

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

RiskOn International, Inc.; Ecoark, Inc.; and Hyperscale Data, Inc.
v. Zest Labs Holdings, LLC, and Gary Metzger

RiskOn International · No. 2:25-cv-02042-APG-NJK · Decided December 22, 2025

SUMMARY

The United States District Court for the District of Nevada partially granted the plaintiffs’ motion for a preliminary injunction and denied their motion for a temporary restraining order as moot. The court enjoined the defendants from further distributing Walmart settlement proceeds to the litigation funder, litigation counsel, other related expense recipients, or the defendants themselves, and barred retention of a 5% compensation amount, while allowing payments to defense counsel in the present case and Stretto, Inc. The court found serious questions concerning compliance with the parties’ stock purchase agreement and the risk that funds would not reach eligible beneficial owners.

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 22, 2025
DOCKET	2:25-cv-02042-APG-NJK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for a preliminary injunction and a temporary restraining order to prevent defendants from spending or transferring settlement proceeds from separate litigation. The court granted the preliminary injunction in part and denied the temporary restraining order as moot.
STANDARD OF REVIEW	A preliminary injunction requires a showing of likelihood of success on the merits, likelihood of irreparable harm, a favorable balance of hardships, and consistency with the public interest. Alternatively, relief may issue upon serious questions on the merits, likely irreparable harm, hardships tipping sharply in the plaintiff's favor, and a public interest supporting relief.
PRECEDENTIAL VALUE	unpublished

PARTIES

RiskOn International, Inc., Ecoark, Inc., Hyperscale Data, Inc. v. Zest Labs Holdings, LLC, Gary Metzger

TOPICS

injunctions

injunction bonds

breach of contract

commercial litigation

civil procedure

PRACTICE AREAS

civil procedure

contracts

commercial litigation

remedies

corporate law

QUESTIONS PRESENTED

1. Whether plaintiffs established the requirements for a preliminary injunction preventing defendants from distributing Walmart litigation proceeds to DTC.
2. Whether plaintiffs established grounds to enjoin further payments to the litigation funder, litigation counsel, other litigation-related payees, and defendants themselves.
3. Whether defendants should be enjoined from retaining five percent of the net proceeds as compensation.
4. Whether plaintiffs' motion for a temporary restraining order should be denied as moot after issuance of the preliminary injunction.
5. Whether a security bond should be required under Federal Rule of Civil Procedure 65.

HOLDINGS

1. Plaintiffs demonstrated serious questions concerning whether transferring the proceeds to DTC would result in the proper beneficial owners receiving their shares, likely irreparable harm because defendants lacked assets to compensate them if the money disappeared, and a balance of equities and public interest favoring preservation of the funds. The court therefore enjoined distribution of any Walmart proceeds to DTC.
2. The court enjoined further distributions of Walmart proceeds to the litigation funder, counsel in the Walmart litigation, and other parties owed expenses related to that litigation.
3. The court enjoined defendants from retaining five percent of the net proceeds as compensation because plaintiffs raised a serious question concerning the amount defendants were owed and the governing documents did not establish that amount.
4. The court waived any security-bond requirement under Federal Rule of Civil Procedure 65 because the injunction caused no harm to defendants.

KEY QUOTATIONS

“To obtain a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm, (3) the balance of hardships favors the plaintiff, and (4) an injunction is in the public interest.” (Order at 2)

“Defendants Zest Labs Holdings, LLC, and Gary Metzger are hereby ENJOINED from further distributing any of the Walmart proceeds to the litigation funder in the Walmart litigation, counsel in the Walmart litigation (Bartko Pavia), other parties owed expenses related to Walmart litigation, or to the defendants themselves.” (Order at 5)

FACTUAL BACKGROUND

Zest Subsidiary obtained a jury verdict against Walmart in trade-secret litigation, and the litigation later settled in July 2025. RiskOn, Ecoark, and Zest Holdings entered into a Stock Purchase Agreement transferring Zest Subsidiary to Zest Holdings for the benefit of RiskOn security holders entitled to receive net Walmart litigation proceeds. Zest Holdings planned to distribute proceeds through DTC and brokers to beneficial stockholders, retain five percent as compensation, and pay litigation-related fees and expenses. Plaintiffs disputed whether those distributions complied with the SPA and sought to preserve the proceeds.

