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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 NORMAN WILHOITE and JUDITH
13 WILHOITE, derivatively on behalf of
TuSimple Holdings, Inc.,
14 Plaintiffs,

15 vs.

16 XIAODI HOU, MO CHEN, CHENG LU,
17 GUOWEI "CHARLES" CHAO, and
HYDRON, INC.,
18 Defendants,

19 and

20 TUSIMPLE HOLDINGS, INC.,
21
22 Nominal Defendant.

Case No. '23CV2333 GPC MSB

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT
FOR:**

- 1. **Violations of the Defend
Trade Secrets Act of 2016,
18 U.S.C. § 1836 *et seq.*;**
- 2. **Violations of the California
Uniform Trade Secrets Act,
CAL. CIV. CODE § 3426.1 *et
seq.*; and**
- 3. **Civil Conspiracy.**

DEMAND FOR JURY TRIAL

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1 Plaintiffs allege the following based upon personal knowledge with respect to
2 themselves and, with respect to all other matters, the investigation of Counsel.
3 Counsel’s investigation included a review and analysis of, *inter alia*: (i) regulatory
4 filings by TuSimple Holdings, Inc. (“TuSimple” or the “Company”) with the
5 United States Securities and Exchange Commission (“SEC”); (ii) press releases,
6 media statements, and marketing presentations issued and disseminated by
7 defendants; (iii) defendants’ statements to analysts and the Company’s investors
8 during earnings conference calls, conferences, and interviews; (iv) analyst and
9 industry reports concerning TuSimple; and (v) other industry-specific information
10 related to TuSimple. Plaintiffs believe that substantial additional evidentiary
11 support will exist for the allegations set forth herein after a reasonable opportunity
12 for discovery.

13 I. NATURE OF THE ACTION

14 1. This is an action seeking to halt the misappropriation of corporate trade
15 secrets, at least some of which have been determined by the United States to be
16 vital to our national security. The action is brought under the Defend Trade Secrets
17 Act of 2016 (the “DTSA”), as to which this Court has original jurisdiction, as well
18 as a related state law claim arising out of the same common nucleus of operative
19 facts.

20 2. Plaintiffs Norman Wilhoite and Judith Wilhoite are stockholders of
21 Nominal Defendant TuSimple Holdings Inc., (“TuSimple” or the “Company”), a
22 public company with substantial operations in California that develops software and
23 related hardware to facilitate the self-driving trucking industry. As set forth in
24 greater detail herein, TuSimple is the victim of knowing and malicious trade secret
25 misappropriation by defendant Hydron, Inc. (“Hydron”) and defendant Mo Chen
26 (“Chen”), facilitated by the other defendants. Chen is TuSimple’s last standing
27 controller after an internecine conflict among TuSimple leadership, as well as the
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1 founder of Hydron, a private company that was the recipient of the misappropriated
2 trade secrets.

3 3. Not only is TuSimple’s misappropriated information a “trade secret”
4 under applicable federal and state law and protected as sensitive intellectual
5 property, but at least some of its trade secrets have also been identified by the
6 United States as sensitive information vital to American national security. The
7 information at issue is the subject of a written National Security Agreement
8 (“NSA”) between the United States and TuSimple. The NSA requires TuSimple to
9 protect the information and not to allow its dissemination until and unless that
10 dissemination was reviewed and approved by a specially formed Government
11 Security Committee of the Board of Directors charged under the NSA with
12 protecting the Company’s data and chaired by a U.S. director with relevant
13 expertise.

14 4. Based upon disclosures recently made by the Company and later made
15 by Hydron, it appears that *after* the Company entered into its NSA with the United
16 States and *after* agreeing to specific measures to protect the integrity of its sensitive
17 trade secrets, Chen, an individual who now holds the majority of the voting power
18 of the Company, wrongfully transferred at least part of the Company’s trade secrets
19 to TuSimple’s China-based business and a rival company *he* formed to compete in
20 the same space in which the Company operates—Hydron.

21 5. Hydron is believed to have ties to the Chinese Communist Party
22 (“CCP”) through the backing of the powerful Chinese oligarch Charles Chao, the
23 controller of Sina Corporation (“Sina”).

24 6. Moreover, Plaintiffs have learned that Hydron has filed papers with the
25 Secretary of State of California within the last few weeks surrendering its license to
26 do business in California and revoking its consent to service in the State for acts
27 that pre-date the surrender of its authority to do business here.

1 7. At the same time that Hydron—under Chen’s direction and through
2 Chao’s indirect patronage—was preparing to leave the State of California,
3 TuSimple announced that it would wind down its business in the United States but
4 continue its business in the People’s Republic of China (“China”).

5 8. Company shareholders have filed actions in Delaware state court to
6 address the common law breach of fiduciary duty by the Board of Directors of the
7 Company (the “Board”) by, among other things, allowing Chen to misappropriate
8 sensitive intellectual property of the Company for his own use at Hydron (the
9 “Delaware Action”).¹ The Delaware Action does not assert any federal causes of
10 action, whether under the DTSA or otherwise.

11 9. In response to the Delaware Action, on March 13, 2023, the Company
12 formed a Special Litigation Committee (“SLC”), a device frequently employed by
13 companies to halt otherwise meritorious derivative litigation during the pendency of
14 a board-led “investigation” of the fiduciary wrongdoing alleged in stockholder
15 suits. The Company has kept the composition of the SLC a secret.

16 10. The parties in the Delaware Action stipulated to, and the court ordered,
17 a stay to allow the SLC to investigate until at least February 29, 2024.

18 11. Still, while the SLC “investigates,” and the plaintiffs in the Delaware
19 Action sit stayed for approximately ten more weeks, the Company has openly
20 declared that it will exit the United States. Meanwhile, Hydron—the recipient of
21 TuSimple’s misappropriated property—has begun to take steps to leave as well.
22 Whatever the SLC is doing, one thing is clear—*it is not acting to stop Chen and his*
23

24 ¹ See *In re TuSimple Holdings, Inc. Stockholder Litigation*, C.A. No. 2022-
25 1095-PAF (Del. Ch. July 27, 2023) (Public Version of Verified Amended
26 Derivative Complaint).

1 *company, Hydron, from taking steps to put TuSimple’s misappropriated trade*
2 *secrets beyond the reach of U.S. Courts into a foreign jurisdiction where trade*
3 *secret and other intellectual property protections are regularly unenforced.*²

4 12. Plaintiffs thus bring this action derivatively in the name and right of
5 TuSimple to seek emergency equitable relief in several forms, including an
6 injunction and a constructive trust to protect the Company’s trade secrets from
7 further misappropriation and from such trade secrets being moved offshore and
8 beyond the effective reach of U.S. Courts. The action also seeks damages for the
9 misappropriation of the Company’s property, including statutory exemplary
10 damages, attorneys’ fees, costs and, if appropriate, reasonable license fees
11 pertaining to the misappropriated technology.

12 II. JURISDICTION AND VENUE

13 13. This Court has subject matter jurisdiction over this action under 28
14 U.S.C. § 1331 because this action arises under the laws of the United States,
15 specifically, the DTSA, 18 U.S.C. § 1836(b)(1) *et seq.*, over which this Court has
16 original jurisdiction.

17 14. This Court has supplemental jurisdiction over the state law civil
18 conspiracy claim asserted herein under 28 U.S.C. § 1367(a) because it is so related
19 to the federal claim that it forms part of the same case or controversy under Article
20 III of the United States Constitution.

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22 ² See, e.g., Scott Pelley et al., *Global intelligence leaders warn against*
23 *China’s technology theft*, CBS NEWS (Oct. 22, 2023), available at
24 [https://www.cbsnews.com/news/chinas-technology-theft-major-threat-fbi-head-](https://www.cbsnews.com/news/chinas-technology-theft-major-threat-fbi-head-warns-60-minutes/)
25 [warns-60-minutes/](https://www.cbsnews.com/news/chinas-technology-theft-major-threat-fbi-head-warns-60-minutes/); Stu Woo & Daniel Michaels, *China’s Newest Weapon to Nab*
26 *Western Technology—Its Courts*, WALL ST. J. (Feb. 20, 2023), available at
27 [https://www.wsj.com/articles/u-s-china-technology-disputes-intellectual-property-](https://www.wsj.com/articles/u-s-china-technology-disputes-intellectual-property-europe-e749a72e)
28 [europe-e749a72e](https://www.wsj.com/articles/u-s-china-technology-disputes-intellectual-property-europe-e749a72e).

1 15. Even without the DTSA claim giving it federal question jurisdiction,
2 this Court would still have jurisdiction to hear the state law civil conspiracy claim
3 under 28 U.S.C. § 1332 because there is complete diversity of citizenship between
4 the parties and the amount in controversy exceeds \$75,000.

5 16. Venue is proper in this judicial district under 28 U.S.C. § 1391,
6 because: (1) one or more defendants reside in this District; and (2) a substantial part
7 of the events or omissions giving rise to the claims occurred in this District.
8 TuSimple maintains its corporate headquarters in San Diego, California (for now)
9 and certain of the Defendants also reside in California.

10 17. Venue is additionally proper in this judicial district under Cal. Corp.
11 Code § 2116, which allows for the enforcement of liability against directors of
12 foreign corporations in the courts of the State of California for, among other things,
13 unauthorized distribution of assets.

14 III. THE PARTIES

15 18. Plaintiffs Norman Wilhoite and Judith Wilhoite are shareholders of the
16 Company and have continuously been shareholders at all relevant times. They are
17 residents and citizens of Hawaii.

18 19. Defendant Guowei “Charles” Chao (“Chao”) served as TuSimple’s
19 Board Chair from April 22, 2019 until his forced resignation in June 2022. During
20 his tenure, Chao also served as the Chair of the Nominating and Corporate
21 Governance Committee. At all relevant times, Chao had simultaneously invested in
22 both TuSimple and Hydron. Chao also serves in leadership positions for several
23 companies other than TuSimple. For example, Chao currently serves as the
24 Chairman of the board of the directors and CEO of Sina. In his time at Sina, Chao
25 previously served as President from 2005 to 2013, CFO from 2001 to 2006, Co-
26 COO from 2004 to 2005, Executive Vice President from 2002 to 2003, and Vice
27 President of Finance from 1999 to 2001. Chao is also currently the chairman of the
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1 board of Sina’s subsidiary, Weibo Corporation (“Weibo”), a leading social media
2 company in China; a director of NetDragon Websoft Holdings Limited, a Chinese
3 company providing technology for online gaming; and a director of Leju Holdings
4 Ltd., an online-to-offline real estate services provider in China. Upon information
5 and belief, Chao is a national, resident, and citizen of China.

