

# Settlement Agreement

Commerce Commission

Ferratum New Zealand Limited

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**Agreement** dated 6 May 2020

## **Parties**

**Commerce Commission** a statutory body established under s 8 of the Commerce Act 1986 (**Commission**)

**Ferratum New Zealand Limited** an incorporated company under the Companies Act 1993 (**Ferratum**)

(collectively the **Parties**)

## **1 Introduction**

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- 1.1 On 28 May 2018 the Commission commenced civil proceedings against Ferratum (CIV-2018-404-1032) (**Proceeding**), alleging that between 9 June 2015 and 23 October 2018 inclusive (**Relevant Period**), Ferratum breached the lender responsibility principle in section 9C(2)(a), and certain of the lender responsibilities in sections 9C(3)(a) and (b) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**). Ferratum denied those allegations and has defended the proceeding.
- 1.2 The parties have agreed to resolve the Proceeding on the basis of this Agreement, and in particular on the basis of admissions limited to the 46 borrowers named in Schedule One to the Fourth Amended Statement of Claim.
- 1.3 This Agreement will be made public by the Commission (including on the Commission's website).

## **2 Interpretation**

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- 2.1 For the purposes of this Agreement, in addition to those terms defined within the body of this Agreement:

**Agreement** means this Settlement Agreement.

**Borrowers** means the 46 borrowers named in Schedule One to the Fourth Amended Statement of Claim set out at Appendix One to this agreement.

**Costs of Borrowing** means the amounts pleaded in Schedule One to the Fourth Amended Statement of Claim set out at Appendix One to this agreement, amounting to a total of \$88,173.00.

**Days** means working days as defined in High Court rule 1.3.

**Related Parties** of Ferratum include:

- (a) its past and present directors, officers, employees and agents; and





- (b) its related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993.

### 3 Breach of the CCCFA

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#### Breaches of the lender responsibility principles

- 3.1 Ferratum was one of seven short term lenders whose lending practices were examined during the Commission's review of the responsible lending practices of high cost short term lenders in New Zealand.
- 3.2 Following the review, the Commission commenced an investigation to determine whether Ferratum had breached any of the lender responsibility principles in the CCCFA.
- 3.3 On 28 May 2018 the Commission commenced the Proceeding alleging that Ferratum breached the lender responsibility principles in sections 9C(2)(a)(i) and (ii), 9C(3)(a) and (b), and 9C(3)(e)(i) and (iii) of the CCCFA and used contracts that were oppressive and/or induced borrowers to enter into contracts by oppressive means.

#### Admitted breaches and basis of resolution

- 3.4 Following discussions between the Parties, the Commission has concluded, based on the Solicitor-General's Prosecution Guidelines and its Enforcement Criteria, that it would be in the public interest for it to resolve the Proceeding on the basis that:
- (a) Ferratum agrees to admit the breaches of the CCCFA, as pleaded in the first, second and third causes of action in the Fourth Amended Statement of Claim attached to this agreement as **Appendix One**.
- (b) The Commission agrees to discontinue the fourth and fifth causes of action (as pleaded in the Third Amended Statement of Claim) in the Proceeding, being alleged breaches of oppressive conduct by Ferratum.
- (c) Ferratum agrees to pay the Costs of Borrowing to the Borrowers.
- (d) Ferratum agrees to make the Costs Payment to the Commission as set out in clause 4.14 below.
- (e) Ferratum will give enforceable undertakings to the Commission under s 113 of the CCCFA, via sections 74A to 74C of the Commerce Act 1986, in the form set out at **Appendix Five** to this Agreement, as set out in clause 4.4 below.
- (f) The rights of Borrowers are not compromised by this Agreement, as set out in clause 5.3 below.
- (g) Ferratum is no longer lending in New Zealand.

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## 4 Terms of settlement

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4.1 The Parties have agreed to resolve the issues arising out of the Proceeding on the terms set out below.

### Admissions

4.2 Ferratum admits paragraphs 3.1, 4.1 and 5.1 of the Fourth Amended Statement of Claim.

4.3 The admissions in this Agreement are limited to those admissions expressly made. Nothing in this Agreement constitutes:

- (a) any wider admission of liability by Ferratum or its Related Parties;
- (b) any admission that any Borrowers have suffered loss or harm; or
- (c) any admission that it would be liable for any damages at law, whether under the CCCFA or any other legislation, regulation or rule of law.

### Enforceable Undertakings

4.4 At the same time as the execution of this Agreement Ferratum will give enforceable undertakings to the Commission under s 113 of the CCCFA, via sections 74A to 74C of the Commerce Act 1986, in the form set out at **Appendix Five** to this Agreement.

### Court procedure for declaratory order

4.5 Within 5 Days of execution of this Agreement the Commission will file:



- (a) the Fourth Amended Statement of Claim as set out in **Appendix One** to this Agreement; and
- (b) a notice of discontinuance discontinuing the fourth and fifth causes of action in the Proceeding in the form set out at **Appendix Three**.

4.6 Within 5 Days of the Commission filing the Fourth Amended Statement of Claim in accordance with clause 4.5 above, Ferratum will file the Statement of Defence as set out in **Appendix Two** to this Agreement.

4.7 Within 5 Days of Ferratum filing and serving its statement of defence in accordance with clause 4.6 above, the Commission will file an interlocutory application seeking a declaratory order on admission of facts in the form attached at **Appendix Six**, and a joint memorandum of counsel in the form attached at **Appendix Four**, seeking that the declaratory order is made without a hearing.

4.8 Ferratum will consent to the Court making the declaration sought by the Commission in accordance with clause 4.7 above.

4.9 The Parties agree to provide to each other, before filing, any Court documents that either intends to file, and to provide a reasonable opportunity for the recipient to comment on the contents.

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- 4.10 The Commission agrees that it will not seek any relief in the Proceeding other than the declaration sought in accordance with clause 4.7 above.
- 4.11 If the Court requires a hearing, the Parties will cooperate to arrange for the Commission's application to be heard by the Court as soon as reasonably possible.
- 4.12 The other provisions of this Agreement remain in force irrespective of the outcome of the Commission's application under clause 4.7 above.
- 4.13 The Parties agree to take whatever steps are required to bring the Proceeding to a conclusion after there is a judgment on the Commission's interlocutory application under clause 4.7 above.

#### **Payment of costs**

- 4.14 Within 5 Days of the execution of this Agreement, Ferratum will pay the Commission NZ\$50,000 (including GST, if any) towards the Commission's costs in relation to the investigation and Proceeding (**Costs Payment**).

#### **Settlement Amount**

- 4.15 Ferratum agrees to pay the Costs of Borrowing to Borrowers.
- 4.16 Within 5 Days of execution of this Agreement, Ferratum will deposit the full Costs of Borrowing into a separate account.
- 4.17 Within 15 Days of execution of this Agreement:
- (a) the Parties will agree on a third party that Ferratum will instruct in accordance with clause 4.17(b) and 4.18 below (**Trustee**). Ferratum will nominate the Trustee, and the Commission may not unreasonably withhold its agreement. The Commission acknowledges that responsible firms of accountants (save for Ferratum's existing accountant), lawyers, or professional trustees are likely to be acceptable Trustees; and
  - (b) Ferratum will transfer the full Costs of Borrowing from the separate account into an account held by the Trustee to be held on trust for payment to Borrowers as provided for by clause 4.18(b) below, such instructions being irrevocable.
- 4.18 Ferratum:
- (a) Will make reasonable inquiries to enable payments to be made in accordance with clauses to 4.19 to 4.27 below;
  - (b) Will instruct the Trustee to make the payments in accordance with clauses 4.20 to 4.27 below, such instructions being irrevocable; and
  - (c) May (with the prior consent of the Commission, not to be unreasonably withheld) novate the payment obligations in clauses 4.20 – 4.27 to the Trustee defined in clause 4.17.

