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## Lawyers who dropped case not entitled to fees, judge says

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A pair of Bay Area plaintiffs attorneys who dropped out of a case that ultimately settled for \$15 million are not entitled to any fees, a San Francisco judge has ruled.

In an order filed with the court April 1, Judge Paul Alvarado ruled that attorneys Nick Reckas and Frederick Watson cannot recover fees, despite having worked on a case on a contingency fee basis for a year and a half. The attorneys had asked the court for a combined \$3.75 million in compensation.

Since the attorneys voluntarily withdrew from the case without justifiable cause, Judge Alvarado wrote in a separate statement of decision, they forfeit any compensation. "There is no authority supporting an award of attorneys fees in a permissive withdrawal situation," Alvarado wrote in *Watson v. Kalashian*, 301573.

Watson would not comment on the decision other than to say he was pursuing a writ. Reckas did not return a call for comment.

The fee fight stems from a high-profile 1997 case in which technology entrepreneurs Michael Kalashian and Jagdish Vij sued a venture capital firm for allegedly diluting their interests in the company they founded. The suit was one of the rare instances in which a venture capital firm has been sued by one of its portfolio companies.

The plaintiffs hired Reckas to represent them in *Kalashian v. Advent VI*, 739278, and signed a contingency fee agreement entitling Reckas to 33 percent of any recovery. Watson did not have his own agreement with the plaintiffs but was retained by Reckas to assist in the case.

Reckas resigned as counsel in 1995 as a result of disagreements with the client over how the case was being handled. Shortly thereafter, the plaintiffs retained Allen Ruby, of San Jose's Ruby & Schofield, who took the case to trial and eventually settled it for \$15 million.

In 1999, Reckas and Watson sued their former clients seeking reimbursement for the services they performed before resigning. Both sides waived their right to a jury trial, said John Fitzgerald, a partner at San Francisco's Pinnacle Law Group, who represented Kalashian and Vij in the fee dispute.

In his decision, Alvarado noted that as a general rule, an attorney who has been retained on a contingency fee basis and then withdraws as counsel forfeits any claim to fees. The only exception occurs in instances in which the attorney was forced to withdraw for ethical reasons.

But the court found that Reckas' and Watson's resignation were not mandated by any ethical concerns.

"Watson admitted that he and Reckas could have continued to represent Vij and Kalashian without offending any ethical rule of conduct," wrote Judge Alvarado. "The court's view of the evidence is that Reckas became unhappy with the behavior and demands of the clients and decided that it was not worth it to him to continue the relationship."

As a result, Judge Alvarado concluded, the attorneys had failed to show that their withdrawal was based on a justifiable cause.

Judge Alvarado awarded Reckas \$2,901.57 for reimbursement of costs in the *Kalashian v. Advent VI* case.

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