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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**PHILLIP STONE, individually and on behalf of  
all others similarly situated,**

**Plaintiff,**

**-against-**

**EXOS HUMAN CAPITAL, LLC, and MEDIFIT  
COMMUNITY SERVICES LLC**

**Defendants.**

**No. 24 Civ. 3548 (JPC)**

**FIRST AMENDED  
CLASS ACTION  
COMPLAINT**

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Phillip Stone (“Plaintiff”), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to herself, and upon information and belief as to other matters, alleges as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover underpayment caused by untimely wage payments and other damages for Plaintiff and similarly situated non-exempt hourly positions including but not limited to health fitness specialists, fitness associates, and similar hourly workers (collectively, “Hourly Workers”) who work or have worked for EXOS Human Capital, LLC and MediFit Community Service LLC. (together “EXOS” or “Defendants”).

2. Headquartered in Phoenix, Arizona, EXOS provides fitness services and facilities for corporate clients throughout the United States.

3. To conduct their operations, EXOS employs over one hundred Hourly Workers in

New York.

4. At all relevant times, Defendants have compensated Plaintiff and all other Hourly Workers in New York on a bi-monthly basis.

5. Despite being manual workers, Defendants failed to properly pay Plaintiff and other Hourly Workers in New York their wages within seven calendar days after the end of the week in which these wages were earned as required by NYLL § 191.

6. In this regard, Defendants failed to provide prompt payment to Plaintiff and all other similarly situated Hourly Workers in New York as required by the NYLL.

7. Manual Workers as contemplated by NYLL § 191 are “dependent upon their wages for sustenance.” *See People v. Vetri*, 309 N.Y. 401, 405 (1955)

8. As such, the failure to provide wages owed to Plaintiff and all other similarly situated Manual Workers, according to NYLL § 191 constitutes an “especially acute injury.” *See Caul v. Petco Animal Supplies, Inc.*, No. 20 Civ. 3534 (RPK) (SJB), 2021 WL 4407856, at \*4 (E.D.N.Y. Sep. 27, 2021) (citing *Vega v. CM & Assocs. Constr. Mgmt., LLC*, 175 A.D.3d 1144, 1146 (N.Y. 1<sup>st</sup> Dept. 2019).

9. At all relevant times Defendants have compensated Plaintiff and all other Hourly Workers on an hourly basis.

10. Plaintiff brings this action on behalf of himself and all other similarly situated Hourly Workers in New York pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) to remedy violations of the NYLL.

**THE PARTIES**

**Plaintiff**

**Phillip Stone**

11. Phillip Stone (“Stone”) is an adult individual who is a resident of New Jersey.
12. Stone was employed by EXOS as an Hourly Worker from in or around 2016 through approximately May 2023.
13. Stone is a covered employee within the meaning of the NYLL.

**Defendant**

**EXOS Human Capital, LLC**

14. EXOS Human Capital, LLC is a foreign business corporation organized and existing under the laws of Delaware.
15. EXOS Human Capital, LLC’s principal executive office is located at 2629 E. Rose Garden Lane, Phoenix, Arizona 85050.
16. EXOS Human Capital, LLC was and is a covered employer within the meaning of the NYLL, and at all times relevant, employed Plaintiff and similarly situated employees.
17. EXOS Human Capital, LLC has maintained control, oversight, and direction over Plaintiff and similar employees, including timekeeping, payroll, and other employment practices that applied to them.
18. EXOS Human Capital, LLC applies the same employment policies, practices, and procedures to all Hourly Workers in its operation, including policies, practices, and procedures with respect to payment of wages.
19. Upon information and belief, at all relevant times, EXOS Human Capital, LLC has had an annual gross volume of sales in excess of \$500,000.

20. At all times relevant, EXOS Human Capital, LLC has employed more than two employees and its employees utilize goods, equipment, and/or materials that have moved in interstate commerce.

21. In this regard, employees for EXOS Human Capital, LLC regularly handled goods in interstate commerce, including, but not limited to, weight lifting equipment and other supplies produced outside the State of New York.

