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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK HUTTMAN,

Case No. 2:08-CV-01015 JAM KJM

Plaintiff,

ORDER GRANTING TRANSFER TO THE  
SOUTHERN DISTRICT OF IOWA

v.

JEFFERSON LINES, a Minnesota  
Corporation; GREYHOUND LINES,  
INC., a foreign corporation;  
and DOES 1 to 50,

Defendants.

This matter comes before the Court on Defendant Greyhound  
Lines, Inc.'s motion for transfer of venue pursuant to 28 U.S.C.  
§ 1404 and Defendant Jefferson Lines' motion to dismiss for lack  
of personal jurisdiction and improper venue or in the  
alternative, to transfer for improper venue pursuant to 28  
U.S.C. § 1406. For the reasons set forth below, this action

1 shall be transferred to the United States District Court for the  
2 Southern District of Iowa.<sup>1</sup>

3 I. FACTUAL AND PROCEDURAL BACKGROUND

4 Plaintiff Mark Huttman ("Plaintiff"), a paraplegic whom  
5 uses a wheelchair, claims that on May 10, 2006 he was traveling  
6 between Minnesota and Reno, Nevada as a passenger in a bus  
7 operated, driven, maintained, and serviced by the Defendants  
8 Jefferson Lines and Greyhound Lines, Inc. (collectively  
9 "Defendants"). Pl's Complaint, filed May 9, 2008 ("Compl.") ¶  
10 7. Plaintiff alleges when he reached Des Moines, Iowa, he  
11 attempted to exit the bus with the assistance of employees of  
12 the named Defendants. Compl. ¶ 7. Plaintiff asserts that as he  
13 exited the bus via the ramp/lift mechanism his left great toe  
14 was caught in the mechanism, which caused part of his toe to be  
15 amputated. Compl. ¶ 8.

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19 Plaintiff claims he was offered minimal assistance at the  
20 scene and instead of seeking immediate medical attention,  
21 elected to remain on the bus and continue traveling to Reno,  
22 Nevada to insure that his pick up in Reno would be there to  
23 greet him. Compl. ¶ 9. Upon arrival in Reno, Plaintiff asserts  
24 his leg was swollen and required hospitalization and medical  
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28 <sup>1</sup> Because oral argument will not be of material assistance,  
the court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 78-230(h).

1 treatment for the injuries sustained initially in Des Moines,  
2 Iowa. Compl. ¶ 10.

3 On May 9, 2008, Plaintiff filed this complaint in the  
4 United States District Court for the Eastern District of  
5 California. Docket ("Doc.") # 1. After the parties stipulated  
6 to extend the time to respond to Plaintiff's complaint to  
7 November 26, 2008, Greyhound Lines, Inc. filed its answer and a  
8 motion to transfer venue for convenience of parties and  
9 witnesses and in the interest of justice. Doc. ## 15, 16.  
10 Defendant Jefferson Lines filed a motion to dismiss for lack of  
11 personal jurisdiction and motion to dismiss for improper venue  
12 or in the alternative, a motion to transfer for improper venue.  
13 Doc. ## 20, 21.

## 14 II. OPINION

15 A district court has the power to transfer an action under  
16 either the statute governing change of venue or the statute  
17 governing cure or waiver of defects as to venue, if such a  
18 transfer is "in the interest of justice." 28 U.S.C. §§ 1404(a),  
19 1406(a); Froelich v. Petrelli, 472 F. Supp. 756 (D. Haw. 1979).  
20 28 U.S.C. § 1406(a) provides, "The district court of a district  
21 in which is filed a case laying venue in the wrong division or  
22 district shall dismiss, or if it be in the interest of justice,  
23 transfer such case to any district or division in which it could  
24 have been brought." 28 U.S.C. § 1404(a) provides, "For the  
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1 convenience of parties and witnesses, in the interest of  
2 justice, a district court may transfer any civil action to any  
3 other district or division where it might have been brought." A  
4 district court has the power to transfer the case in the absence  
5 of personal jurisdiction over the defendants under either §  
6 1404(a) or § 1406(a) if such a transfer is "in the interest of  
7 justice." See Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962);  
8 see also Froelich, 472 F. Supp. at 760.

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11 Here, no party disputes that the Eastern District of  
12 California is an improper venue for this matter. All parties do  
13 agree however, that the Southern District of Iowa is a proper  
14 forum for this matter under 28 U.S.C. § 1391(a)(2) because the  
15 incident giving rise to this litigation occurred in Des Moines,  
16 Iowa. Compl. ¶¶ 7, 13. "Normally transfer will be in the  
17 interest of justice because normally dismissal of an action that  
18 could have been brought elsewhere is 'time consuming and  
19 justice-defeating.'" Miller v. Hambrick, 905 F.2d 259, 262 (9th  
20 Cir. 1990)(addressing transfer under 28 U.S.C. § 1631), (quoting  
21 Goldlawr, Inc., 369 U.S. at 467)(addressing transfer under 28  
22 U.S.C. § 1406)). Consistent with this presumption, transfer is  
23 in the interest of justice in this case. Plaintiff filed his  
24 complaint before the California, Iowa, or Minnesota statute of  
25 limitations had run and thus, transfer is proper. Cf. Froelich,

1 472 F. Supp at 760. Therefore, the case should be transferred  
2 to the Southern District of Iowa.<sup>2</sup>

3 Because the Court has determined that the Eastern District  
4 of California is an improper venue for this action and as a  
5 result is transferring jurisdiction over this action in the  
6 interest of justice pursuant to § 1406(a), it refuses to  
7 determine the merits of Defendant Greyhound Lines, Inc.'s Motion  
8 to Transfer for inconvenience pursuant to § 1404(a) as such a  
9 discussion would be superfluous. The Court also refuses to  
10 determine the merits of Jefferson Lines' Motion to Dismiss for  
11 lack of personal jurisdiction because, as stated above, a  
12 district court has the power to transfer the case in the absence  
13 of personal jurisdiction over the defendants under either §  
14 1404(a) or § 1406(a) if such a transfer is "in the interest of  
15 justice." See Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962);  
16 see also Froelich, 472 F. Supp. at 760. Having determined that  
17 a transfer is proper under § 1406(a), the Court will use this  
18 power to transfer the action to the Southern District of Iowa.<sup>3</sup>  
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24 <sup>2</sup> The Court has considered Jefferson Line's objection to  
25 Plaintiff's late filing, but given the agreement of all parties  
26 to venue in Iowa and given a minimal showing of prejudice to  
27 Jefferson Lines the objection to late filing is overruled.

28 <sup>3</sup> The Court has considered Plaintiff's Opposition to  
Greyhound Lines, Inc.'s Joinder to Jefferson Lines' Motion to  
Dismiss, but the Court is declining to rule on the Opposition to  
Joinder because it in no way affects the merits of the Court's  
decision.

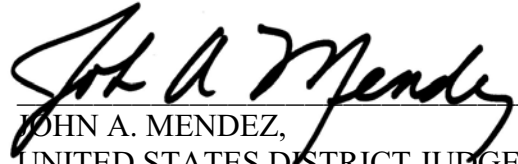
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III. ORDER

For the reasons set forth above, the case is ordered transferred to the Southern District of Iowa for all further proceedings.

IT IS SO ORDERED.

Dated: February 9, 2009

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE