

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**LOS ANGELES COUNTY**

**If you worked at Dawn Barnes Karate Kids in California as an Instructor and/or Desk Staff Employee at any time from February 22, 2004 through July 13, 2009, a class action lawsuit may affect your rights.**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- A former employee has sued Dawn Barnes Karate Kids, Inc. (“DBKK”). This is a follow-up to a prior notice you received notifying you that the Court had certified the case as a class action.
- The Court has preliminarily approved a class action settlement with DBKK on behalf of all persons who worked at Dawn Barnes Karate Kids locations in California as an Instructor and/or Desk Staff employee at any time from February 22, 2004 through July 13, 2009.
- The Court has not decided whether DBKK did anything wrong. There is money available now pursuant to a settlement between Plaintiffs and DBKK as detailed below. However, your legal rights are affected, and you have a choice to make now:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>SUBMIT CLAIM FORM</b>	<b>Stay in this lawsuit. Become a part of the Settlement with DBKK. Give up certain rights.</b> By submitting a claim form, you become part of the Settlement Class, and are therefore able to collect a settlement award as detailed below. But, you give up any rights to sue DBKK separately about the same legal claims in this lawsuit.
<b>DO NOTHING</b>	<b>Stay in this lawsuit. Do not become a part of the Settlement with DBKK. Give up certain rights.</b> By doing nothing, you <u>will not</u> become part of the Settlement Class, and therefore will be <u>unable</u> to collect a settlement award as detailed below. Also, you give up any rights to sue DBKK separately about the same legal claims in this lawsuit.
<b>OBJECT TO THE SETTLEMENT</b>	<b>Stay in this lawsuit. Do not become a part of the Settlement with DBKK. May give up certain rights.</b> By objecting to the Settlement before Final Approval, you <u>will not</u> become part of the Settlement Class, and therefore will be <u>unable</u> to collect a settlement award as detailed below. Also, if the Court rejects your objection, you give up any rights to sue DBKK separately about the same legal claims in this lawsuit.
<b>ASK TO BE EXCLUDED</b>	<b>Get out of this lawsuit. Get no benefits from it. Keep rights.</b> If you ask to be excluded from the settlement, you won’t share in the Settlement Fund. But, you keep any rights to sue DBKK separately about the same legal claims in this lawsuit.

- Your options are explained in this notice. To submit a claim form, object to the settlement or ask to be excluded, you must act before December 3, 2009.
- **Any question?** Read on or contact Class Counsel or the Claims Administrator listed below.

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## BASIC INFORMATION

### 1. Why did I get this notice?

DBKK's records show that you currently or previously worked at Dawn Barnes Karate Kids locations in California as an instructor and/or desk staff employee. This notice explains that the Court has given preliminary approval to a settlement in a certified class action lawsuit that may affect you. You have legal rights and options that you may exercise as part of this settlement. Judge Kenneth R. Freeman of the Los Angeles Superior Court is overseeing this class action. The lawsuit is known as *Dubitsky v. Dawn Barnes Karate Kids, Inc.*, Case Number BC386022.

### 2. What is this lawsuit about?

This lawsuit is about whether DBKK properly compensated employees for all hours worked and reimbursements for employee expenses, and therefore failed to pay proper wages as required by applicable California laws. More information about California laws regarding proper compensation can be found at the website of the California Department of Industrial Relations – Industrial Welfare Commission, <http://www.dir.ca.gov/iwc/iwc.html>.

DBKK asserts that their employees were properly paid. DBKK denies that any unlawful policy or practice exists as to the above claims.

### 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case Tom Dubitsky) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The gentleman who is the Class Representative—and all the Class Members like them—are called the Plaintiffs. The companies they sue (in this case DBKK) are called the Defendants. One court resolves the issues for everyone in the class—except for those people who choose to exclude themselves from the Class.

### 4. Why is this lawsuit a class action?

Class Representative Dubitsky, on behalf of himself and all other similarly situated employees, filed a motion for class certification in early 2009, which was granted by the Court. The case then proceeded as a certified class action. While the case would have still proceeded to trial to determine the merits of Plaintiffs' claims, the parties reached the settlement set forth in these papers as a compromise prior to trial. Each class member was sent a notification that the action was pending as a class action and affected their rights as current or former employees of DBKK and was given the opportunity to opt-out of any future proceedings. This notification is being sent to you to inform you of the settlement.

## THE CLAIMS IN THE LAWSUIT

### 5. What does the lawsuit complain about?

In the lawsuit, the Plaintiff alleges that DBKK failed to compensate persons employed by DBKK as instructors and/or desk staff employees for all hours worked and reimbursement of reasonably incurred expenses, and therefore failed to pay proper wages and provide proper wage statements as required by California law.

### 6. How does DBKK answer?

DBKK denies that it did anything wrong and says that the employees in question were properly paid for all hours worked. DBKK asserts that their employees were properly reimbursed for all employee expenses. DBKK denies that any unlawful policy or practice exists as to the above claims.