6 20. Defendant Cheng Lu (“Lu”) served as a director of the Company
7 beginning in June 2020. He was President and CEO of the Company for relevant
8 times until his resignation on March 3, 2022. He subsequently returned to his
9 positions in November 2022, which he currently holds. Upon information and
10 belief, Lu is a resident of San Diego, California, and a citizen of California.

11 21. Defendant Xiaodi Hou (“Hou”) was a director of TuSimple from 2015
12 to 2023. He is also a co-founder of the Company and served as TuSimple’s Chief
13 Technology Officer (“CTO”) until March 3, 2022, when he was appointed to serve
14 as TuSimple’s President, CEO, and Chairperson of the Board. Hou was terminated
15 by the Audit Committee and removed from his position as Chairperson of the Board
16 on October 31, 2022. As detailed herein, however, Hou was subsequently
17 reinstated until he resigned from the Company’s Board of Directors on March 9,
18 2023, in connection with an investigation by the Company’s Audit Committee
19 conducted into claims that he was poaching TuSimple employees for work in a new
20 business venture. Hou is a resident of San Diego, California, and a citizen of
21 California.

22 22. Defendant Mo Chen (“Chen”) was at relevant times TuSimple’s co-
23 founder, Executive Chairman, and director. Chen previously served as the
24 Company’s CEO from 2015 to September 2020. He has served as a director from
25 the Company’s founding in 2015 until he resigned his directorship effective June 9,
26 2022. He served as Executive Chairman of the Board between September 2020 and
27 March 2022. As discussed below, Hou reappointed Chen to the Board on
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1 November 10, 2022. Chen is currently Executive Chairman of the TuSimple Board
2 and the Company's Controlling Stockholder. He also serves as a member of the
3 Compensation Committee. Chen is a resident of San Diego, California, and a
4 citizen of Canada.

5 23. Until recently surrendering its authority to transact interstate business
6 in California, Defendant Hydron was a Southern California-based Delaware
7 corporation.³ While he was a director and Executive Chairman of TuSimple, Chen
8 launched Hydron in March 2021. Hydron competes with TuSimple in the
9 autonomous trucking space. It conducts the majority of its business in China.
10 Hydron is a citizen of both Delaware and California.

11 24. Nominal Defendant TuSimple is a Delaware corporation headquartered
12 at all relevant times in San Diego, California with, until recently, operations
13 primarily in the United States and China.⁴ It was founded by Chen and Hou in
14 2015. TuSimple develops self-driving technology for the \$4 trillion global long-
15 haul freight truck market. Until recently, TuSimple's stated aim was to use its
16 technology to develop an autonomous freight network ("AFN") that, in turn, would
17 make long haul trucking safer, more reliable, efficient, and environmentally
18 friendly. TuSimple's principal executive offices are located at 9191 Towne Centre
19 Drive, Suite 600, San Diego, California 92122. TuSimple is a citizen of both
20 Delaware and California.

21 25. The defendants are herein referred to collectively as "Defendants."
22

23 ³ *TuSimple Co-Founder Mo Chen Launches Hydron, Producing Hydrogen-*
24 *Powered Autonomous-Ready Freight Trucks*, PR NEWswire (June 10, 2022).

25 ⁴ TuSimple also has a small presence in Europe, Hong Kong, and Japan. *See*
26 *TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023), Ex. 21.1.*

1 26. Non-Party James Lu (“James Lu”) is a director of TuSimple. He was
2 appointed to the Board on December 7, 2022. Among other things, James Lu is the
3 founding partner of Joffre Capital, an investment firm in the consumer software,
4 technology, and internet businesses. He is also the Chairperson of Grindr Inc., the
5 world’s largest LGBTQ social dating application. James Lu was appointed to the
6 Company’s Government Security Committee in January 2023 but for undisclosed
7 reasons was subsequently removed. He is a member of the Audit Committee and
8 Chair of the Nominating and Corporate Governance Committee and Compensation
9 Committee.

10 27. Non-Party Michael Mosier (“Mosier”) is a director of TuSimple. He
11 was appointed to the Board on December 15, 2022 and is a member of the
12 Government Security Committee. Mosier previously had served as Acting Director
13 of the U.S. Treasury’s Financial Crimes Enforcement Network and had previously
14 been Counselor (Cybersecurity & Emerging Technology) to the Deputy Secretary
15 of the Treasury.

16 28. Non-Party Wendy Hayes (“Hayes”) was a director of TuSimple. She
17 was appointed to the Board on December 15, 2022 and was the Chair of the Audit
18 Committee and member of the Nominating and Corporate Governance Committee
19 and Government Security Committee. She is also a partner at Founders X
20 Ventures, a venture capital firm based in Silicon Valley. She stepped down from
21 the Board on December 15, 2023.⁵

22 29. Non-Party J. Tyler McGaughey (“McGaughey”) is a director of
23 TuSimple. He was appointed to the Board on March 13, 2023 and is the Chair and
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25 ⁵ See TuSimple Holdings, Inc., Current Report (Form 8-K) (Dec. 15, 2023) at
26 3.

1 Security Director for the Government Security Committee. According to
2 TuSimple’s website, he is “responsible for overseeing the Company’s compliance
3 with federal government legal and regulatory requirements.”⁶ He is also a partner
4 at the law firm Winston & Strawn LLP.

5 30. Non-Party Zhen Tao (“Tao”) is a director of TuSimple. She was
6 appointed to the Board on March 13, 2023 and is a member of the Audit
7 Committee. She is a Senior Partner at Third Square Capital Management, an
8 investment firm.

9 31. Non-Party Bonnie Yi Zhang (“Zhang”) was a member of TuSimple’s
10 Board of Directors from September 30, 2020 until June 2022. Zhang currently
11 serves as a member of the Board of Directors and as CFO of Sina. Before joining
12 Sina, Zhang served as CFO of Weibo, a subsidiary of Sina, from 2014 to 2015.
13 Before working at Weibo, Zhang was the CFO of AdChina Ltd., a company
14 operating an integrated internet advertising platform in China, from 2011 to 2014.

15 IV. FACTUAL ALLEGATIONS

16 A. TuSimple Is Founded on the Strength of Its Proprietary 17 Technology

18 32. Hou and Chen founded TuSimple in 2015 through a series of
19 predecessor entities to develop autonomous truck solutions in the United States and
20 China. The U.S. business was housed in an entity called TuSimple LLC, formed on
21 August 7, 2015 under the laws of the State of California.

22 33. In 2016, Hou and Chen restructured, incorporating TuSimple
23 (Cayman) Limited under the laws of the Cayman Islands to serve as a holding

24 ⁶ *Board of Directors*, TuSimple.com, available at
25 <https://ir.tusimple.com/governance/board-of-directors/default.aspx> (accessed Dec.
26 12, 2023).

1 company for TuSimple LLC’s successor entity, TuSimple, Inc. TuSimple, Inc. was
2 the “entity through which [TuSimple] currently carr[ies] out substantially all of our
3 operations, and our other international subsidiaries, and all of the assets and
4 operations related to [TuSimple’s] autonomous truck solutions business.”⁷

5 34. In particular, the Company has sought to develop a “fully integrated
6 software and hardware solution” to eventually produce the “world’s most
7 advanced” autonomous operation of semi-trucks without the assistance,
8 intervention, or even presence of a human driver.⁸ This is referred to in the industry
9 as “L4 Technology” or “Level 4” autonomy and in the semi-autonomous driving
10 industry refers to the highest amount of autonomy a vehicle can have.

11 35. This field is highly competitive, as multiple startups, established
12 players, and vehicle manufacturers compete for technological advances over each
13 other.

14 36. In such a dynamic and complex field as semi-autonomous vehicles,
15 TuSimple’s ability to protect its proprietary technology from misuse by competitors
16 is instrumental to its success. TuSimple describes the “[h]allmarks” of its
17 proprietary technology as its “1,000 meter perception range, 35 second planning
18 horizon, high definition (‘HD’) maps with accuracy within five centimeters, and an
19 integrated L4 autonomous semi-truck design comprising of a fully redundant sensor
20 suite and components.”⁹ As of June 30, 2023, the Company held approximately
21 590 global issued patents that span “the entire autonomous freight ecosystem”
22

23 ⁷ TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
24 2021) at 27.

25 ⁸ *Id.* at 82.

26 ⁹ *Id.*

1 along with approximately 1,170 pending patent applications.¹⁰ Some of the “key
2 elements” of the Company’s patents include their “1,000 meter perception system,
3 multi-sensor fusion, prediction model, and planning capabilities.”¹¹

4 37. The Company’s proprietary information not only features patents, but
5 also trade secrets and confidential information. In its 2021 Annual Report,
6 TuSimple stated that it:

7 rel[ies] on proprietary information (such as trade secrets, know-how,
8 and confidential information) to protect intellectual property that may
9 not be patentable, or that we believe is best protected by means that do
10 not require public disclosure. [TuSimple] generally seek[s] to protect
11 this proprietary information by entering into confidentiality
12 agreements, or consulting, services, or employment agreements that
13 contain non-disclosure and non-use provisions with our employees,
14 consultants, contractors, scientific advisors, and third parties.¹²

15 38. The core of this U.S.-developed proprietary technology is TuSimple’s
16 “full-stack onboard autonomous driving software with industry leading capabilities
17 across perception, planning, and control,” along with certain offboard toolchain
18 technologies; its simulation platform; and its data infrastructure.¹³ The source
19 codes for these technologies are trade secrets of TuSimple.¹⁴ TuSimple’s trade

20 ¹⁰ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023), at
21 14.

22 ¹¹ TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
23 2021) at 125.

24 ¹² TuSimple Holdings, Inc., Annual Report (Form 10-K) (Feb. 23, 2022) at
25 24.

