

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 SEAN M. ROONEY
Assistant Chief Counsel
4 MIRANDA LEKANDER
Assistant Chief Counsel
5 DANIELLE A. STOUMBOS (State Bar No. 264784)
Senior Counsel
6 KELLY SUK (State Bar No. 301757)
Senior Counsel
7 Department of Financial Protection and Innovation
320 West 4th Street, Suite 750
8 Los Angeles, California 90013
Telephone: (213) 503-2046
9 Facsimile: (213) 576-7181

10 Attorneys for Complainant

11 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
12 OF THE STATE OF CALIFORNIA
13

14 In the Matter of:)
15 THE COMMISSIONER OF FINANCIAL)
16 PROTECTION AND INNOVATION,)
17 Complainant,) CONSENT ORDER
18 v.)
19 FERNISHED, INC. d/b/a FERNISH)
20 Respondent.)
21 _____)

22 This Consent Order (Order) is entered into between the Commissioner of the Department of
23 Financial Protection and Innovation (Commissioner) and Farnished, Inc. doing business as Farnish
24 (Farnish) (collectively the Parties) and is made with respect to the following facts:

25 I.

26 **Recitals**

27 The Commissioner’s jurisdiction over the California Consumer Financial Protection Law
28

1 A. The Commissioner has jurisdiction over covered persons who engage, have engaged,
2 and propose to engage in offering and providing a consumer financial product or service in
3 California and affiliated service providers under the California Consumer Financial Protection Law
4 (CCFPL) (Fin. Code, § 90000 et seq.).

5 B. A “covered person” is “[a]ny person that engages in offering or providing a consumer
6 financial product or service to a resident of this state.” (Fin. Code, § 90005, subd. (f)(1).)

7 C. A “consumer financial product or service” is generally a “financial product or service
8 that is delivered, offered, or provided for use by consumers primarily for personal, family, or
9 household purposes.” (Fin. Code, § 90005, subd. (e)(1).)

10 D. A “financial product or service” includes, among other things, extending or brokering
11 certain leases of personal or real property that are the functional equivalent of purchase finance
12 arrangements and are on a non-operating basis. (Fin. Code, § 90005, subd. (k)(2).)

13 E. Under the CCFPL, it is unlawful for a covered person or service provider to
14 “[e]ngage, have engaged, or propose to engage in any unlawful, unfair, deceptive, or abusive act or
15 practice with respect to consumer financial products or services.” (Fin. Code, § 90003, subd. (a)(1)).

16 F. Under the CCFPL, it is also unlawful for a covered person or service provider to
17 “offer or provide to a consumer any financial product or service not in conformity with any
18 consumer financial law or otherwise commit any act or omission in violation of a consumer financial
19 law.” (Fin. Code, § 90003, subd. (a)(2)).

20 *Fernish offers subscription agreements to California consumers*

21 G. Fernish is a Delaware corporation with a business address at 8075 West 3rd Street,
22 Suite 400, Los Angeles, California 90048, and was founded in 2017.

23 H. Michael Barlow is Fernish’s founder and chief executive officer.

24 I. Fernish operates a website at www.fernish.com, and advertises home furnishings with
25 “rent-to-own flexibility. Fall in love with something? Buy it out and make it your own! All monthly
26 payments go toward ownership.”
27
28

1 J. Fernish offers its home furnishings to California consumers in exchange for a
2 monthly fee using Subscription Agreements. Consumers may not cancel the Subscription Agreement
3 during the initial term without incurring a penalty.

4 K. However, at the end of the initial term, consumers have four options; they may: (1)
5 purchase the items; (2) cancel the Subscription Agreement without penalty (if cancelled timely) by
6 returning the items; (3) continue to rent the items; or (4) swap the items for other furnishings for a
7 fee (the Subscription Agreements).

8 Fernish’s Subscription Agreements were rental purchase agreements under the Karnette Rental-
9 Purchase Act

10 L. California’s Karnette Rental-Purchase Act (Karnette Act) applies to certain rental
11 purchase agreements. (Civ. Code, § 1812.622, subd. (d)). The Karnette Act contains important
12 procedural and substantive requirements to “ensure that consumers are adequately informed of all
13 relevant terms” before entering into a rental-purchase agreement. (Civ. Code, § 1812.621).

