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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GREAT WESTERN COMMUNICATIONS,  
LLC, an Illinois limited liability company,

Plaintiff,

v.

STARTOUCH, INC., a Washington  
corporation, and KEITH SCHEFFER, a  
Washington citizen.

Defendants.

Case No.:

COMPLAINT

JURY DEMAND

Great Western Communications, LLC, for its Complaint, alleges as follows:

**I. PARTIES**

1. Plaintiff Great Western Communications, LLC (“GWC”) is an Illinois limited liability company with its principal place of business in Illinois.

2. Defendant StarTouch, Inc. (“STI”) is a Washington corporation with its principal place of business in Ferndale, Washington.

3. Defendant Keith Scheffer is STI’s president and a Washington citizen. He resides in Ferndale, Washington.

1 **II. JURISDICTION AND VENUE**

2 4. The Court has subject matter jurisdiction under 28 U.S.C. § 1332 because plaintiff  
3 is an Illinois citizen, defendants are Washington citizens, and the amount in controversy,  
4 excluding interest and costs, exceeds \$150,000.

5 5. This Court has personal jurisdiction over the defendants because both are citizens  
6 of Washington. Venue is proper under 28 U.S.C. § 1391 because defendants reside in this  
7 district.

8 **III. FACTS**

9 6. On December 31, 2009, in exchange for valuable consideration, STI executed and  
10 delivered a promissory note (“Note”) to GWC, promising to pay GWC the principal amount of  
11 \$200,000 in four \$50,000 installments. A copy of the Note is attached as **EXHIBIT 1**.

12 7. Mr. Scheffer personally guaranteed payment of the Note.

13 8. STI made the first principal payment, but failed to pay GWC the second  
14 installment when it became due. GWC sent STI and Mr. Scheffer a letter in March 2011  
15 demanding that they cure STI’s default. They have failed to do so. The outstanding principal  
16 balance on the Note is \$150,000.

17 9. Under the Note, STI must pay a penalty for any delinquent payment that is not  
18 received by GWC within 5 days of its due date. Penalties continue to accrue.

19 10. GWC is entitled to recover the attorneys’ fees, expenses, and costs that it incurs in  
20 any action to enforce the terms of the Note.

21 **COUNT I — BREACH OF PROMISSORY NOTE**

22 11. Plaintiff realleges and incorporates by reference the allegations contained in  
23 paragraphs 1 through 10 as if fully set forth herein.

24 12. STI has breached the terms of the Note by not timely making principal and  
25 interest payments.

26 13. GWC has been injured by STI’s breach in an amount exceeding \$150,000.  
27

1 **COUNT II — BREACH OF GUARANTEE**

2 14. Plaintiff realleges and incorporates by reference the allegations contained in  
3 paragraphs 1 through 13 as if fully set forth herein.

4 15. In exchange for valuable consideration, GWC accepted the Note in reliance on  
5 Mr. Scheffer's personal guarantee of payment.

6 16. Mr. Scheffer was provided notice of STI's default but has breached his guarantee  
7 by failing to cure STI's default.

8 17. GWC has been injured by Mr. Scheffer's breach in an amount exceeding  
9 \$150,000.

10 **IV. PRAYER FOR RELIEF**

11 Plaintiff prays for a judgment in favor of GWC and against StarTouch and Mr. Scheffer  
12 for: (a) the unpaid principal amount of the Note, (b) all penalties for delinquent payments, (c) the  
13 costs, expenses, and attorneys fees that GWC has incurred and will incur in enforcing the terms  
14 of the Note, (d) prejudgment interest in accordance with the default provisions in the Note, and  
15 (e) such other relief as the Court may deem just and proper.

16 **V. JURY DEMAND**

17 GWC requests a jury trial on all issues so triable.

18  
19 DATED this 13th day of June, 2011.

