IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION

JOSHUA MCCOLLUM, OAKFORD CRAWSON LLC, JEFFREY MAGOVENY, NG BOON MIN, LIM TECK YEOW, ALEXEJ KRAVETSKER, and MICHAEL MEDOVOJ on behalf of themselves and all others similarly situated, Plaintiffs, v. CIRCLE INTERNET GROUP, INC., and CIRCLE INTERNET FINANCIAL, LLC, Defendants.	Civil Action No. 1:26-cv-11733-WGY

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Other Authorities

INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. As the nation's leading advocate for business, it represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the executive branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases like this one that raise issues of concern to the Nation's business community.[1]

The proper limits of secondary tort liability are critically important to the Chamber's members, including financial institutions and technology providers whose products and services may be misused by third parties. The Chamber has repeatedly appeared as amicus curiae to address those limits, including in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), and *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025). The Chamber has a strong interest in ensuring that aiding-and-abetting liability is applied consistently within its well-settled boundaries.

[1] All parties have consented to the filing of this amicus curiae brief. No counsel for a party authored this brief in whole or in part, and no person or entity, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

This case asks whether a financial-technology company can be liable for aiding-and-abetting because it allegedly failed to stop unrelated parties from misusing its lawful and broadly available services. Under centuries of common law, and under the U.S. Supreme Court's decision in *Twitter v. Taamneh*, the answer is no. Aiding-and-abetting liability has always required affirmative, knowing, and culpable participation in another's wrong. Massachusetts, like most jurisdictions, adheres to this principle through the "substantial assistance" requirement independent of the knowledge requirement. Plaintiffs accordingly must plead affirmative conduct that intentionally and materially advances the non-party's tort. The aiding-and-abetting claim here falls far short of that demanding common-law standard, as articulated in *Twitter*. Allegations that a defendant knew of wrongdoing but failed to do more to prevent it are insufficient to establish the affirmative, culpable participation required for aiding-and-abetting liability.

Accepting the Plaintiffs' theory of aiding-and-abetting would dismantle the limits that have long confined liability to those who meaningfully participate in misconduct. It would erase the distinction between intentional action and inaction that disciplines tort law and would effectively convert reasonable obligations on business into a sweeping duty to police third-party conduct as a matter of tort liability. The consequences of such a rule could extend far beyond this case. The Chamber asks the Court to assess the Complaint's sufficiency under *Twitter*, particularly in determining whether the Complaint plausibly alleges the requisite culpability and substantial assistance. That framework reflects the same common-law limits recognized by Massachusetts courts. In light of the broader implications for the business community, the Court should decline Plaintiffs' proposed expansion of tort law, as maintaining the established limits on aiding-and-abetting liability is critical to prevent the imposition of sweeping discovery obligations and

settlement pressures on companies that have not meaningfully participated in any alleged wrongdoing.

ARGUMENT

I. AIDING-AND-ABETTING LIABILITY REQUIRES KNOWING AND CULPABLE PARTICIPATION

Civil aiding-and-abetting liability attaches only where a defendant "know[s] that the other's conduct constitutes a breach of duty *and* gives substantial assistance or encouragement." Restatement (Second) of Torts § 876(b) (1979) (emphasis added); *see also Twitter*, 598 U.S. at 493 (requiring "conscious, voluntary, and culpable participation" so "as to help make it succeed"). These elements, knowledge and substantial assistance, impose distinct and indispensable requirements. Massachusetts has adopted § 876(b) and applies it across aiding-and-abetting claims generally, including those predicated on underlying torts such as conversion. *See Go-Best Assets Ltd. v. Citizens Bank of Massachusetts*, 463 Mass. 50, 63 (2012); *Adams v. Gissell*, 2021 WL 8316261, at *12 (D. Mass. Dec. 8, 2021) (requiring "both knowledge that the other party's conduct was tortious and an intent to substantially assist or encourage that conduct"). Consistent with that standard, the First Circuit likewise requires proof of knowing, affirmative participation amounting to substantial assistance or encouragement. *See Thomas v. Harrington*, 909 F.3d 483, 490–91 (1st Cir. 2018) (applying Massachusetts' "substantial assistance" standard).

