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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
  
  Plaintiff,  
  
  v.  
  
ALTIUS MANAGEMENT, LLC.;  
EDWARD J. POLCHLOPEK III,  
  
  Defendants.

NO. 14-2-12425-SEA  
  
COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF

**COMES NOW**, Plaintiff, State of Washington (hereinafter “the State”), by and through its attorneys Robert W. Ferguson, Attorney General, and Jason E. Bernstein, Assistant Attorney General, and brings this action against Defendants named herein. The State alleges the following on information and belief:

**I. JURISDICTION AND VENUE**

**1.1** This Complaint is filed and these proceedings are instituted under the provisions of the Consumer Protection Act (CPA), RCW 19.86.

**1.2** Jurisdiction of the Attorney General to commence this action is conferred by RCW 19.86.080.

**1.3** Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025, and CR 82.

**1.4** The violations alleged herein have been committed and are being committed in whole or in part in King County, Washington, by Defendants named herein or their agents.

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**II. DEFENDANTS**

2.1 Defendant Altius Management, LLC (“Altius Management” or “Altius”) is a Tennessee limited liability company with its principal place of business located at 1102 17<sup>th</sup> Avenue South, Suite 303, Nashville, TN 37212.

2.2 At all times relevant to this action, Defendant Edward J. Polchlopek III, also known as Ed Nash, was and is the President of Altius Management, LLC. As such, Defendant Polchlopek III controlled Altius Management’s policies, activities and practices, including those alleged in the Complaint herein.

2.3 For purposes of the remainder of this Complaint, the term “Defendants” refers to both Altius Management, LLC and Edward. J. Polchlopek III.

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**III. NATURE OF TRADE OR COMMERCE**

3.1 Defendants were at all times relevant to this lawsuit engaged in trade or commerce within the meaning of RCW 19.86.020 through the sale of playing cards and other accessories via the Kickstarter.com crowdfunding website.

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**IV. FACTS**

4.1 Defendants created, marketed and managed the Asylum Playing Cards Kickstarter Campaign (“Asylum Playing Cards Campaign”) during September and October 2012.

4.2 During the Asylum Playing Cards Campaign, Defendants induced consumers to pay them \$25,146 but, despite over two years passing since the completion of the Kickstarter campaign and transmission of the funds, not a single consumer has received the goods they paid for.

1           **4.3**     Kickstarter is a crowdfunding website that allows project creators to pitch ideas to  
2 the general public with the goal of obtaining enough cash funding to produce whatever item or  
3 work of art is the focus of the funding campaign.

4           **4.4**     The Kickstarter system involves four groups or entities: (1) the project creator,  
5 who asks for money, (2) the backers, who are members of the public who are willing to pay  
6 money, (3) Kickstarter.com and the project website, and (4) Amazon.com's Payment Systems,  
7 which facilitates the transfer of money between backers and the creator after taking a cut for both  
8 Kickstarter.com and itself.

9           **4.5**     A Kickstarter funding campaign or "project" consists of a website hosted by  
10 Kickstarter.com where the project creator describes the project and where backers may make  
11 financial "pledges" in support of the project. The project creator may post updates to the  
12 campaign website and backers may comment on the project generally or on specific updates. All  
13 Kickstarter campaigns are time-limited and most last between several weeks and two months,  
14 depending on the choices made by the project creator.

15           **4.6**     When the campaign begins, the creator must set a funding goal measured in  
16 dollars (or any supported foreign currency). The amount of this goal is entirely at the discretion of  
17 the project creator, but should be enough to allow the project to be completed if the funding goal  
18 is reached.

19           **4.7**     During the campaign, the public may sign in to Kickstarter (via a typical account  
20 creation process) and "back" projects with promises to pay a certain amount upon the end of the  
21 campaign. A backer's promise to pay is called a "pledge." In exchange, backers receive  
22 "rewards," which are usually, though not always, the item or piece of art that is the subject of the  
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1 funding campaign. For example, a project creator may try to fund his idea for a specialized  
2 smartphone stand—if successful, backers would receive the physical stand.

3 **4.8** If, upon completion of the campaign, the funding goal has been achieved, all  
4 backers are charged via Amazon Payment Systems and the money is sent to the project creator. If  
5 the funding goal was *not* reached, however, then no backers are charged and the creator does not  
6 receive any money.  
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8 **4.9** According to Kickstarter’s Terms and Conditions, project creators are legally  
9 bound to fulfill backer rewards if funding is successful. All project creators must agree to these  
10 Terms and Conditions before starting a Kickstarter campaign. Additionally, Kickstarter’s Project  
11 FAQ suggests that project creators experiencing delays in the fulfillment of their project’s pledges  
12 maintain contact with their backers via Kickstarter’s update and comment system. Kickstarter  
13 strongly suggests that “Regular communication is a must.”  
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15 **4.10** During the course of a campaign, the project creator may choose to add certain  
16 “stretch goals” to the campaign in an attempt to convince more people to back his or her project.  
17 These stretch goals can be for virtually anything a creator can imagine and can significantly  
18 increase the value of the project to both backers and the creator. Usually, a stretch goal increases  
19 the rewards for backers, thus inducing people to either increase their pledges or pledge for the first  
20 time.  
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22 **4.11** The Asylum Playing Cards project was given a \$15,000 goal by Defendants and  
23 this goal was reached prior to the October 31, 2012 ending date of the campaign.

