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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM MOSLEY, et al.,  
Plaintiffs,  
v.  
GROUPON, INC., et al.,  
Defendants.

Case No. [15-cv-01205-BLF](#)

**ORDER DENYING MOTION FOR  
SANCTIONS**

**(Re: Docket No. 84)**

The better part of a year ago, Plaintiffs William and Frances Mosley served discovery requests on Defendant Groupon, Inc., to which Groupon and its counsel never responded.<sup>1</sup> Over Groupon’s implausible objection that service had been ineffective, the court granted Plaintiffs’ motion to compel responses to these requests.<sup>2</sup> Pursuant to Fed. R. Civ. P. 37(a)(5)(A), the court awarded Plaintiffs attorney’s fees incurred in filing their motion, and, as required by Fed. R. Civ. P. 36(a)(3), it deemed admitted Plaintiffs’ requests for admission.<sup>3</sup> Soon afterwards, Groupon switched to new counsel,<sup>4</sup> who moved to withdraw those admissions.<sup>5</sup> The court granted that request as well.<sup>6</sup>

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<sup>1</sup> See Docket No. 52 at 1-2.

<sup>2</sup> See *id.* at 2.

<sup>3</sup> See *id.*

<sup>4</sup> See Docket No. 70.

<sup>5</sup> See Docket No. 69.

<sup>6</sup> See Docket No. 83.

1           Plaintiffs now move for sanctions under Rule 37 in the form of attorney’s fees for all this  
2 motion practice.<sup>7</sup> The court already awarded those fees for the initial motion to compel, and at the  
3 hearing on the sanctions motion the parties informed the court that Groupon no longer disputes the  
4 amount of those fees. That portion of the motion therefore is DENIED as moot. The only  
5 remaining point of contention, then, is whether the court should award Plaintiffs their fees for  
6 opposing Groupon’s motion to withdraw.

7           That inquiry starts with the Federal Rules. Rule 37(a)(5)(A) provides that a party  
8 prevailing on its motion to compel must be awarded its “reasonable expenses incurred in making  
9 the motion, including attorney’s fees.” Other subsections of Rule 37 go further. Rule 37(b)(2)(C)  
10 requires a party disobeying a court order to “pay the reasonable expenses, including attorney’s  
11 fees, caused by the failure.” Rule 37(d)(3) imposes sanctions in the same vein for a party that does  
12 not attend its own deposition, serve answers to interrogatories or respond to a request for  
13 inspection. Plaintiffs rely on the latter provision.<sup>8</sup> But although Rule 37 lists exhaustively the  
14 conduct that can lead to an award of attorney’s fees, the failure to respond to a request for  
15 admission is not among them.<sup>9</sup> Rule 36 includes no such provision either. The only reasonable  
16 conclusion is that Rule 37 does not authorize the court to sanction a party for failing to respond to  
17 a request for admission.

18           Plaintiffs have identified no case law to the contrary. They point to a number of cases  
19 awarding, or at least contemplating, such a sanction,<sup>10</sup> but none of these cases cites Rule 37 as the  
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21 <sup>7</sup> See Docket No. 84.

22 <sup>8</sup> See *id.* at 2.

23 <sup>9</sup> Rule 37(c)(2) does impose attorney’s fee sanctions for a party’s failure to admit a matter later  
24 proven to be true, but that is not at issue here.

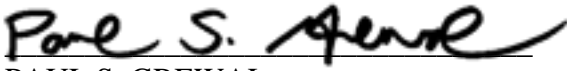
25 <sup>10</sup> See, e.g., *Hadley v. United States*, 45 F.3d 1345, 1350 (9th Cir. 1995); *Archway Ins. Servs., LLC*  
26 *v. Harris*, Case No. 11-cv-01173, 2013 WL 6158369, at \*2 (D. Nev. Nov. 21, 2013); *Upchurch v.*  
27 *USTNET, Inc.*, 160 F.R.D. 131, 133-34 (D. Ore. 1995); *Mid-Valley Bank v. N. Valley Bank*, 764 F.  
Supp. 1377, 1391 (E.D. Cal. 1991).

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basis for the sanction. Instead, as one of Plaintiffs’ cases makes clear, these courts acted pursuant to their “inherent power to levy sanctions for abusive litigation tactics.”<sup>11</sup> Such an award must “be preceded by a finding of bad faith, or conduct tantamount to bad faith.”<sup>12</sup> Plaintiffs do not argue that Groupon’s conduct rose to that level.<sup>13</sup> For all the reasons above, Plaintiffs’ motion for sanctions is DENIED.

**SO ORDERED.**

Dated: March 9, 2016

  
PAUL S. GREWAL  
United States Magistrate Judge

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<sup>11</sup> *Archway Insurance*, 2013 WL 6158369, at \*2 (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765-66 (1980)).

<sup>12</sup> *Gomez v. Vernon*, 255 F.3d 1118, 1134 (9th Cir. 2001) (citing *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir. 2001)).

<sup>13</sup> *See* Docket No. 86 at 2 (suggesting that “[t]he fact[s] of this case meet even this higher bar,” but providing no support for the assertion).