IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY

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| **KESETE BERHANE**  Plaintiff,  vs.  **ERIC FOCH and JANE DOE FOCH,**  **husband and wife**,  Defendants. | NO. 16-2-12605-7 SEA  PLAINTIFF’S PROPOSED  JURY INSTRUCTION  (WITH CITATION) |

COMES NOW plaintiff Kesete Berhane and submit the following proposed instructions to the court.

DATED this 17th day of July, 2017

By /s/ Neftalem Habtemariam\_\_\_\_\_\_\_\_\_

Neftalem Habtemariam

WSBA No. 44117

Attorney for Plaintiff

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| **KESETE BERHANE**  Plaintiff,  vs.  **ERIC FOCH and JANE DOE FOCH,**  **husband and wife**,  Defendants. | NO. 16-2-12605-7 SEA |

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COURT’S INSTRUCTIONS TO THE JURY

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DATE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, JUDGE

INSTRUCTION NO.\_\_\_\_\_

This is a civil case brought by plaintiff Kesete Berhane against Eric Foch, defendant. The plaintiff's lawyer is Neftalem Habtemariam. The defendant's lawyer is Colin Huchinson-Flaming. This case arises out of an automobile collision, which occurred on March 20, 2015 at I-5, Seattle, Washington.

The plaintiff claims on March 20, 2015, Mr. Berhane was traveling northbound to his work on I-5 south of the West Seattle freeway and stopped for traffic ahead. Defendant Foch was traveling one vehicle behind Mr. Berhane and collided with the middle vehicle (Brandon Brook’s Vehicle) directly behind Mr. Berhane causing that vehicle to struck the rear of Mr. Berhane’s vehicle. Plaintiff suffered injuries to his neck, low back, shoulder, hip, and headaches.

It is your duty as a jury to decide the facts in this case based upon the evidence presented to you during this trial. Evidence is a legal term. Evidence includes such things as testimony of witnesses, documents, or other physical objects.

One of my duties as judge is to decide whether or not evidence should be admitted during this trial. What this means is that I must decide whether or not you should consider evidence offered by the parties. For example, if a party offers a photograph as an exhibit, I will decide whether it is admissible. Do not be concerned about the reasons for my rulings. You must not consider or discuss any evidence that I do not admit or that I tell you to disregard.

The evidence in this case may include testimony of witnesses or actual physical objects, such as papers, photographs, or other exhibits. Any exhibits admitted into evidence will go with you to the jury room when you begin your deliberations. When witnesses testify, please listen very carefully. You will need to remember testimony during your deliberations because testimony will rarely, if ever, be repeated for you.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. However, the lawyers' statements are not evidence or the law. The evidence is the testimony and the exhibits. The law is contained in my instructions. You must disregard anything the lawyers say that is at odds with the evidence or the law in my instructions.

Our state constitution prohibits a trial judge from making a comment on the evidence. For example, it would be improper for me to express my personal opinion about the value of a particular witness's testimony. Although I will not intentionally do so, if it appears to you that I have indicated my personal opinion concerning any evidence, you must disregard that opinion entirely.

You may hear objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

In deciding this case, you will be asked to apply a concept called “burden of proof.” The phrase “burden of proof” may be unfamiliar to you. Burden of proof refers to the measure or amount of proof required to prove a fact. The burden of proof in this case is proof by a preponderance of the evidence. Proof by a preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that a proposition is more probably true than not true.

During your deliberations, you must apply the law to the facts that you find to be true. It is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you think it ought to be. You are to apply the law you receive from my instructions to the facts and in this way decide the case.

