

Exhibit 1

(To Abbas Kazerounian Declaration)

Settlement Agreement

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11
12 HEATHER MAXIN, on behalf of herself
13 and of all others similarly situated,

14 **Plaintiffs,**

15 **v.**

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17 **RHG & CO., INC.,**

18 **Defendant.**
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**CLASS ACTION SETTLEMENT
AGREEMENT**

SETTLEMENT AGREEMENT

1 **I. INTRODUCTION**

2 Subject to Court approval, this Agreement of Settlement (the "Settlement
3 Agreement") is made as of the 19 day of October 2016, by and between Plaintiff
4 Heather Maxin ("Plaintiff"), individually and on behalf of all Class Members (as
5 defined below), and Defendant RHG & Co., Inc. d/b/a Vital Nutrients ("Defendant")
6 in the above-captioned action, *Maxin v. RHG & Co., Inc.* (the "Action").

7 **II. RECITALS**

8 A. On or about June 3, 2015, Plaintiff sent Defendant a notice letter alleging
9 that Defendant was selling products in violation of California's: (1) False Advertising
10 Law, California Business & Professions Code sections 17500, *et seq.* ("FAL"), (2)
11 Consumer Legal Remedies Act, California Civil Code sections 1770(a)(2), (4), (5),
12 (7), and (9) ("CLRA"), and (3) Unfair Competition Law, California Business &
13 Professions Code sections 17200, *et seq.* ("UCL"). Specifically, Plaintiff alleged that
14 Defendant's products were deceptively represented as "Made in USA" and that some
15 components were sourced from outside the United States.

16 B. On or about July 14, 2015, Plaintiff sent Defendant a draft complaint
17 alleging claims under the CLRA, the UCL and the FAL. As to the FAL claim,
18 Plaintiff specified that she was alleging a violation of California Business &
19 Professions Code section 17533.7.

20 C. Defendant denies all of Plaintiff's allegations in the June 3, 2015 letter,
21 the July 14, 2015 draft complaint, and the Action, and maintains that its products and
22 all of its representations and labeling at all times were and are in compliance with all
23 applicable laws, statutes, and regulations, as well as all policies adopted by applicable
24 regulatory agencies, and that all such advertising and labeling at all times was and is
25 substantiated and not false or misleading. Defendant believes that it has meritorious
26 defenses to all of the claims asserted in the Action. This Settlement Agreement does
27 not constitute and shall not be construed as an admission by Defendant of any liability
28 or wrongdoing and Defendant expressly denies any such liability or wrongdoing.

1 Defendant also denies the allegation that this Action could satisfy the requirements
2 for class certification under Federal Rule of Civil Procedure Rule 23.

3 D. A survey about Vital Nutrients' products conducted by an expert in
4 statistics and consumer survey research, Kent D. Van Liere Ph.D, revealed that the
5 "Made in USA" language was not material to class members. Specifically, the survey
6 revealed that there was no meaningful difference between the price people who were
7 shown Vital Nutrients' bottles with the "Made in USA" label were willing to pay,
8 relative to the price those who were shown bottles without the label. Over 90% of
9 respondents indicated that the "Made in the USA" language on the Vital Nutrients'
10 bottle did not affect their purchasing decision. The survey showed that while many
11 different factors are important to consumers in selecting vitamins and dietary
12 supplements, the vast majority of consumers do not consider whether a vitamin is
13 "Made in USA" when making their purchasing decision.

14 E. Plaintiff and Defendant (the "Parties") participated in a full day of
15 mediation on October 9, 2015 before the Hon. Leo Papas (Ret.) and have conducted
16 extensive arm's-length negotiations in an attempt to resolve the Action.

17 F. Defendant produced information in response to several discovery
18 requests by Plaintiff's counsel. Among other things, Defendant produced to Plaintiff
19 nationwide sales data for Defendant's products sold during the four-year time period
20 at issue and information regarding Defendant's finances.

21 G. Based upon the investigation, analysis, and discovery conducted by
22 Class Counsel (as defined in Section III.A below), as well as information obtained
23 through arm's-lengths negotiations at the time of mediation, the Parties have agreed
24 to settle the claims raised in the Action on a nationwide basis under the terms and
25 conditions memorialized in this Settlement Agreement. Plaintiff and Class Counsel
26 conclude that the Settlement is fair, reasonable, adequate, and in the best interest of
27 Plaintiff and the Class Members (as defined in Section III.A below).

28 The Parties wish to avoid the expense, risk and uncertainty of further litigation,

1 to resolve all disputes that have arisen between them, and to settle any and all claims
2 that do or may exist in the past, present or future, and therefore have agreed to enter
3 into this Settlement Agreement.

4 **III. TERMS & CONDITIONS OF SETTLEMENT**

5 **NOW THEREFORE**, it is agreed by the undersigned, on behalf of Plaintiff,
6 the Class, and Defendant, that this Action and all claims of Plaintiff and all other
7 Class Members shall be settled, compromised and dismissed on the merits *with*
8 *prejudice* as to Defendant on the following terms and conditions.

