

NO. \_\_\_\_\_  
(Electronically Filed)

JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
JUDGE \_\_\_\_\_

Todd Dunn, Individually, and as representative  
of a class of similarly situated persons comprising  
the unincorporated labor organization,  
Greater Louisville Central Labor Council,  
3000 Fern Valley Road  
Louisville, Kentucky 40213

**PLAINTIFF**

**VS.**

**COMPLAINT**

CHURCHILL DOWNS RACETRACK, LLC,  
700 Central Avenue  
Louisville, Kentucky 40208

SERVE: CT CORPORATION SYSTEM  
306 West Main Street, Suite 512  
Frankfort, Kentucky 40601

COPY: James U. Smith, III, Esq.  
SMITH & SMITH ATTORNEYS  
400 North First Trust Centre  
Louisville, Kentucky 40202

**DEFENDANT**

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**COMES NOW** the Plaintiff, TODD DUNN, Individually, and as  
representative of a class of similarly situated persons comprising the  
unincorporated labor organization, the Greater Louisville Central Labor  
Council (hereinafter collectively referred to as the “Labor Council”), by  
counsel, and hereby states the following causes of action against the De-  
fendant, CHURCHILL DOWNS RACETRACK, LLC (hereinafter the  
“Defendant”). The Labor Council herein seeks declaratory and injunctive  
relief against Defendant.

## **I. PRELIMINARY STATEMENT**

The relief the Labor Council seeks herein is simple enough. Pursuant to its members' rights under Section 1 of the Kentucky Constitution and KRS 336.130, the Labor Council seeks to preserve and exercise its constitutional and statutory right to engage in lawful and peaceful picketing. However, the Labor Council has recently learned that Defendant has secured permits on or around all public sidewalks and easements where picketing activity would likely occur in order to deprive the Labor Council of its constitutional and statutory right to engage in lawful and peaceful picketing activity.

The Labor Council seeks declaratory and injunctive relief against Defendant, ordering it to permit individuals who wish to engage in picketing activity the ability to engage in such activity on or around public sidewalks and easements around its property located at 700 Central Avenue in Louisville, Kentucky 40208.

In support thereof, the Labor Council states as follows:

## **II. PARTIES, JURISDICTION AND VENUE**

1. The Plaintiff, TODD DUNN, Individually, and as representative of a class of similarly situated persons comprising the unincorporated labor organization, the Greater Louisville Central Labor Council, is a natural person who resides in the Commonwealth of Kentucky, and he currently serves as the President of the Labor Council. The Labor Council's

headquarters is located at 3000 Fern Valley Road in Louisville, Kentucky 40203.

2. The Defendant, CHURCHILL DOWNS RACETRACK, LLC, is a Kentucky Limited Liability Company, with its headquarters located at 700 Central Avenue in Louisville, Kentucky 40208, organized and existing under the laws of the Commonwealth of Kentucky with the power to sue and be sued.

3. The Company's agent for service of process listed on the official website for the Secretary of State of the Commonwealth of Kentucky is: CT Corporation System located at 406 West Main Street, Suite 512 in Frankfort, Kentucky 40601.

4. The Defendant is subject to the *in personam* jurisdiction of this Court because this action arises from its acts and omissions which have all taken place at its principal place of business in the Commonwealth of Kentucky.

5. Subject matter jurisdiction and venue are proper in this Court, as the Labor Council seeks declaratory and equitable relief herein and Defendant has its principal office in Jefferson County.

### **III. FACTUAL ALLEGATIONS**

6. The legal and factual allegations contained in Verified Complaint Paragraph(s) One (1) through Five (5) are repeated and re-alleged as if fully set forth herein.

7. The Labor Council is a federation of labor unions representing affiliates with more than 54,000 members throughout the Greater Louisville region.

8. Tomorrow, Defendant will hold its annual Kentucky Derby at racetracks located at or around 700 Central Avenue in Louisville, Kentucky.

9. The Labor Council has learned that members of the union representing Defendant's valet employees, Service Employees International Union, Local 541 ("Local 541"), intend to exercise their Section 1 of the Kentucky Constitution and statutory right under KRS 336.130 to strike and engage in peaceful picketing activity in support of their labor demands and contract settlement.

10. The Labor Council intends to support Local 541's strike, and also have its members picket alongside Local 541 valet members.

11. However, the Labor Council has recently learned that Defendant, in an effort to deprive Local 541 and members of the community, including the Labor Council, their rights to engage in lawful, peaceful Section 1 of the Kentucky Constitution picketing activity, have secured permits around all public sidewalks, easements, and rights of way where picketing activity would likely occur. *See attached affidavit.*

12. The Labor Council and its activists were deprived of their Section 1 of the Kentucky Constitution right to handbill when they were removed from the south side of Central Avenue at the behest of the

Defendant Churchill Downs. *See* attached affidavit.

