

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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WAYNE MARTIN, :  
 :  
 Plaintiff, : Civil Case No.:  
 :  
 - against - :  
 : **COMPLAINT**  
 :  
 DESIGNATRONICS INC., DYSON, DYSON & :  
 DUNN, INC., and ROBERT KUFNER, in his :  
 individual and professional capacities, : **JURY TRIAL DEMANDED**  
 :  
 Defendants. :  
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Plaintiff Wayne Martin hereby alleges as follows:

**PRELIMINARY STATEMENT**

*“He’s an HR nightmare.”*

- Quote by Robert Nelson, Head of Human Resources for Designatronics Inc., speaking about CEO Robert Kufner

1. To say Defendant Robert Kufner, the Chief Executive Officer (“CEO”) of Defendant Designatronics Inc. (“Designatronics”), is “an HR nightmare” would be a drastic understatement, as his name was synonymous with offensiveness, discrimination and misogyny. Mr. Kufner referred to African-Americans using the “n-word,” touched women without their consent, referred to women with larger bodies as “fat slobs” and remarked about the sexual orientation of employees. Mr. Martin joined Designatronics in 2013 as the Director of Operations and regularly witnessed Mr. Kufner’s despicable conduct, and frequently reported it to Robert Nelson, the head of Human Resources, who responded by calling Mr. Kufner “an HR nightmare,” and a “misogynistic pig.” Mr. Kufner routinely boasted that he was protected by his friends who ran Designatronics’ parent company, Dyson, Dyson & Dunn, Inc. (“DD&D”). In

April 2017, as a result of Mr. Martin's complaints – together with the complaints of many other employees – Mr. Kufner was fired by Designatronics' Chairman, Michael Walsh. However, just two months later, at the behest of his friends at DD&D, Mr. Kufner was rehired to be the CEO of Designatronics. As his first order of business, and within hours of his return, Mr. Kufner fired Mr. Martin in retaliation for his previous complaints which had led to Mr. Kufner's termination.

2. Mr. Martin seeks declaratory, injunctive and equitable relief, as well as monetary damages, to redress Defendants' unlawful employment practices, including unlawful discrimination and retaliation in violation of Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981") and the New York State Human Rights Law, §§ 290 *et seq.* ("NYSHRL").

### **JURISDICTION AND VENUE**

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343 as this action involves federal questions regarding the deprivation of Plaintiff's rights under Section 1981. The Court has supplemental jurisdiction over Plaintiff's related claims arising under state law pursuant to 28 U.S.C. § 1367(a).

4. Pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e), venue is proper in this district because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district.

### **PARTIES**

5. Plaintiff Wayne Martin is a 59-year-old former employee of Designatronics who resides in Plainview, New York. Plaintiff began his employment at Designatronics as Vice President of Operations in December 2013 and was terminated from this position on or around July 10, 2017. At all relevant times, Plaintiff met the definition of a "person" and/or "employee" under all applicable statutes.

6. Defendant Designatronics Incorporated is a domestic business corporation with its principal place of business located at 250 Duffy Avenue, Hicksville, New York 11801. At all relevant times, Designatronics Incorporated met the definition of an “employer” under all applicable statutes.

7. Defendant Dyson, Dyson & Dunn, Inc. is a foreign business corporation, licensed to do business in the State of New York, with its principal place of business located at 566 Chestnut Street, Suite 7, Winnetka, Illinois 60093. At all relevant times Dyson, Dyson & Dunn, Inc. met the definition of an “employer” under all applicable statutes.

8. Defendant Robert Kufner is the President and CEO of Designatronics Incorporated and resides in the State of New York. Mr. Kufner directly supervised Plaintiff from the beginning of Plaintiff’s employment in December 2013 through on or around April 10, 2017, and again on or around July 10, 2017. Mr. Kufner directly participated in the discriminatory and retaliatory conduct to which Plaintiff was subjected. At all relevant times, Mr. Kufner met the definition of an “employer” under all applicable statutes.