9 **A. Definitions**

10 The following terms, as used in this Settlement Agreement and attached
11 exhibits, have the meanings set forth below:

12 1. "Adequate Proof of Purchase" means: (i) cash register receipt identifying
13 the purchased Product and date of purchase or (ii) similar documentation that
14 identifies the purchased Product and date of purchase.

15 2. "Attorneys' Fees Award" means any award of attorneys' fees and costs
16 approved by the Court for payment to Class Counsel.

17 3. "Cash Award" means the cash compensation that each Class Member
18 who submits a Valid Claim shall be entitled to receive.

19 4. "Claim(s)" means a claim made either electronically or by U.S. Mail by
20 a person asserting that he or she is a member of the Class in accordance with the
21 requirements contained in this Settlement Agreement.

22 5. "Claim Form" means the form attached hereto as Exhibit B.

23 6. "Claims Administrator" means the firm of Kurtzman Carson Consultants
24 ("KCC").

25 7. "Claims Program" means the mechanism by which Class Members can
26 submit a Claim and, if the claim is deemed valid, receive a Cash Award.

27 8. "Claims Period" means the period between: (i) the date on which the
28 Court grants preliminary approval and (ii) sixty (60) days after the Final Approval

1 Hearing.

2 9. "Class" means all Persons who purchased one or more of the Products in
3 the United States within the Class Period, excluding: (1) RHG & Co., Inc., its officers,
4 directors, employees, and their immediate family members, and (2) any judicial
5 officer hearing this litigation, as well as their immediate family members and
6 employees.

7 10. "Class Counsel" means Abbas Kazerounian; and, Matthew M. Loker
8 from Kazerouni Law Group, APC, and Joshua B. Swigart from Hyde & Swigart,
9 APC.

10 11. "Class Member(s)" means all Persons who purchased one or more of the
11 Products in the United States within the Class Period.

12 12. "Class Notice" means the Court-approved notice of this Settlement
13 Agreement that is directed to Class Members.

14 13. "Class Period" means the period between: (1) August 1, 2012, and (2)
15 the date the Court issues the Preliminary Approval Order.

16 14. "Court" means the United States District Court for the Southern District
17 of California.

18 15. "Days" means calendar days, except when expressed as "business days."
19 However, when computing any period of time prescribed or allowed by this
20 Settlement Agreement, the day of the event or default from which the designated
21 period of time begins to run shall not be included. Furthermore, when computing any
22 period of time prescribed or allowed by this Settlement Agreement, the last day of the
23 period so computed shall be included, unless it is a Saturday, a Sunday, or a holiday
24 of the United States District of California in the Southern District, in which event the
25 period runs until the end of the next day which is not a Saturday, Sunday, or a holiday
26 as described above.

27 16. "Final Approval Date" means the fourteen (14) days after the date that is
28 the later of: (i) the expiration of the time to appeal the final Judgment with no appeal

1 having been filed, or (ii) if any such appeal is filed, the termination of such appeal on
2 terms which affirm the final Judgment or dismiss the appeal with no material
3 modification of the final Judgment, and (iii) the expiration of the time to obtain any
4 further appellate review of the final Judgment.

5 17. "Final Approval Hearing" means the fairness hearing to consider the
6 final approval of the Settlement as required by Federal Rule of Civil Procedure 23(e).

7 18. "Final Approval Order" means the final order entered by the Court in the
8 form attached hereto as Exhibit D, approving this Settlement Agreement as fair,
9 adequate and reasonable.

10 19. "Judgment" means the judgment entered by the Court in the form
11 attached hereto as Exhibit E. The Judgment (and the underlying Final Approval
12 Order) shall be deemed "Final" upon entry of judgment.

13 20. "Long-Form Notice" means the long form of Notice of Proposed
14 Settlement of Class Action in the form attached hereto as Exhibit A.

15 21. "Notice Program" means the mechanisms and arrangements for providing
16 notice to the Class.

17 22. "Party" means Plaintiff Heather Maxin, the Class Members, and
18 Defendant, individually and collectively.

19 23. "Person" means any individual, corporation, distributor, pharmacy,
20 healthcare professional, retailer, or other legal entity and their respective successors
21 or assigns.

22 24. "Plaintiff" means representative Plaintiff Heather Maxin, both in her
23 individual capacity and on behalf of the Class.

24 25. "Postcard Notice" means the abbreviated form of notice attached hereto
25 as Exhibit F that shall be mailed or emailed by the Claims Administrator to potential
26 Class Members.

27 26. "Preliminary Approval Order" means the Order issued by the Court in
28 substantially the same form attached hereto as Exhibit C.

27. "Product(s)" means Defendant's products that contained an unqualified "Made in USA" label or were otherwise represented as being "Made in USA," including on Defendant's website, brochures, and/or any other marketing materials.

28. "Qualifying Transaction" means a purchase of a Product in the United States during the Class Period.

29. "Qualifying Claimant" means a Class Member who submits a timely, completed Claim Form, indicating that he or she engaged in a Qualifying Transaction, and whose Claim is not rejected by the Claims Administrator.

30. "Released Parties" means all parties identified as having claims released against them in the first paragraph of Section F of this Settlement Agreement.