PROCEDURAL HISTORY

Plaintiffs sued defendants for breach of contract and related claims concerning the distribution of Walmart litigation settlement proceeds. After a December 17, 2025 hearing, the court ruled on plaintiffs' motions for preliminary and temporary injunctive relief.

DISPOSITION

other

CASES CITED

- Whistler Investments, Inc. v. Depository Trust & Clearing Corp., 539 F.3d 1159, 1163 (9th Cir. 2008)
- In re Appraisal of Dell Inc., No. CV 9322-VCL, 2015 WL 4313206, at *5-6 (Del. Ch. July 13, 2015), as revised (July 30, 2015)
- Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)
- Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011)

OPINION

1 UNITED STATES DISTRICT COURT 2 DISTRICT OF NEVADA 3 RISKON
INTERNATIONAL, INC.; Case No.: 2:25-cv-02042-APG-NJK EOCARK, INC.; and
HYPERSCALE DATA, 4 INC., Order Granting Plaintiffs’ Motion for Preliminary Injunction in
Part and 5 Plaintiffs Denying Plaintiffs’ Motion for Temporary Restraining Order as Moot 6 v.
[ECF Nos. 17, 18] 7 ZEST LABS HOLDINGS, LLC, and GARY METZGER, 8 Defendants 9
AND ALL RELATED COUNTERCLAIMS 10 11 The parties in this case dispute the method of
distribution of settlement proceeds derived 12 from separate litigation between Walmart, Inc. and
non-party Zest Labs, Inc. (Zest Subsidiary).

13 Plaintiff RiskOn International, Inc. was a publicly traded company whose shareholders are
owed 14 the settlement proceeds.¹ Plaintiff Hyperscale Data, Inc. owns 85% of the voting stock of
15 RiskOn. Plaintiff Ecoark, Inc. is RiskOn's wholly owned subsidiary that formerly owned Zest
16 Subsidiary. Defendant Zest Holdings, LLC currently owns Zest Subsidiary, thereby controlling
17 the settlement proceeds from the Walmart litigation.

Zest Holdings' sole member is defendant 18 Gary Metzger. The plaintiffs have sued the defendants
for breach of contract, among other 19 claims, alleging that the defendants' proposed distribution
of the Walmart proceeds violates the 20 agreement that transferred Zest Subsidiary from Ecoark to
Zest Holdings. They move for a 21 22 23 1 RiskOn was formerly known as BitNile Metaverse,
Inc. and Ecoark Holdings, Inc. ECF No. 1-1 at 2.

1 preliminary injunction and a temporary restraining order to prohibit the defendants from 2
spending or transferring any of the Walmart proceeds. 3 I. FACTUAL BACKGROUND 4 Zest
Subsidiary sued Walmart in 2018, alleging theft of trade secrets. ECF No. 1-1 at 35. 5 Zest
Subsidiary won a jury verdict against Walmart in 2021, but Walmart successfully moved for 6 a
new trial in 2023.

Id. 7 While the Walmart litigation was ongoing, RiskOn developed a plan to transfer Zest 8
Subsidiary such that RiskOn and Ecoark no longer owned it. Id. at 3-4. RiskOn and Ecoark 9
assigned all their claims against Walmart to Zest Subsidiary. Id. at 4. Metzger, then a member of
10 RiskOn's Board of Directors, formed Zest Holdings to acquire Zest Subsidiary, oversee the 11
Walmart litigation, and distribute any proceeds from the litigation to RiskOn's shareholders.