22. EXOS Human Capital, LLC fully acquired MediFit Community Services LLC on or about December 2014.<sup>1</sup>

23. EXOS Human Capital, LLC lists jobs in New York on their website's career page. *See Exhibit A*, EXOS Job Postings.

#### **MediFit Community Services LLC**

24. MediFit Community Services LLC is a foreign business corporation organized and existing under the laws of New Jersey.

25. MediFit Community Services LLC's principal executive office is located at 2629 E. Rose Garden Lane, Phoenix, Arizona 85050.

26. MediFit Community Services LLC was and is a covered employer within the meaning of the NYLL, and at all times relevant, employed Plaintiff and similarly situated employees.

27. MediFit Community Services LLC has maintained control, oversight, and direction over Plaintiff and similar employees, including timekeeping, payroll, and other employment practices that applied to them.

28. MediFit Community Services LLC applies the same employment policies,

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<sup>1</sup> <https://www.businesswire.com/news/home/20141218005127/en/EXOS-Completes-Acquisition-of-MediFit>

practices, and procedures to all Hourly Workers in its operation, including policies, practices, and procedures with respect to payment of wages.

29. Upon information and belief, at all relevant times, MediFit Community Services LLC has had an annual gross volume of sales in excess of \$500,000.

30. At all times relevant MediFit Community Services LLC has employed more than two employees and its employees utilize goods, equipment, and/or materials that have moved in interstate commerce.

31. In this regard, employees for MediFit Community Services LLC regularly handled goods in interstate commerce, including, but not limited to, weight lifting equipment and other supplies produced outside the State of New York.

32. MediFit Community Services LLC was fully acquisitioned by EXOS Human Capital, LLC on or about December 2014.<sup>2</sup>

33. MediFit Community Services LLC's social media posts claim it is "fully rolled into the EXOS brand."<sup>3</sup>

### **JURISDICTION AND VENUE**

34. This Court has original jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), codified at 28 U.S.C. § 1332(d), because the amount in controversy against the Defendants in this matter exceeds the sum or value of \$5,000,000, exclusive of interest and costs.

35. The members of the proposed class are citizens of states different from that of at least one Defendant.

36. There are over 100 members in the proposed class.

37. Defendants are subject to personal jurisdiction in New York.

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<sup>2</sup> <https://www.businesswire.com/news/home/20141218005127/en/EXOS-Completes-Acquisition-of-MediFit>

<sup>3</sup> <https://www.facebook.com/share/p/MQPTLoqeJKiKdJc/>

38. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendants conduct business in this District.

**NEW YORK CLASS ACTION ALLEGATIONS**

39. Plaintiff brings the First Cause of Action, an NYLL claim, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of:

All persons who work or have worked as Hourly Workers for Defendants in New York between September 23, 2017,<sup>4</sup> and the date of final judgment in this matter (the “New York Class”).

40. The members of the New York Class are so numerous that the joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

41. There are more than one hundred members of the New York Class.

42. Plaintiff’s claims are typical of those claims that could be alleged by any member of the New York Class, and the relief sought is typical of the relief which would be sought by each member of the New York Class in separate actions.

43. Plaintiff and the New York Class have all been injured in that they have been uncompensated, under-compensated, or untimely compensated due to Defendants’ common policies, practices, and patterns of conduct. Defendants’ corporate-wide policies and practices affected everyone in the New York Class similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each member of the New York Class.

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<sup>4</sup> This class period is due to Governor Cuomo’s Executive Order that tolled the applicable NYLL statute of limitations during the COVID-19 pandemic for 228 days. *See Brash v. Richards*, 195 A.D. 3d 582, 2021 WL 2213786, 2021 N.Y. Slip Op. 03436 (App. Div. 2d Dep’t June 2, 2021) (holding executive order tolled rather than suspended statutes of limitations under New York law).

44. Plaintiff is able to fairly and adequately protect the interests of the New York Class and has no interests antagonistic to the New York Class.

45. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

46. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendant. Class action treatment will permit a large number of similar persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

47. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting Plaintiff and/or each member of the New York Class individually and include, but are not limited to, the following:

- (a) whether Defendants correctly compensated Plaintiff and the New York Class on a timely basis.