## **7. Has the Court decided who is right?**

The Court hasn't decided whether DBKK or the Plaintiffs are correct. By certifying the class and granting preliminary approval to the class action settlement and issuing this Notice, the Court is not suggesting that the Plaintiffs would win or lose this case at trial.

## **8. What are the terms of the proposed settlement?**

The settlement reached between Plaintiffs and DBKK has a maximum value of \$175,000.00 for payments to the Class, enhancements to the named Plaintiff, administration of the settlement funds and attorneys' fees and costs.

The settlement makes available cash to be paid to each class member who completes and returns the enclosed claim form according to the following formula:

All Class Members will be eligible to submit a claim for an "Individual Settlement Payment." If a Class Member submits a timely and properly completed Claim Form (enclosed in this envelope), then the Class Member will be a "Participating Class Member." DBKK will provide money to the Claims Administrator to pay Settlement Awards to Participating Class Members. Participating Class Members will be paid an amount for each week that the Participating Class Member was employed by Defendant DBKK during the period of February 22, 2004 through July 13, 2009.

The Participating Class Member's Individual Settlement Payment will be calculated as follows:

Total maximum monetary liability of \$175,000, less requested attorneys' fees of \$52,500, litigation costs of \$6,200, estimated claims administration costs of \$5,500, requested enhancement award to Plaintiff of \$8,000, leaves a balance of \$102,800 for distribution to the Class ("Class Distribution Sum"). Any remaining funds after the attorneys' fees and costs, enhancement award, and claims administration costs will be distributed to all Class Members. The Net Settlement Sum shall be used to fund Individual Settlement Payments.

The Parties agree that the Net Settlement Sum shall be divided between all Participating Class Members based on the number of workweeks they worked for DBKK based on company records. To arrive at an Original Workweek Value, the Net Settlement Sum will be divided by the total number of workweeks worked by all Class Members during the Class Period. The Original Workweek Value will be used to calculate the minimum amount each Class Member will receive based on the number of workweeks each individual Class Member worked during the Class Period, which is included on the enclosed claim form. After the time for submitting Claim Forms has passed and after final approval by the Court, the Net Settlement Sum will be dispersed among Participating Class Members (those that returned valid and timely Claim Forms) based on a New Workweek Value. To arrive at a New Workweek Value, the Net Settlement Sum will be divided by the total number of workweeks worked by the Participating Class Members during the Class Period.

To arrive at an Individual Settlement Payment amount, the New Workweek Value will be multiplied by the number of workweeks worked by each individual Participating Class Member during the Class Period.

Payroll deductions will be made for employee state and federal withholding taxes and any other applicable payroll deductions owed by the Participating Class Member as a result of the payment, resulting in a "Net Settlement Amount." The Gross Settlement Amount for a particular Settlement Class Member is consequently the sum of the Net Settlement Amount for that Participating Class Member plus the applicable state and federal payroll deductions owed by the Settlement Class Members relating to the payment to the Class Member.

## WHO IS IN THE CLASS?

### 9. Am I part of this Class?

Judge Freeman decided that all persons who were instructors and/or desk staff employees at Dawn Barnes Karate Kids locations in the State of California for the period of February 22, 2004 through July 13, 2009, are Class Members.

### 10. I'm still not sure if I am included.

If you are still not sure whether you are included in the Class, you can get free help by contacting Desmond, Marcello & Amster, the Claims Administrator, at the designated phone number for this matter at (310) 846-4772, or by calling or writing the lawyers in case, at the phone number or address listed in question 22.

## YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded from the Settlement, and you have to decide this now.

### 11. What happens if I submit my Claim Form?

If you are a member of the class above and would like to be included in this case, you need to complete, sign and mail the enclosed Claim Form postmarked no later than December 3, 2009.

On the Effective Date of this Settlement, except as to the rights and obligations created by this Agreement, each Plaintiff and all Class Members who have not timely opted out (as detailed below), whether or not they have submitted a timely Claim Form (meaning even if they do nothing at all), release, dismiss and forever release Defendant DBKK and DBKK's employees, representatives, administrators, attorneys, insurers, lenders, shareholders, officers, directors, divisions, affiliates, partnership, partners, parent and/or subsidiary corporations, assigns, heirs and successors in interest and each of them from any and all claims, demands, and causes of action that were alleged in the Action, including but not limited to all wage and hour claims for payment for all hours worked, unreimbursed business expenses, and any other wage and hour claims asserted in the complaint based on facts pled in the complaint for the time period February 22, 2004 through July 13, 2009.

