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12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14 NORMAN WILHOITE and JUDITH
 15 WILHOITE, derivatively on behalf of
 16 TUSIMPLE HOLDINGS, INC.,

17 Plaintiffs,

18 vs.

19 XIAODI HOU, MO CHEN, CHENG LU,
 20 GUOWEI "CHARLES" CHAO, and
 21 HYDRON, INC.,

22 Defendants,

23 - and -

24 TUSIMPLE HOLDINGS, INC.,

25 Nominal Defendant.

Case No. 3:23cv2333-BEN (MSB)

**Plaintiffs' Notice of Motion and
 Motion for Temporary Restraining
 Order and for Expedited Discovery
 Pursuant to Federal Rule of Civil
 Procedure 26(d)(1)**

Date: February 26, 2024
 Time: 10:30 a.m.
 Courtroom: 5A (Schwartz)
 Judge: Hon. Roger T. Benitez

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 26, 2024, before the Honorable
3 Roger T. Benitez of the United States District Court for the Southern District of
4 California, located at 221 West Broadway, San Diego, California 92101, Plaintiffs
5 Norman Wilhoite and Judith Wilhoite (“Plaintiffs”) will move this Court for an
6 order: (1) issuing a temporary restraining order enjoining Defendants and all those
7 acting in concert with any of them from (a) violating the National Security
8 Agreement between Nominal Defendant TuSimple Holdings, Inc. (“TuSimple”)
9 and the United States; (b) selling, transferring, or disclosing TuSimple trade secrets
10 to people or entities outside the United States, including to TuSimple’s China-based
11 businesses; (c) selling, transferring, or disclosing TuSimple trade secrets to Hydron,
12 Inc.; (d) transferring any proceeds obtained from the sale, transfer, or disclosure of
13 TuSimple’s trade secrets outside the United States; or (e) transferring any proceeds
14 obtained from the sale, transfer, or disclosure of TuSimple’s assets other than trade
15 secrets outside the United States.; and (2) allowing defendants to produce
16 particularized discovery on an expedited basis.

17 This motion is made based on this notice of motion and motion, the
18 supporting memorandum of points and authorities, the declaration of Albert Y.
19 Chang, and the Court’s complete files and records in this action.

20 Dated: January 5, 2024

Respectfully submitted,

21 BOTTINI & BOTTINI, INC.

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25 s/ Albert Y. Chang

26 Albert Y. Chang

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14 NORMAN WILHOITE and JUDITH
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 20 GUOWEI "CHARLES" CHAO, and
 21 HYDRON, INC.,

22 Defendants,

23 - and -

24 TUSIMPLE HOLDINGS, INC.,

25 Nominal Defendant.

Case No. 3:23cv02333 BEN (MSB)

**Plaintiffs' Memorandum of Points
 and Authorities in Support of
 Motion for Temporary Restraining
 Order and for Expedited Discovery
 Pursuant to Federal Rule of Civil
 Procedure 26(d)(1)**

Date: February 26, 2024
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INTRODUCTION

1
2 The executives at the San Diego-based autonomous trucking company
3 TuSimple¹ have unlawfully transferred, and continue to transfer, the Company's
4 valuable trade secrets to a competitor with close ties to the Chinese government.
5 The beneficiary is a privately held company with operations in both China and
6 California called Hydron. Hydron is run by one of the same TuSimple executives,
7 Defendant Mo Chen, and backed by Defendant Charles Chao. Unauthorized
8 transfers of trade secrets like this are bad enough for any company's prospects, but
9 because TuSimple designs and builds autonomous trucking technology — which
10 implicates the United States' national security interests — Defendants' theft of
11 trade secrets places this country at risk. It also puts TuSimple in violation of its
12 National Security Agreement with the United States, which federal authorities
13 imposed on TuSimple to protect those very same national security interests.

