J.2.2 Sample Complaint for Damages for Breach of Implied Warranty of Merchantability

1. Seller is a merchant with respect to [type of goods].

2. On or about [date], Buyer purchased [identify the goods] from Seller.

3. An implied warranty that the goods were merchantable arose by operation of law as part of the sale.

4. Seller breached the implied warranty of merchantability in that the goods were not in merchantable condition when sold or at any time thereafter and were not fit for the ordinary purposes for which such goods are used, in that: [identify the defects in the goods].

5. Buyer notified Seller of the defects in the goods on [date], which was a reasonable time after Buyer discovered the breach.

6. As a result of Seller’s breach of the implied warranty of merchantability, Buyer has suffered damages in the amount of $______, which represents the difference between the value of the goods as delivered and the value they would have had if they had been as warranted.

7. Seller’s breach also caused the following incidental and consequential damages to Buyer: [list incidental and consequential damages].

WHEREFORE, Buyer prays for judgment against Seller in the amount of $______, plus costs and such other relief as the Court deems proper.

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1 Under UCC § 2-314(1), the implied warranty of merchantability only arises if the seller is a merchant with respect to goods of that kind. See § 4.2.2, supra.
2 Merchantability is measured as of the time of sale. See § 7.3.6.2, supra.
3 Fitness for the ordinary purposes for which such goods are used is the most commonly-used subsection of the definition of merchantability at U.C.C. § 2-314(2). See § 4.2.3, supra.
4 U.C.C. § 2-607(3)(a) requires a buyer who has accepted goods to notify the seller of the breach within a reasonable time after the buyer discovers or should have discovered the breach. See § 7.2, supra. In some situations, the consumer’s attorney may also want to allege here that the buyer afforded the seller an opportunity to cure the defect. See Appx. J.2.5, note accompanying para. 9, infra.
5 This measure of damages is set by U.C.C. § 2-714(2). See § 10.4, supra.
6 Recovery of incidental and consequential damages is authorized by U.C.C. § 2-715. Note that pleading rules may require incidental and consequential damages to be pleaded with particularity.
7 A request for attorney fees should be added to the prayer for relief, if available under state law. The U.C.C. does not provide for the buyer to recover attorney fees, but they are recoverable for claims under the Magnuson-Moss Warranty Act and a number of state laws. See §§ 2.7.6, 13.9, supra.