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### Payment to Borrowers

- 4.19 Within 10 Days of execution of this Agreement, Ferratum shall take reasonable steps using the information that it holds to contact each Borrower (for example, this may include contacting Borrowers by SMS message, email, post or telephone) advising:
- (a) that Ferratum has admitted that it breached the lender responsibility principles in relation to the Borrower's loan(s) with Ferratum during the Relevant Period;
  - (b) that Ferratum and the Commission have agreed that Ferratum should offer to repay to the Borrower all of the interest and fees that he or she paid to Ferratum. That is, Ferratum will compensate the Borrower all of his or her Costs of Borrowing;
  - (c) that Ferratum has entered into this Agreement with the Commission;
  - (d) the amount of the Costs of Borrowing which Ferratum has agreed to pay to the Borrower in settlement of the Proceeding against Ferratum;
  - (e) that the Borrower should direct Ferratum as to how to pay the Costs of Borrowing (for example by providing a bank account number, or requesting payment by cheque);
  - (f) that the Borrower can direct Ferratum to credit a Borrower's Costs of Borrowing against any outstanding balance the Borrower may have on a loan contract with Ferratum; and
  - (g) a Ferratum contact email address and phone number for any Borrowers who have any queries.
- 4.20 If Ferratum obtains instructions from any Borrower as to a nominated bank account into which the Costs of Borrowing can be paid, Ferratum shall, within 5 Days of receiving that instruction, pay (via the Trustee's account in accordance with clause 4.17 above) the Costs of Borrowing by direct crediting the relevant nominated account.
- 4.21 If Ferratum obtains instructions from any Borrower to pay the Costs of Borrowing via cheque, Ferratum shall, within 5 Days of receiving that instruction, pay the Costs of Borrowing by posting a cheque to the Borrower from the Trustee's account in accordance with clause 4.18(b) above.
- 4.22 To the extent that Ferratum cannot establish contact with a Borrower, Ferratum shall use reasonable endeavours to locate those Borrowers using external credit reporting searches.
- 4.23 The parties will proceed as per clauses 4.26 and 4.27 below if, twelve months after the date of this Agreement:
- (a) there are any Borrowers who Ferratum cannot locate after using reasonable endeavours as required under clause 4.22 above; or
  - (b) there are any Borrowers who have not provided payment instructions in accordance with clauses 4.19(e) and 4.19(f) above.

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### *Bankrupt Borrowers*

- 4.24 Notwithstanding clause 4.22 above, if any Borrowers who are entitled to be paid Costs of Borrowing are bankrupt, the relevant Costs of Borrowing shall be paid (via the Trustee's account in accordance with clause 4.18(b) above) to the Official Assignee, unless otherwise agreed with the Official Assignee.

### *Deceased Estates*

- 4.25 Notwithstanding clause 4.22 above, if any Borrowers who are entitled to be paid Costs of Borrowing are deceased:

- (a) Ferratum shall use reasonable endeavours to contact the representative(s) of the deceased Borrower and write to the representative(s) of the deceased Borrower informing them of the entitlement to the Costs of Borrowing; and
- (b) pay the Costs of Borrowing at the direction (if any) of the representative(s) of the deceased Borrower (via the Trustee's account in accordance with clause 4.18(b) above); or
- (c) if the representative(s) of the deceased Borrower has not contacted Ferratum within 12 months of Ferratum's last attempt to contact them, or has not provided payment instructions in accordance with clauses 4.19(e) and 4.19(f) above, the parties will proceed as set out at clause 4.27 below.

- 4.26 Twelve months after the date of this Agreement, Ferratum undertakes to provide a report to the Commission confirming the progress it has made in distributing the Costs of Borrowing, including a summary of the payments made to the Borrowers pursuant to this Agreement, and an update on its progress locating Borrowers (**Payment Update**).

- 4.27 Within 30 days of receiving the Payment Update the parties will consider the amount of money which remains unpaid to Borrowers, and will agree whether that remaining unpaid amount will be either:

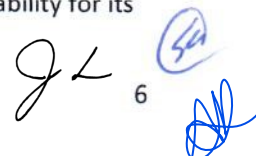
- (a) treated as unclaimed money under the Unclaimed Money Act 1971; or
- (b) paid to a charity to be agreed with the Commission.

- 4.28 Other than the Costs of Borrowing and Costs Payment, in no circumstances is Ferratum required to pay any further amounts to the Commission or Borrowers under this Agreement.

## **5 Other Proceedings**

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- 5.1 The Commission undertakes not to issue, encourage or support any civil or criminal legal proceedings against Ferratum and/or each of its Related Parties in respect of matters that are the subject of the Proceeding.
- 5.2 This Agreement is entered into without prejudice to the rights of Borrowers in respect of the breach, which rights the Commission is not compromising on their behalf (save that it acknowledges that Ferratum will not have any liability for its

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Costs of Borrowing, once the Costs of Borrowing are returned in accordance with this Agreement).

- 5.3 Nothing in this Agreement will limit or affect the ability of:
- (a) the Commission to issue proceedings against Ferratum in respect of matters not related to the Proceedings, or in respect of conduct Ferratum engages in after the date of this Agreement or for breach of this Agreement or a breach of the Enforceable Undertakings; and
  - (b) any person who has not consented to be bound by the terms of this Agreement from pursuing any rights that person considers would be available to them arising from matters contained in this Agreement.

## **6 Public statements**

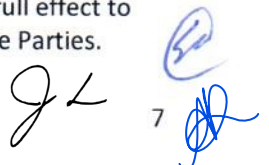
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- 6.1 Subject to clause 6.2 below, the Parties may make public statements in relation to the settlement after this Agreement has been executed. The Parties agree that any public statements relating to the Proceedings will be made in good faith and be consistent with the spirit and intent of this Agreement.
- 6.2 Except as required by law, Ferratum agrees that it will not make any public comment in relation to this Agreement or the Proceedings until after the Commission has issued any media comment notifying the public of this settlement.
- 6.3 The Parties agree to provide written copies of their draft initial press release to the other party at least 24 hours in advance of their release to allow the other party the opportunity to comment. A party will be free to amend their draft initial press release after provision to the other party and will not be obliged to accept the comments of the other party.

## **7 Miscellaneous**

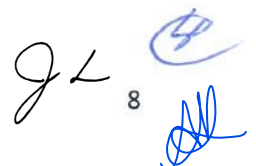
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- 7.1 The Commission acknowledges that some of the information provided by Ferratum in the course of the investigation and proceedings may be confidential and/or commercially sensitive and/or subject to privilege. The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of that information it will notify Ferratum of that request and will consult with Ferratum as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982.
- 7.2 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement.
- 7.3 The Parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement, and to demonstrate good faith in performing their obligations under this Agreement and in resolving any issues arising under this Agreement.
- 7.4 If necessary or desirable, the payment processes required to give full effect to the terms of this Agreement may be amended by agreement of the Parties.

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- 7.5 The Parties by written agreement may vary any of the time periods stipulated in this Agreement, in which instance all other dependent time periods will be extended by the same amount of time.
- 7.6 Where Ferratum or the Commission take any step in the payment process of this Agreement late, all dependent dates shall be extended by the same period.
- 7.7 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 7.8 The Parties agree that the New Zealand Courts will have exclusive jurisdiction to determine any proceedings arising out of or in connection with this Agreement and the matters to which it relates, including any proceedings brought by the Commission.
- 7.9 This Agreement constitutes the entire agreement between the Parties in relation to resolving the Proceedings. It supersedes all prior communications, understandings or representations whether oral or written between the Parties.
- 7.10 No amendment to this Agreement will be effective unless it is in writing and signed by both of the Parties.
- 7.11 Any failure by any party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.
- 7.12 Any person signing this Agreement on behalf of one of the Parties warrants that by signing that they have all the necessary authority from that party to sign this Agreement on their behalf.
- 7.13 The parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A party may execute this Agreement by one signatory executing one counterpart and another signatory executing a different counterpart. A party's delivery of a signed pdf counterpart of this Agreement by email will have the same legal effect as that party's delivery of a signed original counterpart.
- 7.14 Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:
- (a) If addressed to the Commission, by hand delivery or email to the following address:
- Commerce Commission  
Level 9  
44 The Terrace  
Wellington 6011
- Attention: Antonia Horrocks, General Manager, Competition and Consumer, Commerce Commission
- Email: Antonia.Horrocks@comcom.govt.nz
- (b) If addressed to Ferratum, by hand delivery or email to the following address:

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Ferratum New Zealand Limited

c/o Bell Gully, Level 22, 48 Shortland Street, Auckland 1010

Attention: Anouska Sweetman

Email: [Anouska.Sweetman@Ferratum.com](mailto:Anouska.Sweetman@Ferratum.com)



**Execution**

**Signed by and on behalf of New Zealand  
Commerce Commission**

  
Chair

  
New Zealand Commerce Commission

**Signed by and on behalf of Ferratum  
New Zealand Limited**

  
Director/authorised signatory

SAMI KALLIO



**James Logan**

Ferratum New Zealand Limited

## Appendix One

# Fourth Amended Statement of Claim

The Plaintiff by its solicitor says:

## 1 The parties

- 1.1 The plaintiff, the Commerce Commission is a body corporate established under s 8 of the Commerce Act 1986 (**Commission**). Its functions include enforcement of the Fair Trading Act 1986 (**FTA**) and the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 1.2 The defendant, Ferratum New Zealand Limited is a company incorporated in New Zealand with its registered office at Level 2, 132 Hurstmere Road, Takapuna, Auckland, 0622. Ferratum New Zealand Limited trades as "Ferratum", "Just Cash" and "Simple Cash" (together referred to hereafter as **Ferratum**).
- 1.3 Ferratum was incorporated on 17 February 2011 and is wholly owned by Ferratum Oyj, a company registered in Finland.