Id. 12 at 4. On August 25, 2023, RiskOn, Ecoark, and Zest Holdings entered into a Stock Purchase
13 Agreement (SPA) transferring all shares of Zest Subsidiary to Zest Holdings. Id. at 18-19. The
14 SPA established that Zest Holdings was "formed for the benefit of [RiskOn's] security holders
15 entitled to participate" in the "distribution" of the "net proceeds" of the Walmart litigation, and
16 that the "transfer" of Zest Subsidiary to Zest Holdings "will facilitate the distribution of net 17
proceeds derived from [the Walmart] litigation to the Record Date Owners and is consistent with
18 the expectations of such Record Date Owners." Id. at 18.

The SPA defines "Record Date 19 Owners" to be RiskOn's "security holders of record as of
November 15, 2022." Id. 20 Zest Subsidiary and Walmart reached a settlement in the trade secrets
litigation in July 21 2025. Id. at 6. Zest Holdings has begun paying out of those proceeds several
fees and costs 22 associated with the trade secrets litigation, including paying the litigation funder,
counsel, taxes, 23 and other expenses and fees.

ECF Nos. 31-7 at 8; 32-2 at 8. After Zest Holdings finishes paying 1 its remaining litigation
expenses, it will distribute the remaining funds (the net proceeds) to the 2 Record Date Owners.
ECF No. 32-2 at 8. Zest Holdings intends to retain 5% of the net proceeds 3 as compensation for

prosecuting and monetizing the claims in the Walmart litigation. *Id.* The 4 rest it plans to distribute to the Record Date Owners by distributing it pro rata to the stockholders 5 listed on RiskOn's stock ledger on November 15, 2022.

ECF Nos. 1-1 at 7; 32-1 at 37. 6 RiskOn's stock ledger states that on the relevant date about 80% of its shares were owned 7 by an entity called Cede & Co., which is a nominee of Depository Trust Company (DTC).² ECF 8 No. 1-1 at 7. Both parties agree though that DTC should not ultimately end up with any of the 9 net proceeds. That is because DTC's nominee, though owning legal title to these RiskOn shares, 10 did not own the economic benefits or trading rights of any of RiskOn's stock.

DTC is a central 11 clearinghouse registered with the Securities and Exchange Commission that streamlines and 12 settles securities transactions between stockbrokers for virtually every broker dealer in the 13 United States. ECF Nos. 6 at 10; 31-2 at 5. *Whistler Investments, Inc. v. Depository Trust and 14 Clearing Corp.*, 539 F.3d 1159, 1163 (9th Cir. 2008); *In re Appraisal of Dell Inc.*, No. CV 9322- 15 VCL, 2015 WL 4313206, at *5-6 (Del.

Ch. July 13, 2015), as revised (July 30, 2015). 16 DTC had legal title to the vast majority of RiskOn's stocks due to reforms Congress 17 implemented to increase the efficiency of trading securities of public companies. See David 18 Brooks, *Depository Trust Company and the Omnibus Proxy: Shareholder Voting in the Era of 19 Share Immobilization*, 56 S. Tex. L. Rev. 205, 209-10 (2014).

Because RiskOn was a public 20 company with stock listed on the NASDAQ stock exchange, any public market investor with a 21 brokerage account could purchase RiskOn stock by placing an order with a broker. ECF No. 6 at 22 2 This number is an estimate because Zest Holdings does not have RiskOn's stock ledger as of 23 November 15, 2022, the record date. ECF No. 45-2 at 2.

RiskOn has not authorized its transfer agent to release that information to Zest Holdings. ECF Nos. 45-2 at 1-2; 45-3 at 2-3. 1 9. These investors are "beneficial owners" because they could sell and had the economic 2 benefits of the stock, but they did not appear on RiskOn's stock ledger. See Brooks, *Depository 3 Trust Company and the Omnibus Proxy: Shareholder Voting in the Era of Share Immobilization*, 4 56 S. Tex. L. Rev. at 207.

