

Heather Maxin, on behalf of herself and all others similarly situated

v.

RHG & Company, Inc.,
Case No.: 3:16-cv-02625-JLS-BLM (S.D. Cal)
United States District Court
Southern District of California
www.RHGsettlement.com

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT.

PLEASE READ THIS NOTICE CAREFULLY.

1. **Introduction** - This notice concerns a proposed settlement (the "Settlement") of a lawsuit against RHG & Company, Inc. d/b/a Vital Nutrients ("Defendant") on behalf of all Persons who purchased Vital Nutrient's products in the United States during the period from August 1, 2012 to February 27, 2017, that contained an unqualified "Made in the USA" label, or were otherwise represented as being "Made in USA," including on Defendant's website, brochures, or any other marketing materials. The action is currently pending in the United States District Court for the Southern District of California (the "Court"). The Court has certified this action to proceed as a class action, for purposes of settlement only. This notice is intended to: (a) inform you about the Settlement of this action and (b) advise you of your rights and your options regarding the Settlement.

2. **Description of the Action** - This action alleges that Defendant violated California state law by improperly labeling and selling its products as being "Made in USA." This action alleges that one or more components of Vital Nutrients' products were sourced from outside of the United States. This action seeks, among other things, an award of damages against Defendant as a result of this alleged conduct.

3. **Defendant's Denial** - The Court has not decided in favor of either side in the case. Defendant denies all of the allegations in the complaint and expressly denies any liability or wrongdoing. Defendant stands by its "Made in USA" labeling and marketing and denies that it did anything wrong.

4. **Definition of the Class** - A "Class Member" is any Person who purchased any Vital Nutrients' product in the United States between August 1, 2012 to February 27, 2017, that contained an unqualified "Made in USA" label or were otherwise represented as being "Made in USA," excluding: (1) RHG & Co., Inc., its officers, directors, employees, and their immediate family members, and (2) any judicial officer hearing this litigation, as well as their immediate family members and employees.

5. **The Proposed Settlement** - The parties have reached a proposed Settlement of this action, which the attorneys for the Class believe is fair, reasonable, adequate and in the best interest of Class Members. Defendant agreed to the Settlement, without admitting liability, to avoid the costs and other burdens of continued litigation.

Defendant will create a Gross Settlement Fund of nine hundred thousand dollars (\$900,000) to be used to pay: (a) cash awards to Class Members, (b) an incentive award to Plaintiff, (c) fees and costs of Class Counsel, (d) costs of administering the notice, claims, and Settlement, and (e) taxes due in connection with the Gross Settlement Fund and Net Settlement Fund prior to distribution to the Class. However, Class Members, Plaintiff, and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement. After items (b) through (e) (above) have been paid, the remaining amounts (the "Net Settlement Fund") shall be used to pay valid claims submitted by Class Members. If any amounts remain in the Net Settlement Fund after payment of items (a) through (e) above, the amount will be distributed *cy pres* to a nonprofit organization. No part of the Gross Settlement Fund is or is intended as payment of a fine or similar penalty, or any payment of a potential fine or similar penalty in the future.

The proposed Settlement provides: (a) Class Members who submit a valid claim shall receive a cash reward, as described in further detail below, (b) injunctive relief (including revised labeling that conforms to the Settlement terms), and (c) an agreement by Defendant to pay all costs related to sending this notice and of processing and paying Class Members' claims under this Settlement.

Defendant also agrees to: (a) pay an incentive award (to the extent awarded by the Court) to the class representative Heather Maxin in the amount of five thousand dollars (\$5,000), and (b) pay Class Counsel's attorneys' fees and costs (to the extent awarded by the Court) in amount not to exceed two hundred seventy thousand dollars (\$270,000). Plaintiff shall file a motion for recovery of attorneys' fees and costs with the Court and Defendant agrees not to object to the extent Plaintiff does *not* request more than the above-stated sums.

6. **Terms of Restitution to Class Members** - Class Members who submit a valid claim without adequate proof of purchase shall receive \$6.00 per product, up to a maximum of five (5) products per person. Class Members who have proof of having purchased more than five (5) products and submit a valid claim accompanied by adequate proof of purchase shall receive \$6.00 per product, up to a maximum of twenty-five (25) products per person. Adequate proof of purchase means a cash register receipt or similar documentation identifying the purchased product and date of purchase. This cash reward is available for Class Members who do not opt out and who return a valid claim form.

If the amount available in the Net Settlement Fund is less than the total amount of valid claims submitted, then the amount to each Class Member shall be reduced *pro rata* so that the Gross Settlement Fund payments shall not exceed \$900,000.