### **PLAINTIFF’S FACTUAL ALLEGATIONS**

48. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

#### **Phillip Stone**

49. Throughout his employment, Stone was employed at Defendants’ 338 Greenwich Street, New York, New York as a “health fitness specialist” paid on an hourly basis of \$23.00 from in or around 2016 through approximately May 2023.

50. During Stone’s employment, over twenty-five percent of Stone’s duties were

physical tasks, including but not limited to: (1) moving around weights; (2) wiping down workout equipment; (3) emptying garbage pails; (4) cleaning and wiping down bathroom and shower facilities; (5) leading group workouts; (6) demonstrating workouts to clients; and (7) standing for long periods of time.

51. Despite regularly spending more than twenty-five percent of his daily job duties performing these physical tasks, Stone was always compensated by Defendants on a bi-monthly basis.

52. As a result of Defendants' untimely wage payments, Stone was underpaid for the each bi-monthly pay period, and thus Defendants paid Stone on an untimely basis.

53. For example, for the period beginning December 1, 2022 and ending December 14, 2022, Stone was paid his lawfully earned wages on December 30, 2022.

54. In this regard, Defendants failed to pay Stone his wages earned from December 1, 2022 to December 7, 2022 by December 14, 2022 as required by NYLL § 191(1)(a).

55. Defendants further failed to pay Stone his wages earned from December 8, 2022 to December 14, 2022 by December 21, 2022 as required by NYLL § 191(1)(a).

56. As a result of Defendants' untimely wage payments, Stone was underpaid was underpaid for the period of December 1, 2022 to December 7, 2022, December 8, 2022 to December 14, 2022, and for every corresponding period where Defendant paid him on an untimely basis.

57. Moreover, Plaintiff was denied the time value of his money by Defendants' underpayments. Plaintiff was unable to invest, save, or purchase utilizing the wages he earned and was owed that was not delivered on a timely basis.



**FIRST CAUSE OF ACTION**  
**New York Labor Law – Failure to Pay Timely Wages**  
**(Brought on behalf of Plaintiff and the New York Class)**

58. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

59. The timely payment of wages provisions NYLL § 191 and its supporting regulations apply to Defendants and protect Plaintiff and the New York Class.

60. Defendants failed to pay Plaintiff and the New York Class on a timely basis as required by NYLL § 191(1)(a), which resulted in Plaintiff and the New York Class being underpaid.

61. Due to Defendants' violations of the NYLL, Plaintiff and the New York Class are entitled to recover from Defendants the amount of the underpayments caused by their untimely wage payments as liquidated damages, reasonable attorneys' fees and costs, and pre-judgment and post-judgment interest as provided for by NYLL § 198.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually, and on behalf of all other similar persons, respectfully request that this Court grant the following relief:

- A. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Designation of Plaintiff as representative of the New York Class and counsel of record as Class Counsel;
- C. Liquidated damages in the amount of the untimely wage payments pursuant to the NYLL;
- D. Prejudgment and post-judgment interest;

- E. Reasonable attorneys' fees and costs of the action; and
- F. Such other relief as this Court shall deem just and proper.

Dated: New York, New York  
October 1, 2024

Respectfully submitted,

*/s/ Brian S. Schaffer*  
Brian S. Schaffer

**FITAPELLI & SCHAFFER, LLP**

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*Attorneys for Plaintiff and  
the Putative Class*

# **EXHIBIT A**



BUSINESSES

ATHLETES

PRACTITIONERS

CAREERS

COMPANY

CONTACT US

Performance Coach

📍 New York, NY

🕒 Posted 28 Days Ago

24-1452

Performance Manager

📍 New York, NY

🕒 Posted 28 Days Ago

24-1451

Performance Coach

📍 New York, NY

🕒 Posted 25 Days Ago

24-1459

Performance Site Lead

📍 New York, NY

🕒 Posted 25 Days Ago

24-1458

Yoga Instructor - Sound Bath

📍 New York, NY

## Performance Coach [🔗](#)

Apply

- Experience teaching group fitness classes with emphasis on helping improve technique and ability
- Excellent computer skills including Microsoft Office Suite or related products

### Physical Requirements:

- Candidates applying for this position should be able to lift up to 50 pounds unassisted repeatedly throughout the workday. Also, the physical requirements of this job require frequent walking around and demonstrating and assisting with exercise movements; bending, stretching, lifting, pushing, pulling and squatting are movements performed daily.