A. Affirmative, Culpable Participation Has Always Been the Core of Aiding-and-Abetting

The rule that aiding-and-abetting requires culpable participation, not mere inaction, is not a modern innovation. It is the doctrine's foundation in both tort and criminal law, and *Twitter* traced the doctrine to that common-law root. Section 876(b) of the Restatement (Second) of Torts reflects the settled common-law rule recognized in Massachusetts and other jurisdictions. That

rule imposes liability on one who "knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement." Restatement (Second) of Torts § 876(b) (1979). The operative words, "gives," "assistance," and "encouragement," describe affirmative conduct. The comments confirm as much, treating the paradigm aider-abettor as one who actively helps or encourages the wrongdoer. *Id*. cmt. d.

The criminal-law lineage is to the same effect, and older still. In the canonical formulation, Judge Learned Hand explained that to aid and abet a defendant must "in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by his action to make it succeed." *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938). The Supreme Court adopted that formulation in *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949), and reaffirmed it in *Rosemond v. United States*, 572 U.S. 65, 76 (2014), explaining that an aider-abettor must take an affirmative act in furtherance of the offense with intent to facilitate it. *Id.* at 71, 77.

Twitter wove these threads together. Surveying the same common-law sources, the Court held that "aids and abets" connotes "conscious, voluntary, and culpable participation in another's wrongdoing," and that the concept of helping "has never been boundless" but ordinarily requires blameworthy, affirmative conduct. *Twitter*, 598 U.S. at 488–89, 493, 500 (holding that plaintiffs, at a minimum, must allege a "very good reason to think that defendants were consciously trying to help or otherwise participate in" the misconduct).

B. Substantial Assistance Requires Conscious and Culpable Participation

Although the concepts of aiding-and-abetting and substantial assistance "do not lend themselves to crisp, bright-line distinctions," they have long required that a defendant "consciously and culpably participated in a wrongful act so as to help make it succeed." *Twitter*, 598 U.S. at 493, 506. Consistent with these limits, courts have emphasized the need to cabin aiding-and-

abetting liability to cases involving "truly culpable conduct." *Id.* at 489. The concept of substantial assistance has never been open-ended; it requires blameworthy conduct, thus imposing limits to prevent the doctrine from sweeping in those whose only contribution is the provision of a neutral, generally available service, or assistance that is merely tangential or incidental, untethered from any culpable participation in the wrong. *Id.* at 488–89 (warning that an overbroad rule would expose ordinary merchants to liability for any misuse of their goods and services).

This limitation follows from the common-law structure of aiding-and-abetting liability: knowledge and substantial assistance operate in tandem, but neither can substitute for the other. *See Twitter*, 598 U.S. at 493; *Thomas*, 909 F.3d at 491. Liability thus requires affirmative, blameworthy conduct that meaningfully furthers the tort. *See Twitter*, 598 U.S. at 493. The Restatement reflects this same principle, describing liability only where a defendant provides assistance or encouragement that intentionally helps bring about the tort. *See* Restatement (Second) of Torts § 876(b) & cmt. d (1979).

Likewise, the Supreme Court identified the D.C. Circuit's decision in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), as "long regarded as a leading case on civil aiding-and-abetting ... liability" and the product of "an extensive survey of the common law." *Twitter*, 598 U.S. at 488. *Halberstam*, too, identified knowledge and substantial assistance as separate factors. *Id.* (quoting *Halberstam*, 705 F.2d at 477). *Halberstam*'s review of the common law identified six factors bearing on whether assistance is "substantial." *Id.* All these factors assume that the defendant affirmatively did something with the intent to assist. The six factors are "(1) the nature of the act assisted, (2) the amount of assistance provided, (3) [whether the defendant was] present at the time of the principal tort, (4) the defendant's relation to the tortious actor, (5) the defendant's state of

mind, and (6) the duration of the assistance given." *Id.* (quoting *Halberstam*, 705 F.2d at 488) (quotation marks omitted).

