

1
2
3
4
5
6
7 HASSAN ALI,

8 Plaintiff(s),

9
10
11 No. C 11-4094 PJH

12 v.

13 STERICYCLE, INC., et al.,

14 Defendant(s).

15
16 **ORDER GRANTING MOTION TO
17 REMAND AND DENYING MOTION
18 TO DISMISS**

19
20 Before the court are plaintiff's motion to remand and defendants Davis and Del Rio's
21 motion to dismiss, both premised on the same issue – whether the two individual
22 defendants are "sham" defendants which would destroy diversity jurisdiction. The court has
23 reviewed the briefs and supporting papers of the parties and determined that oral argument
24 would not be helpful. Based upon this review, the court finds that plaintiff has stated a
25 viable claim of intentional infliction of emotional distress against the two individual
26 defendants. While defendants' merits based argument might well suggest that plaintiff may
27 have difficulty proving their conduct was extreme and outrageous, the court finds that for
28 pleading purposes, the factual allegations are sufficient. Moreover, even if the court was
persuaded that the factual allegations were deficient, any dismissal would be with leave to
amend, as there is no basis for finding that amendment would be futile. Thus, both
defendants would remain in the case and the court would be divested of diversity

1 jurisdiction. Accordingly, the motion to remand is GRANTED and the motion to dismiss is
2 DENIED.

3 This matter is hereby remanded to the Alameda County Superior Court. The
4 January 11, 2012 hearing date is VACATED.

5 **IT IS SO ORDERED.**

6 Dated: December 22, 2011


7 PHYLIS J. HAMILTON
8 United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28