### IDJI 4.88.3 - Truth is a defense - alternate

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

To be defamatory, the communication must be false in a material fashion. This means that the “gist” or “sting” of the communication, when taken in its entirety and in context, must be false. It is not sufficient to prove that some insignificant detail is false if the “gist” or “sting” of the communication is otherwise true.

Comments:

Baker v. Burlington Northern, Inc., 99 Idaho 688, 587 P.2d 829 (1978).

Laughton v. Cawford, 68 Idaho 578, 201 P.2d 96 (1948).

NOTE: This will ordinarily be an issue submitted to the court in a dispositive motion. However, there must be instances where the court concludes that it cannot rule on the issue as a matter of law. The form of the instruction set out above also presumes that Idaho law requires the plaintiff to bear the burden of proving falsity even in cases involving non-media defendants.