14 M. A rental purchase agreement includes an agreement where a consumer rents or leases
15 personal property for consideration for an initial term that may be renewed or otherwise extended, if
16 under the terms of the agreement the consumer acquires an option or other legally enforceable right
17 to become owner of the property. (Civ. Code, § 1812.622, subd. (d)).

18 N. At all relevant times, Fernish’s Subscription Agreements were rental purchase
19 agreements under the Karnette Act because the Subscription Agreements leased personal property to
20 consumers for consideration, for an initial term that could be renewed, and Fernish’s consumers had
21 the legally enforceable right to become the owner of the property.

22 O. The Karnette Act is a “consumer financial law” under Financial Code section 90005,
23 subdivision (d) because it directly regulates the manner, content, or terms and conditions of any
24 rental purchase transaction in California.

25 Commissioner’s findings

26 P. At all relevant times, Fernish was a “covered person” that offered “consumer
27 financial products or services” under the CCFPL.

28

1 Q. The Commissioner finds that at all relevant times, Fernish’s Subscription Agreements
2 were rental purchase agreements under the Karnette Act, and “consumer financial products and
3 services” under the CCFPL.

4 R. The Commissioner finds that at all relevant times, Fernish failed to comply with the
5 Karnette Act in connection with its Subscription Agreements by:

6 i. failing to disclose whether the property subject to the rental-purchase
7 agreement is new or used in violation of Civil Code section 1812.623, subdivision (a)(2);

8 ii. failing to clearly and conspicuously provide the Karnette Act’s mandated
9 contract disclosures, in violation of Civil Code section 1812.623;

10 iii. including prohibited provisions in rental purchase agreements in violation of
11 Civil Code section 1812.624;

12 iv. charging a late fee that exceeds the amount permitted under Civil Code
13 section 1812.626, subdivision (e);

14 v. failing to include required information in advertisements in violation of Civil
15 Code section 1812.630; and

16 vi. failing to adhere to the Karnette Act’s prescribed formula for calculating the
17 maximum cash price charged to consumers on certain products, in violation of Civil Code section
18 1812.644.

19 However, the Commissioner finds that Fernish did not charge any finance fees permitted
20 under section 1812.644, subdivisions (c) and (d).

21 S. The Commissioner finds that at all relevant times, Fernish’s failure to comply with
22 the Karnette Act in connection with its Subscription Agreements violated the CCFPL by:

23 i. violating Financial Code section 90003, subdivision (a)(1) by engaging in
24 unlawful acts; and

25 ii. violating Financial Code section 90003, subdivision (a)(2) by offering to
26 provide to a consumer any financial product or service not in conformity with any consumer
27 financial law or otherwise commit any act or omission in violation of a consumer law.
28

1 T. Fernish has cooperated with the Commissioner’s investigation.

2 U. Fernish, by entering into this Consent Order, neither admits nor denies that it has
3 violated any California law or regulation.

4 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
5 forth herein, the Parties agree as follows:

6 **II.**

7 **Terms and Conditions**

8 1. Purpose. This Consent Order resolves the issues before the Commissioner, described
9 in Paragraphs P through S above, in a manner that avoids the expense of a hearing and other
10 possible court proceedings, protects consumers, is in the public interest, and is consistent with the
11 purposes and provisions of the CCFPL.

12 2. Desist and Refrain Order. Pursuant to Financial Code section 90015, subdivision
13 (d)(1), Fernished, Inc. d/b/a Fernish is hereby ordered to desist and refrain from:

14 i. violating Financial Code section 90003, subdivision (a)(1) by engaging,
15 having engaged, or proposing to engage in unlawful, unfair, deceptive, or abusive acts, including,
16 but not limited to, the unlawful acts described in Paragraphs P through S above (failing to comply
17 with the Karnette Act in connection with its Subscription Agreements); and

18 ii. violating Financial Code section 90003, subdivision (a)(2) by offering to
19 provide to a consumer any financial product or service not in conformity with any consumer
20 financial law or otherwise commit any act or omission in violation of a consumer law, as described
21 in Paragraphs P through S above.