### **ADMINISTRATIVE PROCEDURES**

9. Plaintiff will also file a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”). Following the EEOC’s issuance of a Notice of Right to Sue, Mr. Martin will seek leave of the Court to further amend the Complaint to add claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*

10. Any and all other prerequisites to the filing of this suit have been met.

## FACTUAL ALLEGATIONS

### Mr. Martin's Indisputable Value to Designatronics

1. On December 22, 2013, Mr. Martin interviewed with Designatronics and, the very next day, was offered a position as Vice President (“VP”) of Operations.

2. Given that the Company had recently terminated all of its executive leadership amidst serious allegations of misappropriation of corporate funds, Designatronics was in desperate need of stable, reliable and ethical management.

3. Mr. Martin was immediately asked to shoulder immense responsibility, including, *inter alia*, negotiating Company leases, overseeing engineering and manufacturing, as well as managing production and ensuring quality control throughout the Company.

4. Mr. Martin excelled in every one of these areas, and helped run the Company well beyond expectations.

5. By way of example only, Mr. Martin oversaw and managed the consolidation of Designatronics's production facilities from four locations into one location over a period of only two months.

6. On or around March 9, 2017, in recognition of his smooth handling of the relocation process, Mr. Martin was awarded a \$20,000 bonus.

7. Further, due to Mr. Martin's unmatched supervision and guidance, Designatronics's core manufacturing and production brand, Stock Drive Products/Sterling Instrument, or SDP/SI, maintained a defects rate of well under 1% throughout his tenure at the Company. This low of a rate – which amounted to only roughly 70,000 scrapped parts out of 35,000,000 produced annually – is virtually unheard of within the industry.

8. Mr. Martin's success at Designatronics was particularly remarkable in light of the fact that he was not only handling all of his own responsibilities, but also the majority of Mr. Kufner's.

9. Mr. Kufner shirked almost all of his responsibilities and relied on Mr. Martin to cover for him. Mr. Kufner spent hours per day playing online videogames, thereby forcing Mr. Martin (and others) to carry out his jobs, such as conducting performance reviews.

10. In fact, Mr. Kufner was so checked out of his job that Mr. Martin never received a formal performance review, apart from one he was asked to draft himself.

11. Mr. Kufner's abysmal record is documented through countless employee complaints to HR; however, these complaints were seldom escalated to Mr. Kufner himself due to fear of reprisal.

12. Apparently, Mr. Kufner assumed he was protected due to his close friendships with John Dyson and Derry McCauley of parent company Defendant DD&D and sister company McGard (the largest company in DD&D's portfolio), respectively.

13. Mr. Kufner would constantly brag, "I'm tight with these guys," and tell stories of driving expensive cars with Messrs. Dyson and McCauley.

14. Mr. Kufner's incessant bragging about his closeness with the executive leadership of Designatronics's parent company sent a clear message to everyone around him that he was "untouchable" and could wield unchecked power over anyone who chose to cross him.

#### **Mr. Kufner's Offensive Conduct and Mr. Martin's Repeated Complaints**

15. In addition to being a persistent "gamer" during business hours at the expense of running the Company, Mr. Kufner also engaged in highly offensive and blatantly discriminatory treatment of other employees.

16. As Joanne Iannacone and later Robert Nelson, the successive heads of HR during Mr. Martin's tenure, would often put it, Mr. Kufner was "an HR nightmare."

17. Mr. Kufner subjected Designatronics to such a constant onslaught of discriminatory and reprehensible workplace comments (many of which were followed by protected complaints by Mr. Martin) that it would be impossible to recount all of them.

18. Mr. Kufner made several racist remarks about Black people and displayed a disturbing level of comfortability with the "n-word."

19. For example, he once recounted to Mr. Nelson that, while seated close to one of the team's benches at a professional football game, he looked at the players and said, "***Man, fucking niggers are the worst.***" Mr. Kufner made similar remarks to Mr. Nelson about Black members of the crowd as well. Mr. Kufner invoked the same hateful racial epithet three to four more times in this conversation, and ended by saying that he had to leave the game early because "***the fucking niggers were so horrible.***"

20. Mr. Martin summarized these remarks, as relayed by him to Mr. Nelson, in a protected complaint to HR in February 2017.

