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| --- | --- | --- | --- | --- | --- |
| Requested by Plaintiffs |  | Requested by Defendant |  | Requested by Cross-Complainants |  |
| Given as Requested |  | Given as Modified |  | Given on Court’s Motion |  |
| Refused  Withdrawn |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Judge | | | |
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3610 Aiding and Abetting Tort—Essential Factual Elements

[*Name of plaintiff*] claims that [he/she/*nonbinary pronoun*] was harmed by [*name of actor*]’s [*insert tort theory, e.g., assault and battery*] and that [*name of defendant*] is responsible for the harm because [he/she/*nonbinary pronoun*] aided and abetted [*name of actor*] in committing the [*e.g., assault and battery*].

If you find that [*name of actor*] committed [a/an] [*e.g., assault and battery*] that harmed [*name of plaintiff*], then you must determine whether [*name of defendant*] is also responsible for the harm. [*Name of defendant*] is responsible as an aider and abetter if [*name of plaintiff*] proves all of the following:

1. That [*name of defendant*] knew that [a/an] [*e.g., assault and battery*] was [being/going to be] committed by [*name of actor*] against [*name of plaintiff*];

2. That [*name of defendant*] gave substantial assistance or encouragement to [*name of actor*]; and

3. That [*name of defendant*]’s conduct was a substantial factor in causing harm to [*name of plaintiff*].

Mere knowledge that [a/an] [*e.g., assault and battery*] was [being/going to be] committed and the failure to prevent it do not constitute aiding and abetting.

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| *New April 2008; Revised December 2015* |

**Directions for Use**

Give this instruction if the plaintiff seeks to hold a defendant responsible for the tort of another on a theory of aiding and abetting, whether or not the active tortfeasor is also a defendant.

Some cases seem to hold that in addition to the elements of knowledge and substantial assistance, a complaint must allege the aider and abettor had the specific intent to facilitate the wrongful conduct. (See [Schulz v. Neovi Data Corp. (2007) 152 Cal.App.4th 86, 95 [60 Cal.Rptr.3d 810]](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012490793&pubNum=0007047&originatingDoc=Ibf79cad2318e11dda1b0a5ff586a03c0&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).)

It appears that one may be liable as an aider and abetter of a negligent act. (See [Navarrete v. Meyer (2015) 237 Cal.App.4th 1276, 1290 [188 Cal.Rptr.3d 623]](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2036506944&pubNum=0007047&originatingDoc=Ibf79cad2318e11dda1b0a5ff586a03c0&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)); [Orser v. George (1967) 252 Cal.App.2d 660, 668 [60 Cal.Rptr. 708]](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1967111248&pubNum=0000227&originatingDoc=Ibf79cad2318e11dda1b0a5ff586a03c0&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.DocLink)).)