22 Fernish must Desist and Refrain from charging or collecting any late fees under its
23 Subscription Agreements that exceed the amount permitted under Civil Code section 1812.626,
24 subdivision (e) as of the effective date of this Consent Order as defined in paragraph 26 (Effective
25 Date.

26 All other provisions of the Desist and Refrain Order will become operative by no later than
27 July 1, 2022 to allow time for Fernish to resolve technological issues and otherwise come into
28 compliance.

1 3. Customer Refunds. Pursuant to Financial Code section 90012, subdivision (b)(2),
2 Fernish hereby agrees to issue refunds, pursuant to the instructions below, for all late fees it collected
3 from California customers in excess of the amount permitted under Civil Code section 1812.626,
4 subdivision (e), from January 1, 2018 through the Effective Date, and which Fernish had not already
5 provided a consumer refund, by no later than sixty calendar days after the Effective Date (Refunds).

6 i. All Refunds shall be paid to via credit chargeback to the California customer’s
7 credit/bank account of record listed in Fernish’s records. Should the credit chargeback be rejected or
8 otherwise fails to process within fifteen (15) business days, Fernish, directly or through an agent,
9 shall send a refund check by first class mail to the California customer’s last known postal mail
10 address listed in Fernish’s records, unless new address information has been provided by the
11 customer pursuant to Paragraph 4. Each Refund check shall be mailed with a request for address
12 correction on the outside of each envelope. Fernish, directly or through an agent, shall re-send all
13 Refund checks returned by the United States Postal Service with a forwarding or corrected address.

14 ii. No later than seventy calendar days after the Effective Date, notice of the
15 refund payments shall be sent to the Department at the Notice address in Paragraph 23. With this
16 notice, Fernish shall also provide a report containing the customer’s name, address, and amount of
17 the refund.

18 4. Notice to Consumers. At least fourteen business days before the issuance of the
19 Refunds, Fernish shall send a notice to each customer owed a refund for which Fernish has such
20 contact information (Consumer Notice). Such Consumer Notice shall be sent to the customer’s last
21 known e-mail address. The Customer Notice shall say:

22 Pursuant to a settlement with the California Department of Financial Protection
23 and Innovation, Fernish is issuing you a refund of late fees it charged you in
24 excess of California Civil Code section 1812.626, subdivision (e). This refund
25 will be credited to your credit or debit card account on file with Fernish. If this
26 refund cannot be successfully processed within fifteen (15) business days, we will
27 send the refund by check via U.S. Mail to the address you provided to Fernish. If
28 you do not receive the refund via your credit or debit account or need to update

1 your credit/debit account information or address or to confirm your existing
2 address information, please contact us immediately at (310) 954-2005 or via e-
3 mail at info@fernish.com.

4 The Customer Notice shall not be accompanied by any other documents or text
5 when emailed to consumers unless first approved by the Commissioner.

6 5. No Consumer Waiver. Payment of a Refund to any consumer under this Consent
7 Order may not be conditioned on that consumer waiving any right.

8 6. Handling of Uncashed Checks. Fernish shall escheat any returned or unclaimed
9 Refunds to the California State Controller’s Office within the period provided by Code of Civil
10 Procedure section 1520 of the Unclaimed Property Law (Code of Civ. Proc., § 1500 et seq.). In the
11 event of escheat, notice shall be sent within five business days to the Department at the Notice
12 address in Paragraph 23, and shall include a copy of any escheatment report(s) submitted to the
13 California State Controller.

14 7. Investigative Costs. Fernish shall pay the Commissioner’s Investigative Costs
15 (Costs) in the amount of \$10,000.00 no later than 15 days after the Effective Date. The Costs must
16 be made payable in the form of a cashier’s check or Automated Clearing House deposit to the
17 Department of Financial Protection and Innovation and transmitted to the attention of Accounting –
18 Litigation, at the Department of Financial Protection and Innovation, 2101 Arena Boulevard,
19 Sacramento, California 95834. Notice of the payment must be concurrently sent to Danielle A.
20 Stoumbos, Senior Counsel, Enforcement Division, via electronic mail at:
21 Danielle.Stoumbos@dfpi.ca.gov.