Instead, broker-dealers, also called DTC participants, inform the DTC 5 how many shares of RiskOn its customers collectively own. See *id.* at 210. DTC then compiles 6 the number of shares owned by all DTC participants, notifies RiskOn of that number, and DTC's 7 nominee appears on RiskOn's stock ledger as the legal owner of the shares reported by DTC 8 participants that were initially bought by the beneficial owners.

See *id.* at 210-11. This makes 9 DTC the "record owner" of the shares. When beneficial owners traded RiskOn shares, their 10 brokers would trade the shares between themselves and then only

report to the DTC the net 11 change of the sum of their customers' collective ownership of RiskOn shares at the end of the 12 trading day. See *id.* at 210. DTC records by book entry these net changes in ownership across all 13 brokers, allowing an unlimited number of trades of RiskOn shares between brokers without 14 changing DTC's nominee as the registered owner of the shares on RiskOn's stock ledger.

See *id.* 15 at 210-11. That is why RiskOn's stock ledger lists DTC's nominee as the owner of about 80% of 16 RiskOn's stocks because that amount had been bought by public market investors through 17 brokers on November 15, 2022. 18 The defendants believe that distributing the proper pro rata amount of the net Walmart 19 proceeds to DTC will ultimately lead to the beneficial owners of RiskOn's stock receiving the 20 net proceeds.

They state that once DTC receives the net proceeds, it will distribute them 21 proportionally to the brokers based on how many RiskOn stocks each broker's customers held, 22 and then the brokers will distribute the funds to RiskOn's public market investors. 23 1 The plaintiffs argue that distributing the net proceeds to DTC will breach the SPA 2 because DTC is not a "Record Date Owner" under the SPA and because DTC is unable to 3 distribute the net proceeds such that the beneficial owners of RiskOn's stock will receive them.

4 They also argue that the defendants' spending of the Walmart proceeds on expenses outside of 5 the distribution to the beneficial owners of RiskOn's stock is excessive and violates the SPA. 6 The plaintiffs move for a temporary restraining order and preliminary injunction based only on 7 their likelihood of success on their breach of contract claim. They seek to prohibit the 8 defendants from spending or transferring any portion of the Walmart proceeds.

9 II. MOTION FOR PRELIMINARY INJUNCTION 10 To obtain a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of 11 success on the merits, (2) a likelihood of irreparable harm, (3) the balance of hardships favors the 12 plaintiff, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 13 555 U.S. 7, 20 (2008).

Alternatively, the plaintiff must demonstrate (1) serious questions on the 14 merits, (2) a likelihood of irreparable harm, (3) the balance of hardships tips sharply in the 15 plaintiff's favor, and (4) an injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). 17 For the reasons set forth on the record in the December 17, 2025 hearing, and as outlined 18 here, I grant a preliminary injunction barring the defendants from making any further 19 distributions of the Walmart proceeds to DTC, the litigation funder, counsel in the Walmart 20 litigation, other parties owed expenses related to the Walmart litigation, or the defendants 21 themselves.³ 22 23 3 The plaintiffs also moved for a temporary restraining order to bar the defendants from distributing any of the Walmart proceeds on the same grounds as their motion for a preliminary 1 The plaintiffs have raised a serious question whether transferring the money to DTC will 2 lead to RiskOn's beneficial owners receiving their share of the net proceeds.

Both parties agree 3 that the SPA's purpose is to ensure the beneficial owners ultimately receive their proper share of 4 the Walmart proceeds. But the plaintiffs have raised a serious question whether DTC needed 5 notice prior to November 15, 2022 to be able to practically distribute the proceeds to the proper 6 brokers so that those brokers can distribute the proceeds to the proper beneficial owners.

There 7 is a likelihood of irreparable injury to the plaintiffs because the defendants do not have assets to 8 compensate the beneficial owners or the plaintiffs if DTC receives the money and it disappears at 9 some point in the distribution process.