Each common-law factor for substantial assistance presupposes intentional conduct. The nature and amount of assistance measure what the defendant affirmatively contributed and how much; a defendant who contributes nothing has no act to weigh. Presence asks whether the defendant lent support as the wrong unfolded. Relation to the tortious actor looks for a connection through which the defendant had a motive to further the wrong; Plaintiffs' theory would reach parties based merely on an attenuated connection to the alleged wrongdoer or victim. State of mind speaks only to culpability, not to assistance. And duration measures how long assistance continued.

The Court cautioned that these factors are not a mechanical checklist but a guide to the essence of aiding-and-abetting: participation in another's wrongdoing that is both significant and culpable. *Twitter*, 598 U.S. at 493. A tortfeasor taking advantage of a defendant's prior, passive action is not participation at all, and so it fails the inquiry whether the factors are applied strictly or, as *Twitter* directs, by their basic thrust. *Id.* at 505–06.

Plaintiffs' theory ultimately rests on the premise that a defendant who has inadvertently provided a tool that the tortfeasor uses has substantially assisted the tort. But passive actions and knowledge do not constitute or substitute for substantial assistance. *See Go-Best Assets Ltd.*, 463 Mass. at 64; *Twitter*, 598 U.S. at 493; *Thomas*, 909 F.3d at 490–91. In that regard, courts have described the two requirements as working "in tandem, with a lesser showing of one demanding a greater showing of the other." *Twitter*, 598 U.S. at 491–92. That principle calibrates the quantum of proof as between two elements that are both present; it does not let a plaintiff dispense with one of them. A strong showing of knowledge can reduce the quantum of assistance a plaintiff must

prove, but it cannot manufacture affirmative assistance out of an omission. Knowledge multiplied by inaction is still inaction, just as multiplication by zero produces zero. The First Circuit made the point directly: a defendant's "general awareness" of wrongdoing, without more, does not establish aiding-and-abetting. *Thomas*, 909 F.3d at 491. Rather, a defendant may only be liable for aiding-and-abetting with affirmative, blameworthy conduct that helps bring about the tort. A rule that let a plaintiff satisfy the assistance element by pointing to the defendant's knowledge would collapse two elements into one and read "substantial assistance" out of the doctrine.

Relatedly, generic, content-neutral services cannot be recast as "active abetting." *Twitter* explained that operating neutral systems, without targeting wrongdoers, fails to convert passive assistance into active abetting. The principle is straightforward: making an indiscriminate service available to all users, some of whom misuse it, is not the selective, targeted, culpable aid that aiding-and-abetting requires. Federal courts have consistently rejected attempts to convert "routine" or "everyday business practices" into substantial assistance. *See, e.g.*, *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991); *Doe v. GTE Corp.*, 347 F.3d 655, 659 (7th Cir. 2003) ("That web hosting services likewise may be used to carry out illegal activities does not justify condemning their provision whenever a given customer turns out to be crooked."). Treating such conduct as substantial assistance would collapse the distinction between participation and presence, exposing ordinary commercial activity to liability without any culpable participation in wrongdoing.

Twitter's concern was concrete: if aiding-and-abetting liability "were taken too far, then ordinary merchants could become liable for any misuse of their goods and services, no matter how attenuated their relationship with the wrongdoer." 598 U.S. at 489. The point applies across the economy. A telephone company is not an aider-and-abettor merely because it is informed that its

lines are being used to plan crimes; an email provider is not an aider-and-abettor because it is alerted that its servers are carrying fraudulent messages; a shipping company is not an aider-and-abettor because it is notified that a particular parcel may contain contraband. None is an aider-and-abettor of these wrongs merely for offering its services to the public and declining to police every customer.

Cases imposing liability for aiding-and-abetting illustrate the opposite principle. In *Halberstam*, the defendant was not a passive service provider but maintained a "long-running" and interdependent relationship with the primary wrongdoer over the course of five years, knowingly providing assistance that helped make the tort succeed. *Halberstam*, 705 F.2d at 487–88. And in *Direct Sales*, the Court found liability only where the defendant engaged in unusual conduct—supplying extraordinarily large quantities of discounted morphine under circumstances that demonstrated knowing participation in the unlawful distribution scheme. *Direct Sales Co. v. United States*, 319 U.S. 703, 710–13 (1943). These decisions confirm the settled rule: aiding-and-abetting liability attaches only where a defendant affirmatively and culpably participates in the specific wrongful conduct. The common thread is that providing a widely available service to all comers is not culpable participation in the misconduct of the few who may allegedly misuse it.