14 To make matters worse, Plaintiffs have recently learned that Defendants are
15 in the process of selling all TuSimple's assets in the United States, after which
16 Defendants will presumably send the proceeds to China and take the remaining
17 trade secrets with them there, outside the effective reach of the U.S. courts. That is
18 alarming in light of the federal investigations and private litigation that have
19 targeted Defendants' wrongful conduct. The only explanation is that Defendants
20 are seeking to (1) relocate to China, (2) transfer TuSimple's intellectual property
21 and trade secret assets to Hydron and TuSimple's China-based business (both of
22 which are barred under the National Security Agreement from receiving

23
24 ¹ Terms not defined herein have the same meaning ascribed to them in
25 Plaintiffs' complaint. *See Wilhoite, et al. v. Hou, et al.*, No. 23cv2333-BEN (MSB),
26 Dkt. No. 1.

1 TuSimple’s trade secret information), thereby (3) evading the jurisdictional reach of
2 any U.S. judgment. Indeed, it is no secret that U.S. companies are routinely the
3 subject of brazen IP theft by Chinese nationals connected to the Chinese
4 government. It was recently disclosed that Apple’s autonomous driving technology
5 was the subject of attempted theft by the Chinese government.²

6 In light of the troubling (and still fluid) series of events described below, this
7 Court should issue a Temporary Restraining Order (“TRO”) designed to preserve
8 the status quo, command compliance with the National Security Agreement, and
9 stop Defendants from syphoning away TuSimple’s hard-earned trade secrets.
10 Furthermore, given the short lifespan of a TRO, Plaintiffs anticipate moving for the
11 issuance of a preliminary injunction to preserve the status quo as litigation
12 proceeds. To substantiate a preliminary injunction record in light of the exigency
13 described herein, the Court should also order expedited discovery.

14 **BACKGROUND**

15 Two shareholders of TuSimple filed this case against several TuSimple
16 directors, Hydron, and Nominal Defendant TuSimple for violations of the Defend
17 Trade Secrets Act of 2016 (the “DTSA”), the California Uniform Trade Secrets Act
18 (“CUTSA”), and civil conspiracy. Dkt. No. 1. The allegations in the complaint, in
19 conjunction with additional materials described below, paint a distinct portrait of
20 unauthorized disclosures of corporate trade secrets, shocking conflicts of interest,

21 ² See Robert McMillan, “China is Stealing AI Secrets to Turbocharge Spying,
22 U.S. Says,” THE WALL STREET JOURNAL, Dec. 25, 2023 (noting that a Chinese
23 national and former Apple employee was arrested at the San Jose airport as he tried
24 to board a plane for Beijing and charged with stealing trade secrets related to the
25 company’s autonomous-driving program; the former employee later pleaded
26 guilty).

1 and close connections with the Chinese government and the Chinese Communist
2 Party.

3 **I. TuSimple’s Intellectual Property Supported an \$8.5 Billion Valuation**

4 Founded in San Diego in 2015, TuSimple purports to “develop[] the world’s
5 most-advanced self-driving technologies specifically designed for heavy-duty
6 trucks.” *See* Declaration of Albert Y. Chang in Support of Plaintiffs’ Motion for a
7 Temporary Restraining Order (“Chang Decl.”), ¶ 4, Ex. 1. The Company’s
8 research and development efforts have focused on making long haul trucking safer,
9 more reliable, efficient, and environmentally friendly. TuSimple pursued these
10 benefits through automation, seeking to develop a “fully integrated software and
11 hardware solution” to eventually produce the “world’s most advanced” autonomous
12 operation of semi-trucks without the assistance, intervention, or even presence of a
13 human driver. Chang Decl., ¶ 5a, Ex. 2. This is referred to as “L4 Technology” or
14 “Level 4” autonomy, which in industry parlance means the highest amount of
15 autonomy a vehicle can have. *Id.*