Because the defendants have already stated they will not 10 distribute any funds to DTC until they have adequate assurance that doing so will ensure the 11 beneficial owners receive their portion, and because they do not have that assurance yet, the 12 defendants are not harmed by an injunction at this stage. ECF No. 31 at 26. So the balance of the 13 equities tips sharply in the plaintiffs' favor.

The public interest weighs in favor of halting the 14 transfer of the funds to DTC until there are assurances that RiskOn's beneficial owners will 15 receive their share of the Walmart proceeds through that process.

Therefore, I grant a 16 preliminary injunction to prohibit the defendants from transferring any of the Walmart proceeds 17 to DTC. 18 I also prohibit the defendants making any further distributions to the litigation funder of 19 the Walmart litigation, counsel in the Walmart litigation (Bartko Pavia), or to other parties owed 20 expenses related to the Walmart litigation.

The plaintiffs again have raised serious questions 21 whether any of these payments are excessive or in violation of the SPA because the defendants 22 injunction. I deny the motion for a temporary restraining order as moot as I am granting the 23 preliminary injunction. 1 have refused to turn over specifics of what those entities are owed and what they did to earn 2 those amounts.

I find irreparable harm to the plaintiffs that tips sharply in their favor because 3 once any more of these funds are paid out, it will be extremely difficult to get them back. The 4 defendants will experience minimal harm because the injunction provides them a defense from 5 potential legal liability for waiting to pay these expenses.

The public interest is served by 6 ensuring the Record Date Owners will receive the maximum payout from the Walmart proceeds 7 to the extent some of these funds are not needed for litigation expenses. 8 Finally, I grant a preliminary injunction barring the defendants from retaining 5% of the 9 net proceeds. All parties agree that the defendants are owed some compensation for prosecuting 10 the trade secrets litigation against Walmart.

However, the plaintiffs have raised a serious question about how much the defendants are owed because neither the SPA nor any other document given to me states the amount the defendants are owed for their work.

The same likelihood of irreparable harm applies here as it does in paying out the litigation expenses, such that the balance of the equities tips sharply in the plaintiffs' favor. This again serves the public interest by ensuring the Record Date Owners will receive the maximum payout from the Walmart proceeds. However, I do not enjoin the defendants from distributing part of the Walmart proceeds to defense counsel in this case or to Stretto, Inc., the legal services firm the defendants retained to distribute the Walmart proceeds.

At the December 17 hearing, the plaintiffs agreed to not seek to stop payments to either at this time. Given there is no harm to the defendants, I waive any need for a security bond under Federal Rule of Civil Procedure 65. I strongly encourage the parties to communicate with each other to resolve these questions on their own. Both parties are withholding information from the other.

An appropriate confidentiality order should protect the defendants' disclosure to the plaintiffs of the fee arrangements with the litigation funder, Bartko Pavia, and other Walmart litigation expenses. Also, with this injunction, the plaintiffs have no reason to believe that providing the list of RiskOn's stockholders of record as of November 15, 2022 to the defendants will cause the defendants to transfer the funds to the DTC at this time.

See ECF No. 31-7 at 13-14. I. CONCLUSION I THEREFORE ORDER that the plaintiffs' motion for preliminary injunction (ECF No. 10) is GRANTED in part. Defendants Zest Labs Holdings, LLC, and Gary Metzger are hereby ENJOINED from further distributing any of the Walmart proceeds to the litigation funder in the Walmart litigation, counsel in the Walmart litigation (Bartko Pavia), other parties owed expenses related to Walmart litigation, or to the defendants themselves.

I FURTHER ORDER that the plaintiffs' motion for a temporary restraining order (ECF No. 17) is DENIED as moot. DATED this 22nd day of December, 2025. G— ANDREW P. GORDON. CHIEF UNITED STATES DISTRICT JUDGE