26 ¹³ TuSimple Holdings, Inc., Current Report (Form 8-K) (June 27, 2023) at
27 Ex. 99.1.

28 ¹⁴ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023) at
18, 34.

1 secret information also includes the technical data, blueprints, and schematics for
2 implementation of its full-stack autonomous driving technology.

3 39. For example, the Company developed and owns the software that it
4 uses for the first-in-the-industry AFN, which provides “a comprehensive, turnkey,
5 autonomous freight solution that supplies users with access to purpose-built L-4
6 autonomous semi-trucks operating on HD digital mapped routes connecting a
7 nationwide network of terminals.”¹⁵ One such software is a “comprehensive
8 turnkey product” called TuSimple Path.¹⁶ TuSimple Path, in turn, allows users
9 access to a separate, “on-board autonomous driving software” called TuSimple
10 Connect that provides a “cloud-based autonomous operations oversight system, HD
11 digital route mapping support, and emergency roadside assistance.”¹⁷

12 40. TuSimple also owns trade secret information including a vast set of
13 semi-truck-specific driving data that it uses to develop its perception and motion
14 planning technologies.

15 41. TuSimple’s trade secrets, for purposes of this action, consist of
16 confidential and proprietary information surrounding the Company’s autonomous
17 trucking platform, including (among other things) designs, blueprints, schematics,
18 specifications, software, source code, summaries of technical analyses, status
19 reports, technical data and other Company-developed know-how surrounding
20 TuSimple’s L4 autonomous driving technology, Autonomous Freight Network, or
21 “AFN,” TuSimple Path, and TuSimple Connect.

22 ¹⁵ TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
23 2021) at 82.

24 ¹⁶ *Id.* at 83.

25 ¹⁷ *Id.*; *see also id.* at 119 (graphic depicting the relationship between
26 TuSimple Path and TuSimple Connect).

1 42. The Company’s research and development has primarily occurred at its
2 locations in the United States, rather than in China. Relying on the technologies
3 available in the United States, TuSimple historically spent dramatically more on
4 research and development in the United States, spending roughly \$105 million in
5 2020, \$215 million in 2021, and \$257 million in 2022. By comparison, TuSimple
6 spent just \$27 million, \$72 million, and \$95 million, respectively, in China and the
7 rest of the Asia Pacific region, purportedly for the purpose of independently
8 developing self-driving technologies.¹⁸ As set forth in the NSA, TuSimple was not
9 permitted to share sensitive U.S.-developed technologies with its China-based
10 business or any foreign businesses.

11 43. TuSimple’s proprietary information is critical for purposes of
12 maintaining its competitive standing. Accordingly, TuSimple entered into
13 proprietary information agreements with its employees, including Chen, Lu, and
14 Hou, which required that TuSimple’s trade secret information be held in the
15 strictest confidence and only be used in connection with employment at TuSimple.

16 44. As TuSimple disclosed in its 2021 Annual Report, “[i]f any of our
17 trade secrets were to be lawfully obtained or independently developed by a
18 competitor or other third party, we would have no right to prevent them from using
19 that trade secret to compete with us.” Moreover, “[i]f any of our trade secrets were
20 to be disclosed (whether lawfully or otherwise) to or independently developed by a
21 competitor or other third party, it could have a material adverse effect on our
22 business, operating results, and financial condition.”¹⁹ Furthermore, “[f]ailure to

23 ¹⁸ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023) at
24 58.

25 ¹⁹ TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
26 2021) at 53-54.

1 adequately protect our intellectual property rights could result in our competitors
2 offering similar products, potentially resulting in the loss of our competitive
3 advantage[.]”²⁰

4 45. TuSimple made consistent disclosures in subsequent public filings as
5 well.²¹

6 **B. TuSimple Reorganizes and Goes Public, But CFIUS Inquires**

7 46. In 2017, Sun Dream, Inc. (“Sun Dream”) acquired a 20% stake in
8 TuSimple (Cayman) through redeemable convertible preferred stock.²² Sun Dream,
9 in turn, is a subsidiary of Sina, a Chinese media conglomerate that is partially
10 backed by the Chinese government²³ and which often functions as an

11 ²⁰ *Id.* at 50.

12 ²¹ *See, e.g.*, TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7,
13 2023) at 31 (“We rely on a combination of intellectual property rights, such as
14 patents, trademarks, copyrights, and trade secrets (including know-how), in addition
15 to employee and third-party nondisclosure agreements, intellectual property
16 licenses, and other contractual rights, to establish, maintain, protect, and enforce our
17 rights in our technology, proprietary information, and processes. Intellectual
18 property laws and our procedures and restrictions provide only limited protection
19 and any of our intellectual property rights may be challenged, invalidated,
20 circumvented, infringed or misappropriated. If we fail to protect our intellectual
21 property rights adequately, we may lose an important advantage in the markets in
22 which we compete.”); TuSimple Holdings, Inc., Quarterly Report (Form 10-Q)
23 (May 3, 2022) at 41; TuSimple Holdings, Inc., Quarterly Report (Form 10-Q) (Aug.
24 8, 2022) at 39; TuSimple Holdings, Inc., Quarterly Report (Form 10-Q) (July 17,
25 2022) at 51.

22 ²² TuSimple Holdings, Inc., Registration Statement (Form S-1) (Mar. 23,
23 2021) at 61.

24 ²³ Brenda Goh, Yingzhi Yang & Echo Wang, *Beijing owns stakes in*
25 *ByteDance, Weibo domestic entities, records show*, REUTERS (Aug. 16, 2021),
26 available at [https://www.nasdaq.com/articles/beijing-owns-stakes-in-bytedance-
weibo-domestic-entities-records-show-2021-08-17](https://www.nasdaq.com/articles/beijing-owns-stakes-in-bytedance-weibo-domestic-entities-records-show-2021-08-17).

1 instrumentality of the Chinese Communist Party (“CCP”) and its political
2 objectives.²⁴

3 47. Chao controlled, and still controls, both Sina and Sun Dream.²⁵ Chao
4 has been an executive at Sina for years in various capacities and is CEO of Weibo.

5 48. Disregarding the connections between Sun Dream and an authoritarian
6 regime overseas, TuSimple’s managers continued doing business with Sun Dream
7 for years. For instance, the Company and Sun Dream entered into a convertible
8 loan agreement on June 8, 2020 with a principal of up to \$100 million, although
9 only half was actually funded. The Company and Sun Dream subsequently
10 converted the loan into 3,928,937 Series E-1 redeemable convertible preferred
11 stock.²⁶

12 49. Chen and Hou gave Sun Dream two seats on the Board, held by Chao
13 and Zhang.²⁷ Upon information and belief, this was to honor TuSimple’s
14 relationship with Sun Dream.

15 _____
16 ²⁴ For instance, Sina was one of many Chinese technology companies to
17 institute an internal Communist Party committee. *See, e.g.,* Emily Feng, *Chinese*
18 *tech giants like Baidu and Sina set up Communist Party committees*, AUSTL. FIN.
19 *REV.* (Oct. 11, 2017), available at <https://www.afr.com/world/asia/chinese-tech-giants-like-baidu-and-sina-set-up-communist-party-committees-20171011-gyyh5u>.

20 The Chinese government also has a storied history of censoring users on
21 Sina’s wholly owned social media platform, Weibo, which Sina and Weibo have
22 facilitated. *See, e.g.,* *China Bans Finance Writers From Weibo Over ‘Negative’*
Comments as Stock Market Sinks, TIME (June 27, 2023), available at
<https://time.com/6290509/china-finance-writers-weibo-economy/>.

23 ²⁵ TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
2021) at 155 (“Sun Dream Inc[.] is ultimately controlled by Mr. Charles Chao”).

24 ²⁶ *Id.* at 151.

25 ²⁷ *See* TuSimple Holdings, Inc., Annual Report (Form 10-K) (Feb. 23, 2022)
26 (describing “current directors of the Company representing Sun Dream Inc.”).

1 50. On February 23, 2021, the Company reorganized into its current
2 corporate structure. As restructured, TuSimple is a Delaware parent entity acting as
3 a holding company for a wholly owned, California-based subsidiary called
4 TuSimple, Inc., which handles all operations. The corporate reorganization did not
5 change the Company's principal place of business, which was and has always been
6 San Diego, California, nor did the reorganization alter its day-to-day operations.²⁸

7 51. The Company's reorganization and general growth were accompanied
8 by an expansion in hiring. The Company's number of full-time employees
9 expanded significantly between January 1, 2018 from 130 to approximately 1,400
10 by the end of 2021.²⁹

11 52. In early 2021, TuSimple geared up to go public through an initial
12 public offering ("IPO"). In its March 23, 2021 prospectus filed with the SEC in
13 connection with the IPO, TuSimple disclosed to its public investors that the
14 Committee on Foreign Investment in the United States ("CFIUS") was investigating
15 a related-party transaction orchestrated by Chen and Hou. CFIUS is an interagency
16 federal committee that reviews transactions involving foreign investment in the
17 United States that may threaten U.S. national security interests. In particular,

18
19 ²⁸ For instance, substantially all the Company's employees have been located
20 in San Diego, California at all relevant times. *See, e.g.*, TuSimple Holdings, Inc.,
21 Registration Statement (Form S/1A) (Apr. 7, 2021) at 131 ("As of December 31,
22 2020, we had 839 full-time employees. The majority of our employees are based in
23 San Diego, California, with others located in Arizona and Beijing, China."); *see*
24 *also id.* ("Our corporate headquarters is located in San Diego, California, consisting
of approximately 21,000 square feet of office space, primarily for corporate
administration as well as research and development.").

25 ²⁹ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Feb. 23, 2022) at
26 17.

1 CFIUS inquired into the 2017 transaction by which Sun Dream acquired its 20%
2 stake in TuSimple.³⁰

3 53. While CFIUS issues lurked beneath the surface, TuSimple completed
4 its IPO and officially listed on the Nasdaq in April 2021, raising over \$1 billion in
5 equity based on an \$8.5 billion valuation.