31. "Settlement" means the terms and conditions of the settlement embodied by this document.

32. "Settlement Agreement" means this Settlement Agreement, including all exhibits hereto.

33. "Settlement Website" means (www.-----.com), which will, at the appropriate time, post a copy of the Notice, Settlement Agreement, the Complaint, a toll free number for receiving calls related to the Settlement, and any additional relevant documents as later determined. The Claims Administrator shall be responsible for setting up a Settlement Website where Class Members can, among other things, fill out the Claim Form and view this Settlement Agreement.

34. "Short-Form Notice" means the abbreviated form of Notice of Proposed Settlement of Class Action in the form attached hereto as Exhibit G.

35. "Valid Claim" means a timely and fully completed Claim Form that includes Adequate Proof of Purchase, if applicable, submitted by a Class Member.

B. Settlement Consideration From Defendant

1. Gross Settlement Fund. Defendant agrees to create a common fund of nine hundred thousand dollars (\$900,000) (the "Gross Settlement Fund") to be used to pay: (i) the Cash Awards, (ii) the incentive award to Plaintiff Heather Maxin, (iii)

1 the Attorneys' Fees Award, which includes litigation costs of Class Counsel, (iv) costs
2 of administering the notice, the Claims, and the Settlement, and (v) taxes due in
3 connection with the Gross Settlement Fund and Net Settlement Fund prior to
4 distribution to the Class. However, Class Members, Plaintiff, and Class Counsel shall
5 be responsible for paying any and all federal, state, and local taxes due on any payments
6 made to them pursuant to the Settlement.

7 (a) Within ten (10) days after the Court issues the Preliminary
8 Approval Order, Defendant shall establish the Gross Settlement Fund by depositing
9 \$900,000 into an interest-bearing account held by the Claims Administrator in a
10 federally insured, third party financial institution. The Claims Administrator will
11 manage the Gross Settlement Fund. In accordance with the payment schedule set
12 forth in this Settlement Agreement, the Claims Administrator shall apply the Gross
13 Settlement Fund to pay items B(1)(i) through B(1)(v) above as such expenses
14 becomes due and payable.

15 (b) No part of the Gross Settlement Fund is, or is intended as payment
16 of, a fine, or similar penalty, or any payment of a potential fine or similar penalty in
17 the future. The Gross Settlement Fund shall be the only payment made or otherwise
18 due from Defendant in consideration of the matters stated in this Settlement
19 Agreement.

20 (c) The amounts remaining in the Gross Settlement Fund after the
21 deduction of the amounts necessary to pay items B(1)(ii) through B(1)(v) above (the
22 "Net Settlement Fund"), shall be used to pay Valid Claims submitted by Class
23 Members.

24 (d) If the amount available in the Net Settlement Fund is less than the
25 total amount of Valid Claims submitted, then the amount to each Class Member shall
26 be reduced on a *pro rata* basis so that the total Gross Settlement Fund payments made
27 pursuant to this Settlement shall not exceed \$900,000.

28 (e) If any amounts remain in the Net Settlement Fund after payment

1 of items B(1)(i) through B(1)(v) above, the Claims Administrator shall make a
2 distribution *cy pres* to a nonprofit organization, as agreed on by the Parties and the
3 Court, with a total value that equals the amount remaining in the Net Settlement Fund.

4 (f) Any unclaimed funds or any funds from uncashed settlement
5 checks, including settlement checks to Class Members who submitted Valid Claim
6 but whose current address could not ultimately be determined, shall be delivered to a
7 *cy pres* recipient selected by the parties and approved by the Court.

8 (g) The Gross Settlement Fund at all times shall be deemed a
9 "qualified settlement fund" within the meaning of United States Treasury Reg. §
10 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties
11 relating to them) arising with respect to the income earned by the Gross Settlement
12 Fund or otherwise, including any taxes or tax detriments that may be imposed on
13 Defendant or its counsel or Plaintiff and Class Counsel with respect to income earned
14 by the Gross Settlement Fund during any period during which the Gross Settlement
15 Fund does not qualify as a "qualified settlement fund" for the purpose of federal or
16 state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Gross
17 Settlement Fund. Defendant and its counsel and Plaintiff and Class Counsel shall
18 have no liability or responsibility for any of the Taxes.

19 2. Payment of Claims. Within thirty (30) days after the Final Approval
20 Date, the Claims Administrator will send to each Qualifying Claimant a Cash Award
21 check as follows:

22 (a) Class Members who submit a Valid Claim without Adequate
23 Proof of Purchase shall receive \$6.00 per Product, up to a maximum of five (5)
24 Products per Person.

25 (b) Class Members who have proof of having purchased more than
26 five (5) Products and submit a Valid Claim accompanied by Adequate Proof of
27 Purchase shall receive \$6.00 per Product, up to a maximum of twenty-five (25)
28 Products per Person.

1 3. Injunctive Relief.

