Order)(Shin, Clara) (Filed on 6/19/2020) (Entered: 06/19/2020)
07/02/2020	68	STIPULATION WITH PROPOSED ORDER re 67 MOTION to Dismiss <i>Third Amended Complaint - Stipulation and [Proposed] Order Regarding Case Schedule</i> filed by Michael R. Rattagan. (August, Andrew) (Filed on 7/2/2020) (Entered: 07/02/2020)
07/02/2020	69	Order by Judge Edward M. Chen granting 68 Stipulation Regarding Case Schedule re: 67 Motion to Dismiss. Opposition due 7/20/2020; reply due 7/30/2020; hearing reset for 8/13/2020 at 1:30 PM. before Judge Edward M. Chen.(afmS, COURT STAFF) (Filed on 7/2/2020) (Entered: 07/02/2020)
07/02/2020		Set/Reset Deadlines as to 67 MOTION to Dismiss <i>Third Amended Complaint</i> . Responses due by 7/20/2020. Replies due by 7/30/2020. Motion Hearing set for 8/13/2020 01:30 PM in San Francisco before Judge Edward M. Chen. (afmS, COURT STAFF) (Filed on 7/2/2020) (Entered: 07/02/2020)
07/20/2020	70	OPPOSITION/RESPONSE (re 67 MOTION to Dismiss <i>Third Amended Complaint</i>) - <i>Plaintiff's Opposition to Defendant's Motion to Dismiss Third Amended Complaint</i> filed by Michael R. Rattagan. (Attachments: # 1 Declaration of Andrew A. August in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss Third Amended Complaint, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(August, Andrew) (Filed on 7/20/2020) (Entered: 07/20/2020)
07/30/2020	71	REPLY (re 67 MOTION to Dismiss <i>Third Amended Complaint</i>) filed by Uber Technologies, Inc.. (Shin, Clara) (Filed on 7/30/2020) (Entered: 07/30/2020)
08/11/2020	72	<p>CLERKS NOTICE CONVERTING MOTION HEARING 67 MOTION TO DISMISS TO ZOOM HEARING. Motion Hearing set for 8/13/2020 01:30 PM in San Francisco before Judge Edward M. Chen.</p> <p>For Zoom connection, see: https://apps.cand.uscourts.gov/telhrq/</p> <p>This proceeding will be a Zoom video conferencing webinar.</p> <p>PLEASE NOTE: Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. See General Order 58 at Paragraph III.</p> <p>Case participants will enter proceeding as attendees, thereafter promoted to panelists and shall arrive at least 5 minutes prior to hearing start time.</p> <p>All counsel, members of the public and press please click the link or use the information below to join the webinar:</p> <p>https://cand-uscourts.zoomgov.com</p>

		<p>/j/1619911861?pwd=TjVma1lnMIJINHR3ZE9QMkFjNkFndz09</p> <p>Meeting ID: 161 991 1861 Password: 912881</p> <p>Dial by your location +1 929 205 6099 US (New York) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 346 248 7799 US (Houston) +1 669 900 6833 US (San Jose) Find your local number: https://zoom.us/j/1619911861</p> <p>For important information and guidance on technical preparation, please see https://www.cand.uscourts.gov/zoom/.</p> <p>as to 67 MOTION to Dismiss <i>Third Amended Complaint</i>. Motion Hearing set for 8/13/2020 01:30 PM in San Francisco before Judge Edward M. Chen. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (afmS, COURT STAFF) (Filed on 8/11/2020) (Entered: 08/11/2020)</p>
08/13/2020	74	<p>Minute Entry for proceedings held before Judge Edward M. Chen:</p> <p>Motion Hearing held on 8/13/2020 re 67 MOTION to Dismiss <i>Third Amended Complaint</i> filed by Uber Technologies, Inc. ; taking under submission 67 Motion to Dismiss.</p> <p>Total Time in Court: 56 Minutes. Court Reporter: JoAnn Bryce.</p> <p>Plaintiff Attorneys: Andrew August, Allan Steyer. Defendant Attorney: Jeff Davidson.</p> <p>Attachment: Minute Order. (afmS, COURT STAFF) (Date Filed: 8/13/2020) (Entered: 08/15/2020)</p>
08/14/2020	73	<p>TRANSCRIPT ORDER for proceedings held on 08/13/2020 before Judge Edward M. Chen by Michael R. Rattagan, for Court Reporter Jo Ann Bryce. (August, Andrew) (Filed on 8/14/2020) (Entered: 08/14/2020)</p>
08/17/2020	75	<p>TRANSCRIPT ORDER for proceedings held on 8/13/2020 before Judge Edward M. Chen by Uber Technologies, Inc., for Court Reporter Jo Ann Bryce. (Heath, Amy) (Filed on 8/17/2020) (Entered: 08/17/2020)</p>
08/19/2020	76	<p>ORDER by Judge Edward M. Chen Granting 67 Defendant's Motion to Dismiss and Dismissing Case With Prejudice. (emcsec, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)</p>
08/19/2020	77	<p>JUDGMENT. Signed by Judge Edward M. Chen on 8/19/2020. (emcsec, COURT STAFF) (Filed on 8/19/2020) (Entered: 08/19/2020)</p>

08/23/2020	78	Transcript of Proceedings held on 8/13/20, before Judge Edward M. Chen. Court Reporter Jo Ann Bryce, telephone number 510-910-5888, email: joann_bryce@cand.uscourts.gov. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter until the deadline for the Release of Transcript Restriction after 90 days. After that date, it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 73 Transcript Order) Release of Transcript Restriction set for 11/23/2020. (Related documents(s) 73) (jabS, COURTSTAFF) (Filed on 8/23/2020) (Entered: 08/23/2020)
09/16/2020	79	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Michael R. Rattagan. (Appeal fee of \$505 receipt number 0971-14948856 paid.) (Steyer, Allan) (Filed on 9/16/2020) (Entered: 09/16/2020)
09/21/2020	80	USCA Case Number 20-16796 9th Circuit for 79 Notice of Appeal filed by Michael R. Rattagan. (hdjS, COURT STAFF) (Filed on 9/21/2020) (Entered: 09/21/2020)
10/16/2020	81	Transcript Designation Form for proceedings held on 08/08/2019, 08/13/2020 before Judge Edward M. Chen, re 79 Notice of Appeal Transcript due by 11/16/2020. (Cohoe, Jill) (Filed on 10/16/2020) (Entered: 10/16/2020)

PACER Service Center			
Transaction Receipt			
01/27/2021 18:13:34			
PACER Login:	Aacubed1957:4478643:0	Client Code:	Rattagan
Description:	Docket Report	Search Criteria:	3:19-cv-01988-EMC
Billable Pages:	9	Cost:	0.90