#### **IV. CLASS ALLEGATIONS**

13. The legal and factual allegations contained in Verified Complaint Paragraph(s) One (1) through Twelve (12) are repeated and re-alleged as if fully set forth herein.

14. The Plaintiff brings this suit against the Defendant as a class action, prosecuted by the named representative individually, and on behalf of a class of similarly situated persons, to wit: (1) the members of the Labor Council; the members of the Local 541 and Defendant's valet employees, pursuant to Kentucky Rules of Civil Procedure, Rule (hereinafter "CR") 23.01 and CR 23.02(b). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Plaintiff Class may be expanded or narrowed. The proposed Plaintiff Class is as follows:

Labor Council Class: All members of the Greater Louisville Central Labor Council, Service Employees International Union, Local 541 and Defendant's valet employees.

15. Excluded from the Labor Council Class are any member of the Judge assigned to this case's immediate family. Plaintiff expressly reserves the right to modify the Plaintiff Class definition as further investigation and/or discovery so warrants.

16. This action has been brought and may properly be maintained as a class action pursuant to CR 23 and the case law thereunder.

17. Numerosity: The members of the Labor Council Class are so numerous that joinder of all members is impracticable. The Labor Council alone currently has approximately 54,000 members in the Greater Louisville region.

18. Commonality: Common questions of law and fact exist as against the Defendant in this action. These common questions predominate over any questions affecting only individual Labor Council Class members. These common legal and factual questions include, but are not limited to, the following:

- a. whether or not the members of the Labor Council; the members of the Local 541 and Defendant's valet employees have a statutory and Section 1 of the Kentucky Constitution right under KRS 336.130 to peaceably picket at Churchill Downs; and
- b. whether or not the Plaintiff Class members are entitled to declaratory and injunctive relief.

19. These and other questions of law and/or fact are common to members of the Plaintiff Class and predominate over any questions affecting only individual members of it.

20. Typicality: The Plaintiff's claims against the Defendant are typical of the claims of the similarly situated members of the Labor Council Class.

21. Adequacy: The Plaintiff's claims are made in a representative capacity on behalf of the other members of the Labor Council Class. The Plaintiff has no interests antagonistic to the interests of the other members of the Labor Council Class and is subject to no unique defenses. Indeed, it is hard to imagine a more qualified representative of the Labor Council Class than its elected President.

22. The Plaintiff is similarly situated in interest to all members of the proposed Labor Council Class and is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions. Accordingly, the Plaintiff is an adequate representative of the Labor Council Class and will fairly and adequately protect the interests of the members of the Labor Council Class.

23. This suit may be maintained as a class action under CR 23.02(b) because Defendant has acted or refused to act on grounds generally applicable to the Labor Council Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

## **V. CAUSES OF ACTION**

### **AS AND FOR A FIRST CAUSE OF ACTION**

### **DECLARATION OF RIGHTS & INJUNCTION PURSUANT TO KRS**

**336.130**

**(on behalf of Plaintiff and the Labor Council Class)**

24. The legal and factual allegations contained in Verified Complaint Paragraph(s) One (1) through Twenty-Three (23) are repeated and re-alleged as if fully set forth herein.

25. By depriving Local 541 and members of the community, including the Labor Council of their right to engage in lawful, peaceful picketing activity, Defendant's conduct violates KRS 336.130 provisions providing that "employees, collectively and individually, may strike, engage in peaceful picketing, and assemble collectively for peaceful purposes."

26. Plaintiff and the Labor Council Class therefore request a declaration that Defendant's conduct violates KRS 336.130 and request injunctive relief to abate the statutory violation.

## **VI. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays this Court for Judgment:

- A. Certifying the Labor Council Class, and appointing Plaintiff as class representative, and his counsel as class counsel;
- B. Entering a permanent injunction requiring the Defendant refrain from engaging in any conduct violating KRS 336.130 by requiring that it:
  1. Permit Plaintiff and all members of the Labor Council class the ability to engage in peaceful, picketing activity in and around all public sidewalks, easements, and rights of way around the 700 Central Avenue racetrack location.

- C. That Plaintiff and the Labor Council Class be awarded declaratory relief;
- D. That Plaintiff be awarded its costs; and
- E. That the Court grant Plaintiff all additional relief that may be equitable, just and proper including a reasonable award of attorneys' fees.

Respectfully submitted,

/s/ Peter J. Jannace

DAVID O'BRIEN SUETHOLZ

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