2 (a) In response to Plaintiff's June 3, 2015 notice letter, Defendant
3 already commenced shipping its Products with revised labeling that conforms to the
4 terms of the Settlement. Defendant has also deleted any "Made in USA"
5 representation from its website. Defendant will also continue to comply with the
6 newly enacted Section 17533.7 of the California Business & Professions Code,
7 effective January 1, 2016.

8 (b) Defendant, distributors, healthcare practitioners, pharmacies, and
9 other retailers will not be obligated to recall, remove, or re-label Products already
10 shipped or in the stream of commerce that do not conform to the terms of this
11 Settlement as of the date of this Settlement Agreement.

12 (c) It will not be deemed a breach of the Settlement Agreement if a
13 third party that is not owned, operated or controlled by Defendant makes a "Made in
14 USA" representation as to the Products.

15 (d) To the extent that any state and/or federal statute, regulation,
16 policy, and/or code may impose different obligations on Defendant in the future with
17 respect to the Products, this injunctive relief shall cease as to Defendant's conduct
18 covered by that statute, regulation, policy, and/or code as of the effective date of such
19 statute, regulation, policy and/or code.

20 **C. CAFA Notice**

21 Within ten (10) days after the filing of this Settlement Agreement with the
22 Court, the Claims Administrator shall serve notice of the Settlement Agreement that
23 meets the requirements of Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715,
24 on the appropriate federal and state officials. All costs and expenses related to the
25 CAFA Notice shall be distributed from the Gross Settlement Fund. Defendant will
26 provide Class Counsel and counsel for Defendant with any substantive responses
27 received in response to any CAFA Notice.

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1 **D. Notice Program**

2 1. Identifying Class Members. Plaintiff understands that Defendant cannot
3 identify all Class Members because the Products are distributed primarily by third
4 party distributors, healthcare practitioners, and other retailers, rather than directly by
5 Defendant. Accordingly, Plaintiff understands that the benefits described above may
6 be over-inclusive and/or under-inclusive, but Plaintiff believes that the most effective
7 way to provide benefits to the largest number of Class Members is to do so in the
8 manner expressed therein.

9 2. Claims Administrator. Defendant will retain KCC to administer the
10 Notice Program and the Claims Program. The responsibilities of the Claims
11 Administrator shall include but are not limited to: (i) setting up the Settlement Website
12 where Class Members can, among other things, fill out a Claim and view this
13 Settlement Agreement, (ii) setting up a toll-free number for receiving calls related to
14 the Settlement, (iii) implementing Class Notice, (iv) determining Valid Claims, (v)
15 distributing the Cash Award, (vi) maintaining proper records of the settlement
16 administration, and (vii) providing information to counsel for Defendant and Class
17 Counsel.

18 3. Mailing Or Emailing Direct Notice.

19 (a) Within five (5) days after entry of the Preliminary Approval Order,
20 Defendant shall provide a list to the Claims Administrator of the names of all
21 purchasers of whom it is aware who bought at least one Product during the Class
22 Period, and their address and/or email address for the purposes of directing notice.

23 (b) Within twenty-eight (28) days after entry of the Preliminary
24 Approval Order, the Claims Administrator shall mail or email the Postcard Notice (in
25 the form attached hereto as Exhibit F) to the Class Members. In the event that a Class
26 Notice is returned as undeliverable with a forwarding address, the Claims
27 Administrator shall re-mail the Class Notice to the indicated forwarding address
28 within five (5) business days from the date of receipt of the forwarding address. The

1 Claims Administrator shall have no obligation to re-mail any Class Notice returned
2 as undeliverable after thirty (30) days from the date on which it was originally mailed.

3 4. Defendant's Website & KCC's Settlement Website.

4 (a) Within twenty-eight (28) days of the entry of the Preliminary
5 Approval Order, the Claims Administrator shall ensure that the Settlement Website is
6 active and able to accept online claims, and that a toll-free number is available for
7 receiving calls related to the Settlement. The Settlement Website will contain, among
8 other things, the Long-Form Notice attached hereto as Exhibit A, the Settlement
9 Agreement, the Complaint, a Claim Form that can be downloaded, the ability to make
10 a claim online, and any additional relevant documents as later determined. The
11 Settlement Website shall remain active until ninety (90) days after the Court enters the
12 Judgment or after any appeal is resolved.

13 (b) Within twenty-eight (28) days after entry of the Preliminary
14 Approval Order, Defendant shall provide a hyperlink that states "Notice of Class
15 Action Settlement" somewhere on its website or a sub-page of its website. The
16 hyperlink will direct Class Members directly to KCC's Settlement Website.

17 5. Letter To Pharmacies. Within twenty-eight (28) days entry of the
18 Preliminary Approval Order, the Claims Administrator shall send a letter (attached
19 hereto as Exhibit H) to all pharmacies that purchased at least one Product from
20 Defendant during the Class Period. The letter will request that the pharmacy
21 participate in the Class Notice process by posting a copy of the enclosed Short-Form
22 Notice on their website or in its store location for the duration of the Claims Period.
23 The letter makes clear that the Parties have not represented to the Court that any
24 pharmacy will actually post the Short-Form Notice in their websites or business places.