6 54. The Company took on a dual-class stock structure in which Class A
7 shares traded publicly while Chen and Hou held super-voting stakes through Class
8 B shares.³¹ Through their stakes, after the IPO, Chen and Hou controlled a
9 combined 62.5% of the Company's voting power.

10 55. Contemporaneously with the IPO, Chao's Sun Dream sold a portion of
11 its stake and converted the remainder into Class A stock, resulting in Sun Dream
12 holding 13.1% of the Class A shares and 5.8% of total voting power.³² Both before
13 and shortly after the IPO, Chao, through Sun Dream, held the largest stake in
14 TuSimple after Chen and Hou.³³

15 56. In TuSimple's IPO Registration Statement, the Company reaffirmed
16 that its "intellectual property is an essential asset of our business" and
17 acknowledged that its "business may be adversely affected if [it is] unable to
18

19 ³⁰ TuSimple Holdings, Inc., Registration Statement (Form S-1) (Mar. 23,
20 2021) at 61.

21 ³¹ See TuSimple Holdings, Inc., Registration Statement (Form S/1A) (Apr. 7,
22 2021) at 154 (stating that, after the IPO, Chen held 14,367,314 Class A shares and
23 12,000,000 Class B shares, resulting in a total voting power of 31.4%, while Hou
24 held 13,367,314 Class A shares and 12,000,000 Class B shares for a total voting
power of 31.1%). Each owned their stakes through respective intermediaries and
trusts. See *id.* at 155.

25 ³² *Id.*

26 ³³ See *id.* at 154-155.

1 adequately establish, maintain, protect, and enforce our intellectual property and
2 proprietary rights or prevent third parties from making unauthorized use of our
3 technology and other intellectual property rights.”³⁴

4 **C. Chen Founds Hydron Using TuSimple’s Misappropriated Trade**
5 **Secrets**

6 57. Around the same time as TuSimple’s IPO, in late March 2021, Chen
7 clandestinely founded Hydron. Chen apparently has not minded competing with
8 TuSimple, a company to which he is a fiduciary in various capacities, because
9 Hydron is a rival of TuSimple that also designs, manufactures, and sells
10 autonomous trucks. As the company’s name implies, Hydron’s trucks feature
11 hydrogen engines as an alternative to fossil fuels. Chen did not announce Hydron
12 to the public until over a year later, in June 2022, as discussed further below.

13 58. Hydron has significant operations in, and ties to, China, where Chen
14 reportedly spends most of his time.³⁵ At relevant times, Hydron was backed by
15 Chen and other Chinese investors, including Chao. Chen is CEO of Hydron and,
16 upon information and belief, is its controlling stockholder.

17 59. Hou, acting in his capacity as a director and CTO of TuSimple, aided
18 Chen and Hydron by expropriating material amounts of TuSimple’s intellectual
19 property without authorization—including technical data, blueprints and schematics
20 that would enable Hydron to replicate TuSimple’s technology—and transferring
21 such information to Hydron. Hydron benefitted from these unlawful transfers

22 ³⁴ *Id.* at 27.

23 ³⁵ Heather Somerville *et al.*, *TuSimple Probed by FBI, SEC over Its Ties to a*
24 *Chinese Startup*, WALL ST. J. (Oct. 30, 2022), available at
25 <https://www.wsj.com/articles/tusimple-probed-by-fbi-sec-over-its-ties-to-a-chinese-startup-11667159325>.
26

1 because it was able to make use of valuable intellectual property and technological
2 advancements that it did not itself develop.

3 60. According to Hydron’s website, despite its recent formation, it is
4 already “autonomous ready.” Hydron claims that already its trucks are “equipped
5 with a complete set of sensors, computing units and redundant actuators to support
6 SAE Level 4 autonomous operation, allowing fleet owners to operate our trucks
7 nearly continuously stopping only for refueling and preventative maintenance.”³⁶
8 On information and belief, Hydron’s trucks are autonomous ready because of its
9 use of TuSimple’s misappropriated trade secret information.

10 **D. TuSimple Enters into the NSA with CFIUS and Wrestles with**
11 **Turnover as its Previously Secret Connection to Hydron Emerges**

12 61. Although TuSimple was making progress in commercial terms, the
13 CFIUS investigation had not abated, as the United States remained concerned with
14 the vulnerability of TuSimple’s business model to foreign nationals threatening
15 U.S. interests.

16 62. On February 18, 2022, TuSimple entered into the NSA with CFIUS
17 and related federal entities as a result of its investigation. The NSA required certain
18 changes at TuSimple.

19 63. The NSA required TuSimple to appoint a Security Officer and a
20 Security Director to the Board, to maintain a Government Security Committee
21 chaired by the Security Director, and to submit regular reports to federal agencies
22 affiliated with CFIUS for monitoring.

23 64. The NSA also restricted TuSimple’s distribution of data and
24 technology, requiring that it not be shared with TuSimple’s China-based businesses
25 and other foreign-controlled companies.

26 ³⁶ See <https://hydron.com> (last visited Dec. 19, 2023).

1 65. The NSA also required certain personnel changes at TuSimple. For
2 one, it required Chao and Zhang, who were appointed by Sun Dream, to relinquish
3 their seats by not standing for reelection at the end of June 2022.³⁷ Accordingly,
4 Hou—who had been CTO until then—became CEO and Chair of the Board. Hou
5 replaced Lu as CEO, who had been in that position since September 2020 after
6 joining the Company as CFO in January 2019.

7 66. Unsurprisingly, the markets reacted negatively to Hou’s sudden
8 appointment to the Board, and TuSimple stock tumbled 20% on the news that he
9 had taken over as CEO.

10 67. A few months later, Chen decided it was finally time to announce
11 Hydron to the world. In June 2022, Hydron publicly announced its business model
12 by issuing a press release describing its goals of building hydrogen-powered, semi-
13 autonomous trucks “equipped with L4 autonomous driving technology.”³⁸

14 68. Because of the similarities in self-driving technology required for both
15 Hydron’s and TuSimple’s operations, a reporter asked Chen whether TuSimple
16 would be supplying autonomous technology to Hydron. Chen avoided giving a
17 direct answer, all but admitting that he planned to siphon TuSimple’s assets to
18 Hydron (to the extent he was not already doing so).³⁹

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20 ³⁷ TuSimple Holdings, Inc., Current Report (Form 8-K) (Feb. 18, 2022) at 2.

21 ³⁸ *TuSimple Co-Founder Mo Chen Launches Hydron, Producing Hydrogen-*
22 *Powered Autonomous-Ready Freight Trucks*, PR NEWSWIRE (June 10, 2022).

23 ³⁹ See Tom Quimby, *TuSimple co-founder kicks off new fuel cell truck*
24 *company to help take on supply chain setbacks*, CCJ DIGITAL (June 15, 2022),
25 available at [https://www.ccjdigital.com/alternative-power/hydrogen-fuel-
26 cell/article/15293004/tusimple-cofounder-starts-fuel-cell-truck-
27 company#:~:text=Supply](https://www.ccjdigital.com/alternative-power/hydrogen-fuel-cell/article/15293004/tusimple-cofounder-starts-fuel-cell-truck-company#:~:text=Supply) (Chen evasively answering, when asked if TuSimple
28 would supply autonomous technology to Hydron, “Hydron’s hydrogen powered

1 69. Also beginning in June 2022, TuSimple’s problems with turnover only
2 amplified. As Chao stepped down from the Board pursuant to the NSA, CFO
3 Patrick Dillon (“Dillon”) and General Counsel James Mullen (“Mullen”) also left
4 the Company in June and August 2022, respectively.

5 70. Upon information and belief, both Dillon and Mullen left because they
6 disapproved of how the Board had mismanaged Company intellectual property
7 assets in relation to Hydron and other matters relating to Hou. When Mullen and
8 Dillon each raised concerns, they were forced out of the Company.

9 71. On August 31, 2022, TuSimple shareholders initiated a federal
10 securities class action in the Southern District of California, alleging violations of
11 federal securities laws for misleading statements made in the Company’s public
12 filings, including (among other things) that the Company had omitted mention of
13 TuSimple’s related-party transactions with Hydron.⁴⁰

14 72. On October 30, 2022, the *Wall Street Journal* reported that the FBI,
15 SEC, and CFIUS were each investigating whether certain Company executives,
16 including Hou, had improperly shared TuSimple’s technology and intellectual
17 property with Hydron.⁴¹ These probes investigated potential securities law

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20 autonomous trucks are designed to be software agnostic and can operate on a
21 variety of SAE Level 4 autonomous driving software platforms”).

22 ⁴⁰ See *Dicker et al. v. TuSimple Holdings, Inc. et al.*, C.A. No. 3:22-cv-
23 01300-BEN-MSB (Aug. 31, 2022) (Original Compl.); *Dicker*, C.A. No. 3:22-cv-
01300-BEN-MSB at Page ID # 1251 (Oct. 2, 2023) (Consol. Compl.).

24 ⁴¹ Heather Somerville, Kate O’Keeffe, & Jang Jie, *TuSimple Probed by FBI,*
25 *SEC Over Its Ties to a Chinese Startup*, WALL ST. J. (Oct. 30, 2022), available at
26 https://www.wsj.com/articles/tusimple-probed-by-fbi-sec-over-its-ties-to-a-chinese-startup-11667159325?mod=Searchresults_pos1&page=1.

1 violations, for instance, whether (i) TuSimple management had failed to disclose its
2 relationship with Hydron; (ii) TuSimple's intellectual property was improperly
3 transferred to Hydron; (iii) TuSimple had improperly financed Hydron; and (iv)
4 sending valuable technology to an overseas adversary defrauded TuSimple
5 investors.

6 73. It turned out Chen was also busy recruiting TuSimple employees at the
7 time, including senior executives, to contribute time and labor to work on Hydron-
8 related matters while being compensated by TuSimple. Such employees received
9 equity in Hydron while remaining employees at TuSimple.

10 74. The TuSimple Board took swift action against Hou, but not against
11 Chen. On October 31, 2022, TuSimple announced in an SEC disclosure that the
12 Board had terminated Hou as CEO, President, and CTO and removed him from the
13 Board effective immediately.⁴² Hou was replaced by the former EVP of
14 Operations, Ersin Yumer, as interim CEO and President.

