UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

RiskOn International, Inc. f/k/a BitNile Metaverse, Inc. and/or Ecoark Holdings, Inc., Ecoark, Inc., and Hyperscale Data, Inc. v. Zest Labs Holdings, LLC, and Gary Metzger

RiskOn International v. Zest Labs · No. 2:25-cv-02042-APG-NJK · Decided December 29, 2025

SUMMARY

The United States District Court for the District of Nevada denies without prejudice the parties' motions to seal documents and information filed in connection with a motion to dismiss and motions concerning preliminary injunctive relief. Applying the compelling-reasons standard for sealing judicial records, the court holds that the existence of confidentiality provisions, without more, does not justify sealing. The court keeps the currently sealed materials under seal temporarily and permits the parties to file a stipulation or renewed motions identifying specific portions and compelling reasons for sealing by January 14, 2026.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Andrew P. Gordon
JURISDICTION	United States District Court for the District of Nevada
DECIDED	December 29, 2025
DOCKET	2:25-cv-02042-APG-NJK
DISPOSITION	other
PROCEDURAL POSTURE	The parties moved to seal documents and information filed in connection with a motion to dismiss and motions concerning a preliminary injunction and temporary restraining order.
STANDARD OF REVIEW	The court applied the strong presumption of public access to judicial records and required compelling reasons, supported by a factual basis and balanced against the public interest, because the materials related to a dispositive motion and a preliminary-injunction motion.
PRECEDENTIAL VALUE	unpublished

TOPICS

motions to dismiss · injunctions · civil procedure · commercial litigation

PRACTICE AREAS

civil procedure · commercial litigation · contracts

QUESTIONS PRESENTED

1. Whether the parties established compelling reasons sufficient to overcome the strong presumption of public access to judicial records associated with a motion to dismiss and motions for preliminary injunctive relief.
2. Whether the mere existence of a confidentiality provision in a settlement agreement justified sealing the documents and information at issue.
3. Whether the documents should remain temporarily sealed while the parties were given an opportunity to identify specific redactions and provide a legally sufficient justification for sealing.

HOLDINGS

1. The compelling-reasons standard applies to documents filed in connection with the defendants' motion to dismiss and the parties' preliminary-injunction briefing because a motion to dismiss is related to the merits and a preliminary-injunction motion is at least tangentially related to the merits.
2. The mere fact that a settlement agreement contains a confidentiality provision, without additional justification, is not a compelling reason to seal judicial records.
3. The defendants' and plaintiffs' motions to seal are denied without prejudice, while the currently sealed documents remain sealed temporarily pending a stipulation or renewed motion identifying specific material and compelling reasons for sealing.

KEY QUOTATIONS

> *“Unless a particular court record is one traditionally kept secret, a strong presumption in favor of access is the starting point.”* (at 1)

> *“The “mere fact” that a “settlement agreement may contain a confidentiality provision, without more, does not constitute a compelling reason to seal the information.””* (at 2)

> *“Because the defendants and the plaintiffs have not provided anything beyond “conclusory statement[s] that the agreement contains a confidentiality clause,” I cannot find compelling reasons to seal these documents.”* (at 2)

> *“Because “[o]nce information is published, it cannot be made secret again,” I will keep all currently sealed documents under seal until I rule on the parties’ stipulation or new motion to seal or until January 16, 2026 if neither party files a motion to seal.”* (at 3)

FACTUAL BACKGROUND

Non-party Zest Labs, Inc. entered into a settlement agreement with Walmart containing a confidentiality provision. RiskOn and Ecoark had transferred Zest Labs, Inc. to Zest Labs Holdings, LLC, which was to distribute proceeds from the Walmart litigation to specified RiskOn security holders. Plaintiffs sued defendants concerning the proposed distribution, and the parties sought to seal shareholder letters, an estimate of settlement proceeds, information concerning litigation expenses, and related briefing.