25 6. Publication. Within twenty-eight (28) days after entry of Preliminary
26 Approval Order, or as soon as practicable thereafter, the Claims Administrator shall
27 arrange for publication of the Notice of Settlement in a national publication.

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1 **E. Claims Program**

2 1. Submission Of Claims. Claim Forms shall be available from the Claims
3 Administrator and on the Settlement Website. To file a Valid Claim, a Class Member
4 must: (i) complete a Claim Form by providing all of the requisite information
5 (including but not limited to the names of the Products purchased, the approximate
6 date of purchase, and the quantity of Products purchased), (ii) sign the Claim Form
7 under penalty of perjury, (iii) indicate whether he or she is enclosing Adequate Proof
8 of Purchase, and (iv) either return the Claim Form and Adequate Proof of Purchase,
9 if any, to the Claims Administrator or submit this information via the Settlement
10 Website no later than sixty (60) days after the Final Approval Hearing (the "Claims
11 Deadline"). Only Class Members who submit Valid Claims shall be entitled to a Cash
12 Award.

13 2. Determination Of Validity. The Claims Administrator shall be
14 responsible for determining the validity of all Claims.

15 (a) The type of Claims that the Claims Administrator will reject
16 include but are not limited to: (i) a Claim Form postmarked or electronically submitted
17 after the Claims Deadline, (ii) a Claim Form that is not signed, and (iii) any Claim
18 that is not substantially in compliance with the instructions on the Claim Form. Such
19 Persons who submit a Claim Form that is subsequently rejected by the Claims
20 Administrator will remain Class Members and will be bound by this Settlement.

21 (b) Class Members may not submit more than one Claim Form. If a
22 Class Member submits more than one Claim Form, only the first Claim Form will be
23 considered for Cash Award and the remaining Claim Forms will be denied.

24 (c) Submitted Claim Forms that omit information or contain inaccurate
25 or disqualifying information shall be returned by the Claims Administrator to the Class
26 Member's address or email address on the Claim Form as part of a notice of missing
27 information. Class Members whose Claim Forms are returned shall have until the
28 Claims Deadline, or fifteen (15) days from when the notice of missing information was

1 mailed or emailed, whichever is later, to reply to the notice and provide a revised Claim
2 Form that includes all required information. If a Class Member fails to respond by the
3 requisite deadline, or the Claims Administrator is unable to return the Claim Form as a
4 result of the omitted information, the Claims Administrator will reject such Class
5 Member's Claim and there will be no payment on such Claim. The Claims
6 Administrator will make the final decision in its sole discretion regarding whether a
7 Claim is valid.

8 3. Fraudulent Filings. If the Claims Administrator has a reasonable
9 suspicion of fraud, the Claims Administrator shall immediately notify both Class
10 Counsel and Defendant's Counsel of that fact and the basis for its suspicion. Class
11 Counsel and Defendant's Counsel shall endeavor to reach an agreed appropriate
12 solution to any suspected fraud. If necessary, Defendant may suspend the Claims
13 process and/or seek assistance from the Court.

14 4. Costs For Notice and Claims Program. The Claims Administrator will
15 be responsible for paying all costs of the Notice Program and Claims Program out of
16 the Gross Settlement Fund.

17 **F. Releases**

18 1. Released Parties. The "Released Parties" are Defendant, including but
19 not limited to its past and present affiliated or related corporate entities, its investors,
20 agents, directors, officers, owners, endorsers, insurers, employees, attorneys,
21 affiliates, joint-ventures, partners, advertising agencies, vendors, whether in their
22 individual or official capacities. The "Released Parties" shall also include all
23 distributors, healthcare practitioners, pharmacies, retailers, resellers, raw material
24 suppliers, vendors, wholesalers, and any Person in the chain of distribution, who sell
25 or have sold Products, third party entities who have displayed advertisements for the
26 Products, as well as third parties who contributed to the development of the
27 marketing of the Products, including these entities' respective past and present
28 directors, officers, managers, employees, and trustees, whether in their individual or

1 official capacities.

2
3 2. Plaintiff Releasing Parties. The "Plaintiff Releasing Parties" include the
4 Plaintiff and all Class Members, their present and former spouses, heirs, executors,
5 administrators, representatives, agents, and assigns.

6 3. Release By Plaintiff Releasing Parties. All Class Members (including
7 any of their past, present, or future agents, legal representatives, trustees, estates,
8 heirs, executors and administrators), and whether or not they object to the Settlement,
9 will release and forever discharge the Released Parties from all claims, demands,
10 actions, suits, causes of action, whether class, individual or otherwise in nature,
11 damages, liabilities, costs, expenses, penalties and attorneys' fees, known or
12 unknown, suspected or unsuspected, in law or equity, arising out of:

- 13 (i) a "Made in USA" designation on or about a Product;
- 14 (ii) representations by Defendant or third parties relating to where a
15 Product or any component/ingredient thereof was made, manufactured, or sourced;
- 16 (iii) any violation or alleged violation of California Business &
17 Professions Code sections 17200 *et seq.*, 17500 *et seq.*, and section 17533.7, and
18 California Civil Code sections 1770 *et seq.*;
- 19 (iv) any violation or alleged violation of 15 U.S.C. § 45a, any federal
20 statute, federal regulation, or statute of any of the fifty (50) states or any U.S. territory,
21 including but not limited to consumer protection laws, false advertising laws, fraud,
22 negligence, breach of warranty, and/or breach of contract claims; and/or
- 23 (v) any other legal or equitable claims that are connected with the
24 allegations in the Action, or that could have been presented in the Action.