15 75. The same disclosure also announced that:

16 As of the time of this filing, the Company believes that, based on
17 information obtained in connection with an ongoing investigation by
18 the Company's Audit Committee, ***during 2021 Company employees***
19 ***spent paid hours working on matters for Hydron Inc. (f/k/a Turing***
20 ***Auto), a company which the Company believes has significant***
21 ***operations in China***, and that such paid hours had an estimated value
22 of less than \$300,000. ***Mr. Mo Chen, one of our co-founders and***
23 ***former Executive Chairman, is a founder, director and chief***
24 ***executive officer of Hydron, and he has an equity interest in the***
25 ***Company of greater than 10%***. This related party transaction was not
26 presented to, or approved by, the Audit Committee as required by the
27 Company's Code of Conduct.⁴³

28 ⁴² TuSimple Holdings, Inc., Current Report (Form 8-K) (Oct. 31, 2022) at 2.

⁴³ *Id.* (emphasis added).

1 76. The work that TuSimple employees had spent performing for Hydron
2 in 2021 had not been presented to or approved by either the Board or the Board’s
3 Audit Committee, which according to its charter was tasked with “review[ing] and
4 oversee[ing] all transactions between the Company and a related person” and
5 reviewing “actual and potential conflicts of interest” including “corporate
6 opportunities” taken “by insiders, Board members, and corporate officers.”⁴⁴

7 77. More directly relevant for present purposes, the Company also
8 disclosed that during 2022, it had “*shared confidential information with Hydron*
9 *and its partners*, which was not brought to the attention of the Audit Committee
10 and Government Security Committee, and before entering into relevant non-
11 disclosure and other cooperation agreements.”⁴⁵

12 78. Shortly thereafter, the Company entered into a non-disclosure
13 agreement with Hydron that “covered the information” at issue, but the Company
14 “[did] not know whether Hydron shared, or publicly disclosed, the information
15 before entering into that agreement.”⁴⁶

16 79. The Company also believed, based on the Audit Committee’s
17 ostensibly “ongoing investigation[,]” that the information at issue was “not related
18 to the intangible assets or patents reflected on the Company’s balance sheet” and
19 that “the Company has not been able to determine the value, if any, of such
20 information.”⁴⁷

21
22 ⁴⁴ TuSimple Holdings, Inc., Audit Committee Charter (as of Jan. 27, 2022).

23 ⁴⁵ TuSimple Holdings, Inc., Current Report (Form 8-K) (Oct. 31, 2022) at 3
24 (emphasis added).

25 ⁴⁶ *Id.*

26 ⁴⁷ *Id.*

1 80. These actions wrecked the Company’s stock price and Wall Street
2 outlook on the Company. For instance, Bank of America Securities issued an
3 October 31, 2022 report in which it lowered its recommendation to public investors
4 from “Buy” to “Underperform,” lowered its Price Objective from \$14 per share to
5 \$5.50, and explained the downgrade was due in part to the Company’s “uncertain
6 direction,” and “surprising shift in the boardroom[.]”⁴⁸ Piper Sandler, another
7 investment bank, issued a report the same day downgrading its recommendation
8 from “Overweight” (*i.e.*, “Buy”) to “Neutral” (*i.e.*, “Hold”), stating that the stock
9 price had dropped 40% on the news of Hou’s removal, that Hou’s removal was the
10 “latest in a string of management departures[.]” and that Piper Sandler accordingly
11 cut its price target down from \$14 to \$4.00 per share.⁴⁹ RBC Capital Markets also
12 issued a report on October 31, 2022 indicating a revised price target of \$4 per share.

13 81. The Company issued a press release on November 7, 2022, further
14 indicating that it had lost trust in Hou’s ability to lead due to “concerns about his
15 lack of candor and transparency with the Board” and that its decision was “made in
16 connection with an ongoing investigation that was initiated by the Board’s Audit
17 Committee.”⁵⁰

18 **E. Chen and Hou Strike Back**

19 82. His misconduct brought to light, Hou was down, but not defeated. Nor
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21 ⁴⁸ Ken Hoexter, Adam Roszkowski, & Nathan Ho, *TuSimple: Lower to*
22 *Underperform: Fires founder / CEO for cause; PO to \$5.50*, BOFA GLOB. RSCH.
(Oct. 31, 2022) at 1.

23 ⁴⁹ Alexander E. Potter & Ben Johnson, *TuSimple Holdings, Inc. (TSP):*
24 *Downgrading to Neutral Following Sudden Termination of TSP’s CEO*, PIPER
25 SANDLER (Oct. 31, 2022) at 1.

26 ⁵⁰ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 7, 2022) at 2.
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1 would his ally Chen take kindly to the Board’s attempts to limit what he could or
2 could not do with TuSimple’s assets or Hydron—even if those limits were
3 prescribed by agreement with the United States through the NSA.

4 83. On November 9, 2022, Hou granted Chen an irrevocable proxy over
5 the shares he held through intermediary vehicles, signed a voting agreement with
6 Chen, and agreed to vote his shares as Chen directed.⁵¹ The result was that Chen
7 could single-handedly wield approximately 59% of the Company’s voting power.

8 84. The terms of each agreement are particularly solicitous to Chen and
9 his wielding of control well into the foreseeable future. The irrevocable proxy
10 remains in effect until either (i) the two-year anniversary of the proxy date or (ii)
11 “mutual agreement” between Chen and the intermediary entities through which Hou
12 owns his stock.⁵²

13 85. On November 10, 2022, Chen used his control over TuSimple to purge
14 almost the entire Board, single-handedly removing directors Brian Buss, Karen C.
15 Francis, Reed Werner, and Michelle Sterling, but leaving his loyalist Hou in place.

16 86. By purging the Board, Chen and Hou blatantly violated the NSA,
17 which required the existence of a Government Security Committee.

18 87. As the sole remaining member of the Board, and in return for
19 reinstatement, Hou returned the favor to Chen by appointing Chen and Lu to the
20 Board.⁵³

21 88. The new, three-person Board then removed Yumer as interim CEO and

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23 ⁵¹ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 9, 2022) at 2;
24 *see also* TuSimple Holdings, Inc., Statement of Beneficial Ownership (Form 13-D)
(Nov. 9, 2022) (disclosing irrevocable proxy and voting agreement).

25 ⁵² TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 9, 2022) at 2.

26 ⁵³ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 10, 2022) at 2.

1 President of the Company and appointed Lu in his stead.⁵⁴

2 89. The new Board also appointed Chen to the Board as Executive
3 Chairman.

4 90. The results of the coup were, unsurprisingly, turmoil at the Company.
5 By November 15, 2022, TuSimple had missed its deadline to publicly file a 10-Q,
6 triggering a de-listing process under Nasdaq rules. KPMG shortly thereafter
7 resigned as TuSimple's principal accounting firm on November 10, 2022.⁵⁵ KPMG
8 explained in a letter to the SEC that it resigned "as a result of recent events *that*
9 *culminated in the dismissal of [TuSimple's] previous Board of Directors,*
10 *including its Audit Committee.*"⁵⁶

11 91. Further, on December 5, 2022, TuSimple was forced to scrap a
12 partnership it had entered in 2020 with Navistar International Corporation
13 ("Navistar"),⁵⁷ an original equipment manufacturer that was an important partner
14 for TuSimple. As a Bank of America analyst report put it, Navistar ended this
15 agreement "primarily due to governance concerns as TuSimple transitioned across 3
16 different CEOs (Dr. Hou, Dr. Yumer, and now Mr. Lu) over the span of 3 weeks,
17 *and then firing its board of directors[.]*"⁵⁸

19 ⁵⁴ *Id.*

20 ⁵⁵ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 17, 2022) at 2.

21 ⁵⁶ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 22, 2022) at 4
22 (attaching KPMG's letter to the SEC dated November 22, 2022) (emphasis added).

23 ⁵⁷ Navistar is a wholly owned subsidiary of TRATON SE, a business with
24 which TuSimple had separate partnerships as well.

25 ⁵⁸ Ken Hoexter, Adam Roszkowski, & Nathan Ho, *TuSimple: Commercial*
26 *plan at risk as Navistar ends relationship, more may cancel; PO to \$1.00*, BOFA
27 GLOB. RSCH. (Dec. 6, 2022) at 1 (emphasis added).

F. Chen and Hou Install a Potemkin Board

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92. To obfuscate the open and notorious coup that Chen and Hou accomplished, the Board jammed up the works with additional directors to strengthen the appearance of neutral Company oversight.

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93. On December 7, 2022, the Board appointed James Lu to the Board, and on December 13 (the first day of James Lu’s tenure), appointed him Chair of the Compensation Committee alongside Chen, who was also a member.

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94. On December 15, 2022, the Board appointed Hayes and Mosier to the Board.

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95. Also on December 15, the Board appointed Hayes as Chair and Mosier and Lu as members of the Board’s Audit Committee, appointed Lu as the Chair and Hayes as a member of the Board’s Nominating and Corporate Governance Committee, and appointed Mosier as Security Director and Chair of the Government Security Committee.

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96. Chen’s attempts to paint a picture of an independent Board presiding over a smoothly running company, however, did not fool the market. On December 20, 2022, after the market closed, news leaked that TuSimple was going to lay off a significant portion of its workforce. The following day, on December 21, 2022, the Company announced “a broad[] restructuring plan,” and confirmed that it was laying off 25% of TuSimple’s global workforce.⁵⁹ TuSimple’s shares dropped from a close of \$1.51 per share on December 20, 2022 to a close of \$1.42 per share on December 21, 2022, on high trading volume.

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⁵⁹ Rebecca Bellan, *Self-driving truck company TuSimple to lay off 25% of workforce*, PR NEWSWIRE (Dec. 21, 2022), available at <https://techcrunch.com/2022/12/21/self-driving-truck-company-tusimple-to-lay-off-25-of-workforce/>.

