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1 WILLIAM VERICK, CSB #140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, CSB #198059
424 First Street
3 Eureka, CA 95501
Telephone (707) 268-8900
4 Facsimile (707) 268-8901

5 DAVID H. WILLIAMS, CSB #144479
BRIAN ACREE, CSB #202505
6 2070 Allston Way, Suite 300
Berkeley, CA 94704
7 Telephone: (510) 647-1900
Facsimile: (510) 647-1905

8 Attorneys for Plaintiff
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

MAR 22 2004

GORDON PARK-LI, Clerk
BY: JOCELYN C. ROQUE
Deputy Clerk

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12
13 COUNTY OF SAN FRANCISCO

14
15 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

CASE NO. 411379

(JR)

16 Plaintiff,

[proposed]

17
18 vs.

ORDER APPROVING SETTLEMENT
(Bed Bath & Beyond)

19 KINDERMAN J. & SONS, et al.,

Date: March 22, 2004

Time: 9:30 a.m.

Dept.: 301

20 Defendants.
21 _____/

22
23 Plaintiff's motion for approval of settlement and entry of Consent Judgment came on
24 regularly for hearing on noticed motion on May 22, 2004. The court finds that

25 1. The warnings required by the Consent Judgment comply with the requirements of
26 Proposition 65.

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2. The payments in lieu of civil penalty specified in the Consent Judgment are reasonable based on the criteria in Calif. Health & Safety Code §25249.7(b)(2); and

3. The attorneys fees and costs awarded under the Consent Judgment are reasonable under California law.

Based upon these findings, the settlement and Consent Judgment are approved.

IT IS SO ORDERED.

Dated: MAR 22 2004

RONALD EVANS QUADACH

Judge of the Superior Court

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WILLIAM VERICK (State Bar #140972)
FREDRIC EVENSON (State Bar #198059)
KLAMATH ENVIRONMENTAL LAW CENTER
424 First Street
Eureka, CA 95501
Telephone: (707) 268-8900

DAVID H. WILLIAMS (State Bar #144479)
BRIAN ACREE (State Bar #202505)
Berkeley, CA 94704
Telephone: (510) 647-1900
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Attorneys for Plaintiff
Mateel Environmental Justice Foundation

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SUPERIOR COURT OF CALIFORNIA – UNLIMITED JURISDICTION
COUNTY OF SAN FRANCISCO

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

vs.

KINDERMAN J. and SONS, INC., et al.,

Defendants.

Case No. 411379

**CONSENT JUDGMENT
(BED BATH & BEYOND INC.)**

1. **INTRODUCTION**

1.1 On August 12, 2002, Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“MEJF”), acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief (“Complaint”) in the Superior Court, in and for the City and County of San Francisco, Case No. 411379, against various defendants, including Bed Bath & Beyond Inc. (“Bed Bath”). The Complaint alleges, among other things, that Bed Bath violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5, *et seq.* (“Proposition 65”), and Business and Professions Code Sections 17200, *et seq.* (the “Unfair Competition Act”) by knowingly and intentionally exposing persons to products containing lead and/or lead compounds, which are chemicals known to the State of

1 California to cause cancer and birth defects or other reproductive harm, without first providing a
2 clear and reasonable warning to such individuals. The Complaint was based upon a 60-Day
3 Notice letter ("Notice") dated January 15, 2002, sent by MEJF to Bed Bath, the California
4 Attorney General, all District Attorneys and all City Attorneys with populations exceeding
5 750,000. A copy of the Notice is attached to the Complaint.
6

7 1.2 For purposes of this Consent Judgment, the term "Party" includes MEJF and Bed
8 Bath and the term "Parties" shall refer to MEJF and Bed Bath, collectively.
9

10 1.3 For purposes of this Consent Judgment, the term "Covered Products" shall be
11 defined as decorative or holiday string lights or lighted products which are manufactured with
12 PVC or other thermoplastic coating covered wire or cable, which have light(s) connected to or
13 located along the wire or cable, and which contain lead and/or lead compounds in the wire or
14 cable coating.
15