## 2 The relevant facts

- 2.1 Ferratum is a creditor who, during the relevant periods described below, provided high-cost credit agreements to New Zealand borrowers (**Borrowers**) under consumer credit contracts. It lent between \$100 and \$1,000, charging interest of between 52% and 803% per annum. Ferratum offered loan terms of between 7 and 45 days. No payment was required until the end of the loan term, when the principal and all interest was required to be paid.
- 2.2 Ferratum has no shopfronts and operated an online and electronic business model. Ferratum has stopped offering new loans in New Zealand.
- 2.3 Ferratum marketed itself as offering quick, easy loans. For example, during September 2015, over half of Ferratum's loans were approved within 10 minutes of the borrower applying.
- 2.4 A significant portion of Ferratum's loan book was repeat business with existing borrowers. In September 2015, for example, approximately 80% of Ferratum's loans were provided to borrowers who had previously entered into a loan agreement with Ferratum (**Repeat Borrowers**). This increased to approximately 90% by September 2016.
- Ferratum's advertising**
- 2.5 Between 9 June 2015 and the 23 October 2018, Ferratum advertised to Borrowers through the direct means of text messages and emails (**Direct Advertising**) and to the public through media including billboards, bus advertisements, radio advertisements, website advertisements and Facebook advertisements (**Public Advertising**).

- 2.6 Ferratum's Direct and Public Advertising did not include a prominent risk warning that made it clear that high cost credit agreements should not be used for long term or regular borrowing, and are suitable only to improve short term cash flows.
- 2.7 Ferratum used frequent text message advertising that encouraged Borrowers to reapply for new loans.
- 2.8 Ferratum's Direct Advertising to Borrowers with overdue payments encouraged them to reapply for further, and sometimes larger, loans.

**Ferratum's loan approval process: new borrowers**

- 2.9 Ferratum required Borrowers who have never obtained a loan from Ferratum (**New Borrowers**) to make an online application via the Ferratum website.
- 2.10 When applying online, a New Borrower was required to set "sliders" to show the requested amount and period of the loan, and to enter information in an online application form. The information requested in the online application form changed over time.

**Particulars**

- (a) Between June 2015 and 15 July 2016 the online application form asked New Borrowers to provide only the following information:
- (i) Employment type;
  - (ii) Monthly income;
  - (iii) Payday frequency; and
  - (iv) Next pay date.
- (b) The online application form changed on or about 15 July 2016 to ask New Borrowers to provide the following information:
- (i) Employment type;
  - (ii) Net monthly income;
  - (iii) Payday frequency;
  - (iv) Next pay date;
  - (v) Total monthly living expenses; and
  - (vi) Loan purpose.
- 2.11 At all relevant times, Ferratum relied upon an automated scoring system to approve loan amounts (**Scoring System**). The Scoring System sets the maximum amount a Borrower can borrow. It takes into account various criteria. For most Borrowers, those criteria did not include a Borrower's income, expenses or the purpose of the loan.

### Particulars

- (a) Until 12 October 2016, income, expenses and loan purpose were not taken into account by the Scoring System at all;
  - (b) From 13 October 2016, income and expenses were taken into account by the Scoring System, but **only** for New Borrowers with bad credit where bank transactions were available.
- 2.12 Since 9 June 2015, Ferratum obtained bank statements for a limited number of loans and only ever when New Borrowers applied for their first loan.

### Ferratum's loan approval process: repeat borrowers

- 2.13 Ferratum permitted Repeat Borrowers to apply for a loan in two ways: online or via text message.
- 2.14 When using the online option, Repeat Borrowers were required to set "sliders" to show the requested amount and period of the loan. They were not required to update the information in the online application form referenced above in paragraph 2.10, which was pre-populated from the last information they provided online.
- 2.15 When using the text message option, Repeat Borrowers applied for a new loan by sending a text message to Ferratum with the requested amount and term of the loan along with a unique identifying PIN number. Ferratum then sent a text message asking the Repeat Borrower to reply confirming their acceptance of the loan. Once the Repeat Borrower replied with that confirmation, Ferratum would transfer the funds into the borrower's account.
- 2.16 The extent to which Ferratum required Repeat Borrowers to update their financial information when applying for new loans changed over time.

### Particulars

- (a) Between June 2015 and June 2016, Repeat Borrowers were not required to update their financial information at all, whether applying via text message or online. During this period, Ferratum sometimes approved loans either:
  - (i) without any information (or without any updated information) about the Repeat Borrower's income, expenses or loan purpose; or
  - (ii) with information about the Repeat Borrower's income only and without information about the Repeat Borrower's expenses or the purpose of the loan.
- (b) Between July 2016 and February 2017, Ferratum's application process prompted, but did not require, Repeat Borrowers to update their financial information when applying for a new loan. During this period, Ferratum approved some loans with either no information about the Repeat Borrower's income, expenses or loan purpose, or with information about income only. Where such information was on a

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[Signature]

Repeat Borrower's file from a previous loan, it was often not updated for subsequent loans.

- 2.17 Ferratum's reliance on the Scoring System, and the related information deficiencies referred to above in paragraph 2.16, meant that Repeat Borrowers could be offered a larger loan if they had previously repaid a loan, regardless of whether their income, expenses or other circumstances had changed.
- 2.18 Since 9 June 2015, Ferratum approved loans for Repeat Borrowers when the only financial information it held in relation to the Repeat Borrower was out of date, such as obsolete income, expenses or loan purpose information provided in relation to earlier loans.

#### **Loan Contract**

- 2.19 After Ferratum approved a loan, it would send an email to the Borrower which asked the Borrower to reply, either via email or text message, confirming that they wanted the loan. Once the Borrower replied, Ferratum would transfer the funds into the Borrower's account.
- 2.20 Ferratum would then send the Borrower an email attaching loan documentation including its standard terms and conditions.
- 2.21 The standard terms and conditions document, "Terms & Conditions – Ferratum New Zealand Limited" (**Standard Terms**) is 32 pages long, and not all aspects of it were expressed in plain language in a clear, concise, and intelligible manner.

### **3 First cause of action: Failure to make reasonable inquiries**

- 3.1 Ferratum breached sections 9C(2)(a)(ii) and 9C(3)(a) of the CCCFA by failing to make reasonable inquiries so as to be satisfied that it was likely that credit provided under agreements met the Borrower's requirements and objectives and that Borrowers would be able to make repayments without suffering substantial hardship, in that:
- (a) for the borrowers listed in Schedule One to the Fourth Amended Statement of Claim (**Borrowers**) who had previously entered into a loan agreement with Ferratum (**Repeat Borrowers**) between 9 June 2015 and February 2017, Ferratum failed to ensure that the Repeat Borrowers provided updated information about income, expenses and loan purpose before entering into a new loan agreement; and
  - (b) between 9 June 2015 and 14 July 2016, Ferratum failed to obtain: (i) loan purpose information from the Borrowers or (ii) sufficient information about Borrowers' income and expenses.
- 3.2 As a result of Ferratum's conduct pleaded at Section 2 and paragraph 3.1 above, Borrowers suffered loss or damage as set out at Schedule One.

### **Relief sought for the first cause of action**

3.3 The Commission seeks the following relief:

- (a) A declaration that Ferratum's conduct has breached ss 9C(2)(a)(ii) and 9C(3)(a) of the CCCFA.