25 Notwithstanding the above released claims, the released claims shall exclude
26 any claims regarding physical injury sustained by any Class Member(s) as a result of
27 orally ingesting any Product(s).

28 4. Release By Defendant. Defendant and its past and present trustees,

1 directors, officers, shareholders, partners, agents, employees, representatives,
2 attorneys, insurers, hereby release Plaintiff and her counsel from any claims arising
3 out of the resolution of this Action.

4 5. Release Of Unknown Claims. Defendant and each Class Member
5 expressly waive the provisions of Section 1542 of the California Civil Code (and all
6 other like provisions of law) to the full extent that these provisions may be applicable
7 to the releases herein. California Civil Code, Section 1542, provides:

8 A GENERAL RELEASE DOES NOT EXTEND TO
9 CLAIMS WHICH THE CREDITOR DOES NOT KNOW
10 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
11 THE TIME OF EXECUTING THE RELEASE, WHICH
12 IF KNOWN BY HIM OR HER MUST HAVE
13 MATERIALLY AFFECTED HIS OR HER
14 SETTLEMENT WITH THE DEBTOR.

15 Subject to the above, Defendant or each Class Member may hereafter discover facts
16 other than or different from those which he, she, or it knows or believes to be true
17 with respect to the claims being released. Nevertheless, Defendant and each Class
18 Member hereby expressly waive and fully, finally and forever settle and release, upon
19 this Settlement becoming final, any known or unknown, contingent or non-contingent
20 claim in any way relating to the subject matter of the claims being released herein,
21 whether or not concealed or hidden, without regard to subsequent discovery or
22 existence of such different or additional facts.

23 **G. Objection**

24 1. Right To Object. Any Class Member may object to the Settlement at the
25 Final Approval Hearing. Except as the Court may order otherwise, no Class Member
26 objecting to the Settlement shall be heard and no papers, briefs, pleadings, or other
27 documents submitted by any such Class Member shall be considered by the Court
28 unless such Class Member files with the Court and mails to Class Counsel and counsel
for Defendant a written objection with the caption *Maxin v. RHG & Co., Inc.*, that

1 includes: (a) the Class Member's full name and current address, (b) a signed statement
2 under the penalty of perjury that he or she believes himself or herself to be a Class
3 Member, (c) the specific grounds for the objection and any other reasons why such
4 Class Member desires to be heard, (d) all documents or legal authority that such Class
5 Member desires the Court to consider, and (e) a notice of intent to appear, if
6 applicable.

7 2. Deadline. All objections must be filed and postmarked no later than
8 ninety (90) days after entry of the Preliminary Approval Order. Any Class Member
9 who fails to object in the manner prescribed herein, or who does not restrict his or her
10 argument at the Final Approval Hearing to matters raised in a timely and validly
11 submitted written objection, shall be deemed to have waived his or her objections and
12 will be forever barred from making any such objection in the Action. While a signed
13 statement under penalty of perjury that he or she believes himself or herself to be a
14 Class Member is prima facie evidence that the objector is a Class Member, Plaintiff
15 and/or Defendant may take discovery regarding the matter, subject to Court approval.

16 3. Response To Objection. Class Counsel shall file and serve a written
17 response to any objection filed and served by any Class Member. Counsel for
18 Defendant may, in its discretion, file and serve a written response to any objection.
19 Any such written response shall be filed with the Court and served upon the objecting
20 Class Member or the objecting Class Member's attorney at least fourteen (14) days
21 before the Final Approval Hearing.

22 **H. Opt-Out Rights of Class Members**

23 1. Requesting Opt-Out. Any member of the Class may request exclusion
24 from the Settlement in this Action by U.S. mail, personally signed, and stating
25 unequivocally that he/she wishes to be excluded from this class action Settlement.

26 (a) Any opt-out request must be mailed to the Claims Administrator,
27 postmarked no later than ninety (90) days after entry of the Preliminary Approval
28 Order.

1 (b) Such request shall state the name and address of the person
 2 requesting exclusion and that such person elects to be excluded from this Settlement.
 3 Each request must also contain a signed statement that: "I/We hereby request to be
 4 excluded from the proposed Class in *Maxin v. RHG & Co., Inc.*," or similar words to
 5 this effect. The person requesting exclusion must be a Class Member and must sign
 6 the request for exclusion. A third party may not sign the exclusion request on behalf
 7 of the Class Member(s) requesting the opt-out.

8 (c) Any Person who chooses to be excluded and who provides the
 9 requested information will not be bound by any judgment entered in connection with
 10 this Settlement. No Person who chooses to be excluded from the Settlement may
 11 submit a Claim Form.