PROCEDURAL HISTORY

Plaintiffs and defendants filed competing motions to seal materials attached to or quoted in briefing on the defendants' motion to dismiss and the plaintiffs' motion for preliminary injunctive relief. The court denied all motions to seal without prejudice because the parties did not establish compelling reasons for secrecy, but temporarily continued the existing seals and allowed the parties to submit a stipulation or renewed motion identifying specific materials and compelling reasons.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. The parties were ordered to file by January 14, 2026 either a stipulation identifying every portion of every document to be sealed, with compelling reasons and redacted versions, or a renewed motion to seal. If neither was filed, the existing seals would remain only until January 16, 2026.

CASES CITED

- Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978)
- Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1178-79 (9th Cir. 2006)
- Foltz v. State Farm Mutual Automobile Insurance Co., 331 F.3d 1122, 1135-37 (9th Cir. 2003)
- Center for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1096-1101 (9th Cir. 2016)
- Helix Environmental Planning, Inc. v. Helix Environmental & Strategic Solutions, 2021 WL 120829, at *1-*2 (S.D. Cal. Jan. 13, 2021)
- United States v. Cuevas, 2023 WL 6196142, at *1 (D. Nev. Sept. 22, 2023)
- In re Roman Catholic Archbishop of Portland, 661 F.3d 417, 425 (9th Cir. 2011)
- In re Copley Press, Inc., 518 F.3d 1022, 1025 (9th Cir. 2008)

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 RISKON INTERNATIONAL, INC. f/k/a Case No.: 2:25-cv-02042-APG-NJK BITNILE METAVERSE, INC. and/or 4 ECOARK HOLDINGS, INC., EOCARK, Order Denying Parties’ Motions to Seal INC., and HYPERSCALE DATA, INC., 5 [ECF Nos. 9, 19, 24, 33, 42] Plaintiffs 6 v. 7 ZEST LABS HOLDINGS, LLC, and GARY 8 METZGER, 9 Defendants 10 AND ALL RELATED COUNTERCLAIMS 11 Plaintiffs RiskOn, Inc., Ecoark, Inc., and Hyperscale Data, Inc. and defendants Zest Labs 12 Holdings, LLC (Zest Holdings) and Gary Metzger move to seal various documents and pieces of 13 information filed with the defendants’ motion to dismiss and with both

sides' papers relating to plaintiffs' motion for a preliminary injunction and temporary restraining order.

As the parties have not raised a compelling reason to seal, I deny their motions. But I keep the documents under seal for now while I give the parties another opportunity to justify sealing them.

I. BACKGROUND

In separate litigation, non-party Zest Labs, Inc. (Zest Subsidiary) entered into a settlement agreement with Walmart, Inc. that contains a confidentiality provision.

ECF Nos. 1-1 at 6; 12 at 2. RiskOn and Ecoark had previously transferred Zest Subsidiary to Zest Holdings so that Zest Holdings would distribute any proceeds derived from the Walmart litigation to RiskOn's "security holders of record as of November 15, 2022." ECF No. 1-1 at 18.

In this case, the plaintiffs sue the defendants over the proposed distribution of the Walmart settlement proceeds, alleging breach of contract and other causes of action. ECF No. 1-1. The parties have filed several motions and related papers. The defendants move to seal several documents and pieces of information in their briefing. ECF Nos. 9; 24; 33.

First is a letter they sent to RiskOn's shareholders that they attached as an exhibit to their motion to dismiss. ECF No. 11-7. Second is an estimate of how much money from the settlement proceeds they intend to distribute to RiskOn's shareholders in their statement of removal. ECF No. 23.

Third is information in their opposition to the plaintiffs' motion for a preliminary injunction regarding the litigation expenses being paid out of the Walmart settlement proceeds and a second letter sent to RiskOn's shareholders. ECF Nos. 32; 32-1; 32-2.

The plaintiffs seek to seal the portions of their briefs that quote and argue about the information the defendants wish to seal. ECF Nos. 19, 42.