7. **Releases** - In return for the Settlement, Class Members who do not request exclusion from the Class agree to release (give up) all claims against the Released Parties arising out of: (a) a "Made in USA" designation on or about Defendant's product, (b) representations by Defendant or third parties relating to where the product or components / ingredients thereof were made, manufactured, or sourced, (c) any violation of California Business & Professions Code §§ 17200 *et seq.*, 17500 *et seq.*, and 17533.7, and California Civil Code §§ 1770 *et seq.*, (d) any violation of 15 U.S.C. 45a, any federal statute or regulation, or statute of any of the fifty states or U.S.

territory, including consumer protection laws, false advertising laws, fraud, negligence, breach of warranty and/or breach of contract claims, and (e) any other legal or equitable claims that are connected with the allegations in this action.

If you do nothing, you will receive no payment from the Settlement. You will still be part of the Class, however, and subject to the release described above and will not be permitted to continue to assert released claims in any other case against Defendant or other persons or entities covered by the release.

8. **How to Make a Claim** - Only Class Members who submit a Claim Form postmarked no later than **November 27, 2017** will be eligible to participate in the Settlement. Claim Forms postmarked after **November 27, 2017** will not be considered. To obtain a Claim Form, you may go to www.RHGsettlement.com. Once completed, mail the claim form and any proof of purchase to:

RHG Co., Inc. Class Action
c/o KCC Class Action Services
P.O. Box 43034
Providence, RI 02940-3034

Claims Forms and any proof of purchase can also be submitted online. Approved claims will be honored after the "Final Approval Date," as defined in the Settlement Agreement.

9. **Request for Exclusion from the Class** - If you wish to be excluded from the Class, you must mail a letter so that it is postmarked no later than **May 30, 2017** to the address listed in paragraph 8 above. The letter must state your name, address, and include the following signed statement: "I/We hereby request to be excluded from the proposed Settlement Class in *Maxin v. RHG & Co., Inc.*" **If you exclude yourself from the Class, you will not be entitled to share in any cash award that the Class may obtain**, but you will be able to file a separate claim against Defendant based on the practices alleged in this action.

10. **Objection** - If you do not request exclusion, you may still object to the proposed Settlement. To be considered, a written objection must be filed with the Court and mailed to the counsel below no later than **May 30, 2017** at the following addresses:

United States District Court, Southern District of California
Hon. Janis L. Sammartino,
Courtroom 4A (4th Floor – Schwartz)
Suite 4135
221 West Broadway
San Diego, CA 92101

Counsel for the Class

Abbas Kazerounian
Matthew M. Loker
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626

Counsel for Defendant:

Lee S. Brenner
KELLEY DRYE & WARREN LLP
10100 Santa Monica Blvd., 23rd Floor
Los Angeles, CA 90067

Counsel for the Class

Joshua B. Swigart
HYDE & SWIGART
2221 Camino Del Rio South, Ste. 101
San Diego, CA 92108

If you wish to object, the written objection must be captioned *Maxin v. RHG & Co., Inc.* and include: (a) your full name and current address, (b) a signed statement under the penalty of perjury that you believe to be a Class Member, (c) the specific grounds for the objection and any other reasons why you desire to be heard, (d) all documents or legal authority that you desire the Court to consider, and (e) a notice of intent to appear, if applicable. Only Class Members who have submitted a timely written objection will have their objections considered by the Court and/or be heard at the final hearing on approval of the Settlement.

11. **Hearing On Settlement, Class Counsel Fees, and Class Representative Incentive Award** - The Settlement has already been preliminarily approved by the Court. The Court will hold a final Fairness Hearing to consider: (a) whether the tentative Settlement summarized above is fair, reasonable, adequate, and in the best interests of the Class, (b) whether Plaintiff and her attorneys have fully, fairly and adequately represented the Class in this action and in negotiating the Settlement, and (c) whether to award attorneys' fees and costs to Class Counsel and whether to award class representative enhancement fee to Plaintiff. The Fairness Hearing and motion hearing is presently scheduled for **September 28, 2017 at 1:30 p.m.** in Courtroom 4A of the United States District Court for the Southern District of California, Edward J. Schwartz Courthouse, 221 West Broadway, San Diego, CA 92101. The time and date of the approval may be changed by the Court without further notice to the Class.

Any party, including a Class Member, who wishes to file an objection and/or oppose the Settlement and/or Plaintiff's motion for fees are instructed to do so in writing, as described above.

12. **More Information - Do not contact the Court regarding this Notice or the lawsuit.** If you wish additional information about this notice or the Settlement, you may examine the Court's file on the case at the address shown above. For more information, visit www.RHGsettlement.com, or call 1-855-581-1277.

The Court has not ruled in favor of or against the Plaintiff or Defendant on the merits of any of their claims, denials, or defenses in this case.