16 1.4 Bed Bath is a business that employs ten or more persons and distributes, markets
17 and/or sells, Covered Products within the State of California. Lead and lead compounds are
18 chemicals known to the State of California to cause cancer and lead is a chemical known to the
19 State of California to cause reproductive toxicity pursuant to Health and Safety Code Section
20 25249.9. Products containing lead and/or lead compounds that are sold or distributed in the State
21 of California are, under specified circumstances, subject to the Proposition 65 warning
22 requirement set forth in Health and Safety Code Section 25249.6. MEJF alleges that certain
23 Covered Products manufactured, distributed, sold and/or marketed by Bed Bath for use in
24 California require a warning under Proposition 65.
25

26 1.5 For purposes of this Consent Judgment, the Parties stipulate that this Court has
27 jurisdiction over the allegations contained in the Notice and the Complaint and personal
28 jurisdiction over Bed Bath as to the acts alleged in the Complaint, that venue is proper in the

1 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a
2 full and final settlement and resolution of the allegations contained in the Complaint and of all
3 claims which were or could have been raised based on the facts alleged therein or arising
4 therefrom or related thereto.

5
6 1.6 This Consent Judgment resolves claims that are denied and disputed. The Parties
7 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
8 between the Parties and those entities within Bed Bath's chain of distribution for the purpose of
9 avoiding prolonged litigation. This Consent Judgment and compliance with it shall not constitute
10 an admission with respect to any allegation made in the Notice or the Complaint, each and every
11 allegation of which Bed Bath denies, nor may this Consent Judgment or compliance with it be
12 used as an admission or evidence of any fact, wrongdoing, misconduct, culpability or liability on
13 the part of Bed Bath.

14
15 2. **INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNING**

16 2.1 Warnings under Proposition 65, including those specified in Section 2.2, shall not
17 be required for the Covered Products if a representative sample of the thermoplastic, plastic or
18 polyvinyl chloride used in the cable or wire coating of the Covered Products has shown lead
19 content by weight of less than 0.03% (300 parts per million "300 ppm"), using a test method of
20 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less
21 than 300 ppm. Compliance may be met by relying on information obtained from suppliers,
22 manufacturers or distributors of Covered Products, provided such reliance is in good faith.

23
24 Warnings under Proposition 65, including those specified in Section 2.2.2, shall not be
25 required for Covered Products that are distributed, marketed, sold or shipped for sale or use
26 outside the State of California.

1 2.2.2 Recognizing that product labeling is not the exclusive method of providing
2 warnings under Proposition 65 and its implementing regulations, Bed Bath shall have the option
3 of issuing the Proposition 65 warnings specified in section 2.2 by means of “point of sale”
4 warnings (“shelf warnings”). If point of sale warnings are used, the warning signs shall be at
5 least 4 inches by inches in size and shall be placed on the shelf or display where the Covered
6 Product is sold.

7
8 **3. MONETARY RELIEF**

9 3.1 In settlement of all of the claims referred to in this Consent Judgment, within ten
10 (10) business days of the entry of this Consent Judgment, Bed Bath shall pay:

11
12 (a) \$10,000.00 (Ten Thousand Dollars and No Cents) to the Klamath
13 Environmental Law Center to cover MEJF’s attorneys’ fees and investigation and testing costs;
14 and

15 (b) \$7,500.00 (Seven Thousand Five Hundred Dollars and No Cents) to
16 Ecological Rights Foundation, a California non-profit environmental organization that advocates
17 for workers’ and consumers’ safety and awareness of toxic exposures, in lieu of civil penalties
18 pursuant to Health & Safety Code Section 25249.7(b), for alleged past violations. The payment
19 will be spent on informing the public regarding toxic exposures or on activities and programs to
20 reduce exposures. The money shall not be spent on funding attorney’s fees for Proposition 65
21 litigation.

22
23 **4. ENFORCEMENT OF JUDGMENT/NOTICE/STIPULATED REMEDIES**

24 4.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
25 hereto. Subject to Section 4.2, the Parties may, by noticed motion or order to show cause before
26 the Superior Court of San Francisco County, giving the notice required by law, enforce the terms
27 and conditions contained herein seek whatever fines, costs, penalties or remedies as may be
28 provided by law for any violation of the Consent Judgment.