20 STOKES LAWRENCE, P.S.

21  
22 By:   
23 Bradford J. Axel (WSBA #29269)  
24 800 Fifth Avenue, Suite 4000  
25 Seattle, Washington 98104-3179  
(206) 626-6000  
(206) 464-1496  
bja@stokeslaw.com

26 Counsel for Plaintiff

27 File No.: 49923-001

PROMISSORY NOTE

\$200,000.00

December 31, 2009

Bellingham, Washington

STARTOUCH, INC., a Washington corporation (the "Maker"), promises to pay to the order of GREAT WESTERN COMMUNICATIONS, LLC, an Illinois limited liability company (the "Holder"), 875 N. Michigan Avenue, Suite 3100, Chicago, IL 60611, the principal of Two Hundred Thousand Dollars (\$200,000.00), together with interest on that amount, upon the agreements, terms and conditions provided in this Promissory Note (the "Note"):

1. *Definitions.*

(a) *Default.* The term "Default" means any of the following events:

(i) the Maker at any time fails to pay, when due, any sum owing on this Note; or

(ii) the Maker breaches or fails to perform any obligation under this Note or any other agreement between the Maker and the Holder; or

(iii) the Maker files or is served with any petition for relief under the 11 U.S.C. § 1 et seq. or any similar federal or state statute, or a proceeding is instituted against the Maker seeking a readjustment of the Maker's indebtedness; or

(iv) the Maker assigns any of its assets for the benefit of its creditors; or

(v) an action is commencing to appoint, or the Maker consents to the appointment of a receiver or trustee for all or any part of the Maker's property; or

(vi) the Maker admits, in writing, its inability to pay its debts as they become due; or

(vii) the Maker becomes insolvent; or

(viii) a court of competent jurisdiction enters an order approving a petition seeking a reorganization of the Maker or appointing a receiver, trustee, or other similar official of substantially all of Maker's assets.

(b) *Default Rate.* The term "Default Rate" means the rate of interest otherwise payable on this Note plus five percent (5%).

2. *Interest.* All sums owing on this Note shall bear interest from the date of this Note until paid, at a fixed rate of eight percent (8%) per annum. Should the Maker default on any of the obligations specified in this Note, all sums owing on the Note shall bear interest at the Default Rate.

3. *Amortization; Payment.*

(a) *Amortization.* This Note shall be amortized through payments to Holder of monthly payments of interest on the balance due and the principal payments described in subparagraph 3(b).

(b) *Payment Schedule.* On or before the 30th day of January, 2010, and on or before the like date of each month thereafter until December 30th, 2010, the Maker shall pay to the Holder at the address stated above the interest due for that month on the then outstanding principal balance. In addition, the Maker shall pay to the Holder Fifty Thousand Dollars (\$50,000.00) on principal on March 30, 2010; on December 30, 2010; and on June 30, 2011; and a final payment of Fifty Thousand Dollars (\$50,000.00) on December 30, 2011.

(c) *Maturity Date.* On or before December 30, 2011, the Maker shall pay the unpaid principal and interest remaining due on this Note, and shall pay any and all costs, expenses, and other charges due and payable on this Note (the "Maturity Date").

(d) *General.* Payments shall be applied first to costs, expenses, and other charges provided for in this Note or incurred by the Holder in realizing on this Note, second to interest then accrued, and then to principal. All payments shall be made in the lawful currency of the United State of America. All payments shall be made to the Holder at the address specified herein for notices or at such other place as the Holder may specify in writing.

4. *Prepayment.* The Maker may prepay any amount owing on this Note without incurring any additional charge. Notwithstanding any prepayment, the Maker shall continue to make all succeeding installments or other payments as they become due, until this Note is completely paid.

5. *Late Payment Charge.* If any installment of principal or interest shall not be paid within five (5) days after the date it becomes due, the Maker shall pay a late charge equal to five percent (5%) of the delinquent installment. The late charge shall be in addition to, and not in lieu of, any other rights or remedies the Holder may have by virtue of any breach or default.