1 97. TuSimple management heavily implied that the Company’s cuts would
2 be spread evenly across the Company’s operations in the United States and China,
3 or that it would fall harder on the Chinese business. At the same time that
4 management announced layoffs in the United States, the Company stated that it
5 remained “in the process of selling off its Asia-focused businesses[.]”⁶⁰

6 98. This framing was consistent with the message that management had
7 expressed months before to investors. For instance, in a May 3, 2022 earnings call,
8 Hou stated that TuSimple is a “US first, US-centric company.” And in a May 11,
9 2022 earnings call, then-CFO Patrick Dillon had told investors that the Company
10 was considering a complete sale of the Asia-Pacific business altogether.

11 **G. Chen Throws Hou Under the Proverbial Self-Driving Bus**

12 99. It is said there is no honor among thieves, but apparently, there is also
13 none in the corporate espionage business either. Fully powered up with a near-
14 supermajority vote, Chen decided to make Hou, his old-time business partner, into a
15 fall guy.

16 100. The Company’s woes—especially with the U.S. Government—
17 deepened in early 2023. Sometime in January 2023, the Company appears to have
18 appointed James Lu and Hayes to the Government Security Committee in an
19 attempt to further legitimize its image.⁶¹ On February 1, 2023, the *Wall Street*
20 *Journal* reported that a national security panel had urged the DOJ to consider

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23 ⁶⁰ *Id.*

24 ⁶¹ *TuSimple Adds Independent Directors to Government Security Committee*,
25 PR NEWswire (Jan. 17, 2023), available at <https://www.prnewswire.com/news-releases/tusimple-adds-independent-directors-to-government-security-committee-301723837.html>.
26

1 espionage charges against the leadership of TuSimple.⁶² It further reported that the
2 FBI and SEC were investigating whether TuSimple improperly financed and
3 transferred technology to Hydron, the company founded by Chen operating
4 primarily in China.

5 101. On March 3, 2023, TuSimple received a Notice of Delisting from
6 Nasdaq for failing to timely file its Form 10-K.⁶³

7 102. Amid this bad publicity, the Company announced that on March 9,
8 2023, Hou resigned from the Board because of an internal investigation into claims
9 that he was seeking to get TuSimple employees to resign from the Company and
10 join a new venture that he was planning.⁶⁴

11 103. Hou, of course, denied it. As reported in a March 14, 2023 news
12 article, Hou took his feud public, evidently feeling betrayed by Chen. Hou publicly
13 denied the basis for his termination and stated that he had resigned over a
14 fundamental disagreement with TuSimple's executive compensation practices and
15 its decision to shift from Level 4 to Level 2 assisted driving.⁶⁵

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17 ⁶² Kate O'Keeffe, Aruna Viswanatha, & Heather Somerville, *Leaders of Self-*
18 *Driving-Truck Company Face Espionage Concerns Over China Ties*, WALL ST. J.
19 (Feb. 1, 2023), available at [https://www.wsj.com/articles/leaders-of-self-driving-](https://www.wsj.com/articles/leaders-of-self-driving-truck-company-face-espionage-concerns-over-china-ties-11675255921)
20 [truck-company-face-espionage-concerns-over-china-ties-11675255921](https://www.wsj.com/articles/leaders-of-self-driving-truck-company-face-espionage-concerns-over-china-ties-11675255921).

21 ⁶³ TuSimple Holdings, Inc., Current Report (Form 8-K) (Mar. 3, 2023) at 2.

22 ⁶⁴ Rebecca Bellan, *TuSimple co-founder resigns, accused of poaching staff*
23 *for new venture*, TECHCRUNCH (Mar. 14, 2023), available at
24 [https://techcrunch.com/2023/03/13/tusimple-co-founder-resigns-accused-of-](https://techcrunch.com/2023/03/13/tusimple-co-founder-resigns-accused-of-poaching-staff-for-new-venture/)
25 [poaching-staff-for-new-venture/](https://techcrunch.com/2023/03/13/tusimple-co-founder-resigns-accused-of-poaching-staff-for-new-venture/).

26 ⁶⁵ Rebecca Bellan, *TuSimple co-founder blames exit on CEO pay and*
27 *autonomy downgrade*, TECHCRUNCH (Mar. 14, 2023), available at
28 [https://techcrunch.com/2023/03/14/tusimple-co-founder-blames-exit-on-ceo-pay-](https://techcrunch.com/2023/03/14/tusimple-co-founder-blames-exit-on-ceo-pay-and-autonomy-downgrade/)
[and-autonomy-downgrade/](https://techcrunch.com/2023/03/14/tusimple-co-founder-blames-exit-on-ceo-pay-and-autonomy-downgrade/).

1 104. In a letter dated March 14, 2023, Hou wrote to the TuSimple Board
2 and management that he had resigned over the Company’s “business strategy and
3 future direction” and that the “so-called investigation” into his wrongdoing was
4 “retaliation instigated by TuSimple’s Chairman and CEO[,]” *i.e.*, his old business
5 partner Chen.⁶⁶ Hou also accused Chen and his (other) cronies of “support[ing] the
6 lucrative CEO executive compensation package they sought while simultaneously
7 laying off hundreds of extremely talented employees just before Christmas.”⁶⁷ Hou
8 also accused management of harassing and threatening employees during the
9 investigation process, which he excoriated as “appalling.”⁶⁸

10 105. To avoid further embarrassment, management tried yet again to
11 whitewash the internal governance problems at TuSimple by appointing ostensibly
12 independent directors. On March 15, 2023, the Company announced McGaughey’s
13 and Tao’s appointments to the Board.

14 106. The Board appears to have appointed McGaughey to the Government
15 Security Committee at some time thereafter as well.⁶⁹ It also appears that James Lu
16 was at some point removed from the Government Security Committee because the
17 Company subsequently disclosed that its members as of September 2023 were
18 McGaughey, Hayes, and Mosier, with McGaughey succeeding Mosier as Chair and
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22 ⁶⁶ TuSimple Holdings, Inc., Current Report (Form 8-K) (Mar. 16, 2023) at 4
(attaching Hou’s letter).

23 ⁶⁷ *Id.*

24 ⁶⁸ *Id.*

25 ⁶⁹ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023) at
26 109.

1 Security Director.⁷⁰

2 107. On March 16, 2023, Chen fired back at Hou. On behalf of the Board,
3 Chen responded to Hou’s letter, describing it as “riddled with post-hoc excuses for
4 your resignation, which are pretextual and false.”⁷¹

5 108. Taking up a mantle of hypocrisy, Chen’s letter also stated that “the
6 Company will vigorously protect its employees, and its intellectual property[,]”
7 asked Hou to honor the cease and desist letter the Company had sent him, and
8 stated to his fellow co-founder that the Company wished “to finally put the
9 distraction of your tenure at the Company behind us[.]”⁷²

10 109. Chen also went on to state that the sole reason Hou resigned was “to
11 avoid a requested interview with Company counsel or any potential action by the
12 Audit Committee.”⁷³

13 **H. TuSimple Prepares to Transfer to Hydron and Remove from this**
14 **Country its U.S. Trade Secrets, as Both Eye an Exit to China**

15 110. Even as the SLC purports to investigate misconduct, Defendants are
16 routing the intellectual property assets to Hydron—and China—out the back door.

17 111. On May 16, 2023, the Company “authorized an additional
18 restructuring plan[,]” *i.e.*, it followed through on layoffs of 300 employees,⁷⁴
19 impacting only TuSimple operations in the United States.⁷⁵ The effects of the

20 ⁷⁰ *Id.* at 108-09. It also appears that McGaughey took over Mosier’s role as
21 Chair of the Government Security Committee on April 17, 2023. *See id.* at 41
(stating that McGaughey succeeded Mosier as security director).

22 ⁷¹ TuSimple Holdings, Inc., Current Report (Form 8-K) (Mar. 16, 2023) at 6.

23 ⁷² *Id.*

24 ⁷³ *Id.*

25 ⁷⁴ TuSimple Holdings, Inc., Current Report (Form 8-K) (May 18, 2023) at 2.

26 ⁷⁵ *Id.* at 5.

1 Company's contraction were not to be spread evenly across TuSimple's global
2 operations, as the Company had indicated back in December 2022.

3 112. On May 18, 2023, the Company declared that "it is in the best interest
4 of shareholders to continue owning and operating [the Company's] Asia Pacific
5 subsidiaries and is no longer exploring a transaction."⁷⁶ In other words, TuSimple
6 would shutter its U.S. business and move its research and development efforts to
7 China.

8 113. On June 28, 2023, TuSimple publicly stated it was exploring "strategic
9 alternatives" for its U.S. business.⁷⁷

10 114. In and of itself, a company's decision to cease operations in one
11 country in order to focus on opportunities elsewhere is not a cause for alarm. Here,
12 however, the looming threat of federal investigation into Chen's and his companies'
13 misappropriation of assets sensitive to U.S. national security interests appear to be
14 the primary drivers for the Board's sudden about-face.

15 115. On September 7, 2023, the Company announced in its delayed 2022
16 Annual Report that "the Company and certain current and former directors and
17 officers received subpoenas from the SEC requesting the production of Company
18 documents" in response to the investigation "into the related party transaction with
19 Hydron."⁷⁸

20 _____
21 ⁷⁶ TuSimple Holdings, Inc., Current Report (Form 8-K) (May 18, 2023) at 2.
(attaching TuSimple's Press Release dated May 18, 2023).

22 ⁷⁷ *Autonomous firm TuSimple exploring possible U.S. exit*, CCJ DIGITAL
23 (June 30, 2023), available at [https://www.ccjdigital.com/equipment-
24 controls/autonomous/article/15541534/autonomous-firm-tusimple-exploring-
possible-us-exit](https://www.ccjdigital.com/equipment-controls/autonomous/article/15541534/autonomous-firm-tusimple-exploring-possible-us-exit).

25 ⁷⁸ TuSimple Holdings, Inc., Annual Report (Form 10-K) (Sept. 7, 2023) at
26 36. Although federal law requires Annual Reports to be filed 90 days after Fiscal
27

1 116. By December 2023, TuSimple had begun packing up shop while
2 federal investigations circled.⁷⁹ The mostly likely explanation for the Company's
3 very public about-face and embrace of an Asia-Pacific home is that Defendants are
4 seeking to (i) relocate to China, (ii) transfer TuSimple's intellectual property and
5 trade secret assets to Hydron and TuSimple's China-based business (both of which
6 are barred under the NSA from receiving TuSimple's trade secret information), and
7 (iii) evade the jurisdictional reach of any U.S. judgment challenging such a move.