II. DISCUSSION

"[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 (1978). "Unless a particular court record is one traditionally kept secret, a strong presumption in favor of access is the starting point." Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (simplified). A party seeking to seal a judicial record bears the burden of overcoming the strong presumption of access. Foltz v. State Farm Mut. Auto Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003). The showing required to meet this burden depends upon whether the documents to be sealed relate to a motion that is "more than tangentially related to the merits of the case." Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1101 (9th Cir.

2016). When the underlying motion is more than tangentially related to the merits, the "compelling reasons" standard applies. Id. at 1096–98. Under this standard, I may seal records only when I find "a compelling reason and articulate the factual basis for [my] ruling, without relying on hypothesis or conjecture. Kamakana, 447 F.3d at 1179 (quotation omitted).

I must then "conscientiously balance the competing interest of the public and the party who seeks to keep certain judicial records secret." Id. (simplified). The defendants seek to seal documents filed in support of their motion to dismiss and their opposition to the plaintiffs' motion for a preliminary injunction.

The plaintiffs' desired redactions are based on those same documents. A motion to dismiss, as a dispositive motion, is related to the merits. See Foltz, 331 F.3d at 1136. A motion for preliminary injunction is tangentially related to the merits because it "frequently requires the court to address the merits of a case" and "often includes the presentation of substantial evidence." Ctr. for Auto Safety, 809 F.3d at 1099.

Therefore, the compelling reasons standard applies to all documents in this case. In all three of their motions to seal, the defendants' arguments for sealing are practically identical. They state that "compelling reasons exist for this narrow sealing order here because the information at issue is subject to a confidentiality agreement." ECF Nos. 24 at 4; 33 at 4; see ECF No. 9 at 3.

The defendants do not give any other reasons for sealing. They cite three unpublished cases but do not explain how those cases relate to the facts of this case. The plaintiffs do not provide any further reasons for sealing the information or documents. The "mere fact" that a "settlement agreement may contain a confidentiality provision, without more, does not constitute a compelling reason to seal the information." Helix Env't Plan., Inc. v. Helix Env't & Strategic Sols., Case No. 3:18-cv-02000-AJB-AHG, 2021 WL 120829, at *1 (S.D.

Cal. Jan. 13, 2021) (citing Foltz, 331 F.3d at 1137-38). Because the defendants and the plaintiffs have not provided anything beyond "conclusory statement[s] that the agreement contains a confidentiality clause," I cannot find compelling reasons to seal these documents. Helix Env't Plan., Inc., 2021 WL 120829, at *2 (citing Kamakana, 447 F.3d at 1178).

Therefore, I deny all motions to seal without prejudice. I will give the parties until January 14, 2026 to file a stipulation that identifies every portion of every document they want sealed, listing compelling reasons to do so and including redacted versions of those documents. Redaction is preferred over sealing entire documents. See United States v. Cuevas, Case No. 2:22-cr-00286-CDS-BNW, 2023 WL 6196142, at *1, (D.

Nev. Sept. 22, 2023) (citing Jn re Roman Catholic Archbishop of Portland, 661 F.3d 417, 425 (9th Cir. 2011)). Ifthe parties cannot stipulate what to redact or seal, either party may file a new motion to seal, listing compelling reasons to do so with redacted versions of the documents by January 14, 2026.

Because “[o]nce information is published, it cannot be made secret again,” I will keep all currently sealed documents under seal until I rule on the parties’ stipulation or new motion to seal or until January 16, 2026 if neither party files a motion to seal. Jn re Copley Press, Inc., 518 F.3d 1022, 1025 (9th Cir. 2008). I. CONCLUSION I THEREFORE ORDER that the defendants’ motions to seal (ECF Nos. 9, 24, 33) and the plaintiffs’ motions to seal (ECF Nos. 19, 42) are DENIED without prejudice.

Nevertheless, all currently sealed documents will remain under seal for now. The parties have until January 14, 2026 to file either a stipulation as to what to seal or a new motion to seal. DATED this 29th day of December, 2025. ANDREWP.GORDON. CHIEF UNITED STATES DISTRICT JUDGE