21. Moreover, in 2015, after a dispute between two manufacturing employees in which one had called the other a "nigger," Mr. Kufner repeatedly yelled in the office for all to hear, "***You can't call someone a nigger!***"

22. Mr. Martin told Mr. Kufner that even when telling others not to use the word, he had to refrain from saying the n-word out loud. Mr. Martin explained this multiple times, but his requests were ignored. Mr. Martin felt compelled to report this issue to Ms. Iannacone.

23. Additionally, Mr. Kufner sexually harassed and made offensive remarks about women on a regular basis.

24. In approximately Winter 2015, when he heard that Payroll Manager Rachel Lazarow had fallen in the parking lot, Mr. Kufner told Mr. Nelson that Ms. Lazarow was a “*fat slob*” and “should watch where she walks.”

25. Adding further insult to injury, when Ms. Lazarow returned to work after hurting herself, Mr. Kufner publicly asked if she wanted him to buy her spiked shoes so she could walk through the parking lot without falling, obviously intending to embarrass Ms. Lazarow.

26. On a separate occasion, Ms. Lazarow and Finance Manager Josephine Borzacchiello were discussing how to use a particular exercise machine known as the “stair master.” When Ms. Borzacchiello commented that she used the machine often, Mr. Kufner interjected, “Well, you must have strong calf muscles then,” and grabbed Ms. Borzacchiello’s calf, yet again evincing a complete inability to act appropriately within the workplace.

27. Ms. Borzacchiello immediately made a sexual harassment complaint to HR, and later told then-Chairman of the Board of Directors Michael Walsh that she thought Mr. Kufner was a “*sexual predator*.”

28. Mr. Martin also complained to HR about Mr. Kufner’s touching of Ms. Borzacchiello’s leg.

29. Further, Ms. Borzacchiello’s opinion was clearly shared by other women, as Ms. Iannacone once described Mr. Kufner to Mr. Martin as a “*misogynistic pig*.”

30. On at least one occasion, Mr. Kufner spoke about gay people in a derogatory fashion as well. In early 2017, in the context of reviewing a customer service employee’s performance, Mr. Kufner somehow felt it was germane to the discussion and appropriate to note

that the employee was “a gay.” Mr. Martin escalated this remark to HR as yet another example of Mr. Kufner’s discriminatory treatment of employees.

31. It bears repeating that the foregoing accounts represent a fraction of the offensive and discriminatory conduct by Mr. Kufner, and many more have been documented by Designatronics employees.

32. Further, over the course of his last six to eight months at Designatronics, Mr. Martin met with Mr. Walsh and Mr. Nelson, respectively, at least once per month to escalate complaints about Mr. Kufner’s behavior.

### **Mr. Kufner’s Threats of Reprisal against Employees Who Complained about Him**

33. For years, Mr. Kufner was successful in keeping his unprofessionalism and offensive conduct under wraps by fostering an environment where other employees feared that reporting his misconduct might cost them their jobs.

34. To be sure, as noted above, Designatronics employees did in fact complain constantly about Mr. Kufner; however, they were sure to instruct Ms. Iannacone, and later Mr. Nelson, that their complaints were to remain confidential.

35. That said, on at least two occasions, and likely others, Mr. Kufner learned that employees had complained about him and quickly sought to intimidate them from engaging in any further protected activity.

36. On one occasion, not long after Mr. Martin began working at Designatronics, he received a phone call from Ms. Iannacone, who was forced to pull over her car in tears while on her way home from work.



37. Apparently, Mr. Kufner recently had found out that she previously spoke with Mr. Walsh about Mr. Kufner's behavior and threatened to exact revenge against her, screaming through the phone, "If you think Uncle Mike is going to protect you, you're wrong!"

38. Notably, Mr. Kufner eventually played a primary role in carrying out Ms. Iannacone's termination.

39. Separately, on October 26, 2016, Mr. Nelson informed Mr. Martin that Mr. Kufner had explicitly threatened him with termination after learning that Mr. Nelson had spoken with Mr. Walsh, as well as an internal auditor from De Bruin & Associates, about Mr. Kufner's behavior.

