

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA**

Case No. 02-23374-CIV-MARTINEZ/BANDSTRA

ACCESS NOW, INC. and CHRIST)
SOTER TAVANTZIS, on their own)
behalf and on behalf of all those)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
RTM OPERATING COMPANY, d/b/a)
ARBY'S,)
)
Defendant.)
)
_____)

**NOTICE OF PRELIMINARY APPROVAL OF AMENDMENTS
TO PROPOSED CONSENT DECREE, AND FAIRNESS HEARING**

TO: ALL PERSONS WHO HAVE QUALIFIED, QUALIFY, OR WILL QUALIFY AS HAVING A "DISABILITY," AS THAT TERM IS DEFINED BY 42 U.S.C. § 12102(2), AND WHO HAVE BEEN OR WILL BE A GUEST, CUSTOMER, PATRON, VISITOR OR OTHERWISE, AND WHO HAVE BEEN, ARE, OR WILL BE DENIED FULL AND EQUAL ACCESS TO OR HAVE BEEN, ARE, OR WILL BE DISCRIMINATED AGAINST UNDER TITLE III OF THE ADA OR REGULATIONS PROMULGATED THEREUNDER, OR SIMILAR FEDERAL, STATE, OR LOCAL LAW, RULE, ORDER, OR ORDINANCE (EXCLUDING CLAIMS FOR ALL DAMAGES, OTHER THAN STATUTORY DAMAGES), BECAUSE OF THEIR "DISABILITY," AT OR IN CONNECTION WITH THE FOLLOWING: ALL RESTAURANTS DOING BUSINESS AS "ARBY'S" NOW OR HEREAFTER OWNED AND/OR OPERATED BY DEFENDANT RTM OPERATING COMPANY, INC., OR ITS AFFILIATED COMPANIES, WHICH ARE LOCATED IN THE FIFTY STATES IN THE UNITED STATES OF AMERICA AND THE DISTRICT OF COLUMBIA.

NOTICE IS HEREBY GIVEN that a Fairness Hearing in the matter of Access Now, Inc. and Christ Soter Tavantis, et al. v. RTM Operating Company d/b/a Arby's, U.S. District Court, Southern District of Florida, Case No. 02-23374, is scheduled before the Honorable Jose E. Martinez, United States District Judge, in Dade County, Florida on the 14th day of June, 2006 at 1:30 p.m. at the United States District Court for the Southern District of Florida, 301 N. Miami Ave., Miami, Florida 33128, to determine the fairness, reasonableness, and adequacy of certain amendments to the Proposed Consent Decree, to which the Court has already granted preliminary approval.

As the Parties to the above-referenced lawsuit have already made clear through various forms of Notice during December, 2004, Plaintiffs Access Now, Inc. and Christ Soter Tavantzis (collectively, "Plaintiffs") and Defendant RTM Operating Company ("RTM") have reached a settlement of Plaintiffs' claims in this lawsuit under the Americans with Disabilities Act ("ADA"). As indicated in the December, 2004 Notices, the Court in this action has certified this lawsuit as a class action for settlement purposes, and it has granted preliminary approval of the Proposed Consent Decree that embodies the settlement reached by Plaintiffs and RTM, which applies only to restaurants owned or operated by RTM or certain of its affiliates doing business as "Arby's." The Court conducted a Fairness Hearing on April 7, 2005 at which class members who had submitted timely written objections to the Proposed Consent Decree were provided an opportunity to present their objections to the Court verbally.

On April 6, 2006, the Court granted Plaintiffs and RTM permission to make several amendments to the Proposed Consent Decree which they have agreed to make in an effort to address objections raised by members of the class. In summary, these amendments add a provision regarding RTM policies and training programs; add a provision requiring RTM to provide documentation evidencing completed accessibility enhancements; and add a definition of mental disability that is consistent with federal regulations. The amendments also provide clarification to several provisions already contained in the Proposed Consent Decree. These clarifications address the effect of the Proposed Consent Decree on state law claims for damages; the release of claims with respect to future affirmative misconduct; the standards to be applied to RTM's obligations under the Proposed Consent Decree for different types of construction; the definition of what is "readily achievable" with respect to reduction of service space; and RTM's obligation to ensure compliance with the terms of the ADA and applicable state and local laws. Each of these amendments are contained in the Third Amended Proposed Consent Decree, at Sections 3(B) (defining "Communication Disability," "Mental Disability," "Nonconforming Elements," and "Statutory Damages"), 8.3, 11.1, 11.2(A)-(C) and (F)(8), 11.9, and 13.1.

If you object to the amendments contained in the Third Amended Proposed Consent Decree, you must send a **written** statement, **postmarked** on or before May 29, 2006, specifying the reason(s) for your objection to the amendments and, if applicable, your intent to appear at the above-referenced hearing, to each of the following: (1) Clerk of Court, United States District Court for the Southern District of Florida, 301 North Miami Avenue, Miami, Florida 33128; (2) Joshua M. Entin, Esq., Rosen Switkes & Entin, P.L., 407 Lincoln Road, Penthouse SE, Miami Beach, Florida 33139, (305) 534-4757 (Attorney for Plaintiffs); and (3) Charles H. Morgan, Esq., Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, Georgia, 30309, (404) 881-7000 (Attorney for RTM). If you choose to attend the Fairness Hearing, please note that the Court has a policy prohibiting electronic devices, which includes cellular phones, in the courthouse. A copy of the policy is available at the Court's website, www.flsd.uscourts.gov. The Court will not consider an objection unless it is **postmarked** on or before May 29, 2006 and sent to each of the foregoing. Objections shall be limited to the amendments only. Any person who fails to object in the manner prescribed above shall be deemed to have waived such objection and will be forever barred from raising such objection in this action. Only objecting settlement class members who seek in their objections to present objections orally shall be permitted to present their objections orally at the Fairness Hearing. If you wish to participate in the Fairness Hearing,

your request to do so must be conspicuously noted in all correspondence regarding this matter – e.g., through a reference line "RE: Request to Participate in Fairness Hearing." You must list the case name and case number (Access Now, Inc. v. RTM Operating Company, Docket No. 02-23374-CIV-Martinez/Bandstra) on all correspondence regarding this matter.

This Notice is only a summary of the amendments to the Proposed Consent Decree. For further information concerning this matter or to request a copy of the Proposed Consent Decree, you may contact either of the counsel listed above or obtain a copy at www.rosenandswitkes.com or www.adaaccessnow.org. Unless you are objecting to the amendments to the Proposed Consent Decree in the manner indicated above, **DO NOT CONTACT THE COURT CONCERNING THIS NOTICE OR THE LAWSUIT.**