12 2. Withdrawing From Settlement. If more than three hundred (300) Class
 13 Members request exclusion, then Defendant has the unilateral right, in its sole
 14 discretion, to withdraw from this Settlement Agreement. This unilateral right to
 15 withdraw must be exercised within fifteen (15) days of Defendant's receipt of
 16 notification that the number of individuals validly requesting exclusion exceeds three
 17 hundred (300) Persons.

18 I. Attorneys' Fees And Plaintiff's Incentive Award

19 1. Motion For Attorneys' Fees And Incentive Award. Class Counsel shall
 20 file a motion with the Court for an award of attorneys' fees and costs and Plaintiff's
 21 incentive award. Such a motion shall be heard at the Final Approval Hearing (or at
 22 any other time deemed appropriate by the Court).

23 (a) Defendant agrees not to oppose a motion seeking an award of
 24 attorneys' fees and costs that does not seek more than two hundred seventy thousand
 25 dollars (\$270,000).

26 (b) Defendant also agrees not to oppose a motion seeking an incentive
 27 award to Plaintiff that does not seek more than five thousand dollars (\$5,000).

28 2. Deadline. At least fourteen (14) days prior to the deadline for written

1 Objections, Class Counsel shall file a motion requesting the Court's approval of
2 attorneys' fees and costs and for Plaintiff's incentive award.

3 **J. Final Approval Hearing**

4 1. Hearing Date. The Final Approval Hearing will be held on such date as
5 the Court may order, but no sooner than one hundred sixty (160) days after the Court
6 grants preliminary approval. The Final Approval Hearing may be continued from time
7 to time as necessary without further notice to the Class.

8 2. Briefing Schedule. Plaintiff shall file a Motion for Final Approval at least
9 twenty-eight (28) days prior to the Final Approval Hearing, unless otherwise agreed by
10 the Parties or ordered by the Court. Plaintiff's Motion for Final Approval will include
11 a proposed Final Approval Order substantially in the form of Exhibit D and the
12 Judgment in substantially the form of Exhibit E. Defendant may, in its sole discretion,
13 also file a Motion for Final Approval.

14 3. After Final Approval.

15 (a) Within ten (10) days after the Final Approval Date, the Claims
16 Administrator will pay from the Gross Settlement Fund: (i) Attorneys' Fees and Costs
17 Award ordered by the Court; (ii) incentive award to Plaintiff ordered by the Court;
18 and (iii) fees owed to the Claims Administrator, less any amounts previously tendered.

19 (b) Within thirty (30) days of the Final Approval Date, the Claims
20 Administrator will issue Cash Award checks to those Class Members who submitted
21 Valid Claims.

22 **K. Consequences Of Non-Approval Or Withdrawal**

23 1. Reservation Of Rights And Confidentiality. In the event that this
24 Settlement does not become final in accordance with the terms hereof, then this
25 Settlement Agreement will be of no force or effect. However, the Parties agree that
26 this Settlement Agreement, including all settlement negotiations and draft settlement
27 agreements, will be: (a) without prejudice to the rights and defenses of any Party, (b)
28 inadmissible under Federal Rules of Evidence Rule 408 and all other applicable

1 federal and/or state laws, and (c) not deemed or construed to be an admission or
2 evidence of any violation of any law or of any liability by Defendant. This paragraph
3 will survive and continue to apply to Defendant, Plaintiff and each Class Member,
4 even if the Court does not approve the Settlement, or the Court's approval of this
5 Settlement is set aside on appeal, or Defendant withdraws from the Settlement
6 Agreement.

7 2. Certification Vacated. If the Court does not grant final approval of the
8 Settlement reflected in this Settlement Agreement, any class certification will be
9 vacated and the Parties will be returned to their positions with respect to the Action
10 as if the Settlement Agreement had not been entered into. In the event that Final
11 Approval is not achieved: (a) any Court orders preliminarily or finally approving the
12 certification of any class contemplated by this Settlement Agreement shall be null,
13 void, and vacated, and shall not be used or cited thereafter by any person or entity,
14 and (b) the fact of the Settlement reflected in this Settlement Agreement, shall not be
15 used or cited thereafter by any Person, including without limitation any contested
16 proceeding relating to the certification of any class.

17 3. Attorneys' Fees And Incentive Award. The Court's failure to approve,
18 in whole or in part, Class Counsel's attorneys' fees and costs or incentive award to
19 Plaintiff shall not prevent the Settlement Agreement from becoming effective, nor
20 shall it be grounds for termination.

21 **L. Miscellaneous Provisions**

22 1. No Publicity Beyond Notice Procedures. Plaintiff and Class Counsel
23 shall not hold any press conference or issue any press release or make statements on
24 any website controlled by Plaintiff or Class Counsel or any Person regarding the
25 Settlement, except through the notice process approved by the Court. All agreements
26 made relating to the confidentiality of information will survive this Settlement
27 Agreement.

1 2. Stay of Proceedings. The Parties agree that all proceedings in the
2 Action shall be stayed pending and following preliminary approval of the Settlement,
3 except as necessary to implement the Settlement, or to comply with the terms of the
4 Settlement.