## **4 Second cause of action: Failure to exercise care in advertising**

4.1 Between 9 June 2015 and 23 October 2018, Ferratum breached the lender responsibility principles in ss 9C(2)(a)(i) and 9C(3)(b)(i) of the CCCFA, in relation to the Borrowers, by failing to exercise the care, diligence, and skill of a responsible lender in advertisements for providing credit under an agreement and failed to assist the Borrower to reach an informed decision as to whether or not to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement, in that:

- (a) Ferratum's Direct and Public Advertising, as detailed in Schedules Two and Three, did not include a prominent risk warning within those advertisements that made it clear that high cost credit agreements should not be used for long term or regular borrowing and are suitable only to improve short term cash flows; and
- (b) The Direct Advertising sent by Ferratum to Borrowers, as detailed in Schedule Two, invited the Borrowers who received them, in circumstances that included those with overdue payments on an existing Ferratum loan, to apply for further, and sometimes larger, loans; and
- (c) Ferratum used text message advertising, as detailed in Schedule Two, which encouraged the Borrowers to reapply for new loans without saying that the interest rate on new loans offered may not be the same as previous loans.

4.2 As a result of Ferratum's conduct pleaded at Section 2 and paragraph 4.1 above, Borrowers suffered loss or damage as set out at Schedule One.

### **Relief sought for the second cause of action**

4.3 The Commission seeks the following relief:

- (a) A declaration that Ferratum's conduct has breached s 9C(2)(a)(i) and s 9C(3)(b)(i) of the CCCFA.

## **5 Third cause of action: Failure to assist borrowers**

5.1 Ferratum breached sections 9C(3)(b)(i), 9C(3)(b)(ii) and 9C(3)(b)(iii) by failing to assist Borrowers to reach an informed decision as to whether or not to enter into agreements and to be reasonably aware of the full implications of entering into those agreements, in that:

- (a) Ferratum failed to ensure that all aspects of the Standard Terms provided to Borrowers were expressed in plain language in a clear, concise, and intelligible manner and were not likely to be confusing to Borrowers; and



- (b) Ferratum used text message advertising, as detailed in Schedule Two, which encouraged the Borrowers to reapply for new loans without saying that the interest rate on new loans offered may not be the same as previous loans.

**Relief sought for the third cause of action**

5.2 The Commission seeks the following relief:

- (a) A declaration that Ferratum's conduct has breached ss 9C(3)(b)(i), 9C(3)(b)(ii) and 9C(3)(b)(iii) of the CCCFA.



*Schedule One – [as per the Third Amended Statement of Claim].*

**Schedule Two – Relevant Direct Advertising**

Description	Relevant message	Document reference for indicative example	Borrowers who received this message after their second successive loan
1 Text message	<p>“Thank you for the repayment. You may now reapply! TXT to 8778:                      LOAN(space)AMOUNT(space) your PIN e.g. LOAN                      800 45 PIN Kind regards, Ferratum”</p>	CC.6136	<ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> <li>• [REDACTED]</li> </ul>

- 1 For example sent on 16.01.2017 when previous loans were taken out on dates including 1/11/2016, 29/11/2016, 20/12/2016, 29/12/2016.
- 2 For example sent on 3/05/2018 when previous loans were taken out on dates including 14/12/2017, 12/01/2018, 26/02/2018, 22/03/2018
- 3 For example, sent on 03.03.2016 when previous loans were taken out on dates including 1/09/2015, 7/10/2015, 8/12/2015, 27/01/2016
- 4 For example, sent on 24/01/2017, when previous loans were taken out on dates including 1/07/2016, 15/08/2016, 28/09/2016, 19/10/2016, 6/12/2016
- 5 For example, sent on 20/06/2018 when previous loans were taken out on dates including 19/03/2018, 19/04/2018, 18/05/2018, 19/06/2018
- 6 For example, sent on 15.11.2017 when previous loans were taken out on dates including 3/04/2017, 19/05/2017, 18/07/2017, 18/09/2017
- 7 For example, sent on 09.05.2018 when previous loans were taken out on dates including 13/09/2017, 8/11/2017, 17/01/2018, 9/03/2018
- 8 For example, sent on 28.05.2018, when previous loans were taken out on dates including 15/03/2018, 16/04/2018, 14/05/2018
- 9 For example, sent on 7/06/2017 when previous loans were taken out on dates including 10/02/2017, 23/03/2017, 20/04/2017, 17/05/2017
- 10 For example, sent on 18.08.2017 when previous loans were taken out on dates including 17/05/2017, 29/05/2017
- 11 For example, sent on 01.04.2016 when previous loans were taken out on dates including 22/02/2016, 29/02/2016, 8/03/2016, 21/03/2016

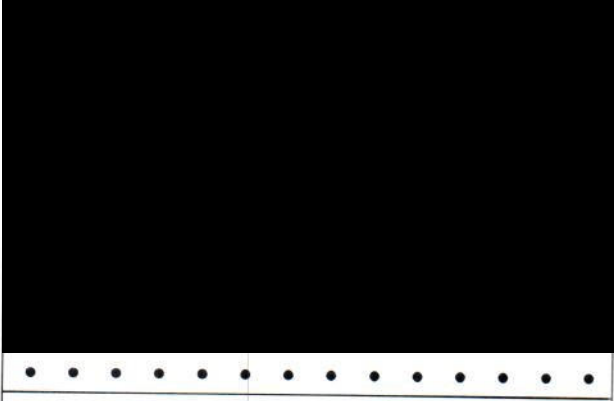

- 12 For example, sent on 23.03.2017 when previous loans were taken out on dates including 7/11/2016, 13/01/2017
- 13 For example, sent on 10.07.2017 when previous loans were taken out on dates including 12/04/2017, 10/05/2017, 25/05/2017, 22/06/2017
- 14 For example, sent on 01.09.2017 when previous loans were taken out on dates including 25/05/2017, 21/06/2017, 22/08/2017
- 15 For example sent on 21.02.2017 when previous loans were taken out on dates including 21/10/2016, 24/11/2016, 14/12/2016, 12/01/2017
- 16 For example, sent on 31.08.2017 when previous loans were taken out on dates including 27/06/2017, 11/07/2017, 20/07/2017, 7/08/2017
- 17 For example, sent on 08.02.2018, when previous loans were taken out on dates including 1/09/2017, 20/10/2017 (repaid on 07.02.2018)
- 18 For example, sent on 10.05.2016 when previous loans were taken out on dates including 20/01/2016, 16/02/2016, 16/03/2016, 12/04/2016
- 19 For example, sent on 03.07.2018 when previous loans were taken out on dates including 11/03/2017, 27/04/2017, 12/05/2017, 23/06/2017
- 20 For example, sent on 20.12.2017 when previous loans were taken out on dates including 1/09/2017, 19/10/2017, 15/11/2017, 28/11/2017
- 21 For example, sent on 06.12.2017 when previous loans were taken out on date including 17/07/2017, 28/08/2017, 2/10/2017, 2/11/2019
- 22 For example, sent on 27.11.2016 when previous loans were taken out on dates including 4/07/2016, 12/09/2016, 2/11/2016
- 23 For example, sent on 21.10.2015 when previous loans were taken out on dates including 7/07/2015, 1/09/2015, 15/10/2015
- 24 For example, sent on 28.12.2016 when previous loans were taken out on dates including 23/09/2016, 6/11/2016, 13/12/2016

2	Text message		"Plz repay your outstanding loan fully, then re-apply for your loan. We will notify you via SMS when your repayment is confirmed on our bank account. Ferratum"	CC.2586					