16 The hallmarks of TuSimple’s solution include its “1,000 meter perception
17 range, 35 second planning horizon, high definition (‘HD’) maps with accuracy
18 within five centimeters, and an integrated L4 autonomous semi-truck design
19 comprising of a fully redundant sensor suite and components.” *Id.* TuSimple’s
20 U.S.-developed proprietary technology also includes its “full-stack onboard
21 autonomous driving software with industry leading capabilities across perception,
22 planning, and control,” along with certain offboard toolchain technologies; its
23 simulation platform; and its data infrastructure. *Id.* ¶ 6, Ex. 3. The source codes
24 for these technologies are trade secrets, as are the technical data, blueprints, and
25 schematics for implementation of its full-stack autonomous driving technology.
26 TuSimple also claims to have built, or is in the process of building, the world’s first
27

1 Autonomous Freight Network (“AFN”) in partnership with shippers, carriers,
2 railroads, freight brokers, fleet asset owners, and truck hardware partners. *Id.* ¶ 2b,
3 Ex. 2. The AFN provides “a comprehensive, turnkey, autonomous freight solution
4 that supplies users with access to purpose-built L-4 autonomous semi-trucks
5 operating on HD digital mapped routes connecting a nationwide network of
6 terminals.” *Id.* ¶ 2d, Ex. 2.

7 TuSimple has spent an extraordinary amount of time, money, and effort to
8 develop this technology, with research and development expenses since the
9 beginning of 2015 topping \$1 billion. *Id.* ¶ 7. These expenditures have started to
10 pay dividends; in December 2021, the Company completed the first fully
11 autonomous vehicle run on public roads in Arizona. *Id.* ¶ 8, Ex. 4. This technology
12 was the primary basis for TuSimple’s \$8.5 billion valuation. *Id.* ¶ 9, Ex. 5.

13 **II. Protecting TuSimple’s Proprietary Information from Competitors and** 14 **the Chinese Government Is Critically Important**

15 Much of TuSimple’s value depends on TuSimple’s ability to maintain
16 confidentiality over its intellectual property. TuSimple’s proprietary information
17 was and is valuable because the Company’s competitors do not have access to it. In
18 large part, that is because the autonomous trucking field is highly competitive, as
19 multiple startups, established players, and vehicle manufacturers compete for
20 technological advances over each other. Chang Decl., ¶ 10a, Ex. 6. Indeed,
21 TuSimple’s public disclosures make clear the extent to which the Company’s
22 proprietary technology is critical to maintaining its competitive standing.

23 In its 2021 Annual Report, for example, TuSimple warned that “[i]f any of
24 our trade secrets were to be lawfully obtained or independently developed by a
25 competitor or other third party, we would have no right to prevent them from using
26 that trade secret to compete with us.” *Id.* ¶ 11b, Ex. 7. Moreover, “[i]f any of our
27 trade secrets were to be disclosed (whether lawfully or otherwise) to or

1 independently developed by a competitor or other third party, it could have a
2 material adverse effect on our business, operating results, and financial condition.”
3 *Id.* Further still, “[f]ailure to adequately protect our intellectual property rights
4 could result in our competitors offering similar products, potentially resulting in the
5 loss of our competitive advantage[.]” *Id.* ¶ 11b, Ex. 7. The Company made
6 consistent disclosures in subsequent public filings. *Id.* ¶ 11c.

7 To protect against these risks, TuSimple made significant efforts to keep its
8 proprietary information secret. It did so, in part, “by entering into confidentiality
9 agreements, or consulting, services, or employment agreements that contain non-
10 disclosure and non-use provisions with our employees, consultants, contractors,
11 scientific advisors, and third parties.” *Id.* ¶ 11c, Ex. 7. These included proprietary
12 information agreements with its employees, including Defendants Chen, Lu, and
13 Hou, which required that TuSimple’s trade secret information be held in the
14 strictest confidence and only be used in connection with employment at TuSimple.
15 *Id.* ¶ 10c, Ex. 6. In addition to these agreements, as corporate directors, the
16 Individual Defendants were under a fiduciary duty of loyalty to refrain from
17 disclosing TuSimple’s valuable secrets to competitors.

18 Above and beyond the usual financial reasons, confidentiality is especially
19 critical at TuSimple because its intellectual property implicates the United States’
20 national security interests. National security concerns bubbled to the surface
21 mainly when Sina Corporation (“Sina”), a Chinese company with deep connections
22 to the Chinese Government, invested significantly in TuSimple in 2017 through a
23 subsidiary called Sun Dream. *Id.*, ¶ 5c, Ex. 2. Sina, which Defendant Chao
24 controls, is a Chinese media conglomerate that is partially backed by the Chinese
25 government and often functions as an instrumentality of the Chinese Communist
26 Party and its political objectives. *Id.* ¶¶ 5e, 12, 13, Exs. 2, 8, 9. Sina’s investment
27 in and control over TuSimple continued to grow over time. *See id.* ¶ 5f, 11, Ex. 2

1 (detailing Sun Dream’s \$100 million convertible loan agreement with TuSimple),
2 Ex. 7 (describing Sun Dream’s two seats on TuSimple’s board of directors).

3 These connections with China caught the attention of CFIUS, an interagency
4 federal committee that reviews transactions involving foreign investment in the
5 United States that may threaten U.S. national security interests. *Id.* ¶ 5c, Ex. 2.
6 Following an investigation, TuSimple entered into a February 18, 2022 National
7 Security Agreement with CFIUS and related federal entities. The National Security
8 Agreement required, *inter alia*, that TuSimple appoint a Security Officer and a
9 Security Director, maintain a Government Security Committee chaired by the
10 Security Director, submit regular reports to federal agencies, and isolate data and
11 technology to prevent them from being shared with TuSimple’s Chinese subsidiary
12 or any foreign businesses. *Id.* ¶ 14, Ex. 10. In addition, TuSimple was obligated to
13 refrain from disseminating its protected information unless and until that
14 dissemination was reviewed and approved by the Government Security Committee.
15 *Id.* The National Security Agreement also required Chao and Zhang, who were
16 appointed by Sun Dream, to relinquish their seats on the Board of Directors by not
17 standing for reelection at the end of June 2022. *Id.*

18 **III. Defendants Misappropriated TuSimple’s Intellectual Property and** 19 **Labor to Benefit Hydron**

20 Despite the critical importance of maintaining confidentiality over the
21 Company’s proprietary intellectual property and TuSimple’s commitments to the
22 United States under the National Security Agreement, Defendants entered into a
23 pattern of systemic misappropriation.

24 ***First, Defendant Chen clandestinely formed Hydron, Inc., in March 2021***
25 ***to compete in the same automated trucking space as TuSimple.*** Hydron designs,
26 manufactures, and sells autonomous trucks, which makes Hydron a direct
27 competitor of TuSimple. Chang Decl., ¶ 15, Ex. 11. Hydron was founded in March

1 2021 by Defendant Chen, while he served as Executive Chairman of TuSimple’s
2 board and was obligated under his employment agreement to refrain from
3 “engag[ing] in any other employment, consulting or other business activity
4 (whether full-time or part-time) that would create a conflict of interest with the
5 TuSimple Group.” *Id.* ¶¶ 10c, 16, Exs. 6, 12. In addition, as discussed above,
6 Hydron is believed to be tied to the Chinese Communist Party through Chao’s
7 backing as the head of Sina. Chen remains Hydron’s CEO and is believed to be its
8 controlling stockholder. *Id.* ¶ 17, Ex. 13.