22 8. Semi-Annual Reports. Fernish shall submit reports to the Commissioner, as follows:

- 23 (a) Report due July 31, 2022 shall include data from January 1, 2022 through June 30, 2022.
24 (b) Report due January 31, 2023 shall include data from July 1, 2022 through December 31,
25 2022.
26 (c) Report due July 31, 2023, shall include data from January 1, 2023 through June 30, 2023.
27 (d) Report due January 31, 2024 shall include data from July 1, 2023 through December 31,
28 2023.

1 For the report under subsection (a) above, the report shall contain the following:

- 2 i. a description of all financial products and services Fernish offered during the
3 reporting Period;
- 4 ii. a description of which consumer financial protection laws apply to each
5 financial product or service offered;
- 6 iii. a template of all contracts used in connection with all financial products and
7 services offered by Fernish during the reporting Period;
- 8 iv. a template of all disclosures provided to consumers during the reporting
9 Period; and
- 10 v. a list of all transactions during the reporting period including the customer’s
11 name; customer’s contact information (address, phone number, e-mail address); description of the
12 current order state (e.g. rented, purchased, swapped, etc.); initial contract date; all fees collected
13 (including. monthly rental or subscription fee, late fee, finance charge, etc.);

14 For the reports under subsections (b), (c), and (d) above, each report shall contain the
15 following:

- 16 i. a description of all financial products and services Fernish offered during the
17 reporting Period;
- 18 ii. a description of which consumer financial protection laws apply to each
19 financial product or service offered;
- 20 iii. a template of all contracts used in connection with all financial products and
21 services offered by Fernish during the reporting Period;
- 22 iv. a template of all disclosures provided to consumers during the reporting
23 Period;
- 24 v. a list of all transactions during the reporting period including the customer’s
25 name; customer’s contact information (address, phone number, e-mail address); description of the
26 item; whether the item was rented, purchased, swapped, etc.; initial contract date; Fernish’s cost to
27 purchase the item from the supplier; any additional costs related to the item in accordance with the
28 defined “Lessor’s Cost” from the Karmette Act; all fees charged broken out by fee type (i.e. monthly

1 rental or subscription fee, late fee, finance charge, etc.); all fees collected; and the payment history
2 for each transaction;

3 and

4 vi. any other information the Commissioner shall reasonably request.

5 The Report shall be mailed on an electronic thumb or flash drive or other electronic version to the
6 Commissioner’s agent, Danielle A. Stoumbos, Senior Counsel,
7 Enforcement Division at 320 West 4th Street, Suite 750, Los Angeles, California 90013. A copy
8 shall also be emailed to Danielle A. Stoumbos at: Danielle.Stoumbos@dfpi.ca.gov.

9 9. Waiver of Hearing Rights. Fernish acknowledges that the Commissioner is ready,
10 willing, and able to proceed with the filing of an administrative enforcement action on the charges
11 contained in this Consent Order. Fernish hereby waives the right to any hearings, and to any
12 reconsideration, appeal, or other right to review which may be afforded pursuant to the CCFPL, the
13 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
14 provision of law, including those rights under Financial Code section 90015, and to judicial review
15 of this matter pursuant to Code of Civil Procedure section 1094.5 with respect to the issuance of this
16 Order and the Desist and Refrain Order contained herein. Fernish further expressly waives any
17 requirement for the filing of an action pursuant to Government Code section 11415.60, subdivision
18 (b). By waiving such rights, Fernish effectively consents to this Consent Order and all the terms
19 becoming final.

20 10. Information Willfully Withheld or Misrepresented. This Consent Order may be
21 revoked, and the Commissioner may pursue any and all remedies available under law against
22 Fernish if the Commissioner discovers that Fernish knowingly or willfully withheld or
23 misrepresented information used for and relied upon in this Consent Order.

24 11. Failure to Comply with Consent Order. If Fernish fails to comply with any term of
25 the Consent Order it shall be deemed a breach of this Consent Order and the Commissioner may
26 institute proceedings for any and all violations of the CCFPL or any other law under the
27 Commissioner’s jurisdiction, including those violations resolved under this Consent Order. Fernish
28 waives any notice and hearing rights which may be afforded under the CCFPL, the California

1 Administrative Procedure Act, the California Code of Civil Procedure or any other provision of law
2 in connection therewith.

