

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CHAUNTAE BLAIR, on behalf of herself and all those similarly situated who consent to representation,	)	
	)	
Plaintiff,	)	Civil Action No.:
	)	
v.	)	FLSA Collective Action
	)	Jury Trial Demanded
	)	
ATLANTA AIRPORT RESTAURANTS, LLC d/b/a MALONE’S, a Georgia Corporation, and ASHIQ A. DELAWALLA, an individual,	)	
	)	
Defendants.	)	

**FLSA COLLECTIVE ACTION COMPLAINT**

COMES NOW Plaintiff Chauntae Blair, (hereinafter “Plaintiff”) by and through her undersigned counsel, and files this lawsuit against Defendants Atlanta Airport Restaurants, LLC d/b/a Malone’s, a Georgia Corporation (hereinafter “Defendant Malone’s”) and Ashiq A. Delawalla, an individual (hereinafter “Defendant Delawalla”) (collectively “Defendants”) on behalf of herself and all others similarly situated, pursuant to § 216(b) of the Fair Labor Standards Act of 1938, and in support thereof would further state as follows:

## INTRODUCTION

1. The instant action arises from Defendants' violations of Plaintiff's rights under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., as amended (hereinafter "FLSA"), and specifically the collective action provisions of the FLSA found at § 216(b) to remedy violations of the minimum hourly wage provisions of the FLSA by Defendants which have deprived Plaintiff, as well as others similarly situated to Plaintiff, of their lawful minimum hourly wages.
2. Plaintiff brings this action as a collective action on behalf of herself and all other similarly situated employees who consent to representation, pursuant to 29 U.S.C. § 216(b) and who were tipped employees of Defendants and paid less than the federal minimum hourly wage and from whom Defendants took a tip credit.
3. Plaintiff was employed by Defendants as a server at Defendants' restaurant, Defendant Malone's, located at 1258 Virginia Avenue, East Point, Georgia 30344.
4. Defendants employed Plaintiff from October 2015 through approximately February 2017.

5. This action is brought to recover unpaid minimum hourly wages owed to Plaintiff and other current and former employees of Defendants who are similarly situated to Plaintiff, pursuant to the FLSA.

6. Other current and former employees of Defendants are also entitled to receive minimum hourly wage for the reasons alleged in this Complaint. Plaintiff may be permitted to maintain this action “for and on behalf of [her]self . . . and other employees similarly situated.” 29 U.S.C. § 216(b). Any similarly situated current or former employee of Defendants wishing to become a party plaintiff to this action must provide “his consent in writing to become such a party,” and such consent must be filed with this Court. 29 U.S.C. § 216(b).

7. Plaintiff and any collective group similarly situated were or are employed by Defendants working at various times during their employment by Defendants as servers, bussers or any other position from whom Defendants took a tip credit.

8. During the employment of Plaintiff, and for at least three years prior to the filing of this Complaint in the case of any collective group similarly situated, Defendants committed violations of the FLSA by failing to compensate employees at the legally appropriate minimum hourly wage, by requiring Plaintiff and those

similarly situated to work “off the clock,” and by requiring Plaintiff and those similarly situated to participate in an improper tip pool in violation of the FLSA.

9. Plaintiff and all similarly situated current and former employees of Defendants who elect to participate in this action seek unpaid minimum hourly wage for work performed, an equal amount of liquidated damages, attorneys’ fees, costs, and other appropriate relief pursuant to 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and 29 U.S.C. § 216(b) (FLSA).

11. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391 (a) and (c) because a substantial part of events or omissions giving rise to the claims occurred within the jurisdiction of this Court and because Defendants are located in this District and are subject to personal jurisdiction in this District.

### **PARTIES**

12. Plaintiff resides in College Park, Georgia (within this District).

13. At all times material to this action, Plaintiff was an “employee” of Defendants defined by § 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States. Plaintiff is further covered by §§ 203, 206, and 207 of the FLSA for the period in which she was employed by Defendants.

14. At all times material to this action, any collective group similarly situated to Plaintiff were “employees” of Defendants defined by § 203(e)(1) of the FLSA, and worked for Defendants within the territory of the United States. These same individuals are further covered by §§ 203, 206, and 207 of the FLSA for the period in which they were employed by Defendants.