9 ***Second, Defendants recruited TuSimple employees to work for Hydron.***

10 Chen and Hou recruited TuSimple employees, including senior executives, to work
11 on Hydron-related matters while being compensated by TuSimple. In October
12 2022, the Company announced that the Board’s Audit Committee had conducted an
13 investigation and found that:

14 [D]uring 2021 Company employees spent paid hours working on
15 matters for Hydron Inc. (f/k/a Turing Auto), a company which the
16 Company believes has significant operations in China, and that such
17 paid hours had an estimated value of less than \$300,000. Mr. Mo
18 Chen, one of our co-founders and former Executive Chairman, is a
19 founder, director and chief executive officer of Hydron, and he has an
20 equity interest in the Company of greater than 10%. **This related
21 party transaction was not presented to, or approved by, the Audit
22 Committee as required by the Company’s Code of Conduct.**

23 *Id.* ¶ 18a, Ex. 14 (emphases added). Similarly, Defendant Hou was caught
24 recruiting TuSimple employees to join Hydron. The Company announced this
25 news on March 9, 2023, describing “an internal investigation into claims that Dr.
26 Hou was approaching TuSimple employees about leaving the Company and joining
27 a new venture being planned by Dr. Hou.” *Id.* ¶ 19, Ex. 15.

28 ***Third, Defendants transferred TuSimple’s proprietary intellectual property
to Chen and Chao’s company — Hydron.*** Defendant Hou aided Chen and Hydron

1 by expropriating TuSimple’s intellectual property without authorization —
2 including trade secrets that would enable Hydron to replicate TuSimple’s
3 technology — and transferring this intellectual property to Hydron. Chao, in turn,
4 benefitted from these transfers as a stockholder in Hydron.

5 When TuSimple disclosed that it had paid employees to work for Hydron (as
6 discussed above), it also made an even more disturbing announcement.
7 Specifically, on October 31, 2022, TuSimple reported that during 2022, Defendants
8 caused the Company to “share[] confidential information with Hydron and its
9 partners, which was not brought to the attention of the Audit Committee and
10 Government Security Committee, and before entering into relevant non-disclosure
11 and other cooperation agreements.” *Id.* ¶ 18b, Ex. 14. Shortly thereafter, TuSimple
12 entered into a non-disclosure agreement with Hydron that “covered the
13 information” at issue, but TuSimple conceded that it “does not know whether
14 Hydron shared, or publicly disclosed, the information before entering into that
15 agreement.” *Id.* TuSimple also announced that it “has not been able to determine
16 the value, if any, of such information.” *Id.*

17 When a financial reporter asked Chen whether TuSimple would supply
18 autonomous technology to Hydron, Chen dodged the question, all but admitting that
19 Hydron certainly had use for TuSimple’s secrets: “Hydron’s hydrogen powered
20 autonomous trucks are designed to be software agnostic and can operate on a
21 variety of SAE Level 4 autonomous driving software platforms.” *Id.* ¶ 20, Ex. 16.

22 These revelations sparked further federal investigations. By October 2022,
23 the FBI, SEC, and CFIUS each had investigations underway into whether
24 TuSimple’s intellectual property was improperly transferred to Hydron, whether
25 TuSimple had improperly financed Hydron, and whether sending valuable
26 technology to an overseas adversary defrauded TuSimple investors. *Id.* ¶ 21, Ex.
27 17. Later, on September 7, 2023, TuSimple announced in its delayed 2022 Annual

1 Report that “the Company and certain current and former directors and officers
2 received subpoenas from the SEC requesting the production of Company
3 documents” in response to the investigation “into the related party transaction with
4 Hydron.” *Id.* ¶ 10b, Ex. 6.

5 **IV. Defendants Chen and Hou Stacked TuSimple’s Board of Directors in an** 6 **Attempt to Avoid Culpability for Their Wrongdoing**

7 With all these disclosures and investigations, Defendants’ corporate theft was
8 at risk of failure. Based on the Audit Committee’s finding that Defendant Hou had
9 arranged for TuSimple employees to spend paid hours working for Hydron, and that
10 Hou exhibited a “lack of candor and transparency with the Board,” TuSimple’s
11 board terminated Hou from his positions as CEO, president, CTO, and Board
12 member as of October 30, 2022. *Id.* ¶ 22, Ex. 18.