1 4.2 Before bringing further action against Bed Bath regarding Covered Products,
2 MEJF must comply with the provisions of this section. In the event that MEJF identifies Covered
3 Products for which warnings are required under section 2.2 and such warnings are not actually
4 being given as required (“Default”), MEJF shall promptly notify Bed Bath, in writing, of such
5 alleged failure(s) to warn (“Notice of Default”). The Notice of Default shall provide sufficient
6 information regarding the alleged default, including, but not limited to, product name and
7 identification code(s), as well as the date on and location at which the alleged violation was
8 observed, to allow Bed Bath to ascertain the nature of the alleged Default and take steps to cure
9 said alleged Default. In the event that Bed Bath implements such measures as are necessary to
10 correct the alleged Default within 14 days of receiving the Notice of Default and notifies MEJF of
11 the corrective measures within 5 days of the measures being taken (“Notice of Cure”), no further
12 action by MEJF will be taken. If Bed Bath fails to take corrective measures within 14 days after
13 receiving the Notice of Default, MEJF may proceed with any available further action concerning
14 Covered Products. Corrective measures are limited to: (1) placement of warnings using the
15 language specified in Section 2.2 on stickers placed on the packaging of the Covered Products;
16 (2) placement of point of sale warnings, consistent with section 2.2.2, or (3) removal of the
17 Covered Products from sale until Section 2.2 warnings are given.

18
19 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

20 5.1 This Consent Judgment is a final and binding resolution between MEJF, acting on
21 behalf of itself and as to those matters asserted in the Notice and/or Complaint on behalf of the
22 public interest pursuant to Health and Safety Code Section 25249.7(d) and the general public
23 pursuant to Business and Professions Code Section 17204, and Bed Bath, its parents, officials,
24 subsidiaries, affiliates, divisions, successors, predecessors, assigns, retailers, customers or any
25 other person or entity in the course of doing business who may use, maintain, distribute, market
26 or sell Covered Products and the successors and assigns of any of them (hereafter referred to as
27 the “BBB Releasees”) of any violation of Proposition 65 or the Unfair Competition Act, of all
28 claims made or which could have been made in the Notice and/or the Complaint, and of any other

1 statutory, regulatory or common law claim that could have been asserted against the BBB
2 Releasees for failure to provide clear, reasonable and lawful warnings associated with the
3 Covered Products. As to alleged exposures to lead and/or lead compounds from the Covered
4 Products, compliance with the terms of this Consent Judgment resolves any issue, past, present
5 and in the future, concerning compliance by the BBBB Releasees with the requirements of
6 Proposition 65 and the Unfair Competition Act.

7
8 **6. COMPREHENSIVE AND GLOBAL RELEASE**

9 6.1 On its own behalf, and as to those matters raised in the Notice and/or Complaint
10 acting on behalf of the public interest pursuant to Health and Safety Code Section 25249.7(d) and
11 the general public, pursuant to Business and Professions Code Section 17204, MEJF and its
12 respective agents, successors and assigns, waives all rights to institute any form of legal action,
13 and releases all claims against the BBB Releasees, whether under Proposition 65 or the Unfair
14 Competition Act or any other statutory or common law, arising out of or resulting from, or related
15 directly or indirectly to, in whole or in part, the Covered Products and claims alleged in the
16 Notice and the Complaint, or facts similar to those alleged.

17
18 6.2 In furtherance of the foregoing, and as to those matters raised in the Notice, MEJF
19 by and on behalf of itself, its parents, its agents, affiliates, successors and assigns, and on behalf
20 of the public interest pursuant to Health and Safety Code Section 25249.7(d) and the general
21 public, pursuant to Business and Professions Code Section 17204, hereby waives any and all
22 rights and benefits which it now has, or in the future may have, conferred upon it with respect to
23 the Covered Products and claims alleged in the Notice and the Complaint, or facts similar to those
24 alleged by virtue of Section 1542 of the California Civil Code, which provides as follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
27 **TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING**
28 **THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE**
MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

1 MEJF understands and acknowledges that the significance and consequence of this waiver of
2 California Civil Code Section 1542 is that even if MEJF itself or any member of the general
3 public it represents suffers future damages arising out of or resulting from, or related directly or
4 indirectly to, in whole or in part, the Covered Products, and as to those matters raised in the
5 Notice MEJF, its agents, successors, attorneys, assigns or affiliates will not be able to make any
6 claim for those damages against the BBB Releasees. MEJF acknowledges that it intends these
7 consequences for any such claims which may exist as of the date of this release but which MEJF
8 does not know exists, and which, if known, would materially affect its decision to enter into this
9 Consent Judgment, regardless of whether the lack of knowledge is the result of ignorance,
10 oversight, error, negligence or any other cause.