3 12. Future Actions by the Commissioner. The Commissioner reserves the right to bring
4 any future actions against Fernish, or any of its partners, owners, officers, shareholders, directors,
5 employees or successors for any and all unknown violations of the CCFPL.

6 13. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
7 ability to assist any other government agency (whether city, county, state, or federal) with any
8 administrative, civil or criminal action brought by that agency against Fernish or any other person
9 based upon any of the activities alleged in this matter or otherwise.

10 14. Headings. The headings to the paragraphs of this Consent Order are inserted for
11 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
12 the provisions hereof.

13 15. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
14 interest.

15 16. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
16 Consent Order it has relied solely on the statements set forth herein and the advice of its own
17 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
18 Order it has placed no reliance on any statement, representation, or promise of any other party, or
19 any other person or entity not expressly set forth herein, or upon the failure of any party or any
20 other person or entity to make any statement, representation or disclosure of anything whatsoever.
21 The Parties have included this clause: (1) to preclude any claim that any party was in any way
22 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
23 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

24 17. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
25 this Consent Order will be valid or binding unless it is in writing and signed by each of the Parties.
26 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
27 provision. No waiver by either party of any breach of, or of compliance with, any condition
28

1 or provision of this Consent Order by the other party will be considered a waiver of any other
2 condition or provision or of the same condition or provision at another time.

3 18. Full Integration. This Consent Order is the final written expression and the complete
4 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
5 between the Parties with respect to the subject matter hereof, and supersedes all prior or
6 contemporaneous agreements, negotiations, representations, understandings, and discussions
7 between and among the Parties, their respective representatives, and any other person or entity with
8 respect to the subject matter covered hereby.

9 19. Governing Law. This Consent Order will be governed by and construed in
10 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
11 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
12 forum to the maintenance of such action or proceeding in such court.

13 20. Counterparts. This Consent Order may be executed in one or more separate
14 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
15 together constitute a single document.

16 21. Effect Upon Future Proceedings. If Fernish applies for any license, certificate,
17 registration, permit, or qualification under the Commissioner’s current or future jurisdiction, or is
18 the subject of any future action by the Commissioner to enforce this Consent Order, then the subject
19 matter hereof shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

20 22. Voluntary Agreement. Fernish enters into this Consent Order voluntarily and without
21 coercion and acknowledges that no promises, threats or assurances have been made by the
22 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each represent
23 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
24 without any duress or undue influence of any kind from any source.

25 23. Notice. Any notice required under this Consent Order shall be provided to each party
26 at the following addresses:

27 To Fernish: Michael Barlow, CEO
28 Fernished, Inc.
8075 W. 3rd Street, Suite 400
Los Angeles, California 90048

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

With a copy to:

Victor Fu, Partner
Prospera Law, LLP
1901 Avenue of the Stars, Suite 480
Los Angeles, California 90067
vfu@prosperalaw.com

To the Commissioner:

Danielle A. Stoumbos, Senior Counsel
Department of Financial Protection and
Innovation
320 West 4th Street, Suite 750
Los Angeles, California 90013
Danielle.Stoumbos@dfpi.ca.gov

24. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

25. Public Record. Fernish hereby acknowledges that this Consent Order is and will be a matter of public record.

26. Effective Date. This Consent Order shall become final and effective when signed by all Parties and delivered by the Commissioner’s agent via e-mail to Fernish’s agent, Victor Fu, counsel for Fernish at, vfu@prosperalaw.com.

///

///

1 27. Authority to Sign. Each signatory hereto covenants that he/she possesses all
2 necessary capacity and authority to sign and enter into this Consent Order and undertake the
3 obligations set forth herein. q

4
5 Dated: January 10, 2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and
Innovation

6
7
8 By: _____
9 Mary Ann Smith
10 Deputy Commissioner of Enforcement

11 Dated: December 22, 2021

FERNISHED, INC. d/b/a FERNISH

12 By: _____
13 Michael Barlow, Chief Executive Officer