### Other Preferred Qualifications:

- Master's Degree in Kinesiology, Sports Science, Rehabilitation or related field.
- Excellent presentation skills in both small and large group settings
- Strong customer service skills where servicing the "client" is top priority
- Energy and passion for helping others achieve their personal goals
- Must be able to work independently with little daily supervision
- Excellent communication skills, both verbal and written
- Experience teaching group fitness classes with emphasis on helping improve technique and ability
- Excellent computer skills including Microsoft Office Suite or related products



BUSINESSES

ATHLETES

PRACTITIONERS

CAREERS

COMPANY

CONTACT US

39 JOBS FOUND

Reception Associate

New York, NY

Posted 30+ Days Ago

24-1230

Health Fitness Specialist Substitute

New York, NY

Posted 30+ Days Ago

24-1390

Recovery and Regeneration Coach

New York, NY

Posted 28 Days Ago

24-1453

Performance Coach

New York, NY

Posted 28 Days Ago

24-1452

Performance Manager

## Performance Site Lead [🔗](#)

Apply

- Experience teaching group fitness classes with emphasis on helping improve technique and ability
- Excellent computer skills including Microsoft Office Suite or related products

### Physical Requirements:

- Candidates applying for this position should be able to lift up to 50 pounds unassisted repeatedly throughout the workday.
- Frequent walking around and demonstrating and assisting with exercise movements; bending, stretching, lifting, pushing, pulling and squatting are movements performed daily.

**Residents of California, Colorado, New York, and Washington:** Per pay transparency requirements, the compensation for this position ranges from \$23.00/hour to \$38.00/hour. Pay is dependent on factors including site location, specialty, certifications and work experience as well as other business needs. Exos offers a comprehensive benefits package for all full time employees (all benefits are subject to eligibility requirements), which includes health insurance, life and disability benefits, 401(k) plan, and paid time off. Additionally, Exos offers a variety of part time benefits (subject to eligibility requirements).

### WHO WE ARE

For nearly 30 years, Exos has been dedicated to getting people ready for the moments that matter by promoting a holistic approach to health. As an elite coaching company,





BUSINESSES

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CONTACT US

Performance Site Lead

New York, NY

Posted 25 Days Ago

24-1458

Yoga Instructor - Sound Bath

New York, NY

Posted 17 Days Ago

24-1528

Member Services Representative - Substitute

New York, NY

Posted 8 Days Ago

24-1559

Group Exercise Instructor

New York, NY

Posted 7 Days Ago

24-1565

Performance Coach

New York City, NY

**Member Services Representative - Substitute**

Apply

- Flexibility: able to work evenings, weekends and holidays

**Physical Requirements:**

- Candidates applying for this position should be able to lift up to 50 pounds unassisted repeatedly throughout the workday.
- Frequent walking around and demonstrating and assisting with exercise movements; bending, stretching, lifting, pushing, pulling and squatting are movements performed daily.

**Residents of CA, CO, NY, WA, MD:** Per pay transparency requirements, the compensation for this position ranges from \$15.00/hour to \$25.00/hour. Pay is dependent on factors including site location, specialty, certifications and work experience as well as other business needs. Exos offers a comprehensive benefits package for all full time employees (all benefits are subject to eligibility requirements), which includes health insurance, life and disability benefits, 401(k) plan, and paid time off. Additionally, Exos offers a variety of part time benefits (subject to eligibility requirements).

**WHO WE ARE**

For nearly 30 years, Exos has been dedicated to getting people ready for the moments that matter by promoting a holistic approach to health. As an elite coaching company, Exos applies its evidence-based methodology to programming designed to unlock the potential in everyone from corporate employees, to elite athletes, military operators,