

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

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 Agreement (SPA) transferring all shares of Zest Subsidiary to Zest Holdings. Id. at 18-19. The SPA established that Zest Holdings was “formed for the benefit of [RiskOn’s] security holders entitled to participate” in the “distribution” of the “net proceeds” of the Walmart litigation, and that the “transfer” of Zest Subsidiary to Zest Holdings “will facilitate the distribution of net proceeds derived from [the Walmart] litigation to the Record Date Owners and is consistent with the expectations of such Record Date Owners.” Id. at 18.

The SPA defines “Record Date 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 associated with the trade secrets litigation, including paying the litigation funder, counsel, taxes, and other expenses and fees.

ECF Nos. 31-7 at 8; 32-2 at 8. After Zest Holdings finishes paying its remaining litigation expenses, it will distribute the remaining funds (the net proceeds) to the Record Date Owners. ECF No. 32-2 at 8. Zest Holdings intends to retain 5% of the net proceeds as compensation for prosecuting and monetizing the claims in the Walmart litigation. Id. The rest it plans to distribute to the Record Date Owners by distributing it pro rata to the stockholders listed on RiskOn’s stock ledger on November 15, 2022.

ECF Nos. 1-1 at 7; 32-1 at 37. RiskOn’s stock ledger states that on the relevant date about 80% of its shares were owned 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 net proceeds. That is because DTC’s nominee, though owning legal title to these RiskOn shares, did not own the economic benefits or trading rights of any of RiskOn’s stock.

DTC is a central clearinghouse registered with the Securities and Exchange Commission that streamlines and settles securities transactions between stockbrokers for virtually every broker dealer in the United States. ECF Nos. 6 at 10; 31-2 at 5. *Whistler Investments, Inc. v. Depository Trust and 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). DTC had legal title to the vast majority of RiskOn’s stocks due to reforms Congress implemented to increase the efficiency of trading securities of public companies. See David Brooks, *Depository Trust Company and the Omnibus Proxy: Shareholder Voting in the Era of Share Immobilization*, 56 S. Tex. L. Rev. 205, 209-10 (2014).

Because RiskOn was a public company with stock listed on the NASDAQ stock exchange, any public market investor with a brokerage account could purchase RiskOn stock by placing an order with a broker. ECF No. 6 at 22. This number is an estimate because Zest Holdings does not have RiskOn's stock ledger as of 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. These investors are "beneficial owners" because they could sell and had the economic benefits of the stock, but they did not appear on RiskOn's stock ledger. See Brooks, *Depository Trust Company and the Omnibus Proxy: Shareholder Voting in the Era of Share Immobilization*, 45 *S. Tex. L. Rev.* at 207.

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

See *id.* at 210-11. This makes DTC the "record owner" of the shares. When beneficial owners traded RiskOn shares, their brokers would trade the shares between themselves and then only report to the DTC the net change of the sum of their customers' collective ownership of RiskOn shares at the end of the trading day. See *id.* at 210. DTC records by book entry these net changes in ownership across all brokers, allowing an unlimited number of trades of RiskOn shares between brokers without changing DTC's nominee as the registered owner of the shares on RiskOn's stock ledger.

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

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

They also argue that the defendants' spending of the Walmart proceeds on expenses outside of the distribution to the beneficial owners of RiskOn's stock is excessive and violates the SPA. The plaintiffs move for a temporary restraining order and preliminary injunction based only on

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. 16 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 11 question about how much the defendants are owed because neither the SPA nor any other 12 document given to me states the amount the defendants are owed for their work.

The same 13 likelihood of irreparable harm applies here as it does in paying out the litigation expenses, such 14 that the balance of the equities tips sharply in the plaintiffs' favor. This again serves the public 15 interest by ensuring the Record Date Owners will receive the maximum payout from the 16 Walmart proceeds. 17 However, I do not enjoin the defendants from distributing part of the Walmart proceeds 18 to defense counsel in this case or to Stretto, Inc., the legal services firm the defendants retained 19 to distribute the Walmart proceeds.

At the December 17 hearing, the plaintiffs agreed to not seek 20 to stop payments to either at this time. 21 Given there is no harm to the defendants, I waive any need for a security bond under 22 Federal Rule of Civil Procedure 65. 23] 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 3] confidentiality order should protect the defendants' disclosure to the plaintiffs of the fee 4! 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 7|| defendants to transfer the funds to the DTC at this time.

See ECF No. 31-7 at 13-14. 8 I. CONCLUSION 9 I THEREFORE ORDER that the plaintiffs' motion for preliminary injunction (ECF No. 10] 18) 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 12|| Walmart litigation, counsel in the Walmart litigation (Bartko Pavia), other parties owed expenses related to Walmart litigation, or to the defendants themselves.

14 I FURTHER ORDER that the plaintiffs' motion for a temporary restraining order (ECF 15|| No. 17) is DENIED as moot. 16 DATED this 22nd day of December, 2025. 17 G— ANDREWP.GORDON. 19 CHIEF UNITED STATES DISTRICT JUDGE 20 21 22 23