11
12 **7. MODIFICATION OF JUDGMENT**

13 7.1 As to any Covered Products, if Proposition 65 warnings for lead or lead
14 compounds in PVC-coated wire or cable should no longer be required, or if warning language,
15 different from that set forth in this Consent Judgment is required, because of a change or changes
16 in law, or based on a California Attorney opinion letter specific as to the Covered Products, Bed
17 Bath shall have no further warning obligations pursuant to this Consent Judgment. In the event
18 that Bed Bath ceases to implement or modify the warnings required under this Consent Judgment,
19 Bed Bath shall provide written notice to MEJF of its intent to do so, and of the basis for its intent,
20 no less than thirty (30) days in advance. MEJF shall notify Bed Bath in writing of any objection
21 within thirty (30) days of its receipt of such notice, or such objection by MEJF shall be waived.

22
23 7.2 Except as provided for in Section 7.1, this Consent Judgment may be modified
24 only upon written agreement of the Parties and upon entry of a modified Consent Judgment by
25 the Court thereon, or upon motion of any Party as provided by law and upon entry of a modified
26 Consent Judgment by the Court.

1 **8. AUTHORITY TO STIPULATE**

2 8.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the Party represented and to legally to bind that Party.

5
6 **9. RETENTION OF JURISDICTION**

7 9.1 This Court shall retain jurisdiction of this matter to implement the Consent
8 Judgment.

9
10 **10. GOVERNING LAW**

11 10.1 The validity, construction and performance of this Consent Judgment shall be
12 governed by the laws of the State of California.

13
14 **11. ENTRY OF CONSENT JUDGMENT**

15 11.1 The Parties hereby request that the Court promptly approve this settlement and
16 enter this Consent Judgment. MEJF shall file a noticed motion requesting court approval of this
17 settlement and entry of the Consent Judgment. The Parties believe that the settlement is fair and
18 reasonable under the circumstances and that its entry is consistent with Proposition 65 and in the
19 public interest. Upon entry of the Consent Judgment, Bed Bath and MEJF waive their respective
20 rights to a hearing on trial on the allegations of the Complaint.

21
22 **12. ENTIRE AGREEMENT**

23 12.1 This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party
27 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
28 deemed to exist or to bind any of the Parties.

1 **13. COURT APPROVAL**

2 13.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4
5 **14. NOTICES**

6 14.1 All Notices or correspondence to be given pursuant to this Consent Judgment or
7 relating to this Consent Judgment shall be served on any Party by the other at the following
8 address:

9 For MEJF: William Verick
10 Klamath Environmental Law Center
11 424 First Street
12 Eureka, CA 95501

13 For Bed Bath: Kenneth O. Bradley, Esq.
14 Bed Bath & Beyond Inc.
15 650 Liberty Avenue
16 Union, New Jersey 07083

17 All matters hereunder after entry of this Consent Judgment shall be served by certified
18 mail (with return receipt), overnight delivery by recognized courier service, or by personal
19 delivery.

20 **15. COUNTERPARTS**

21 15.1 This Consent Judgment may be executed in counterparts or by facsimile, each of
22 which shall be deemed an original, and all of which when taken together, shall constitute one and
23 the same document.

24 **16. COURT FINDINGS**

25 16.1 After review of the documents submitted by the Parties, considering the noticed
26 motion by MEJF and as part of approving this settlement and entering this Consent Judgment, the
27 Court finds: (1) the warnings required in this Consent Judgment comply with the requirements of
28 Proposition 65; (2) the cy pres funding in lieu of civil penalties specified in this Consent

1 Judgment is reasonable, based on the criteria in California Health & Safety Code Section
2 25249.7(b)(2) and (3) the attorneys fees awarded under the Consent Judgment are reasonable
3 under California law.
4

5 IT IS SO STIPULATED:

6
7 Date: _____ MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

8 BY: William Verick
9 William Verick

10
11 Date: _____ BED BATH & BEYOND INC.

