Feifei Gu v Uber Tech. Inc.
2026 NY Slip Op 30410(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 100269/2023
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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FEIFEI GU,

Plaintiff,

- v -

UBER TECHNOLOGIES INC.,

Defendant.

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INDEX NO. 100269/2023

MOTION DATE N/A

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 100, 101, 102, 106, 107, 108

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Defendant's motion to strike the note of issue is granted.

Background

Plaintiff brings this case seeking damages arising out of a purported assault she suffered by an UberEats delivery person while she was working at a restaurant in Manhattan.

Defendant contends that in the most recent discovery order, the parties were to schedule depositions for January and February 2026 and contends that despite repeated communications, plaintiff refused to confirm dates. Defendant also wants to do an IME given that this case involves an assault. It contends that plaintiff should not have filed the note of issue as there is significant outstanding discovery to complete.

In opposition, plaintiff complains that this motion was not filed with enough notice and that defendant failed to serve its discovery response so defendant has waived its rights to discovery.

In reply, defendant points out that it filed the motion on January 16, 2026 and set a return date of January 26, 2026 which satisfies the notice requirement. It argues that this is the relevant date.

Discussion

Defendant is correct that it provided enough notice for the motion as it uploaded its motion on January 16, 2026—that is the effective date of service as this is an e-filed case. It seems that defendant drafted an improper notice of motion that did not make the application returnable in Room 130 and defendant corrected this error on January 20. But plaintiff was given enough notice under the CPLR.

In any event, plaintiff had enough time to file an opposition and that opposition did not state a valid justification to deny defendant's motion. There is no dispute that depositions were not held and that an IME has also not yet been held. Plaintiff's contention about defendant waiving discovery is without merit as she did not cross-move for such relief. And even if she had cross-moved, that application would have ben denied. Plaintiff has brought a case and defendant is entitled to discovery. At a minimum, here, defendant is entitled to a deposition and, because of the nature of her complaint, an IME; depending on what is discovered, defendant may or may not be entitled to more. Plaintiff is, of course, also entitled to discovery.

In this part, a note of issue cannot be filed until discovery is complete so the parties are urged to cooperate toward that goal (a note of issue means discovery is complete and you are ready for trial and substantive motions).

Given the past order, the Court also directs as follows:

Depositions must be completed on or before February 27, 2026. The Court recognizes that, according to defendant, it has been unable to set a date for the depositions. Rather than spend endless time suggesting dates (as that has not been a fruitful tactic), defendant shall pick a firm date within a formal notice of deposition and then reschedule should plaintiff communicate that she needs a new date. However, picking a firm date will ensure that the depositions move forward. Plaintiff is entitled to utilize this same process. If any party fails to appear for a property noticed deposition, the Court may impose penalties upon the filing of a proper motion.

The IME of plaintiff shall take place on or before March 18, 2026. As defendant is certainly aware of the claims in this case, it should be able to designate a doctor shortly after taking plaintiff's deposition.

The note of issue date will remain March 31, 2026—the date selected by the judge previously assigned to this case. Of course, if the discovery does not proceed, then a party must make a motion before the deadline to extend the deadline, and the party causing the delay may be subject to appropriate penalties.

Accordingly, it is hereby

ORDERED that the motion to vacate the note of issue is granted and the note of issue is vacated and the case is stricken from the trial calendar; and it is further

ORDERED that, within 15 days from the entry of this order, movant shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that, within 15 days from completion of discovery as hereinabove directed, the plaintiff shall cause the action to be placed upon the trial calendar by the filing of a new note of

issue and certificate of readiness (for which no fee shall be imposed), to which shall be attached a copy of this order [the plaintiff shall move to reinstate the note of issue as provided in Uniform Rule 202.21 (f)]; and it is further

ORDERED that such upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website)].

Note of Issue Deadline March 31, 2026.

1/29/2026
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
	X	**GRANTED**	**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**			**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**			**FIDUCIARY APPOINTMENT**		**REFERENCE**