WARRANTIES IN SALES OF GOODS--REMEDIES--JUSTIFIABLE REVOCATION OF ACCEPTANCE.

The (*state number*) issue reads:

"Did the plaintiff justifiably revoke *his* acceptance of the (*name good*) purchased from the defendant?"[1]

You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, three things:

First, that the plaintiff accepted the (*name good*) [on the reasonable assumption that the breach of warranty would be cured, and it was not seasonably cured] [because the plaintiff's acceptance was reasonably induced either by the difficulty of discovery of the breach of warranty before acceptance or by the defendant's assurances].

Second, that the breach of warranty substantially impaired the value of the (*name good*) to the plaintiff. You may consider the plaintiff's needs, circumstances and *his* actual reaction to

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[1]N.C.G.S. §25-2-608 (1995).

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the breach. You may also consider whether the plaintiff's reaction to the breach was reasonable under the circumstances.[2]

Third, that the plaintiff notified the defendant of the revocation of acceptance within a reasonable time after *he* discovered or should have discovered the ground for the revocation (and before any substantial change in the condition of the (*name good*) not caused by its own defects). Formal notice that acceptance is being revoked is not necessary. Any conduct by the plaintiff manifesting to the defendant that *he* is seriously dissatisfied with the (*name good*) and expects satisfaction is sufficient. In determining whether revocation was made within a reasonable time, you may consider all of the surrounding circumstances, including the nature of the defect, the difficulty of its discovery, the complexity of the (*name good*) and the sophistication of the plaintiff. (Where a seller attempts to make adjustments to cure the breach of warranty or where a seller makes

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[2]For example, the reasonableness of the buyer's reaction to the breach may be evaluated in relation to the market value, reliability, safety and usefulness for purposes for which similar goods are used, including efficiency of operation, feasibility of repairing or curing the breach of warranty and the seller's ability or willingness to repair or cure the breach of warranty seasonably. *Allen v. Rouse Toyota, Jeep, Inc.*, 100 N.C. App. 737, 740-741, 398 S.E.2d 64, 65-66 (1990).

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repeated assurances that the non-conformity can be and will be cured, it is reasonable for a buyer to delay revocation and continue to use the (*name good*) to see if the seller can meet his assurances.)

Finally, as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff justifiably revoked its acceptance of the (*name good*), then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, it would be your duty to answer this issue "No" in favor of the defendant.