5 3. Binding on Successors. This Settlement Agreement will be binding
6 upon and inure to the benefit of the successors of the Parties hereto. Without limiting
7 the generality of the foregoing, each and every agreement herein by Plaintiff and Class
8 Counsel will be binding upon all Class Members.

9 4. Integration. This Settlement Agreement contains the entire, complete
10 and integrated statement of each and every term and provision agreed to by the Parties,
11 and is not subject to any condition not provided for herein.

12 5. Modification in Writing. This Settlement Agreement will not be
13 amended or modified except by a writing executed by one of Class Counsel and one
14 of Defendant's counsel, or their respective successors-in-interest. Amendments and
15 modifications may be made without additional notice to the Class Members unless
16 such notice is required by the Court.

17 6. Variance and Exhibits. Any inconsistency between this Settlement
18 Agreement and the exhibits attached hereto will be resolved in favor of the Settlement
19 Agreement. Nonetheless, all Exhibits to this Settlement Agreement are material and
20 integral part of the Settlement, and are incorporated by reference as if fully rewritten
21 herein.

22 7. Drafter. None of the parties hereto will be considered to be the drafter
23 of this Settlement Agreement or any provision hereof for the purpose of any statute,
24 case law or rule of interpretation or construction that would or might cause any
25 provision to be construed against the drafter thereof.

26 8. Governing Law. All terms of this Settlement Agreement and the
27 exhibits hereto will be governed by and interpreted according to the substantive laws
28

1 of the State of California without regard to its choice of law or conflict of laws
2 principles that would cause the application of the laws of any other jurisdiction.

3 9. Jurisdiction. Defendant and each Class Member hereby irrevocably
4 submits to and agrees not to contest the exclusive jurisdiction of the Court and agrees
5 that the Court is a proper venue and convenient forum, for purposes of any action or
6 proceeding arising out of or relating to this Settlement Agreement. In the event the
7 provisions of this Settlement Agreement are asserted by Defendant as a defense, in
8 whole or in part, to any claim or cause of action or otherwise raised as an objection in
9 any action or proceeding by a Class Member, it is hereby agreed that Defendant will
10 be entitled to a stay of that action or proceeding until the Court has entered a final
11 judgment no longer subject to any appeal or review determining any issues relating to
12 the defense or objection based on such provisions.

13 10. Execution in Counterparts. This Settlement Agreement may be
14 executed in counterparts. Email with pdf signatures will be considered as valid
15 signatures as of the date hereof.

16 11. Taxes. No opinion concerning the tax consequences of the Settlement to
17 any Class Member is given or will be given by Defendant, Defendant's counsel, or Class
18 Counsel; nor is any Party or their counsel providing any representation or guarantee
19 respecting the tax consequences of the Settlement as to any Class Member. Class
20 Members, Plaintiff, and Class Counsel shall be responsible for paying any and all
21 federal, state, and local taxes due on any payments made to them pursuant to the
22 Settlement. Taxes due in connection with the Gross Settlement Fund and Net Settlement
23 Fund prior to distribution to the Class shall be paid by the Claims Administrator from
24 the Net Settlement Fund.

25 12. Headings. The headings contained in this Settlement Agreement are for
26 reference purposes only and shall not affect in any way the meaning or interpretation of
27 this Settlement Agreement.

28

1 IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties
2 have caused this Settlement Agreement to be executed by their officers or
3 representatives hereunto duly authorized, effective as of the date first above mentioned.

4 In so doing, the Parties expressly agree to and intend to be legally bound by this
5 Settlement Agreement.

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DATED: October 5, 2016

By


Plaintiff Heather Maxin

DATED: _____, 2016

By

Abbas Kazerounian
KAZEROUNI LAW GROUP, APC
Attorney for Plaintiff Heather Maxin

DATED: _____, 2016

By

Joshua B. Swigart
HYDE & SWIGART
Attorney for Plaintiff Heather Maxin

DATED: _____, 2016

By

Thomas J. Petrarca
on behalf of Defendant RHG & Co., Inc.

DATED: _____, 2016


By

Lee S. Brenner
KELLEY DRYE & WARREN LLP
Attorney for Defendants RHG & Co., Inc.


1 DATED: _____, 2016

2 By _____
3 Plaintiff Heather Maxin

4
5 DATED: 10/19/, 2016

6 By 
7 Abbas Kazerounian
8 KAZEROUNI LAW GROUP, APC
9 Attorney for Plaintiff Heather Maxin

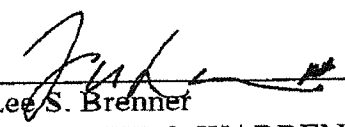
10 DATED: 10/19, 2016

11 By 
12 Joshua B. Swigart
13 HYDE & SWIGART
14 Attorney for Plaintiff Heather Maxin

15 DATED: October 11, 2016

16 By Thomas J. Petrarca
17 Thomas J. Petrarca
18 on behalf of Defendant RHG & Co., Inc.

19 DATED: Oct. 11, 2016

20 By 
21 Lee S. Brenner
22 KELLEY DRYE & WARREN LLP
23 Attorney for Defendants RHG & Co., Inc.