8 117. By December 4, 2023, the Company announced that it had begun the
9 process of winding down its U.S. operations. The Company told investors that it
10 was expecting no significant revenue for the year. The *Wall Street Journal* reported
11 that "TuSimple has stopped hauling freight in its trucks and closed most of its
12 autonomous driving testing and development efforts, according to company
13 statements," and that the Company was "winding down its U.S. business" and
14 "reducing its workforce to about 30 people as it looks for a buyer for its assets that
15 remain in the country."⁸⁰

16 118. The same December 4, 2023 *Wall Street Journal* article also added
17 more detail into what federal authorities continued to scrutinize. In particular, the

18
19 Year End, TuSimple filed its Annual Report for Fiscal Year End December 31,
20 2022 roughly five months after the deadline.

21 ⁷⁹ *Autonomous Trucking Company TuSimple Begins Winding Down*
22 *Operations in US*, PYMNTS (Dec. 5, 2023), available at
23 [https://www.pymnts.com/shipping/2023/autonomous-trucking-company-tusimple-](https://www.pymnts.com/shipping/2023/autonomous-trucking-company-tusimple-begins-winding-down-operations-united-states/)
[begins-winding-down-operations-united-states/](https://www.pymnts.com/shipping/2023/autonomous-trucking-company-tusimple-begins-winding-down-operations-united-states/).

24 ⁸⁰ See Heather Somerville, *TuSimple Winds Down U.S. Operations as It*
25 *Looks for Buyer*, WALL ST. J. (Dec. 4, 2023), available at
26 [https://www.wsj.com/business/tusimple-winds-down-u-s-operations-as-it-looks-for-](https://www.wsj.com/business/tusimple-winds-down-u-s-operations-as-it-looks-for-buyer-11aa5714)
[buyer-11aa5714](https://www.wsj.com/business/tusimple-winds-down-u-s-operations-as-it-looks-for-buyer-11aa5714).

1 FBI, SEC, and CFIUS had each opened investigations into whether TuSimple had
2 “improperly financed and transferred technology” to none other than Hydron,
3 Chen’s side project, which “operates in China and has said it is working to build
4 hydrogen-powered semi trucks to be outfitted with TuSimple autonomous driving
5 systems.”⁸¹

6 119. Based on Plaintiffs’ investigation, Defendants are also in the process of
7 shuttering *Hydron*’s California operation and, upon information and belief, are also
8 attempting to move its assets to China, outside the reach of any U.S. judgment.

9 120. On November 13, 2023, Chen signed and filed a Certificate of
10 Surrender on behalf of Hydron with the California Secretary of State’s office. The
11 form submitted by Chen stated that Hydron “surrenders its rights and authority to
12 transact intrastate business in the State of California” and that “[t]he corporation
13 revokes its designation of agent for service of process in California.”⁸²

14 121. Meanwhile, the Board’s nominally independent directors appear to be
15 jumping ship. On November 15, 2023, Hayes informed the Board that she would
16 not stand for reelection to the Board at the Company’s 2023 Annual Meeting of
17 Stockholders held on December 13, 2023.⁸³ She subsequently stepped down as of
18 December 15, 2023.⁸⁴

19
20 ⁸¹ *Id.*

21 ⁸² A copy of the Certificate of Surrender is attached hereto as **Exhibit A**. The
22 form lists Hydron’s address as 5405 Morehouse Dr., Suite 320, San Diego, CA
92121.

23 ⁸³ TuSimple Holdings, Inc., Current Report (Form 8-K) (Nov. 17, 2023).

24 ⁸⁴ *See* TuSimple Holdings, Inc., Current Report (Form 8-K) (Dec. 15, 2023)
25 at 3. Hayes was originally appointed to serve “until the Company’s 2023 annual
26 meeting of stockholders and until [her] successor is elected and qualified.”
TuSimple Holdings, Inc., Current Report (Form 8-K) (Dec. 13, 2022) at 2. Upon

1 122. As a result of Hayes’ departure, the two remaining members of the
2 Government Security Committee are Mosier and McGaughey.

3 123. These maneuvers are preliminary, but to those paying attention, Chen’s
4 and Hydron’s overarching plan is clear. Once the various trade secret assets—
5 whether intellectual property or otherwise—are improperly transferred overseas to
6 China via Hydron or otherwise, they will be beyond the reach of the Courts,
7 TuSimple and any accompanying stockholder oversight.

8 **V. DEMAND FUTILITY ALLEGATIONS**

9 124. Plaintiffs repeat and reallege each and every allegation above as if set
10 forth in full herein. Plaintiffs did not make a demand on the Demand Board to
11 investigate or initiate the derivative claims asserted herein because demand is
12 excused as futile. Demand is excused because a majority of the six-director
13 Demand Board (comprised of Lu, Chen, James Lu, Mosier, McGaughey, and Tao)
14 (i) faces a substantial likelihood of liability on the claims that are the subject of this
15 Action, (ii) received a material personal benefit from the alleged misconduct that is
16 the subject of this Action, and/or (iii) lacks independence from someone who
17 received a material personal benefit from the alleged misconduct that is the subject
18 of this Action or who would face a substantial likelihood of liability on the claims
19 that are the subject of this Action.

20 125. As detailed above, Chen is a dual director who controls both the
21 Company and Hydron. Chen personally stands to benefit from the knowing and
22 malicious misappropriation of the Company’s trade secrets by Hydron because he is
23

24
25 information and belief, the TuSimple Board does not plan to replace her. So, her
26 resignation is effective as of December 15, 2023.
27
28

1 Hydron’s CEO, founder, and controller.

2 126. As detailed above, Lu lacks independence from someone who received
3 a material personal benefit, Chen. Chen is the controlling stockholder of TuSimple
4 and Lu is an inside director, being both CEO and President of TuSimple.⁸⁵ Upon
5 information and belief, Lu derives his principal income from his employment at
6 TuSimple and therefore is not impartial as to Chen’s interests.

7 127. The remaining directors cannot independently evaluate a demand by
8 operation of the ongoing theft of trade secret assets that Chen and Hydron are
9 currently propounding. Their lack of independence from Chen—and by extension,
10 Hydron—can be inferred from the fact that they are allowing TuSimple to shutter
11 its U.S.-based operations while the Company’s trade secrets are diverted out of the
12 country.

13 128. The remaining directors cannot independently evaluate a demand
14 against Chen’s interests because Chen is a controlling stockholder who has
15 demonstrated that he will purge any Board that attempts to take action against him
16 or Hydron. These directors obtained their Board seats after Chen purged the prior
17 Board and are certainly aware that in the face of dissent Chen would purge the
18 Board again.

19 129. Furthermore, having appointed the SLC and charged it with final
20 power to investigate and act with respect to the allegations of the Delaware Action,
21 which in large part shares the factual allegations underlying the misappropriation of
22 trade secrets here, the Company has conceded that its Board is incapable of

23
24 ⁸⁵ See *In re Ezc Corp. Inc. Consulting Agreement Derivative Litig.*, 2016 WL
25 301245, at *35 (Del. Ch. Jan. 25, 2016) (“Under the great weight of Delaware
26 precedent, senior corporate officers generally lack independence for purposes of
27 evaluating matters that implicate the interests of a controller.”).

1 considering a demand as a matter of law.

2 **VI. CAUSES OF ACTION**

3 **COUNT I**

4 **Violations of the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836 *et seq.***
5 **(Against Chen, Lu, Hou, and Hydron)**

6 130. Plaintiffs repeat and reallege the paragraphs above as if fully set forth
7 herein.

8 131. The Company developed trade secrets in connection with its business;
9 went public in the United States; and trades on the securities exchanges of this
10 country based upon its unique self-driving trade secrets which have been designed
11 to power a new autonomous commercial trucking industry.

12 132. TuSimple owns its trade secrets and this action proceeds derivatively
13 on its behalf.

14 133. TuSimple took steps to protect its trade secrets through confidentiality
15 agreements with employees and vendors and by otherwise treating its trade secrets
16 as highly confidential.

17 134. The United States recognized that the Company's trade secrets are
18 relevant to U.S. national security interests and caused the Company to enter into the
19 NSA with the Company, pursuant to which the Company agreed to take steps to
20 restrict the dissemination of its trade secrets and protect them from
21 misappropriation.

22 135. After the Company agreed to the NSA, and in breach of that
23 agreement, the laws of the United States and their duties as directors, Chen and Hou
24 caused the Company to transfer some portion of its trade secrets to Chen's private
25 company, Hydron, for no consideration and without complying with any of the
26 safeguards established by the NSA. Chen and Hou knew that this was improper.

27 136. Chen's and Hou's actions allowing the Company's trade secrets to be
28 transferred to Hydron have been admitted by the Company, as detailed in the

1 Company's Form 8-K filed with the SEC on October 31, 2022.

2 137. Chen's and Hou's actions have also exposed the Company, and
3 themselves, to civil and criminal sanctions by the U.S. Government.

4 138. Chen and Hou knew that the trade secrets were protected by TuSimple
5 and knew that the transfer of these trade secrets to Hydron was prohibited by
6 Company policy, the terms of their proprietary information agreements, the NSA
7 and their fiduciary duties to TuSimple. Indeed, Chen has publicly recognized as
8 much in his public spat with Hou, in which he downplayed his own culpability.

9 139. As the controller and CEO of Hydron, Chen's knowledge can be
10 imputed to Hydron as well. Thus, Hydron received TuSimple's trade secrets
11 knowing (i) that it had no right to them; (ii) that TuSimple protected them as trade
12 secrets; and (iii) that they were further protected under the NSA.

13 140. Hydron now uses TuSimple's misappropriated trade secrets in
14 connection with the production of Level 4 autonomous ready trucks competing with
15 autonomous trucks of TuSimple reported to have the same or similar technological
16 capabilities.

17 141. The Court should take affirmative actions to protect the Company's
18 trade secrets from leaving the jurisdiction and being put beyond the reach of U.S.
19 courts.