15. Defendant Malone’s is a corporation formed in the state of Georgia and is owned by Defendant Delawalla.

16. Defendants conduct business within this State and District.

17. Defendants maintained either actual or constructive control, oversight and direction of Defendants’ restaurant, including the employment and pay and other practices of that operation.

18. Defendant Malone’s is subject to personal jurisdiction in the state of Georgia for purposes of this lawsuit and can be served through its registered agent, Ashiq A. Delawalla, 6065 Oakbrook Parkway, Norcross, Georgia 30093.

19. Defendant Delawalla is subject to personal jurisdiction in the state of Georgia for purposes of this lawsuit and can be personally served at 6065 Oakbrook Parkway, Norcross, Georgia 30093.

20. At all times relevant to this action, Defendant Malone’s was an enterprise engaged in commerce or in the production of goods for commerce as

defined by § 203 of the FLSA, and had an annual gross volume of sales which exceeded \$500,000.

21. At all times relevant to this action, Defendants were an "employer" of Plaintiff and of others similarly situated, as defined by § 203(d) of the FLSA.

22. The tipped employee provisions set forth in § 203 of the FLSA apply to Defendants.

23. The minimum hourly wage provisions set forth in § 206 of the FLSA apply to Defendants.

### **FACTUAL ALLEGATIONS**

24. Upon information and belief, Defendants employed, in the past three years prior to the filing of this Complaint other individuals who received tips as part of their compensation and for whom Defendants took a tip credit.

25. Plaintiff's duties and the duties of other current and former employees similarly situated of Plaintiff at Defendants' restaurant included servicing customers, taking food and drink orders, serving food and drink orders, clearing tables, attending mandatory shift meetings, and "side work" before and after each shift.

26. Defendants required Plaintiff and those similarly situated employees to attend company meetings prior to each shift but Defendants failed to

compensate the employees for the time spent in attendance of these required meetings.

27. Defendants required Plaintiff and those similarly situated employees to work “side work” prior to and after each shift and failed to compensate the employees at a rate of the federally required minimum wage for such work.

28. At all times relevant to this action, it was the policy and/or practice of Defendants to compensate Plaintiff and other current and former employees similarly situated of Defendants’ restaurant an hourly wage of \$2.13 per hour plus tips.

29. At all times relevant to this action, it was the policy and/or practice of Defendants to compensate Plaintiff and other current and former employees similarly situated for less hours than they actually worked in violation of the FLSA.

30. At all times relevant to this action, Plaintiff and other current and former employees similarly situated of Defendants’ restaurant did not retain all tips they received by requiring such employees to participate in a tip pool whereby employees were required to place a percentage of their acquired tips each shift into a tip pool.

31. At all times relevant to this action, however, Defendants retained a portion of the tips from the tip pool.

32. At all times relevant to this action, the Defendants took a tip credit against the wages of Plaintiff and those similarly situated.

33. At all times relevant to this action, Defendants maintained an invalid tip pool with respect to Plaintiff and those similarly situated.

34. Defendants are liable to Plaintiff and other current and former employees similarly situated for compensation for all time worked in which they were paid at a rate of pay less than the federal minimum wage rate.

35. By reason of the said intentional, willful and unlawful acts of Defendants, Plaintiff and other current and former employees similarly situated suffered damages plus incurring costs and reasonable attorneys' fees.

36. As a result of Defendants' willful violations of the FLSA, Plaintiff and other current and former employees similarly situated are entitled to liquidated damages.

37. Plaintiff has retained the undersigned counsel to represent her and other current and former employees similarly situated in this action, and pursuant 29 U.S.C. § 216(b), Plaintiff and other employees similarly situated are entitled to recover all reasonable attorneys' fees and costs incurred in this action.



38. Plaintiff demands a jury trial.

### **COUNT I**

39. Plaintiff repeats and incorporates by reference paragraphs 1- 38 herein.

40. By its actions alleged herein, Defendants willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

41. Defendants have willfully, intentionally, and/or recklessly engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to properly pay minimum wage compensation to current and former employees of Defendant's restaurant, including Plaintiff and other similarly situated employees, in accordance with §§ 203 and 206 of the FLSA.