25 For example, sent on 03.10.2016 when previous loans were taken out on dates including 1/07/2016, 5/08/2016, 5/09/2016  
26 For example, sent on 17.05.2018 when previous loans were taken out on dates including 29/03/2018, 20/04/2018, 11/05/2018  
27 For example, sent on 31.03.2016 when previous loans were taken out on dates including 7/01/2016, 18/02/2016  
28 For example, sent on 22.02.2017 when previous loans were taken out on dates including 27/10/2016, 25/11/2016, 23/12/2016, 31/01/2017  
29 For example, sent on 15.01.2018 when previous loans were taken out on dates including 10/11/2017, 22/11/2017, 27/12/2017, 9/01/2018  
30 For example, sent on 05.01.2016 when previous loans were taken out on dates including 23/06/2015, 5/08/2015, 1/09/2015 (repaid on 31.12.2015)  
31 For example, sent on 17.01.2017 when previous loans were taken out on dates including 30/10/2016, 3/11/2016, 12/12/2016  
32 For example sent on 04.01.2017 when previous loans were taken out on dates including 1/11/2016, 29/11/2016, 20/12/2016, 29/12/2016  
33 For example, sent on 15.09.2017 when previous loans were taken out on dates including 10/02/2017, 3/04/2017, 19/05/2017, 18/07/2017  
34 For example, sent on 29.01.2016 when previous loans were taken out on dates including 2/10/2015, 2/11/2015, 4/12/2015, 11/01/2016  
35 For example, sent on 30.08.2017 when previous loans were taken out on dates including 25/05/2017, 21/06/2017, 22/08/2017  
36 For example, sent on 16.02.2016 when previous loans were taken out on dates including 22/12/2015, 6/01/2016, 20/01/2016, 3/02/2016  
37 For example, sent on 01.09.2015 when previous loans were taken out on dates including 9/06/2015, 7/07/2015, 4/08/2015  
38 For example, sent on 09.01.2018 when previous loans were taken out on dates including 8/09/2017, 10/11/2017, 22/11/2017, 27/12/2017

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3	Text message	<p>"Your total repayable amount is \$892.50 as of 14/08/2015.BNZ Bank: 02-1244-0068428-00. Reference #:5556723345.Re-apply after paying it back. Ferratum."</p>	CC.2586		
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39 For example sent on 16.01.2017 when previous loans were taken out on dates including 1/11/2016, 29/11/2016, 20/12/2016, 29/12/2016  
40 For example sent on 30/04/2018 when previous loans were taken out on dates including 14/12/2017, 12/01/2018, 26/02/2018, 22/03/2018  
41 For example sent on 02/03/2016 when previous loans were taken out on dates including 1/09/2015, 7/10/2015, 8/12/2015, 27/01/2016  
42 For example, sent on 21.01.2018 when previous loans were taken out on dates including 19/10/2017, 17/11/2017, 19/12/2017, 19/01/2018  
43 For example sent on 04.09.2017 when previous loans were taken out on dates including 10/02/2017, 3/04/2017, 19/05/2017, 18/07/2017  
44 For example, sent on 26.04.2018 when previous loans were taken out on dates including 13/09/2017, 8/11/2017, 17/01/2018, 9/03/2018  
45 For example, sent on 02.08.2017 when previous loans were taken out on dates including 17/05/2017, 31/05/2017, 27/06/2017, 10/07/2017  
46 For example, sent on 12/05/2017 when previous loans were taken out on dates including 6/01/2017, 10/02/2017, 23/03/2017, 20/04/2017  
47 For example, sent on 25.09.2017 when previous loans were taken out on dates including 17/05/2017, 29/05/2017, 25/08/2017  
48 For example, sent on 30.03.2016 when previous loans were taken out on dates including 22/02/2016, 29/02/2016, 8/03/2016, 21/03/2016  
49 For example, sent on 20.03.2017 when previous loans were taken out on dates including 7/11/2016, 13/01/2017  
50 For example, sent on 01.08.2017 when previous loans were taken out on dates including 10/05/2017, 25/05/2017, 22/06/2017, 13/07/2017  
51 For example, sent on 18.08.2017 when previous loans were taken out on dates including 25/05/2017, 21/06/2017







				<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>	
4	Email		<p>"You can always immediately reapply for your next loan by logging on to MY PAGE or by sending TXT...as soon as your existing loan is fully paid...For same day loan application service after the repayment, please send Ferratum the repayment confirmation."</p>	CC.0354.0005	
5	Email		<p>"Our record shows that your repayment is overdue. You may have missed the payments due to your busy schedule. Your repayment due as of today 21/06/2017 is \$ 230.00. If you are in urgent need of cash you can simply make your full repayment today and also reapply today for a bigger loan! You must make a payment of your outstanding loan with us immediately...You can always immediately reapply for your next loan by logging in to MY ACCOUNT or by sending TXT: Loan (space) Amount (Space) Term (space) your dedicated PIN to 8778 as soon as your existing loan</p>	CC.3473	

66 For example, sent on 08.01.2018 when previous loans were taken out on dates including 8/09/2017, 10/11/2017, 22/11/2017, 27/12/2017  
67 For example, sent on 23.12.2015 when previous loans were taken out on dates including 23/06/2015, 5/08/2015, 1/09/2015 (repaid on 31.12.2015)  
68 For example, sent on 10.02.2017 when previous loans were taken out on dates including 30/10/2016, 3/11/2016, 12/12/2016, 17/01/2017  
69 CC.0354.0005: For example, sent on 21.10.2015 when previous loans were taken out on dates including 27/07/2015, 1/09/2015, 28/09/2015  
70 CC.6110: For example sent on 13.05.2017 when previous loans taken out were taken out on dates including 20.12.2016 (the loan for which this email reminder was sent out as it was overdue), 26.10.2016, 31.08.2016, 06.07.2016, 27.05.2016, 27.04.2016, 08.03.2016, 22.01.2016.  
71 CC.6527: For example, sent on 29.04.2017 when previous loans were taken out on dates including 4/07/2016, 12/09/2016, 2/11/2016, 29/12/2016 (repaid 25.08.2017)  
72 FER.13.0001: For example, sent on 31.08.2017 when previous loans were taken out on dates including 10/05/2017, 25/05/2017, 22/06/2017, 13/07/2017



		is fully repaid... For the same day loan application service after the repayment, please send Ferratum the repayment confirmation: CASH deposit receipt issued by a bank branch or online banking transfer, showing in the bank account transaction statement that verifies a cleared fund."		
6	Text message	"You can reapply anytime! Simply TXT to 8778: Loan Amount Term PIN e.g. LOAN 600 45 your dedicated PIN. Kind regards, Ferratum Customer Service"	CC.3987	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>

73 For example sent on 28.12.2016 when previous loans were taken out on dates including 2/08/2016, 30/08/2016, 27/09/2016, 1/11/2016, 29/11/2016, 20/12/2016

74 For example sent on 4/05/2018 when previous loans were taken out on dates including 14/12/2017, 12/01/2018, 26/02/2018, 22/03/2018

75 For example, sent on 03.03.2016 when previous loans were taken out on dates including 1/09/2015, 7/10/2015, 8/12/2015, 27/01/2016

76 For example, sent on 5/01/2017 when previous loans were taken out on dates including 1/07/2016, 15/08/2016, 28/09/2016, 19/10/2016, 6/12/2016

77 For example, sent on 21.02.2018 when previous loans were taken out on dates including 2/11/2017, 24/11/2017, 3/01/2018, 30/01/2018

78 For example, sent on 12.07.2017 when previous loans were taken out on dates including 14/12/2016, 10/02/2017, 3/04/2017, 19/05/2017

79 For example, sent on 26.05.2016 when previous loans were taken out on dates including 22/01/2016, 8/03/2016, 27/04/2016

80 For example, sent on 29.05.2018 when previous loans were taken out on dates including 27/06/2017, 10/07/2017, 4/08/2017, 25/08/2017

81 For example, sent on 9/06/2017 when previous loans were taken out on dates including 10/02/2017, 23/03/2017, 20/04/2017, 17/05/2017

82 For example, sent on 04.03.2016 when previous loans were taken out on dates including 11/01/2016, 29/01/2016, 22/02/2016, 29/02/2016

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				<ul style="list-style-type: none"><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li><li>•</li></ul>	
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83 For example, sent 23.03.2016 when previous loans were taken out on dates including 7/11/2016, 13/01/2017  
84 For example, sent on 12.07.2017 when previous loans were taken out on dates including 12/04/2017, 10/05/2017, 25/05/2017, 22/06/2017  
85 For example, sent on 15.07.2016 when previous loans were taken out on dates including 7/04/2016, 17/06/2016, 18/07/2016  
86 For example, sent on 01.07.2016 when previous loans were taken out on dates including 21/04/2016, 6/05/2016, 7/06/2016, 20/06/2016  
87 For example, sent on 09.02.2018 when previous loans were taken out on dates including 1/09/2017, 20/10/2017 (repaid on 07.02.2018)  
88 For example, sent on 10.06.2016 when previous loans were taken out on dates including 22/02/2016, 21/03/2016, 23/05/2016  
89 For example, sent on 25.11.2017 when previous loans were taken out on dates including 23/08/2017, 1/09/2017, 19/10/2017, 15/11/2017  
90 For example, sent on 08.12.2017 when previous loans were taken out on dates including 17/07/2017, 28/08/2017, 2/10/2017, 2/11/2017  
91 For example, sent on 28.11.2016 when previous loans were taken out on dates including 4/07/2016, 12/09/2016, 2/11/2016  
92 For example, sent on 22.10.2015 when previous loans were taken out on dates including 7/07/2015, 1/09/2015, 15/10/2015  
93 For example, sent on 29.12.2016 when previous loans were taken out on dates including 23/09/2016, 6/11/2016, 13/12/2016  
94 For example, sent on 29.06.2018 when previous loans were taken out on dates including 29/03/2018, 20/04/2018, 11/05/2018  
95 For example, sent on 26.01.2017 when previous loans were taken out on dates including 27/09/2016, 27/10/2016, 25/11/2016, 23/12/2016  
96 For example, sent on 24.08.2016 when previous loans were taken out on dates including 23/05/2017, 9/06/2017, 20/06/2017, 10/07/2017