C. Under Massachusetts Law, Providing a Neutral Service That is Later Misused, Even with Awareness of the Misuse, is not Substantial Assistance

Plaintiffs allege that Circle provided the service the wrongdoers used and then failed to act once aware of the misuse. Neither aspect of Plaintiffs' allegations establishes substantial assistance. Providing a lawful, neutral, and broadly available service that a third party turns to a wrongful end is not, without more, the conscious and culpable participation the doctrine requires; at the time of the provision, the defendant neither knows of nor intends to further the tort. And a defendant's awareness that its service is being misused, coupled with a failure to intervene, cannot

sufficiently establish substantial assistance. No Massachusetts court has held that a non-fiduciary defendant's failure to intervene in a third party's wrongful conduct, standing alone, constitutes "substantial assistance" sufficient for aiding-and-abetting liability. Massachusetts courts instead define the doctrine as knowledge coupled with substantial assistance or encouragement and require proof of both elements. *See Go-Best Assets Ltd.*, 463 Mass. at 64*; see also Thomas*, 909 F.3d at 490–91. Consistent with that principle, decisions in this District have rejected attempts to collapse aiding-and-abetting liability into mere knowledge plus inaction. *See In re TelexFree Sec. Litig.*, 357 F. Supp. 3d 122, 128 (D. Mass. 2019) (holding that "participation that is not active, (i.e., passive) does not constitute aiding and abetting").

The same reasoning forecloses efforts to recast allegedly enabling conduct as "substantial assistance." The mere settlement of transactions or provision of a platform, without more, cannot sustain aiding-and-abetting liability. *See In re State St. Cases*, 2013 WL 5508151, at *22–23 (D. Mass. Aug. 21, 2013). Courts have likewise declined to impose liability where defendants merely operated platforms allegedly used by wrongdoers and "knowingly failed to do enough" to prevent misuse. *See Twitter*, 598 U.S. at 506. Even where the defendant's own accounts and systems were used to carry out the transactions, that use is "precisely the sort of passive assistance and inaction that, without more, does not rise to the level of substantial assistance." *In re State St. Cases*, 2013 WL 5508151, at *23. If even the use of a defendant's own systems to carry out the transactions is not substantial assistance, a bare failure to act necessarily is not.

Courts in this District require more than passive nonfeasance to establish participation; rather, liability arises where the defendant's presence and conduct, viewed in context, amount to active involvement or encouragement. *See Schiller v. Strangis*, 540 F. Supp. 605, 623–24 (D. Mass. 1982). In *Schiller*, the court imposed liability because the defendant "knowingly joined the

unlawful arrest" and continued to "function as an active partner" in the resulting tortious conduct. *Id.* at 620. That type of contemporaneous, participatory conduct bears no resemblance to the theory advanced here. Decisions like *Schiller* do not extend liability to a non-participant based on inaction; instead, they confirm that aiding-and-abetting requires affirmative conduct that meaningfully furthers or "encouraged the illegal conduct." *Id.* These decisions recognize only a narrow concept of participation through presence and contemporaneous involvement, not the broad imposition of liability on a non-participant based solely on a failure to intervene.

Consistent with that principle, courts imposing aiding-and-abetting liability have done so based on affirmative assistance or contemporaneous conduct that helped bring about the underlying wrongdoing, not on a generalized failure to intervene from the sidelines. *See Twitter*, 598 U.S. at 493*; Thomas*, 909 F.3d at 490–91. Accordingly, Massachusetts and First Circuit authority draw a clear distinction between (i) alleged participation or encouragement through contemporaneous conduct and (ii) true nonfeasance by a defendant with no direct role in the underlying wrongdoing. Only the former falls within the scope of aiding-and-abetting liability. The latter—mere inaction, even with alleged awareness—does not satisfy the substantial-assistance requirement.