20 142. Given TuSimple's recent announcement that it was closing its
21 operations in the United States and relocating to China, and TuSimple's common
22 control with Hydron—which, as noted above, has surrendered its authority to do
23 business in California—it is reasonably probable that Chen, Lu, and Hydron are in
24 the process of completing the misappropriation of TuSimple's trade secrets by
25 moving them to China and beyond the jurisdiction of the U.S. courts.

26 143. The Court should enter injunctive relief to prevent (i) Chen, Lu, Hou,
27 and Hydron from moving the trade secrets outside of the United States or
28

1 disseminating them beyond TuSimple; (ii) Hydron from utilizing the trade secrets
2 for any purpose; and (iii) Hydron from disclosing the trade secrets to anyone for
3 any reason. The Court should also establish a constructive trust over TuSimple's
4 trade secrets, including those TuSimple trade secrets wrongfully misappropriated by
5 Hydron, to prevent the transfer and dissipation of the trade secrets.

6 144. For purposes of compliance with the DTSA, Plaintiffs state that the
7 business address for Hydron listed on the records of the California Secretary of
8 State is 5405 Morehouse Dr., Suite 320, San Diego, California 92121.

9 145. In addition to the foregoing, Chen, Lu, Hou, and Hydron should be
10 held liable for all damages permitted under 18 U.S.C. § 1836(b)(3)(B)-(D) relating
11 to their misappropriation of the Company trade secrets, including damages for
12 actual loss, unjust enrichment, payment of reasonable royalties, and exemplary
13 damages permitted by statute and attorneys' fees, as such misappropriation was
14 willful and malicious.

15 146. Absent the Court's intervention, Plaintiffs and the Company are likely
16 to suffer immediate and irreparable harm as the misappropriated trade secrets and
17 the individuals responsible for the misappropriation are likely to be put beyond the
18 jurisdictional reach of the Court.

19 **COUNT II**
20 **Violations of California Uniform Trade Secrets Act,**
21 **CAL. CIV. CODE § 3426.1 *et seq.***
(Against Chen, Lu, Hou, and Hydron)

22 147. Plaintiffs repeat and reallege the paragraphs above as if fully set forth
23 herein.

24 148. The Company developed its trade secrets in connection with its
25 business in San Diego, California, and trades on the securities exchanges of this
26 country based upon its unique self-driving trade secrets which have been designed
27 to power a new autonomous commercial trucking industry.

28 149. The Company's trade secrets derive independent economic value from

1 not being generally known to the public or others who can obtain economic value
2 from the disclosure or use of the Company's trade secrets.

3 150. TuSimple owns its trade secrets and this action proceeds derivatively
4 on its behalf.

5 151. TuSimple took steps to protect its trade secrets through confidentiality
6 agreements with employees and vendors and by otherwise treating its trade secrets
7 as highly confidential.

8 152. The United States recognized that the Company's trade secrets are
9 relevant to U.S. national security interests and caused the Company to enter into the
10 NSA with the Company, pursuant to which the Company agreed to take steps to
11 restrict the dissemination of its trade secrets and protect them from
12 misappropriation.

13 153. After the Company agreed to the NSA, and in breach of that
14 agreement, the laws of the United States and their duties as directors, Chen and Hou
15 caused the Company to transfer some portion of its trade secrets to Chen's private
16 company, Hydron, for no consideration and without complying with any of the
17 safeguards established by the NSA. Chen and Hou knew that this was improper.

18 154. Chen's and Hou's actions allowing the Company's trade secrets to be
19 transferred to Hydron have been admitted by the Company, as detailed in the
20 Company's Form 8-K filed with the SEC on October 31, 2022. Indeed, Chen has
21 publicly recognized as much in his public spat with Hou, in which he downplays his
22 own culpability.

23 155. Chen's and Hou's actions have also exposed the Company, and
24 themselves, to civil and criminal sanctions by the U.S. Government.

25 156. Chen and Hou knew that the trade secrets were protected by TuSimple
26 and knew that the transfer of these trade secrets to Hydron was not permitted by
27 Company policy, their proprietary information agreements, the NSA, or their
28

1 fiduciary duties.

2 157. As the controller and CEO of Hydron, Chen's knowledge can be
3 imputed to Hydron as well. Thus, Hydron received TuSimple's trade secrets
4 knowing (i) that it had no right to them; (ii) that TuSimple protected them as trade
5 secrets; and (iii) that they were further protected under the NSA.

6 158. Hydron now uses TuSimple's misappropriated trade secrets in
7 connection with the production of Level 4 autonomous ready trucks competing with
8 autonomous trucks of TuSimple reported to have the same or similar technological
9 capabilities. Plaintiffs are entitled to an injunction against the further movement or
10 use of the trade secrets and a constructive trust on the trade secrets and the results of
11 any use of such trade secrets by Hydron.

12 159. The misappropriation of the Company's trade secrets was willful and
13 malicious in that Chen, Lu, Hou and Hydron knew that the trade secrets were the
14 property of TuSimple and protected both by common law and the NSA, and yet
15 accepted the Company's trade secrets for its own use and benefit.

16 160. Plaintiffs are entitled to the statutory maximum of damages under Cal.
17 Civ. Code § 3426.3, including damages for actual loss, unjust enrichment, payment
18 of reasonable royalties, and exemplary damages with respect to Chen's, Lu's, Hou's
19 and Hydron's misappropriation of the Company's trade secrets as well as attorneys'
20 fees as such misappropriation was willful and malicious.

21 161. Absent injunctive relief by the Court, TuSimple will suffer imminent
22 and irreparable harm.

23 **COUNT III**
24 **Civil Conspiracy**
25 **(Against All Defendants)**

26 162. Plaintiffs repeat and reallege the paragraphs above as if fully set forth
27 herein.

28 163. In a process spanning multiple parts of TuSimple's short history, all

1 Defendants formed a plan or conspiracy among themselves to deprive TuSimple of
2 its property.

3 164. Hydron took a step in furtherance of the conspiracy by
4 misappropriating TuSimple's trade secrets, as did Hou.

5 165. Hydron, Chao, and Chen have benefitted from that misappropriation
6 given that Hydron is owned primarily by, or for the benefit of, Chen. Chao
7 benefitted as an additional investor in Hydron.

8 166. As CEO of TuSimple, Lu additionally supported Chen and Hydron in
9 misappropriating Company assets.

10 167. TuSimple was harmed by the misappropriation of its property as a
11 result of the civil conspiracy between Defendants.

12 168. TuSimple is entitled to a return of its property, together with damages
13 flowing from any misappropriation or unauthorized use of that property by
14 Defendants and an injunction prohibiting further use.

15 **VII. PRAYER FOR RELIEF**

16 Plaintiffs respectfully request that this Court:

17 A. Preliminarily enjoin Defendants from moving the misappropriated
18 trade secrets outside of the jurisdiction of the Court *pendente lite*;

19 B. Preliminarily and permanently enjoin Defendants from making any use
20 of the misappropriated trade secrets outside of TuSimple for any purpose;

21 C. Establish a constructive trust with respect to the misappropriated trade
22 secrets;

23 D. Award compensatory and exemplary damages under Counts I and II
24 hereof with respect to the harm caused to the Company by the misappropriation;

25 E. Award attorneys' fees under the relevant statutes and common law;

26 F. Award pre- and post-judgment interest; and

27 G. Award such other and further relief as the Court may deem appropriate
28

1 in the circumstances.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a trial by jury of all issues that are subject to
4 adjudication by a trier of fact.

5 Dated: December 22, 2023

Respectfully submitted,

6
7 BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr. (SBN 175783)
8 Albert Y. Chang (SBN 296065)
9 Aaron P. Arnzen (SBN 218272)

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greg.varallo@blbglaw.com

*Attorneys for Plaintiffs Norman Wilhoite
and Judith Wilhoite*

VERIFICATION

We, Norman Wilhoite and Judith Wilhoite, verify that we are shareholders of TuSimple Holdings, Inc. We have reviewed the allegations in this Verified Shareholder Derivative Complaint. As to those allegations of which we have personal knowledge, we believe them to be true; as to those allegations of which we lack personal knowledge, we rely upon our counsel and counsel's investigation, and believe them to be true. Having received a copy of the complaint and reviewed it with counsel, we authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 20, 2023.

Mr. Norman Wilhoite

Norman Wilhoite


Judith Wilhoite

Judith Wilhoite

EXHIBIT A

EXHIBIT A

B2224-2643 11/13/2023 5:00 PM Received by California Secretary of State



Secretary of State
Certificate of Surrender
 (Foreign Qualified Corporation ONLY)

SURC

For Office Use Only

-FILED-

File No.: BA20231764672
 Date Filed: 11/13/2023

There is **No Fee** for filing a Certificate of Surrender

Certified Copy Fee (Optional) – \$5.00

Note: For information about Franchise Tax Board final tax return requirements, go to ftb.ca.gov.

This Space For Office Use Only

1. Corporate Name (Enter the exact name of the corporation as it is recorded with the California Secretary of State. Note: If you registered in California using an assumed name.)

Hydron Inc.

2. Secretary of State Entity Number <div style="text-align: center; font-size: 1.2em;">C4807833</div>	3. Jurisdiction (State, foreign country or place where this corporation is formed.) <div style="text-align: center; font-size: 1.2em;">DELAWARE</div>
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4. Mailing Address to mail copies of Legal Service (Enter the complete mailing address where the California Secretary of State may forward copies of any legal documents against the corporation that are served on the Secretary of State intended for the corporation.)

Mailing Address of Corporation c/o 5405 Morehouse Drive suite 320	City (no abbreviations) San Diego	State CA	Zip Code 92121
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5. Required Statements (Do not alter the Required Statements – ALL must be true to file this Certificate of Surrender.)

Statements 5(a) – 5(d) are true:

- a) The corporation surrenders its rights and authority to transact intrastate business in the State of California.
- b) The corporation revokes its designation of agent for service of process in California.
- c) The corporation consents to process against it in any action upon any liability or obligation incurred within the State of California prior to the filing of this Certificate of Surrender may be served upon the California Secretary of State.
- d) All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

6. Read and Sign Below (Office or title not required.)

I am a corporate officer and am authorized to sign on behalf of the foreign corporation.



Signature

Mo Terry Chen

Type or Print Name