7	Text message	"Still have not reapplied yet? Simply text LOAN Amount Term PIN to 8778 for your new loan! Kind regards, Ferratum Customer Service"	CC:3987										

97 For example, sent on 05.01.2016 when previous loans were taken out on dates including 23/06/2015, 5/08/2015, 1/09/2015 (repaid on 31.12.2015)

98 For example, sent on 26.08.2017 when previous loans were taken out on dates including 23/03/2017, 1/05/2017, 2/06/2017, 5/07/2017

99 For example, sent on 05.03.2016 when previous loans were taken out on dates including 1/09/2015, 7/10/2015, 8/12/2015, 27/01/2016

100 For example, sent on 7/01/2017 when previous loans were taken out on dates including 1/07/2016, 15/08/2016, 28/09/2016, 19/10/2016, 6/12/2016

101 For example, sent on 23.02.2018 when previous loans were taken out on dates including 2/11/2017, 24/11/2017, 3/01/2018, 30/01/2018

102 For example, sent on 14.07.2017 when previous loans were taken out on dates including 14/12/2016, 10/02/2017, 3/04/2017, 19/05/2017

103 For example, sent on 19.11.2015 when previous loans were taken out on dates including 24/06/2015, 19/08/2015, 5/10/2015

104 For example, sent on 31.05.2018 when previous loans were taken out on dates including 25/08/2017, 15/03/2018, 16/04/2018, 14/05/2018

105 For example, sent on 11/06/2017 when previous loans were taken out on dates including 10/02/2017, 23/03/2017, 20/04/2017, 17/05/2017

106 For example, sent on 06.03.2016 when previous loans were taken out on dates including 11/01/2016, 29/01/2016, 22/02/2016, 29/02/2016

107 For example sent on 25.03.2016 when previous loans were taken out on dates including 7/11/2016, 13/01/2017

108 For example sent on 17.06.2017 when previous loans were taken out on dates including 28/03/2017, 12/04/2017, 10/05/2017, 25/05/2017

109 For example, sent on 18.11.2016 when previous loans were taken out on dates including 18/07/2016, 31/08/2016, 22/09/2016, 21/10/2016

				<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> <li>•</li> </ul>	
8	Text message	"Great news from Ferratum! You can apply for a new loan! Please send a TXT: Loan Amount Term	CC.4936		

110 For example, sent on 03.07.2016 when previous loans were taken out on dates including 21/04/2016, 6/05/2016, 7/06/2016, 20/06/2016  
111 For example, sent on 11.02.2018 when previous loans were taken out on dates including 1/09/2017, 20/10/2017 (repaid on 07.02.2018)  
112 For example, sent on 12.06.2016 when previous loans were taken out on dates including 22/02/2016, 21/03/2016, 23/05/2016  
113 For example, sent on 27.11.2017 when previous loans were taken out on dates including 23/08/2017, 1/09/2017, 19/10/2017, 15/11/2017  
114 For example, sent on 10.12.2017 when previous loans were taken out on dates including 17/07/2017, 28/08/2017, 2/10/2017, 2/11/2017  
115 For example, sent on 30.11.2016 when previous loans were taken out on dates including 4/07/2016, 12/09/2016, 2/11/2016  
116 For example, sent on 24.10.2015 when previous loans were taken out on dates including 7/07/2015, 1/09/2015, 15/10/2015  
117 For example, sent on 31.12.2016 when previous loans were taken out on dates including 23/09/2016, 6/11/2016, 13/12/2016  
118 For example, sent on 01.07.2018 when previous loans were taken out on dates including 29/03/2018, 20/04/2018, 11/05/2018  
119 For example, sent on 28.01.2017 when previous loans were taken out on dates including 27/09/2016, 27/10/2016, 25/11/2016, 23/12/2016  
120 For example, sent on 26.08.2016 when previous loans were taken out on dates including 4/07/2016, 20/07/2016, 16/08/2016  
121 For example, sent on 07.01.2016 when previous loans were taken out on dates including 23/06/2015, 5/08/2015, 1/09/2015 (repaid on 31.12.2015)  
122 For example, sent 25.08.2017 when previous loans were taken out on dates including 23/03/2017, 1/05/2017, 2/06/2017, 5/07/2017  
123 For example, sent 28/12/2016 when previous loans were taken out on dates including 27/09/2016, 1/11/2016, 29/11/2016, 20/12/2016

		PIN to 8778. Kind regards, Ferratum Customer Service"			

124 For example, sent on 23.03.2016 when previous loans were taken out on dates including 1/09/2015, 7/10/2015, 8/12/2015, 27/01/2016  
125 For example, sent on 09/01/2017 when previous loans were taken out on dates including 1/07/2016, 15/08/2016, 28/09/2016, 19/10/2016, 6/12/2016  
126 For example, sent on 26.09.2016 when previous loans were taken out on dates including 28/03/2018, 26/04/2018, 23/05/2018, 1/09/2016  
127 For example, sent on 25.11.2015 when previous loans were taken out on dates including 24/06/2015, 19/08/2015, 5/10/2015  
128 For example, sent on 25.08.2017 when previous loans were taken out on dates including 31/05/2017, 27/06/2017, 10/07/2017, 4/08/2017  
129 For example, sent on 15/06/2017 when previous loans were taken out on dates including 10/02/2017, 23/03/2017, 20/04/2017, 17/05/2017  
130 For example, sent on 25.08.2017 when previous loans were taken out on dates including 17/05/2017, 29/05/2017  
131 For example, sent on 01.03.2016 when previous loans were taken out on dates including 11/01/2016, 29/01/2016, 22/02/2016, 29/02/2016  
132 For example sent on 23.03.2016 when previous loans were taken out on dates including 7/11/2016, 13/01/2017  
133 For example, sent on 15.09.2016 when previous loans were taken out on dates including 10/06/2016, 21/07/2016, 19/08/2016  
134 For example, sent on 17.11.2016 when previous loans were taken out on dates including 18/07/2016, 31/08/2016, 22/09/2016, 21/10/2016  
135 For example, sent on 13.07.2016 when previous loans were taken out on dates including 21/04/2016, 6/05/2016, 7/06/2016, 20/06/2016  
136 For example, sent on 26.06.2017 when previous loans were taken out on dates including 2/03/2017, 25/05/2017

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*[Handwritten signature]*


137 For example, sent on 07.10.2016 when previous loans were taken out on dates including 21/03/2016, 23/05/2016, 5/07/2016, 23/08/2016  
138 For example, sent on 18.08.2017 when previous loans were taken out on dates including 2/06/2017, 9/06/2017, 17/07/2017, 24/07/2017  
139 For example, sent on 08.02.2017 when previous loans were taken out on dates including 1/11/2016, 6/12/2016, 6/01/2017  
140 For example, sent on 01.12.2016 when previous loans were taken out on dates including 4/07/2016, 12/09/2016, 2/11/2016  
141 For example, sent on 12.11.2015 when previous loans were taken out on dates including 7/07/2015, 1/09/2015, 15/10/2015  
142 For example, sent on 05.01.2017 when previous loans were taken out on dates including 23/09/2016, 6/11/2016, 13/12/2016  
143 For example, sent on 13.10.2016 when previous loans were taken out on dates including 4/07/2016, 18/07/2016, 12/08/2016, 14/09/2016  
144 For example, sent on 24.11.2016 when previous loans were taken out on dates including 27/09/2016, 27/10/2016  
145 For example, sent on 15.09.2016 when previous loans were taken out on dates including 4/07/2016, 20/07/2016, 16/08/2016, 7/09/2016

