

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEFFREY ROTH,

Plaintiff,

v.

13-CV-901A(F)

2810026 CANADA LIMITED LTD.,
2810034 CANADA LIMITED,
FREDERICK GROUP INC.,
SINGH AMARJIT,

Defendants
Third-Party Plaintiffs,

v.

**DECISION
and
ORDER**

PAMELA J. BAUMAN,

Third-Party Defendant.

PAMELA BAUMAN,

Plaintiff,

v.

15-CV-374A(F)

2810026 CANADA LIMITED,
2810034 CANADA LIMITED,
FREDERICK GROUP INC.,
SINGH AMARJIT,

Defendants

APPEARANCES:

DAVID W. POLAK, ESQ.
Attorney for Plaintiffs
3686 Seneca Street
West Seneca, New York 14224

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Attorneys for Defendants
BEATA SHAPIRO, of Counsel
260 Franklin Street, 14th Floor
Boston, Massachusetts 02110

FELDMAN KIEFFER, LLP
Attorney for Third-Party Defendant
ADAM C. FERRANDINO, of Counsel
110 Pearl Street, Suite 400
Buffalo, New York 14202

In this personal injury case, the court by Decision and Order filed October 4, 2016 (Dkt. 34) (“the October 4, 2016 D&O”) granted Plaintiff’s request for expenses, including reasonable attorneys fees, incurred in connection with Plaintiff’s motion to compel Defendants’ depositions, based on the Decision and Order filed July 18, 2016 (Dkt. 51, 27) (“the July 18, 2016 D&O”), and directed Plaintiff to file Plaintiff’s affidavit of such expenses within 30 days of the October 4, 2016 D&O. Failure to comply with the court’s order to file an affidavit of expenses awarded in connection with a motion to compel permits the court to deem a successful party’s expense request WAIVED. See *Ivoclar Vivadent Inc. v. Corporation Cortex Machina*, 2004 WL 2315071, at *7 (W.D.N.Y. Oct. 14, 2004) (failure to submit affidavit of costs and fees requested constitutes waiver of party’s right to fees and costs in connection with successful motion). Accordingly, as Plaintiff has to date failed to comply with the court’s direction to file Plaintiff’s affidavit of expenses as stated in the October 4, 2016 D&O, Plaintiff’s request is deemed to have been WAIVED.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: April 12, 2017
Buffalo, New York