12 BY: _____

13 ITS" _____
14

15 IT IS SO ORDERED, ADJUDGED AND DECREED:

JCK 1

16
17 Date: _____
18 JUDGE OF THE SUPERIOR COURT
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Judgment is reasonable, based on the criteria in California Health & Safety Code Section 25249.7(b)(2) and (3) the attorneys fees awarded under the Consent Judgment are reasonable under California law.

IT IS SO STIPULATED:

Date: _____ MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

BY: _____
William Verick

Date: Jan. 23, 2004 BED BATH & BEYOND INC.

BY: *[Signature]*
ITS" ^{KOB} Vice President - Corporate Counsel

IT IS SO ORDERED, ADJUDGED AND DECREED:

RONALD EVANS QUINCY

Date: MAR 22 2004 _____
JUDGE OF THE SUPERIOR COURT

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)	Mateel Environmental Justice Foundation		
	DEFENDANT(S) INVOLVED IN SETTLEMENT	Bed Bath & Beyond, Inc.		
CASE INFO	COURT DOCKET NUMBER	411379	COURT NAME	San Francisco Superior Court
	SHORT CASE NAME	Mateel v. Kinderman J. & Sons, Inc.		
REPORT INFO	INJUNCTIVE RELIEF	Reform. standard, warnings prior to purchase on unreformulated product		
	PAYMENT: CIVIL PENALTY	PAYMENT: ATTORNEYS FEES	PAYMENT: OTHER	
		10,000	7,500	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED	
		/ /		
COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT	David H. Williams		
	ORGANIZATION	Attorney At Law	TELEPHONE NUMBER	((510)) 647-1900
	ADDRESS	2070 Allston Way, Suite 300	FAX NUMBER	((510)) 647-1905
	CITY	STATE	ZIP	E-MAIL ADDRESS
Berkeley	CA		davidhwilliams@earthlink.net	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

PROOF OF SERVICE

I am over 18 years of age and not a party to the within action. My business address is 2070 Allston Way, Suite 300, Berkeley, CA 94704. On **February 6, 2004**, I served the documents entitled:

NOTICE OF MOTION AND MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT (Bed Bath & Beyond)


DECLARATION OF DAVID H. WILLIAMS IN SUPPORT OF MOTION TO APPROVE PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT JUDGMENT (Bed Bath & Beyond)

REPORT OF SETTLEMENT

by placing a true and correct copy of the document in a sealed envelope, and personally delivering the envelope to the receptionist at the following address:

Proposition 65 Coordinator
Office of Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 6, 2004.


Kathryn Ansite

PROOF OF SERVICE

I am employed in the County of Alameda; over the age of 18 years and not a party to this action. My business address is 2070 Allston Way, Suite 300; Berkeley, CA 94704 On March 23,2004, I served the following documents described as

ORDER APPROVING SETTLEMENT

CONSENT JUDGMENT

on the parties listed below:

through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below, or compiled for transmission by facsimile transmission, for services as designated below:

By First Class Mail - I caused each such envelope, with first class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein following ordinary course of business

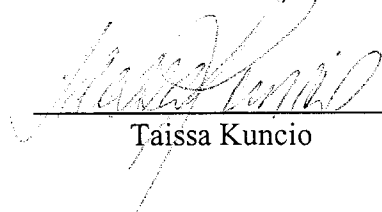
By Federal Express - I caused each such envelope to be delivered to Federal Express Corporation with whom we have a direct billing account to be delivered to the office of the addressee on the next business day.

By Facsimile -- I caused such document to be served via facsimile electronic equipment transmission on the parties in this action by transmitting a true and correct copy using aHewlett Packard Laserjet 3100 facsimile machine which indicated successful transmission to the numbers shown above

By Personal Service -- I personally delivered such envelope to the addressee.

By Personal Service -- I caused each such envelope to be delivered to a courier of a messenger service who personally delivered each such envelope to the office of the addressee.

I declare that the foregoing is true and correct and that I executed this declaration on March 23, 2004 in Berkeley, California.



Taissa Kuncio

Service List

Proposition 65 Coordinator
Office of Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612

John E. Dittoe, Esq.
Reed, Smith, Crosby Heafey, LLP
1999 Harrison Street, Suite 200
Oakland, CA 94612-3572
Cooley, Godward,