The Parties acknowledge and agree that nothing contained in this section shall release or discharge any of them from the rights, duties, and obligations assumed under this Agreement. Further, in order to achieve this full and complete release by Plaintiff and all Class Members, each Class Member will acknowledge that the release provided herein is intended to include its effect wage claims asserted, as listed above, which each Class Member does not know or suspect to exist in his or her favor against DBKK. By the release in this Settlement Agreement, and in the Claim Form, each Class Members, including Plaintiff, will waive all rights and benefits afforded by Section 1542 of the California Civil Code, and does so understanding the significance of that waiver. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

## **12. How do I object to the settlement?**

If you are a member of the class above and would like to object to the settlement, you must file such written objections with the Court and serve on counsel for the Parties (listed below in question 22) within sixty (60) days, or on or before December 3, 2009. No Class Member will be entitled to be heard at the final Settlement Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Settlement Hearing, unless written notice of the Class Member's intention to appear at the Settlement Hearing, and copies of any written objections or briefs have been filed with the Court and served on counsel for the Parties on or before December 3, 2009. Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. You can object to the terms of the settlement, however if the court rejects your objection, you will still be bound by the settlement unless you filed a valid and timely Statement of Exclusion. Your objection should state a specific reason for the objection and your name, address, and dates of employment for DBKK.

## **13. Why would I ask to be excluded?**

If you already have your own wage claim for missed meal/rest break, overtime, misclassification or similar lawsuit against DBKK and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means you remove yourself from the Class, and is sometimes called “opting-out” of the Class—you won't get any money or benefits from this lawsuit as part of Plaintiffs' settlement with Defendant DBKK as detailed above. However, you may then be able to sue or continue to sue DBKK for your claims that occurred if permitted by law. If you exclude yourself, you will not be legally bound by the Court's judgment in this class action.

If you start your own lawsuit against DBKK after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against DBKK, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

## **14. How do I ask to be excluded from the Class?**

If you are a member of the class described above and would like to exclude yourself from the class (“opt-out”) you need to submit a written statement requesting exclusion from the Class within sixty (60) days, or on or before December 3, 2009. Such written requests for exclusion must contain the name, address, telephone number, and last four digits of the social security number of the person requesting exclusion and the location and years of your employment for DBKK, must be returned to the Claims Administrator, at the address below, and must be postmarked on or before December 3, 2009. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Plaintiff who opts out of the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before December 3, 2009 shall be bound by all terms of the Settlement and any Final Judgment entered in this Class Action if the Settlement is approved by the Court.

## **THE LAWYERS REPRESENTING YOU**

## **15. Do I have a lawyer in this case?**

The Court decided that the law firm of Barrera & Associates of Manhattan Beach, CA is qualified to represent you and all Class Members. The law firm is called “Class Counsel.” They are experienced in handling similar cases against other employers. More information about the law firm, its practices, and its lawyers' experience is available at [www.baattorneys.com](http://www.baattorneys.com).

**16. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you. However, in order to object to the settlement (either personally or through counsel) at the Final Approval Hearing, you must follow the objection procedure outlined in paragraph 12 above.

**17. How will the lawyers be paid?**

As part of the settlement with DBKK, Class Counsel has requested \$52,500 in attorneys' fees and \$6,200 in costs to be paid from the Settlement Fund to compensate Class Counsel for their work and costs incurred on this matter. You won't have to pay Class Counsel's fees and expenses.

**18. How will the Class Representatives be paid?**

As part of the settlement with DBKK, Class Counsel has requested \$8,000 as an enhancement award to be paid to Class Representative and Named Plaintiff Tom Dubitsky for his efforts and active participation in this matter during initial investigation, discovery, mediation and the like, while serving as class representatives and taking on the burden and risks of litigation.

**THE DBKK SETTLEMENT**

**19. Who is handling the Claims Administration process?**

Desmond, Marcello & Amster ("DM&A") of Los Angeles, California shall serve as the Claims Administrator for this settlement. DM&A may be reached at:

Dubitsky v. Dawn Barnes Karate Kids, Inc. Claims Administrator  
c/o Desmond, Marcello & Amster  
P.O. Box 451999  
Los Angeles, CA 90045  
www.dmaaction.com  
phone: (310) 846-4772

**20. When is the Final Approval Hearing and do I have to attend?**

The Final Approval Hearing has been set for January 12, 2010 in Department 64 of the Los Angeles Superior Court. You do not need to attend the hearing to be a part of the settlement, as long as you have properly and timely completed a Claim Form. However, if you wish to object to the settlement, and have followed the procedures detailed above, you may appear at the hearing to object.

**21. When will I get money after the hearing?**

Your payment from the Settlement Fund will be paid within approximately 45 days after the Court grants Final Approval of the Settlement, or, if there is any objection to the Settlement that is not withdrawn, then after all rights to appeal are exhausted. The parties anticipate that payments will be mailed in March of 2010.

## GETTING MORE INFORMATION

### 22. Are more details available?

You may contact the Claims Administrator, Desmond, Marcello & Amster, by calling (310) 846-4772 or by writing: Dubitsky v. Dawn Barnes Karate Kids, Inc. Claims Administrator, c/o Desmond, Marcello & Amster, P.O. Box 451999, Los Angeles, CA 90045.

Counsel in this case is as follows:

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