

Valley Lawyers Avoid Sanctions Over Evidence-Tampering Allegations

SAN FRANCISCO — After censuring two Grellas Shah partners for what she called “fraud on the court,” Santa Clara County Superior Court Judge Mary Arand decided against imposing sanctions on the Cupertino lawyers.

Partners George Grellas and Dhaivat Shah had been accused by opposing counsel of helping public safety software company VeriPic Inc. hide evidence in its pursuit of defamation claims against a rival.

In an order Friday, Arand expressed frustration with what she called an “unconscionable, egregious, deliberate, willful and knowing scheme” on the part of VeriPic to interfere with the fair adjudication of the case. However, Arand declined to sanction the Grellas Shah lawyers, acknowledging they had been unable to fully defend themselves against misconduct charges once VeriPic’s CEO invoked his Fifth Amendment rights.

“Grellas Shah persuasively argues that due process prevents the court from imposing sanctions against Grellas Shah and its attorneys because they cannot provide a complete response,” Arand wrote.



George Grellas,
Grellas Shah partner



Dhaivat Shah,
Grellas Shah partner

Arand wrote she intends to dismiss VeriPic’s case due to its pursuit of what she called “frivolous and meritless litigation” over five years and would order the return of \$83,000 in attorney fees the company collected earlier in the case. She also wants VeriPic and CEO John Kwan to reimburse the court \$22,000 for resources wasted on the litigation. VeriPic and Kwan have the chance to respond to Arand’s interim order before it becomes final.

Foray Technologies was the tar-

get of VeriPic’s defamation suit. The company’s lawyer, James Greenan of San Ramon firm Greenan, Pepper, Sallander & Lally, said Wednesday he’s never seen a judge issue such a scathing rebuke of a plaintiff.

“It’s shocking,” he said. “It’s shocking what the court found, and the decision to grant terminating sanctions is totally justified.”

Ruling in May, Arand had proposed ordering \$500,000 in sanctions against VeriPic and its former attorneys, but she evidently re-

thought that approach after considering the predicament of Grellas, Shah and associate David Siegel, who were caught between their own interests and those of their clients.

The Grellas Shah lawyers, who no longer represent VeriPic, deny the accusations of misconduct in a statement on the firm's website.

"As we have demonstrated throughout the matter, there is no direct evidence in that case that would justify the court's imposing such sanctions upon us as counsel. None," they wrote.

The firm's statement also outlines why lawyers considered themselves legally barred from countering accusations of misconduct once Kwan asserted his Fifth Amendment privilege: "As a result of this invocation by the client of the Fifth Amendment privilege, and as a result of the attorney-client privilege, we as former counsel are absolutely prohibited by our ethical obligations to the client from defending ourselves."

Grellas declined to provide additional comment Wednesday.

The sanctions fight started with accusations that VeriPic, a Silicon Valley company which sells software to law enforcement organizations, was misleading customers with phony domain names. Competitor Foray Technologies sent its clients letters claiming VeriPic had purchased dozens of domains using the names of competitors and third-party groups and re-directed the traffic back to its own site.

In response, VeriPic sued Foray for defamation.

Last year, VeriPic's Internet service provider produced emails that Foray said show Kwan making arrangements to buy the domain names in question, redirect the traffic to VeriPic, and hide VeriPic's connection to the sites. Arand wrote in May that evidence suggested VeriPic and its attorneys attempted to hide those emails during initial discovery, and continued to aggressively pursue the defamation case after they should have known it was meritless.

In a 2010 email, Kwan allegedly told his Internet provider "the lawyer" wanted all connections to VeriPic hidden from the domain names in question. In her May order, Arand wrote that suggests the Grellas Shah lawyers were complicit in filing the meritless lawsuit.

VeriPic has denied deleting the emails, and argued their existence doesn't mean its entire case is without merit.

VeriPic forced the court to spend five years handling frivolous litigation, Arand wrote in Friday's order. The court held 175 hearings in the case and processed more than 1,230 pleadings and papers. Documents filed in the case fill more than 100 file volumes, she wrote, whereas the majority of civil cases fill less than one.

"Thus, by this one measure alone, the court has utilized a hundred times more of its scarce resources on this single case alone than on a

typical case," Arand wrote.

The judge also suggested the Grellas Shah lawyers had made statements that conflicted with their former client's interests, and taken too long to withdraw as VeriPic's counsel. But those matters fall within the purview of the State Bar of California, not the court, she wrote. A spokeswoman for the Bar said she couldn't confirm whether an investigation is underway because such proceedings are confidential.

Merri Baldwin of Rogers Joseph O'Donnell represents the Grellas Shah lawyers, Mark Fredkin of Morgan Franich Fredkin & Marsh represents VeriPic, and Greg Hull of Hull & Ellenberg represents Kwan.

Fredkin and Franich did not immediately respond to emails requesting comment.

Greenan, representing Foray, has also filed cybersquatting and malicious-prosecution suits against VeriPic in Santa Clara County Superior Court.

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