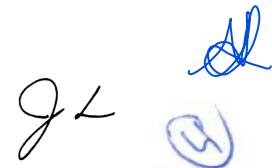
JK  
  


Schedule Three – Relevant Public Advertising

	Description	Relevant text	Document reference
1	Cover picture on Ferratum New Zealand Ltd Facebook page	% Free Loan Now: No Fees! No Interest!	CC.0392
2	Radio advertisement	*Jingle* "Usually when you get a small cash loan you get slapped with interest and fees, ouch, but your first loan from Ferratum could be interest free and have no fees. To find out more text loan to 9090. That's loan to 9090. Huh take that fees. Terms, conditions and lending criteria apply." *Jingle*	CC.0393 CC.0394
3	Radio advertisement	"Need cash in a hurry but don't want to get slapped with interest and fees. Your first loan from Ferratum could have no fees or interest. Text loan to 9090." *Jingle* "Ts and Cs and lending criteria apply".	CC.0396 CC.0395
4	Electronic banner	<p>CAUGHT SHORT!</p> <p>CAUGHT SHORT!</p> <p>Need Fast Cash Now?</p> <p>0%</p> <p>0%</p> <p>No fees or Interest on Your First Loan!</p> <p>Get a FREE LOAN now!</p> <p>FREE LOAN</p> <p>FREE LOAN</p> <p>FREE LOAN</p> <p>FREE LOAN: SUBMIT NOW: *Ts &amp; Cs apply</p>	CC.0397 – CC.0402
5	Electronic banner	<p>Need Instant Cash? No Fees or Interest on your first loan! SUBMIT NOW: just cash: <a href="http://www.justcash.co.nz">www.justcash.co.nz</a>: Terms &amp; Conditions apply</p> <p>Get a FREE LOAN now!</p> <p>FREE LOAN</p>	CC.0403 CC.0404

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		0% Repay only what you borrow! 0%		
6	Electronic banner	just cash: www.justcash.co.nz: Need Instant Cash? No Fees or Interest on your first loan! Terms & Conditions apply: SUBMIT NOW Need Instant Cash? Get a FREE LOAN now! FREE LOAN (x3) 0% (x3) 0% Repay only what you borrow!		CC.0405 CC.0406 CC.0408 CC.0409 CC.0411 CC.0412 CC.0413 CC.0415 CC.0416 CC.0418
7	Electronic banner	just cash www.justcash.co.nz just cash www.justcash.co.nz Need Instant Cash? (x3) Get a FREE LOAN now! FREE LOAN (x4) 0% Repay only what you borrow! 0% (x4) Just cash: Ts & Cs apply: SUBMIT NOW		CC.0407 CC.0410 CC.0414 CC.0417 CC.0419 CC.0422
8	Electronic banner	Need Instant Cash? No Fees or Interest on your first loan! www.justcash.co.nz: Terms & Conditions apply: SUBMIT NOW: just cash Cash? Get a FREE LOAN now! FREE LOAN 0% Repay only what you borrow!		CC.0420 CC.0421

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9	Electronic banner	0% Need Fast Cash Now? Terms & Conditions Apply No Fees: No Interest on first loan Simple, Fast & Friendly Simple cash co.nz: SUBMIT NOW SIMPLE CASH	CC.0423
10	Electronic banner	Need Fast Cash Now? Fast Now Fees Interest Simple, Fast & Friendly Cash SIMPLE CASH No Fees & No Interest on first loan: Terms & Conditions Apply	CC.0424 – CC.0440
11	Electronic banner	SIMPLE CASH Free Loan* Terms and conditions apply. Apply Online in minutes We will process your application Receive your loan when approved! Re-Apply by TXT after repaying the loan APPLY NOW Tel: 09 915 0766 Fax: 09 915 0768 info@simplecash.co.nz	CC.2118 - CC.2149
12	Electronic banner	Ferratum: More than money to everyone: www.ferratum.co.nz: CAUGHT SHORT! Need Fast Cash Now? SUBMIT NOW * Terms & Conditions apply CAUGHT SHORT? 0% No Fees Or Interest On Your First Loan! 0%	CC.2150 - CC.2160

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		Get a FREE LOAN now! FREE LOAN (x2)	
13	Billboard	TXT "GET" TO 9090: 0% FEES OR INTEREST	CC.0391
14	Bus billboard	0% FEES OR INTEREST ON YOUR FIRST CASH LOAN!: TXT "INFO" TO 9090: Ferratum: <a href="http://www.ferratum.co.nz">www.ferratum.co.nz</a>	CC.2117
15	Electronic banner	TXT "GET" TO 9090: 0% FEES OR INTEREST ON YOUR FIRST CASH LOAN! *Loan suitable for short term only. Lending criteria & T's and C's apply	CC.2116

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*(3)*

## Appendix Two

### Statement of Defence

In response to the plaintiff's fourth amended statement of claim dated [ ] May 2020, the defendant by its solicitor says:

1. The Parties
  - 1.1 It admits paragraph 1.1.
  - 1.2 It admits paragraph 1.2, save that it says that its registered office is (as of 1 July 2019): C/- Hayes Knight Limited, Level 1, 5 William Laurie Place, Albany, Auckland, 0632, New Zealand.
  - 1.3 It admits paragraph 1.3.
2. The relevant facts
  - 2.1 It admits paragraph 2.1.
  - 2.2 It admits paragraph 2.2.
  - 2.3 It admits paragraph 2.3.
  - 2.4 It admits paragraph 2.4.  
*Ferratum's advertising*
  - 2.5 It admits paragraph 2.5.
  - 2.6 It admits paragraph 2.6.
  - 2.7 It admits paragraph 2.7.
  - 2.8 It admits paragraph 2.8.  
*Ferratum's loan approval process: new borrowers*
  - 2.9 It admits paragraph 2.9.
  - 2.10 It admits paragraph 2.10.
  - 2.11 In admits paragraph 2.11, but says further that Ferratum's loan handling staff used a number of sources of information in deciding whether or not to approve a loan application, and in what amount.
  - 2.12 It denies paragraph 2.12.  
*Ferratum's loan approval process: repeat borrowers*

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- 2.13 It admits paragraph 2.13.
- 2.14 It admits paragraph 2.14 but says further that:
- a) at all times the Standard Terms required Borrowers to provide true, correct and complete information, including at the point of applying for loans; and
  - b) from June 2016 onwards, prior to issuing any funds, it would send Repeat Borrowers an email referring customers to the Standard Terms and asking Repeat Borrowers to confirm that their application details are correct and up to date, and a text message asking them to read the email that had been sent and to contact Ferratum if their details had changed.
- 2.15 It admits paragraph 2.15, but repeats paragraphs 2.14(a) and (b) above.
- 2.16 In relation to paragraph 2.16, it admits that the extent to which Ferratum required Repeat Borrowers to update their financial information when applying for new loans changed over time, but repeats paragraphs 2.14(a) and (b) above.
- 2.17 In relation to paragraph 2.17, it admits that Repeat Borrowers could be offered a larger loan if they had previously repaid a loan but denies that this was regardless of a change in customers' circumstances.
- 2.18 In relation to paragraph 2.18, it has insufficient knowledge of which (if any) Repeat Borrowers that paragraph refers to, and therefore denies that paragraph.

*Loan Contract*

- 2.19 It admits paragraph 2.19 but repeats paragraph 2.14 (a) and (b) above.
- 2.20 It admits paragraph 2.20.
- 2.21 It admits paragraph 2.21.
3. First cause of action: Failure to make reasonable inquiries
- 3.1 It admits paragraph 3.1.
  - 3.2 It denies paragraph 3.2.
  - 3.3 It is not required to plead to paragraph 3.3.
4. Second cause of action: Failure to exercise care in advertising
- 4.1 It admits paragraph 4.1.
  - 4.2 It denies paragraph 4.2.

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- 4.3 It is not required to plead to paragraph 4.3.
- 5. Third cause of action: Failure to assist borrowers
  - 5.1 It admits paragraph 5.1.
  - 5.2 It is not required to plead to paragraph 5.2.

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## Appendix Three

### Notice of discontinuance of fourth and fifth causes of action

To: The Registrar of the High Court at Auckland

- 1 The plaintiff, the Commerce Commission, discontinues the fourth and fifth causes of action in this proceeding against Ferratum New Zealand Limited.
- 2 A Fourth Amended Statement of Claim, which deletes the fourth and fifth causes of action, is **enclosed** with this notice.
- 3 The defendant, Ferratum New Zealand Limited, consents to the discontinuance of the fourth and fifth causes of action in this proceeding with no issue as to costs.