**WPI 1.01**

INSTRUCTION NO.\_\_\_\_\_

In prior proceedings in this Court, the Court has determined two matters of fact as a matter of law. The court has found that as to medical care provided to Plaintiff Berhane by Valley Medical Center, the Court has determined that the treatment was reasonable and necessary and are casually related to the motor vehicle collision that is the subject of this action. As to the medical care provided to Plaintiff Berhane by Dr. Erin Edwards on March 24, 2015, the Court has further determined that the treatment was reasonable and necessary and is casually related to the motor vehicle collision that is the subject of this action. The court has awarded $3079.60 to Plaintiff for his medical expenses, specifically $2896.60 for Valley Medical Center medical expenses, $183 for pacific medical center medical expenses by Dr. Erin Edwards, M.D.

Based on Oder on Plaintiff’s Motion for Partial Summary Judgement

**INSTRUCTION NO.\_\_\_\_\_**

It is your duty to determine the facts in this case from the evidence produced in court. It also is your duty to accept the law from the judge, regardless of what you personally believe the law is or ought to be. You are to apply the law to the facts and in this way decide the case.

The order in which these instructions are given has no significance as to their relative importance. The attorneys may properly discuss any specific instructions they think are particularly significant. You should consider the instructions as a whole and should not place undue emphasis on any particular instruction or part thereof.

The evidence you are to consider consists of the testimony of the witnesses and the exhibits admitted into evidence. It has been my duty to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. You will disregard any evidence which either was not admitted or which was stricken by the court.

In determining whether any proposition has been proved, you should consider all of the evidence introduced by all parties bearing on the question. Every party is entitled to the benefit of the evidence whether produced by that party or by another party.

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness’ memory and manner while testifying, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

Counsel’s remarks, statements and arguments are intended to help you understand the evidence and apply the law. They are not evidence, however, and you should disregard any remark, statement or argument that is not supported by the evidence or the law as given to you by the judge.

The lawyers have the right and the duty to make any objections that they deem appropriate. Such objections should not influence you, and you should make no presumption because of objections by counsel.

The law does not permit me to comment on the evidence in any way, and I have not intentionally done so. If it appears to you that I have so commented, during either the trial or the giving of these instructions, you must disregard the comment.

Jurors have a duty to consult with one another and to deliberate with a view to reaching a verdict. Each of you must decide the case for yourself but only after an impartial consideration of the evidence with your fellow jurors. In the course of deliberations, you should not hesitate to re-examine your own views and change your opinion if you are convinced it is erroneous. You should not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinions of your fellow jurors, or for the mere purpose of returning a verdict.

You are officers of the court and must act impartially and with an earnest desire to determine and declare the proper verdict. Throughout your deliberations you will permit neither sympathy nor prejudice to influence you.

WPI 1.02

INSTRUCTION NO.\_\_\_\_\_

The defendant denies liability and the nature and extent of the claimed injuries and damages.

WPI 20.01 (modified)

INSTRUCTION NO.\_\_\_\_\_

The foregoing is merely a summary of the claims of the parties. You are not to consider the summary as proof of the matters claimed, unless admitted by the opposing party; and you are to consider only those matters that are established by the evidence. These claims have been outlined solely to aid you in understanding the issues.

WPI 20.05

INSTRUCTION NO.\_\_\_\_\_

The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

WPI 1.03

INSTRUCTION NO.\_\_\_\_\_

You are the sole judges of the credibility of the witnesses and of what weight is to be given the testimony of each. In considering the testimony of any witness, you may take into account the opportunity and ability of the witness to observe, the witness’ memory and manner while testifying, any interest, bias, or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight.

WPI 2.01

INSTRUCTION NO.\_\_\_\_\_

The fact that a witness has talked with a party, lawyer, or party's representative does not, of itself, reflect adversely on the testimony of the witness. A party, lawyer, or representative of a party has a right to interview a witness to learn what testimony the witness will give.

WPI 2.06

INSTRUCTION NO.\_\_\_\_\_

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts. You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

WPI 2.10

INSTRUCTION NO.\_\_\_\_\_

The plaintiff has the burden of proving each of the following propositions:

First, that the plaintiff was injured;

Second, that the negligence of the defendant was a proximate cause of the injury to the plaintiff.

