

Appendix J

Sample Notices Triggering Self-Help Remedies

**J.1 Sample Notice of Rejection or Revocation of Acceptance**

[date]

[dealer]<sup>1</sup>  
[address]

[creditor]  
[address]

Dear Sir/Madam:

I reject or revoke my acceptance [in the alternative, confirm my rejection or revocation of acceptance] of the 19\_\_\_\_\_ [make and model] I purchased from [dealer] on [date].

As you know, I have had many serious problems with the car. Specifically [itemize problems and defects]:<sup>2</sup>

[If applicable: Although I have returned the car to \_\_\_\_\_ [dealer] \_\_\_\_\_ [number] times on \_\_\_\_\_ [dates returned for repair], the defects have not been satisfactorily repaired. Because of such defects the car does not conform to the applicable warranties and/or other contract requirements and this nonconformity substantially impairs the car’s value to me.

[If applicable: Although I have returned the car to \_\_\_\_\_ [dealer] \_\_\_\_\_ [number] times on \_\_\_\_\_ [date] \_\_\_\_\_ [dealer] has refused to take back the car [and/or] return amounts paid by me for the car.]

As I have already informed you [on \_\_\_\_\_/many times], these problems have caused me great expense, inconvenience, and aggravation [describe in detail]:

Because I am cancelling the sale, I am entitled to a return of all money paid toward the purchase price, including;

[as applicable]

- \$ \_\_\_\_\_ down payment
- \$ \_\_\_\_\_ value of the car I traded in
- \$ \_\_\_\_\_ amount of payments I have paid
- \$ \_\_\_\_\_ cost of credit life insurance
- \$ \_\_\_\_\_ cost of credit property insurance
- \$ \_\_\_\_\_ finance charge
- \$ \_\_\_\_\_ [fees—specify]
- \$ \_\_\_\_\_ TOTAL

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1 The advocate may want to send this letter to the manufacturer as well as the dealer. See § 8.3.8, *supra*.  
 2 A rejection notice must identify the defects. Most courts have held that a notice of revocation of acceptance needs to identify the defects. See §§ 8.2.5.3, 8.3.6.3, *supra*. If the notice of revocation of acceptance identifies the defects, it is probably best to use language such as “include but are not limited to” in order to make it clear that the list is not exclusive.

[*If applicable*: I am also entitled to the following incidental and consequential damages: [*itemize such items as storage costs, substitute transportation, costs of inspection, etc.*]]

Under \_\_\_\_\_[*U.C.C. § 2-711(3)*] I have a security interest in the car for return of the total amount above, plus expenses in handling and inspecting the car.

[*ALTERNATIVE 1—if the buyer must continue to use the car*]:

Until you pay me this amount, I will hold the car and use it to the extent necessary to preserve it, to protect my security interest, and to minimize your damages. Moreover, I need return of the money I paid you before I can buy a substitute.

Any attempt by you or your agents to repossess the car will be wrongful and will subject you to liability for conversion and for wrongful repossession under \_\_\_\_\_ [*U.C.C. §§ 9-503 and 9-507*].

[*ALTERNATIVE 2—if the buyer is returning the car to the dealer*]:

I am returning the car to [dealer] and demand the return of my \$ \_\_\_\_\_ at this time.

[*ALTERNATIVE 3—if the car is inoperable or cannot be driven safely*]:

At this time, due to the above-described defects, the car is inoperable [*in the alternative: cannot be safely driven*]. It is parked at [address] and you may pick it up at [*specify times/dates/at any time*].

[*ALTERNATIVE 4—if the buyer plans to sell the car. Caution: Read § 8.4.5, infra carefully before considering this alternative*]:

I will hold the car for ten days until [date], after which time, if you do not pay me this amount [*if applicable*: and return any outstanding instrument], I will sell the car at a private sale [*in the alternative*: a public sale to be held on [date and time] at [address]].

Any attempt by you or your agents to repossess the car will be wrongful and will subject you to liability for conversion and for wrongful repossession under [*U.C.C. §§ 9-503 and 9-507*].

[*FOR ALL FOUR ALTERNATIVES*]

If the seller [*or, if applicable, the assignee, or any creditor subject to the FTC Holder Rule*] [has/have] filed a financing statement covering the goods, I demand, pursuant to [*U.C.C. § 9-404*], that you file a termination statement within ten days to terminate your security interest and send me a copy at my attorney's address below. Because I have rejected or revoked my acceptance, there is no outstanding secured obligation. If you do not file a termination statement within ten days and cooperate in removing the lien, you will be liable under [*U.C.C. § 9-404(1)*] in the amount of \$100 plus any loss caused me by your failure. Further, as I am rightfully revoking acceptance, I am not in default and any report by you to any credit reporting agency that I am in default will be considered wrongful.

If you have any further questions, please feel free to call my attorney, [*name and address*] at [*telephone number*]. If my attorney has not heard from you by [date], I will assume that you are refusing to comply with my rejection/revocation of acceptance and I will proceed accordingly to pursue my legal remedies.

Sincerely,

\_\_\_\_\_  
[Buyer]

\_\_\_\_\_  
Attorney for [Buyer]

## J.2 Sample Notice That Consumer Is Deducting Damages From the Outstanding Balance<sup>3</sup>

[date]

[dealer]  
[address]

[creditor]  
[address]

Dear Sir/Madam:

This is to notify you of my intention to deduct from the balance due on my contract those damages that I have suffered based on [dealer's] breach of that contract. This right is given to me by [UCC § 2-717].

On [date] I entered into a contract with [dealer] to purchase [description of goods]. [Dealer] breached that contract in a number of ways, including breach of express and implied warranties. The warranty breaches included [describe the warranty breaches]. Based on these breaches of contract, I suffered damages of [amount]. My damages include the fact that the [goods] are worth less than I expected, that they will require repair, and that I have also suffered other damages incidental or consequential to the breaches. [Specify damages in greater detail, if desired.]

I am deducting these damages from the balance due, and will do this by withholding a number of installment payments to offset that amount. When my damages have been deducted, I will resume payments.

Because I will be exercising my rights under [UCC § 2-717], the nonpayment of those installments will not result in my being in default of my obligations, and you will have no right to repossess the [collateral securing the loan]. Any repossession will be wrongful, making you liable for additional damages. Any report by you to any credit reporting agency that I am in default will be also be wrongful.

[If the dealer is not holding the promissory note and the FTC Holder Notice is found in the note]:<sup>4</sup>

Although you, not the dealer, are holding my note, I am withholding payments from you because you are liable for my breach of contract claims against the dealer. My note states that the holder is subject to all claims and defenses I have against the seller.

Sincerely,

\_\_\_\_\_  
[Buyer]

\_\_\_\_\_  
Attorney for [Buyer]

<sup>3</sup> See § 8.5, *supra*, for a discussion of this consumer self-help remedy. Note particularly the risks involved with this option, as set out at § 8.5.4, *supra*.

<sup>4</sup> See National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 6.6 (4th ed. 1997 and Supp.) for a discussion of consumer remedies when the FTC Notice should be included in the promissory note but is not.