40. Specifically, Mr. Kufner told Mr. Nelson, "*I'm connected. If you can't be loyal, you'll go the way of your predecessor.*" (referring to Ms. Iannacone).

41. Mr. Nelson memorialized this conversation shortly after it happened, per Mr. Martin's advice.

42. Mr. Kufner's past treatment of employees who complained about him evinces a clear *modus operandi* of intimidation and, if possible, retaliation.

43. Mr. Kufner was aware that Mr. Martin had complained repeatedly about his workplace performance and misuse of Company time, including complaints Mr. Martin made to Mr. Kufner directly.

44. However, it was not until Mr. Kufner's termination meeting that he learned that Mr. Martin had also complained about Mr. Kufner's discriminatory conduct and mistreatment of other employees.

## **The Company's Investigation into Mr. Kufner's Conduct**

45. In early April 2017, Messrs. Martin, Nelson and Walsh began meeting daily to discuss Mr. Kufner's consistently inappropriate workplace behavior.

46. Over several days, they investigated the extent of Mr. Kufner's many problems – among them his addiction to gaming and the countless HR complaints lodged against him. As Messrs. Martin, Nelson and Walsh collected information, they began drafting a performance improvement plan (“PIP”).

47. While the initial intention was merely to give Mr. Kufner a warning, the investigation quickly made clear that his behavior was so wholly inappropriate and offensive that it could not be tolerated and required immediate termination.

48. Accordingly, Messrs. Martin, Nelson and Walsh converted the PIP they had been jointly drafting into a memorandum laying out the basis for Mr. Kufner's termination.

49. While the memorandum did not explicitly recount the details of Mr. Kufner's discriminatory conduct (as it was agreed that it would be less contentious to focus on Mr. Kufner's habitual video gaming when he was supposed to be running the Company), it referenced:

**“the severity of [Mr. Kufner's] infractions” and “behavioral discrepancies [ ] of which [Mr. Kufner had] been repeatedly warned [ ] but with zero improvement.”**

50. Further, the memorandum noted that the Company had conducted a full review of Mr. Kufner's HR file for supporting documentation, and what Mr. Walsh found not only made him feel “utterly shocked, but downright repulsed.”

51. The memorandum, which was written from Mr. Walsh's perspective, ultimately concluded that, “[w]hile examining our HR files and having discussed (one-on-one) with our HR

manager, I discovered an excessive amount of issues that I cannot tolerate nor overlook” and stated the terms of his termination.

52. Notably, previous drafts of the memorandum were much more explicit about Mr. Kufner’s discriminatory behavior, including one draft paragraph, which read:

*In requesting historical information regarding treatment of people and your personal employment file it has come to my attention over the last several days that many of our employees have been documenting your behavior with not only the current HR manager, but his predecessor as well and this was not brought to my attention as they feared retaliation.* In reviewing with HR this in itself voids any type of structured review and opportunity to improve as this is a zero tolerance event and therefore I must insist on your immediate resignation or be forced to terminate. Either of these options will be your choice, but no other options are on the table.

(emphasis added).

53. On April 10, 2017, at his termination meeting, Mr. Kufner reviewed the memorandum and did not contest the contents.

54. Mr. Kufner’s termination was effective immediately.

55. Just four days after his termination, the Company received an anonymous, unsigned letter addressed to Mr. Kufner, purportedly from “The employees of Designatronics.”

56. The letter requested that the Company open up an investigation into Mr. Martin for his alleged badmouthing of Mr. Kufner and supposed portrayal of himself “as the guardian angel of the employees who tries to protect them,” while making Mr. Kufner out to be “the big bad wolf.”

57. This letter, obviously drafted by Mr. Kufner, made clear that Mr. Kufner perceived Mr. Martin (not incorrectly) as having fomented his termination.

58. Anyone who read this letter – such as the members of a jury – would quickly and easily reach the conclusion that if Mr. Kufner ever returned to Designatronics and had an opportunity to fire Mr. Martin, he would do so immediately.

