### IDJI 1.40.3 – General format for charging instruction, general verdict, plaintiff’s case with affirmative defenses, no special interrogatories. [NOT for comparative negligence issues.]

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

The plaintiff has the burden of proof on each of the following propositions:

1. [Proposition No. 1.]
2. [Proposition No. 2.]
3. [Etc.]

In this case, the defendant has asserted the affirmative defense that [describe the affirmative defense alleged.] On this affirmative defense, the defendant has the burden of proof on each of the following propositions:

1. [Proposition No. 1.]
2. [Proposition No. 2.]
3. [Etc.]

If you find from your consideration of all the evidence that the plaintiff has proved each of the propositions required of the plaintiff for the case in chief, and further find that the defendant has failed to prove each of the propositions required for the affirmative defense, your verdict should be for the plaintiff.

If you find that the plaintiff has failed to prove each of the propositions required for the case in chief, or find that the defendant has proved each of the propositions required for the affirmative defense, your verdict should be for the defendant.

Comment:

This instruction is for use with a general verdict form, where special interrogatories will not be used. This instruction, and the general verdict form contemplated by its use, could apply where the affirmative defense is a complete defense to the plaintiff’s claim. If the defense is only a partial defense, or operates only to reduce the damages, or there are additional considerations of comparative fault, a special verdict on jury interrogatories would clarify the issues better. In such case, a set of charging instructions for use with special interrogatories would be a better choice.