The defendant has the burden of proving both of the following propositions:

First, that the plaintiff acted, or failed to act, in one of the ways claimed by the defendant, and that in so acting or failing to act, the plaintiff was negligent;

Second, that the negligence of the plaintiff was a proximate cause of the plaintiff's own injuries and was therefore contributory negligence.

WPI 21.03(modified)

INSTRUCTION NO.\_\_\_\_\_

When it is said that a party has the burden of proof on any proposition, or that any proposition must be proved by a preponderance of the evidence, or the expression “if you find” is used, it means that you must be persuaded, considering all the evidence in the case, that the proposition on which that party has the burden of proof is more probably true than not true.

WPI 21.01

INSTRUCTION NO.\_\_\_\_\_

The term “proximate cause” means a cause which in a direct sequence unbroken by any superseding cause, produces the injury complained of and without which such injury would not have happened.

WPI 15.01

INSTRUCTION NO.\_\_\_\_\_

Negligence is the failure to exercise ordinary care. It is the doing of some act that a reasonably careful person would not do under the same or similar circumstances or the failure to do some act that a reasonably careful person would have done under the same or similar circumstances.

WPI 10.01

INSTRUCTION NO.\_\_\_\_\_

Ordinary care means the care a reasonably careful person would exercise under the same or similar circumstances.

WPI 10.02

INSTRUCTION NO.\_\_\_\_\_

Every person has a duty to see what would be seen by a person exercising ordinary care.

WPI 12.06

INSTRUCTION NO.\_\_\_\_\_

Every person has the right to assume that others will exercise ordinary care and comply with the law, and a person has a right to proceed on such assumption until he or she knows, or in the exercise of ordinary care should know, to the contrary.

WPI 12.07

INSTRUCTION NO.\_\_\_\_\_

It is the duty of the Court to instruct you as to the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If your verdict is for the plaintiff, then you must determine the amount of money which will reasonably fairly compensate the plaintiff for the total amount of his damages, apart from any consideration of contributory negligence.

If you find for the plaintiff, your verdict shall include the following items:

1. The reasonable value of necessary medical care, treatment and services received to the present time;
2. The reasonable value of property damage;
3. The reasonable value of earnings lost in the past;

In addition, you should consider the following future economic damages elements:

1. The reasonable value of necessary medical care, treatment and services with reasonable probability to be required in the future;
2. The reasonable value of necessary earnings with reasonable probability to be lost in the future;

In addition, you should consider the following non-economic damages elements:

1. The nature and extent of the injuries;
2. The disability experienced and with reasonable probability to be experienced in the future;
3. The loss of the ability to enjoy life experienced and with reasonable probability to be experienced in the future;
4. The pain and suffering, both mental and physical, experienced and with reasonably probability to be experienced in the future;

The total amount of damages so determined is the figure which will be reduced by the percentage of plaintiff’s contributory negligence, if any.

The burden of proving damages rests upon the plaintiff and it is for you to determine, based upon the evidence, whether any particular element has been proven by a preponderance of the evidence.

Your award must be based upon evidence and not speculation, guess or conjecture.

The law has not furnished us with any fixed standards by which to measure noneconomic damages. With reference to these matters you must be governed by your own judgment, by the evidence in the case, and by these instructions.

WPI 30.02.01; 30.07.02; 30.08; 30.04; 30.05; 30.06; Kirk v. W.S.U., 109 Wn.2d 448 (1987)

INSTRUCTION NO.\_\_\_\_\_

According to mortality tables, the average expectancy of life of a male aged 75 years is  11.7 years. This one factor is not controlling, but should be considered in connection with all the other evidence bearing on the same question, such as that pertaining to the health, habits, and activity of the person whose life expectancy is in question.