**Mr. Kufner's Return and Swift Retaliatory Termination of Mr. Martin**

59. Immediately after Mr. Kufner's firing, Mr. Martin and Designatronics employee Doug Kerester shared President and CEO duties for an interim period, with Mr. Martin taking on the lion's share of the responsibilities.

60. On June 14, 2017, Mr. Walsh received an unexpected call from Robert Dyson of DD&D, who asked Mr. Walsh to resign from his role as Chairman of the Board of Directors of Designatronics.

61. Mr. Walsh complied with the request and, before submitting his resignation, recommended that Mr. Martin take on the role of President and CEO full-time. While Designatronics's leadership obviously was in flux, it was clear to everyone that Mr. Martin – who had effectively been running Designatronics with Mr. Walsh for some time – would ultimately take the helm in an official capacity.

62. However, on July 10, 2017, Mr. McCauley and John Dyson made an unexpected visit to Designatronics.

63. To the absolute shock of everyone there, Mr. Kufner pulled into the parking lot with them and, shortly thereafter, it was announced that he was being rehired as President and CEO.

64. Mr. Martin later learned that Mr. Kufner's rehiring was actually made effective a few weeks earlier, on June 15, 2017 – the day after Mr. Walsh had been asked to retire.

65. Within hours of his arrival, Mr. Kufner called Mr. Martin into a meeting and summarily terminated him.

66. Mr. Kufner did not provide Plaintiff with any basis whatsoever – let alone a legitimate, non-retaliatory basis – for terminating his employment. There was none.

**FIRST CAUSE OF ACTION**  
**(Retaliation in Violation of Section 1981)**  
*Against All Defendants*

67. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

68. By the actions described above, among others, Defendants retaliated against Plaintiff by unlawfully materially changing the conditions of his employment because he made protected complaints regarding Defendants' unlawful and discriminatory comments regarding Black and/or African-American people by, *inter alia*, terminating his employment.

69. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of Section 1981, Plaintiff has suffered and continues to suffer from economic and emotional harm, for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

**SECOND CAUSE OF ACTION**  
**(Retaliation in Violation of NYSHRL)**  
*Against All Defendants*

70. Plaintiff repeats, reiterates and re-alleges each and every allegation in all of the preceding paragraphs as if fully set forth herein.

71. By the actions described above, among others, Defendants retaliated against Plaintiff by unlawfully materially changing the conditions of his employment because he made protected complaints regarding Defendants unlawful and discriminatory treatment of other

employees by, *inter alia*, terminating his employment.

72. As a direct and proximate result of Defendants' unlawful and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer economic and emotional harm, for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

**THIRD CAUSE OF ACTION**  
**(Aiding and Abetting in Violation of NYSHRL)**  
***Against Defendant Robert Kufner***

73. Plaintiff hereby repeats, reiterates and re-alleges each and every allegation as contained in each of the preceding paragraphs as if fully set forth herein.

74. By the actions described above, among others, Mr. Kufner knowingly or recklessly aided and abetted and directly participated in the unlawful discrimination and retaliation in violation of the NYSHRL to which Plaintiff was subjected.

75. As a direct and proximate result of Mr. Kufner's aiding and abetting of unlawful discriminatory and retaliatory conduct in violation of the NYSHRL, Plaintiff has suffered and continues to suffer economic and emotional harm, for which he is entitled to an award of damages, to the greatest extent permitted under law, in addition to reasonable attorneys' fees and expenses.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against Defendants, through the following relief:

A. A declaratory judgment that the actions, conduct and practices of Defendants complained of herein violate the laws of the United States and the State of New York;

B. An injunction and order permanently restraining Defendants from engaging in such unlawful conduct;

C. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages;

D. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for harm to his professional and personal reputations and loss of career fulfillment;

E. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all non-monetary and/or compensatory damages, including but not limited to, emotional pain and suffering and emotional distress;

F. An award of punitive damages in an amount to be determined at trial;

G. An award of attorneys' fees and costs that Plaintiff has incurred in this action to the fullest extent permitted by law; and

H. Such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: August 21, 2017  
New York, New York

Respectfully submitted,

**WIGDOR LLP**

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