24 **4.12** To further entice people to back the project, Defendants began adding additional  
25 rewards options to the Asylum Playing Cards Campaign, such as Asylum-style poker chips, dice,  
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1 sketches, a ceramic "dealer button," and even a costume straitjacket. Many of these additional  
2 rewards were ideas posed by project backers during the campaign itself, and were not included in  
3 the original Kickstarter campaign.

4 **4.13** Ultimately, the Asylum Playing Cards Campaign obtained 810 backers and  
5 generated \$25,146 in backer pledges.

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7 **4.14** Of the 810 backers, approximately 31 reported that they lived in Washington when  
8 they chose to back Respondent's playing card project on Kickstarter.

9 **4.15** Defendants represented on the Asylum Playing Cards Campaign website that  
10 delivery of the rewards to all backers (e.g. the Asylum playing cards themselves, as well as the  
11 various add-on rewards) would take place in December 2012.

12 **4.16** Defendants have not posted an update to the Asylum Playing Cards Campaign  
13 website since July 13, 2013

14 **4.17** As of April 1, 2014, not a single backer has received any of his or her promised  
15 rewards. All backers were charged on October 31, 2012 when the project successfully funded in  
16 accordance with Kickstarter policy.

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18 **V. FIRST CAUSE OF ACTION – MISREPRESENTATIONS AND THE FAILURE**  
19 **TO DELIVER REWARDS**

20 **5.1** Plaintiff realleges Paragraphs 2.1 through 4.17 and incorporates them herein as  
21 if set forth in full.

22 **5.2** In the context of operating the Asylum Playing Cards Kickstarter campaign,  
23 Defendants engaged in the following acts or practices constituting unfair or deceptive acts in  
24 trade or commerce:

1           a.       Misrepresenting either directly or indirectly that Backers who paid for  
2 Rewards through the Kickstarter Campaign would receive those Rewards in approximately  
3 December 2012;

4           b.       Failing to deliver the promised Rewards to Backers after the Backers  
5 paid money to Defendants via the Kickstarter Campaign.

6           **5.3**       Defendants' practice of representing that Backers who paid for Rewards in  
7 Defendants' Kickstarter campaign and then failing to subsequently deliver those Rewards after  
8 Backers paid money to Defendants affects the public interest and has the capacity to deceive a  
9 substantial number of consumers and is an unfair or deceptive act or practice in trade or  
10 commerce and unfair method of competition in violation of RCW 19.86.020.

11                           **VI.    SECOND CAUSE OF ACTION – FAILURE TO REFUND**

12           **6.1**       Plaintiff realleges Paragraphs 2.1 through 4.17 and incorporates them herein as  
13 if set forth in full.

14           **6.2**       In the context of operating the Asylum Playing Cards Kickstarter campaign,  
15 Defendants engaged in the following acts or practices constituting unfair or deceptive acts in  
16 trade or commerce:

17           a.       Failing to provide refunds to Backers who requested one after they did  
18 not receive their Reward in a timely fashion from Defendants' Kickstarter Campaign;

19           b.       Failing to offer refunds to any other Backer, whether a refund was  
20 requested or not, after Defendants were unable to deliver the Rewards to any backer within a  
21 reasonable timeframe.

22           **6.3**       Defendants' practice of failing to provide refunds to Backers of its Kickstarter  
23 Campaign after the apparent failure of said Campaign affects the public interest and has the  
24 capacity to deceive a substantial number of consumers and is an unfair or deceptive act or  
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1 practice in trade or commerce and unfair method of competition in violation of  
2 RCW 19.86.020.

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4 **VII. PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff, State of Washington, prays for relief as follows:

6 7.1 That the Court adjudge and decree that Defendants have engaged in the conduct  
7 complained of herein.

8 7.2 That the Court adjudge and decree that the conduct complained of in  
9 Paragraphs 4.1 through 6.3 constitutes unfair or deceptive acts or practices and unfair methods of  
10 competition in violation of the CPA.

11 7.3 That the Court issue a permanent injunction enjoining and restraining Defendants  
12 and their representatives, successors, assigns, officers, agents, servants, employees, and all other  
13 persons acting or claiming to act for, on behalf of, or in active concert or participation with  
14 Defendants from continuing or engaging in the unlawful conduct complained of herein.

15 7.4 That the Court assess civil penalties, pursuant to RCW 19.86.140, of up to two  
16 thousand dollars (\$2,000) per violation against the Defendants for each and every violation of  
17 RCW 19.86.020 caused by the conduct complained of herein.


18 7.5 That the Court make such orders pursuant to RCW 19.86.080 as it deems  
19 appropriate to provide for restitution to consumers of money or property acquired by Defendants  
20 as a result of the conduct complained of herein.

21 7.6 That the Court make such orders pursuant to RCW 19.86.080 to provide that  
22 Plaintiff, State of Washington, have and recover from Defendant the costs of this action, including  
23 reasonable attorney's fees.

1           7.7    That the Court order such other relief as it may deem just and proper to fully and  
2 effectively dissipate the effects of the conduct complained of herein, or which may otherwise  
3 seem proper to the Court.  
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5           DATED this 30<sup>th</sup> day of April, 2014.  
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7                           ROBERT W. FERGUSON  
8                           Attorney General

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10                          \_\_\_\_\_  
11                          JASON E. BERNSTEIN, WSBA #39362  
12                          Assistant Attorney General  
13                          Attorneys for Plaintiff  
14                          State of Washington  
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