

a movant's obligation to first attempt to settle the dispute amicably and show "good cause" eliminates the availability of protective orders for purely tactical purposes.<sup>133</sup>

### 3. *Motions to Compel and Sanctions*

A party who has made a Rule 34 request and, in response, received an objection or no answer at all may seek an order compelling compliance under Federal Rule 37(a).<sup>134</sup> Once the court enters such an order, Rule 37(b) provides various sanctions if the order is violated.<sup>135</sup> There are two main reasons for issuing sanctions involving Rule 34; noncompliance with a proper request and improper destruction of documents.<sup>136</sup> Overproduction or dumping of documents falls under the former and constitutes a common problem concerning Rule 34 discovery.<sup>137</sup> For example, in *Levene v. City of New York*, the court sanctioned the plaintiff by dismissing his claims entirely for "dumping" more than 10,000 pages on the defendants, in addition to other failures to comply with discovery orders.<sup>138</sup> Courts exercise much discretion regarding what type of sanction to issue and do so on a fact-specific basis.<sup>139</sup>

133 See FED. R. CIV. P. 26(c)(1)(G); see also *Nestle Foods Corp. v. Aetna Casualty & Surety Co.*, 129 F.R.D. 483, 486 (D.N.J. 1990) (non-patent case denying protection order because movants failed to attempt to negotiate or move for protective order in a timely fashion).

134 7 MOORE ET AL., *supra* note 89, at §34.16[2].

135 See FED. R. CIV. P. 37(b).

136 See 7 MOORE ET AL., *supra* note 89, at §34.16[3],[4]. Sanctions for destruction of documents may be imposed pursuant to Rule 37(b) only if the destruction happened *after* being served with a Rule 34 request. A court may exercise its "inherent power" to sanction abusive acts involving pre-request destruction, if the destructing party was reasonably aware that the items it was destroying constituted evidence. *Id.*; e.g. *Alliance of End Repression v. Rochford*, 75 F.R.D. 438, 440 (N.D. Ill. 1976) (sanctions imposed when documents required to answer interrogatories were destroyed after defendants learned that plaintiffs were about to sue).

137 97 Civ. 7985, 1999 U.S. Dist. LEXIS 9031 (S.D.N.Y. June 11, 1999).

138 *Id.* at \*9.

139 See 7 MOORE ET AL., *supra* note 89, at §34.16[3]-[4].