Date:

.....  
L C A Farmer | V Fowler  
Solicitor for the Plaintiff

.....  
T Fitzgerald | S East | R Massey  
Solicitor for the Defendant

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## Appendix Four

### Joint memorandum of counsel regarding hearing for interlocutory application for declaratory order

May it please the Court:

- 1 The Commerce Commission has filed an interlocutory application for declaratory order on admission of facts, pursuant to r 15.15 High Court Rules. That application relies on the admissions made by Ferratum in paragraphs 3.1, 4.1, and 5.1 of its Statement of Defence, filed as part of a negotiated settlement between the parties. The basis for the application is further set out in the affidavit of *[to insert]*.
- 2 The application for a declaratory order is not opposed by Ferratum. In light of that fact, pursuant to r 7.37 High Court Rules, the Court may grant the order sought with or without a hearing.
- 3 The parties seek that the order sought be made without a hearing. However, in the event the Court considers it would be assisted by written and oral submissions, then the parties agree that a one hour hearing would be sufficient, with timetabling directions for the exchange of synopses of submissions.
- 4 Accordingly, the parties seek:
  - (a) In the event the Court is prepared to make the order sought on the papers:
    - (i) The declaratory order set out at paragraphs 3.3, 4.3 and 5.2 of the Fourth Amended Statement of Claim; and
    - (ii) No order for costs.
  - (b) Or, in the event the Court wishes to convene a hearing to consider the application, the parties seek the following orders:
    - (i) The Registry to consult with the parties to set a one hour hearing on the first available date;
    - (ii) Commission to file its synopsis of submissions ten working days before the hearing, in accordance with r 7.39(2)(a);
    - (iii) Ferratum to file any synopsis of submissions five working days before the hearing, in accordance with r 7.39(5).

#### Discontinuance of the fourth and fifth causes of action

- 5 The Commission has filed a notice of discontinuance in respect of the fourth and fifth causes of action.

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6 Ferratum has consented to the discontinuance of the fourth and fifth causes of action in this proceeding with no issue as to costs.

Date:

.....  
L C A Farmer | V Fowler  
Solicitor for the Plaintiff

.....  
T Fitzgerald | S East | R Massey  
Solicitor for the Defendant

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## Appendix Five

### Undertakings to the Commerce Commission under s 113 of the Credit Contracts and Consumer Finance Act 2003

#### 1 Persons giving undertakings

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- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by Ferratum New Zealand Limited (**Ferratum**), a company having its registered office at Level 2, 132 Hurstmere Road, Takapuna, Auckland.

#### 2 Background

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- 2.1 The background to this matter is set out within a Settlement Agreement between the Commission and Ferratum dated *[insert date]*.

#### 3 Undertakings

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- 3.1 Ferratum undertakes to the Commission not to:
- (a) advertise high cost consumer credit contracts without including a prominent statement that a high cost consumer credit contract should not be used for long term or regular borrowing, and is only suitable to address temporary short term cash needs;
  - (b) send messages directly to borrowers who have an existing loan with Ferratum, without regard to their financial position, requirements, or objectives, in which Ferratum encourages those borrowers to take out a further high cost consumer credit contract with Ferratum;
  - (c) send messages directly to borrowers who have repaid a loan to Ferratum within the last 45 days, without regard to their financial position, requirements, or objectives, in which Ferratum encourages those borrowers to take out a further high cost consumer credit contract with Ferratum; and
  - (d) send messages directly to borrowers who have, in the past six months, failed to make repayments to Ferratum as initially agreed under the credit contract, without regard to their financial position, requirements, or objectives, in which Ferratum encourages those borrowers to take out a further high cost consumer credit contract with Ferratum.

#### **4 Effect of the Undertakings**

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- 4.1 The Undertakings are Court enforceable undertakings in terms of s 113(aa) of the CCCFA that Ferratum will not engage in conduct that is the subject of proceedings CIV-2018-404-1032.

#### **5 Commencement of the Undertakings**

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- 5.1 The Undertakings come into effect when:
- (a) executed by Ferratum; and
  - (b) the Commission confirms its acceptance of the Undertakings.

#### **6 Duration of the Undertakings**

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- 6.1 These Undertakings will continue to have effect for five years from the date of execution.

#### **7 Compliance with the Undertakings**

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- 7.1 If Ferratum becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 7.2 For the avoidance of doubt, nothing in paragraph 7.1 above prevents the Commission from directly seeking any information from Ferratum at any time during the course of any criminal and/or civil proceedings for the purpose of checking compliance with the Undertakings.

#### **8 Miscellaneous**


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- 8.1 No amendment to the Undertakings will be effective unless it is in writing, executed by Ferratum, and signed as accepted by the Commission.
- 8.2 These Undertakings are properly executed if each of Ferratum and the Commission signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by Ferratum or by the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 8.3 Ferratum acknowledges that:
- (a) The Commission will make the Undertakings publically available including by publishing them on the Commission's enforcement response register on its website.

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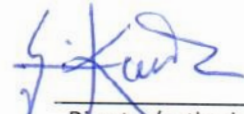
  


- (b) The Commission may, from time to time, make public reference to the Undertakings including in new media statements and in the Commission's publications.
- (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the CCCFA or any other statute or law.

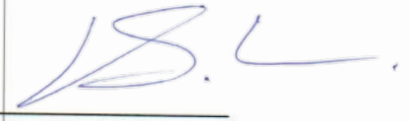
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**Execution**

Signed by and on behalf of Ferratum New Zealand Limited


  
SAMI KALLIOZA

Director/authorised signatory

  
James Logan

Name

*In the presence of:*

  
Signature of witness *Pedro Santos*

WJETIL SANDERMOEN Pedro Santos  
Name of witness

Managing Director Responsible manager  
Occupation

ZUG, SWITZERLAN Perth, Australia  
City/town of residence

04.05.2020 05/05/2020  
Date

## Acceptance

**Signed** by and on behalf of the Commerce  
Commission by:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
New Zealand Commerce Commission

*In the presence of:*

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
City/town of residence

\_\_\_\_\_  
Date

## Appendix Six

**To:** The Registrar of the High Court at Auckland

And

**To:** The Defendant

### **This document notifies you that:**

- 1 The applicant, the Commission, applies to the court for a declaratory order as sought at paragraphs 3.3, 4.3 and 5.2 of the Fourth Amended Statement of Claim (**Claim**), in the following terms:
  - (b) a declaration that Ferratum's conduct in paragraph 3.1 of the Claim has breached ss 9C(2)(a)(ii) and 9C(3)(a) of the CCCFA;
  - (c) a declaration that Ferratum's conduct in paragraph 4.1 of the Claim has breached s 9C(2)(a)(i) and s 9C(3)(b)(i) of the CCCFA; and
  - (d) a declaration that Ferratum's conduct in paragraph 5.1 of the Claim has breached ss 9C(3)(b)(i), 9C(3)(b)(ii) and 9C(3)(b)(iii) of the CCCFA.
- 2 The grounds on which the order is sought are as follows:
  - (a) The Defendant has admitted at paragraphs 3.1, 4.1 and 5.1 of its Statement of Defence that it breached those sections of the CCCFA;
  - (b) The admitted facts amount to breaches of ss 9C(2)(a)(i) and (ii), 9C(3)(a) and (b), and 9C(2)(a)(i) and (ii);
  - (c) Declaratory relief is available for breaches of the CCCFA, even when there has been a settlement between the parties;
  - (d) It is in the interests of justice to grant the declaratory order sought and to give effect to the negotiated settlement;
  - (e) There is a strong public interest in the making of the declaratory order in this case;
  - (f) Upon the grounds set out in the affidavit of Mark John Atwell sworn on **[date]** 2020 and filed with this application; and
  - (g) The application for a declaratory order is not opposed by Ferratum as set out in the joint memorandum of counsel filed with this application.
- 3 This application is made in reliance on:
  - (a) Rule 15.15 High Court Rules; and



(b) *Commerce Commission v ANZ Bank New Zealand Limited* [2015] NZHC 1168.

Date: 2020

.....  
L C A Farmer/V Fowler  
Solicitor for the Plaintiff