WPI 34.04

INSTRUCTION NO.\_\_\_\_\_

When you begin to deliberate, your first duty is to select a presiding juror. The presiding juror's responsibility is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. If you decide the case in favor of the plaintiff, then you will use Verdict Form A and fill in the amount. If you decide the case for the defendant, then you will use Verdict Form B. Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted, or in any other way indicate how your deliberations are proceeding. The presiding juror should sign and date the question and give it to the bailiff. I will confer with the lawyers to determine what response, if any, can be given.

In order to reach a verdict 5 of you must agree. When 5 of you have agreed, then the presiding juror will fill in the verdict form. The presiding juror must sign the verdict whether or not the presiding juror agrees with it. The presiding juror will then inform the bailiff that you have reached a verdict. The bailiff will conduct you back into this courtroom where the verdict will be announced.

WPI 1.08 and 1.09

Instruction No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

When an accident lights up and makes active a preexisting condition that was dormant and asymptomatic immediately prior to the accident, the preexisting condition is not a proximate cause of the resulting damages.

*Bennett v. Messick*, 76 Wn. 2d 474, 478-79, 457 P. 2d 609 (1969)*Harris v. Drake,* 152 Wn. 2d 480, 494, 99 P. 3d 872 (2004)

*Arnold v. Rezvani*, 2006 WL 2469117, Wash. App. Div. I, August 28, 2006

Instruction No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

If your verdict is in favor of the plaintiff, and if you find that:

(1) before this occurrence the  plaintiff had a pre-existing bodily condition that was causing pain or disability, and

(2) because of this occurrence the condition or the pain or the disability was aggravated,

then you should consider the degree to which the condition or the pain or disability was aggravated by this occurrence.

However, you should not consider any condition or disability that may have existed prior to this occurrence, or from which the plaintiff  may now be suffering, that was not caused or contributed to by this occurrence.

WPI 30.17 Aggravation of Pre-Existing Condition

Instruction No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

If your verdict is for the  plaintiff, and if you find that:

(1) before this occurrence the plaintiff had a bodily condition that was not causing pain or disability; and

(2) the condition made the plaintiff  more susceptible to injury than a person in normal health,

then you should consider all the injuries and damages that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

WPI 30.18.01 Particular Susceptibility

Instruction No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_

If your verdict is for the  plaintiff, and if you find that:

(1) before this occurrence the plaintiff had a bodilycondition that was not causing pain or disability; and

(2) because of this occurrence the pre-existing condition was lighted up or made active, then you should consider the lighting up and any other injuries that were proximately caused by the occurrence, even though those injuries, due to the pre-existing condition, may have been greater than those that would have been incurred under the same circumstances by a person without that condition.

WPI 30.18 Previous Infirm Condition

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, KING COUNTY

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| **KESETE BERHANE**  Plaintiff,  vs.  **ERIC FOCH and JANE DOE FOCH,**  **husband and wife**,  Defendants. | NO. 16-2-12605-7 SEA  SPECIAL VERDICT FORM |

We, the jury, answer the questions submitted by the court as follows:

**QUESTION 1:** Was there negligence by the defendant that was a proximate cause of injury or damage to the plaintiff?

**ANSWER:** \_\_\_\_\_\_\_ (Write "yes" or "no")

*(INSTRUCTION: If you answered "no" to Question 1, sign and date the form. If you answered "yes" to Question 1, answer Questions 2 ).*

**QUESTION 2:** What is the total amount of the plaintiff's damages?

1. Past Economic Damages:
2. Past Medical Expenses: $\_\_\_\_\_\_\_\_
3. Past Wage Loss: $\_\_\_\_\_\_\_\_
4. Future Economic Damages:
5. Future Medical Expenses: $\_\_\_\_\_\_\_\_
6. Future Wage Loss: $\_\_\_\_\_\_\_\_
7. Non-economic Damages: $\_\_\_\_\_\_\_\_
8. Pain
9. Disability
10. Loss of Enjoyment of Life

## TOTAL $\_\_\_\_\_\_\_\_\_\_\_\_

Dated: \_\_\_\_\_\_\_\_\_\_, 2017. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Presiding Juror

WPI 45.02 (modified)