42. As a result of Defendants' violations of the FLSA, Plaintiff, as well as other similarly situated employees have suffered damages by failing to receive minimum wage compensation in accordance with §§ 203 and 206 of the FLSA.

43. Defendants have not made a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff and other similarly situated current and former employees of Defendants' restaurant.

44. As a result of the unlawful acts of Defendants, Plaintiff and similarly situated current and former employees have been deprived of minimum wage

compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, attorneys' fees, costs and other relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons who will opt-in to this action, pursuant to § 216(b) of the FLSA, prays for the following relief:

A. Certification of a class and any necessary sub-classes pursuant to 29 U.S.C. § 216(b) to be described as and to include any and all employees from whom Defendants took a tip credit at Defendants' restaurant within three years of the filing of this Complaint;

B. That, at the earliest possible time, Plaintiff be allowed to give Notice of this action, or that the Court issue such Notice, to all persons who have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of Court-supervised Notice. Such Notice shall inform them that this civil action has been filed and of the nature of the action, and of their right to opt into this lawsuit;

C. That Plaintiff and all individuals who opt into this lawsuit ("opt-in Plaintiffs") be awarded damages for the three years preceding the filing of this

Complaint in the amount of their respective unpaid compensation, plus an equal amount of liquidated damages;

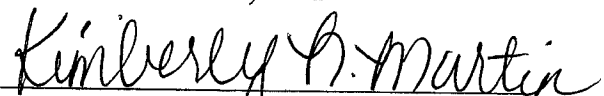
D. That Plaintiff and all opt-in Plaintiffs be awarded reasonable attorneys' fees;

E. That Plaintiff and all opt-in Plaintiffs be awarded the costs and expenses of this action; and

F. That Plaintiff and all opt-in Plaintiffs be awarded such other, further legal and equitable relief, including, but not limited to, any injunctive and/or declaratory relief to which they may be entitled.

Respectfully submitted this 11<sup>th</sup> day of April, 2017.

MARTIN & MARTIN, LLP

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JS44 (Rev. 11/16 NDGA)

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**

Chauntae Blair, on behalf of herself and all those similarly situated who consent to representation

**DEFENDANT(S)**

Atlanta Airport Restaurants, LLC d/b/a Malone's, a Georgia Corporation, and Ashiq A. Delawalla, an individual

**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** Fulton  
(EXCEPT IN U.S. PLAINTIFF CASES)

**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT** Fulton  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

**(c) ATTORNEYS** (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Kimberly N. Martin (kimberlymartinlaw@gmail.com)  
Thomas F. Martin (tfmartinlaw@msn.com)  
MARTIN & MARTIN, LLP  
Post Office Box 1070  
Tucker, Georgia 30085 (404) 313-5538

**ATTORNEYS** (IF KNOWN)

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 2 U.S. GOVERNMENT DEFENDANT
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(FOR DIVERSITY CASES ONLY)

- |                            |                            |   |                            |                            |   |
|----------------------------|----------------------------|---|----------------------------|----------------------------|---|
| PLF                        | DEF                        |   | PLF                        | DEF                        |   |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE                   | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE     |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE                | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION  |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION - TRANSFER
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- 8 MULTIDISTRICT LITIGATION - DIRECT FILE

**V. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

The instant action arises from Defendants' violations of Plaintiff's rights under the Fair Labor Standards Act, 29 U.S.C. Sections 201, et seq. as amended

**(IF COMPLEX, CHECK REASON BELOW)**

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

**CONTINUED ON REVERSE**

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ MAG. JUDGE (IFP) \_\_\_\_\_  
 JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_ (Referral) NATURE OF SUIT \_\_\_\_\_ CAUSE OF ACTION \_\_\_\_\_

**VI. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/CC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

**\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_

JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. \_\_\_\_\_, WHICH WAS DISMISSED. This case  IS  IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

Kimberly N. Martin April 11, 2017

SIGNATURE OF ATTORNEY OF RECORD

DATE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Atlanta Airport Restaurants Hit with Unpaid Minimum Wage Allegations](#)

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