6. *Notices.* Any notice, consent, or other communication required or permitted under this Note shall be in writing and shall be deemed to have been duly given or made either (1) when delivered personally to the party to whom it is directed (or any officer or agent of such party, or (2) three days after being deposited in the United States' certified to registered mail, postage prepaid, return receipt requested, and properly addressed to the party, or (3) by facsimile or electronic transmission, in which case notice shall be deemed given when the notice is transmitted. A communication will be deemed to be properly addressed if sent to the Maker at 1354 Pacific Place, Suite 102, Ferndale, Washington 98248 or if sent to the Holder at 875 N.

Michigan Avenue, Suite 3100, Chicago, IL 60611. The Maker or the Holder may at any time during the term of this Note change the address to which notices and other communications must be sent by providing written notice of a new address within the United States to the other party. Any change of address will be effective ten (10) days after notice is given.

7. *Remedies.* Upon a Default and expiration of any applicable <sup>\*</sup>Cure Period, the Holder shall have all rights available to it at law or in equity, including all rights available under the Washington Uniform Commercial Code. Any unpaid balance outstanding at the time of a Default, and any costs or other expenses incurred by the Holder in realizing on this Note, shall bear interest at the Default Rate. All rights and remedies granted under this Note shall be deemed cumulative and not exclusive of any other right or remedy available to the Holder. Maker hereby waives presentation for payment, notice of dishonor, protest and notice of protest.

\*Cure Period includes a 30-day notification time to cure from the holder  
8. *Attorneys' Fees, Costs, and Other Expenses.* Maker agrees to pay all costs and expenses which the Holder may incur by reason of any Default, including, but not limited to, reasonable attorneys' fees, expenses, and costs incurred in any action undertaken with respect to this Note, or any appeal of such an action. Any judgment recovered by the Holder shall bear interest at the Default Rate. K.S.

9. *Transfer; Obligations Binding on Successors.* The Maker may not transfer any of its rights, duties, or obligations under this Note without the prior written consent of the Holder. This Note, and the duties set forth in the Note, shall bind the Maker and its successors and assigns. All rights and powers established in this Note shall benefit the Holder and its successors and assigns.

10. *Governing Law.* This Note will be construed and the rights, duties, and obligations of the parties will be determined in accordance with the laws of the State of Washington.

11. *Headings.* Headings used in this Note have been included for convenience and ease of reference only, and will not in any manner influence the construction or interpretation of any provision of this Note.

12. *Entire Agreement.* This Note represents the entire understanding of the parties with respect to the subject matter of the Note. There are no other prior or contemporaneous agreements, either written or oral between the parties with respect to this subject.

13. *Waiver.* No right or obligation under this Note will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or by its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance of the right or obligation in any other instance, in any other respect, or at any other time.

14. *Severability.* The parties intend that this Note be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Note, on its face or as applied to

any person or circumstance, is or becomes unenforceable to any extent, the remainder of this note and the application of that provision to other persons, circumstances, or extent, will not be impaired.

15. *References.* Except as otherwise specifically indicated, all references in this Note to numbered or lettered sections or subsections refer to sections or subsections of this Note. All references to this Note include any subsequent amendments to the Note.

16. *Maximum Interest.* Notwithstanding any other provisions of this Note, any interest, fees, or charges payable by reason of the indebtedness evidenced by this Note shall not exceed the maximum permitted by law.

17. *Business Purpose.* The parties hereto affirm that this Note represents a debt incurred in the course of business, or otherwise related to a business purpose.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

MAKER:

StarTouch, Inc.

By: Keith Scheffer  
Keith Scheffer, President

I personally guarantee payment and performance of the foregoing Promissory Note. Should Great Western The holder fail in its attempts to collect against the ASSETS OF STARBUCK FNB. <sup>KS.</sup>  
Keith Scheffer  
Keith Scheffer