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Restaurant Loses Effort to Have Ex-Delivery Workers' Suit Dismissed

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A lawsuit brought by former delivery workers against an Upper West Side restaurant that deducted money from their tips to pay the service fees of food-delivery Web sites can proceed, a federal judge has ruled.

The ruling came in a suit filed against [Indus Valley](#), on Broadway at West 100th Street, where eight former delivery workers say the restaurant kept 12 to 15 percent of their tips when customers placed their orders through services like [Seamless](#) and [Grubhub.com](#).

Indus Valley sought to have the suit dismissed. It admitted to withholding the workers' tips but said the practice was permissible to recoup fees charged by online delivery sites, in the same way that restaurants are allowed to deduct a percentage from tips left via credit card to cover credit card companies' fees for converting those tips to cash.

But the judge, Alison J. Nathan of United States District Court for the Southern District of New York, rejected both Indus Valley's argument and its request to dismiss the suit. A representative from Indus Valley declined to comment.

The judge, quoting from a case the restaurant itself had cited in making its arguments, wrote that tip deductions "were only permissible to the extent that they 'did not enrich [the employer], but instead, at most, merely restored it to the approximate financial posture it would have occupied if it had not undertaken to collect credit card tips for its employees.'"

The service agreements with the delivery Web sites included charges for commissions and "advertisement fees," in addition to credit card processing fees. The agreements, Judge Nathan wrote, "suggest that Indus Valley deducted from gratuities costs beyond those incurred as the result of converting credit card gratuities to cash."

A lawyer for the workers, Jane Chung, said that labor law bars restaurants from taking from workers' tips without an explicit exemption, and said that the judge's ruling effectively declares Indus Valley's practice illegal.

She said the restaurant unlawfully retained almost \$17,000 and compared the practice to passing on the cost of rent or materials to delivery workers.

"These are business expenses," she said Tuesday. "To be using that as a basis to be taking from tips - it's a travesty." The restaurant pays its workers less than minimum wage, which

it is allowed to do because the workers receive gratuities, Ms. Chung said. She said the workers were paid a flat rate of \$125 a week plus tips.

"They were paying us very little, but when they started taking our tips it became an important matter of justice," Silvano Caballero, one of the workers, said through a translator. Indus Valley began withholding tips from workers in 2007, Ms. Chung said, though the suit was not filed until 2012.

If Indus Valley is found to have illegally deducted money from the workers, the workers will be entitled to double the amount they were denied, according to Ms. Chung.

Mr. Caballero said he thought other restaurants in New York engaged in similar practices.

But a lawyer for the New York State Restaurant Association, James Versocki, said: "We don't believe this is widespread in the industry. We think that the operators largely understand that New York State law strictly prohibits the misappropriation of tips from employees."