Massachusetts's highest court has applied that principle directly. In *Go-Best Assets Ltd.*, 463 Mass. at 64, the Supreme Judicial Court ("SJC") held that a bank was not liable for aiding-and-abetting where there was no evidence that "the bank actively participated in or substantially assisted" the underlying tort. If anything, *Go-Best* was a stronger candidate for liability than this case, in which Circle had no relationship with the victims, yet the SJC still found no substantial assistance.[2]

[2] The laws of other states are in accord that mere inaction (with no accompanying fiduciary duty) does not constitute substantial assistance. *E.g., Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 292, 295 (2d Cir. 2006) (substantial assistance

II. PLAINTIFFS' THEORY OF LIABILITY WOULD DISMANTLE THE LIMITS ON TORT LIABILITY, WITH CONSEQUENCES ACROSS THE BUSINESS COMMUNITY

Allowing an inaction-based theory of aiding-and-abetting liability to proceed in this case would erase the settled distinction between action and inaction that governs tort law. As *Twitter* explained, imposing liability on a defendant merely for knowing that wrongdoers used its services and failing to stop them would "run roughshod over the typical limits on tort liability and take aiding and abetting far beyond its essential culpability moorings." 598 U.S. at 503. The aiding-and-abetting doctrine has long been confined to those who affirmatively assist wrongdoing. Expanding it to encompass inaction would transform that standard into one untethered from conduct.

The consequences of such an expansion would extend across the economy. An inaction rule could conscript payments providers, intermediaries, and infrastructure operators into monitoring for and preventing third-party misuse of their services, even absent any relationship with the alleged wrongdoer or victim. The doctrine of aiding-and-abetting has never imposed such obligations, and extending it this way would fundamentally change the nature of tort liability.

These concerns are particularly acute for businesses that supply modern, technology-neutral infrastructure. Advances in technology have allowed businesses, now more than ever before, to provide widely available services that customers overwhelmingly use for lawful purposes. An aiding-and-abetting theory based solely on inaction would chill the development of such services by subjecting providers to open-ended liability for the independent acts of third

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exists "when a defendant affirmatively assists, helps conceal, or fails to act when required to do so," and the mere inaction of an alleged aider and abettor is substantial assistance "only if the defendant owes a fiduciary duty directly to the plaintiff" (citation omitted)); *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App. 4th 860, 879 (2007) ("[m]ere knowledge that a tort is being committed and the failure to prevent it does not constitute aiding and abetting," because "one owes no duty to control the conduct of another" (citation omitted)); *see* Judicial Council of Cal. Civ. Jury Instns. (CACI) (2014) No. 3610.

parties. Nothing in aiding-and-abetting doctrine supports such an expansion, and both precedent and sound policy considerations strongly counsel against it.

Further, the stakes of the pleading standard are practical, not merely doctrinal. A claim that survives a motion to dismiss opens the door to broad, expensive discovery and the settlement pressure that accompanies it. When the governing rule is uncertain, even meritless aiding-and-abetting claims can extract settlements from defendants who did nothing culpable, because the cost and risk of litigation exceed the cost of settling. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (businesses facing "even a small chance of a devastating loss" might find that "the risk of an error" has "become unacceptable" and opt to settle questionable or meritless claims). That concern is especially pronounced in cases where discovery may proceed while a motion to dismiss remains pending. The action-inaction distinction must be enforced at the threshold to prevent discovery itself from becoming the source of the coercive pressure that settled limits on aiding-and-abetting liability are designed to avoid.

Twitter recognized the danger, warning that an expansive theory would "run roughshod over the typical limits on tort liability" and expose providers of ordinary services to liability untethered from culpability. 598 U.S. at 503. Confining aiding-and-abetting to affirmative, culpable participation, and dismissing claims that allege inaction alone, protects legitimate businesses from being conscripted, through the in terrorem pressure of litigation, into roles that Congress and the common law never assigned them.

CONCLUSION

The line between action and inaction is among the oldest and most important limits in tort law. This Court should sustain that limitation, and dismiss the Complaint to the extent it would threaten an unprecedented expansion of liability.

Respectfully submitted,

Dated: June 29, 2026

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CERTIFICATE OF SERVICE

I, Timothy Perla, do hereby certify that on June 29, 2026, a true and correct copy of the foregoing document was served upon all counsel of record via the CM/ECF system of the United States District Court for the District of Massachusetts.

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