13 In response, Chen and Hou joined forces to fire the independent directors and
14 get Hou back on the Board. In particular, Hou and Chen agreed to combine their
15 collective 59% voting power over TuSimple to purge almost the entire board
16 (including those who terminated Hou for his malfeasance), reinstate Hou to the
17 Board, and appoint Chen as Executive Chairman. *Id.* ¶ 23, Ex. 19. This purge
18 blatantly violated the National Security Agreement, which required TuSimple to
19 maintain a Government Security Committee. After wresting control of TuSimple,
20 Chen and Hou installed a Potemkin board to mask the source of real power at the
21 Company. *Id.* ¶¶ 24, 26, Exs. 20, 21.

22 In response to this coup and related misconduct, TuSimple shareholders have
23 initiated litigation in this Court (a consolidated securities class action) and
24 Delaware (derivative actions alleging breaches of fiduciary duty). *Id.* ¶ 25.
25 Because these actions appear primarily focused on damages, stockholder plaintiffs
26 have not moved for injunctive relief to protect the Company’s trade secrets.

1 **V. Defendants Are Attempting to Pull up Stakes, Abandon TuSimple’s U.S.**
2 **Operations, and Evade This Country’s Legal System**

3 As investigations and lawsuits ramp up pressure on Defendants, Plaintiffs
4 have recently discovered signs that Defendants are attempting to abandon
5 TuSimple’s U.S. operations and evade the jurisdictional reach of American courts.
6 In the face of federal investigations and shareholder litigation surrounding their
7 misconduct, Defendants are preparing to transfer TuSimple’s intellectual property
8 to Hydron and get out of Dodge by eyeing an exit to China. Consider:

- 9
- 10 • On December 21, 2022, the Company announced that it would lay off
11 approximately 350 employees globally, or 25% of its workforce, and that
12 “the Company continues its plan to explore strategic alternatives for its
13 Asia business, including a divestiture.” *Id.* ¶ 27, Ex. 22.
 - 14 • On May 16, 2023, the Company announced that it was laying off 300
15 employees, but that the reduction in workforce would “only impact
16 TuSimple locations within the U.S.,” *id.* ¶ 28, Ex. 23, rather than spread
17 the pain of the Company’s contraction more evenly across its main
18 markets. The Company also announced that “it is in the best interest of
19 shareholders to continue owning and operating [the Company’s] Asia
20 Pacific subsidiaries and is no longer exploring a transaction.” *Id.* In other
21 words, TuSimple now plans to shutter its U.S. business while leaving the
22 Asia Pacific business open.
 - 23 • In June 2023, TuSimple publicly stated it was exploring “strategic
24 alternatives” for its U.S. business. *Id.* ¶ 29, Ex. 24.
 - 25 • On September 7, 2023, in its belated Annual Report, the Company
26 announced that during 2022 the SEC had subpoenaed Company
27 documents in connection with related-party transactions with Hydron. *Id.*
28 ¶ 10b, Ex. 6.

- 1 • On December 4, 2023, the Company announced that it was in the process
2 of “winding down the Company’s U.S. operations, including through
3 sales of U.S. assets, and assisting with the Company’s strategic shift to the
4 Asia-Pacific region.” *Id.* ¶ 30, Ex. 25.

5 Meanwhile, **Hydron** has quietly begun packing up shop as well. Based on
6 Plaintiffs’ investigation, Defendants are in the process of shuttering Hydron’s
7 California operations and, upon information and belief, attempting to move its
8 assets to China as well. On November 13, 2023, Chen signed and filed a Certificate
9 of Surrender on behalf of Hydron with the California Secretary of State’s office. *Id.*
10 ¶ 31, Ex. 26. The form submitted by Chen stated that Hydron “surrenders its rights
11 and authority to transact intrastate business in the State of California” and that
12 “[t]he corporation revokes its designation of agent for service of process in
13 California.” *Id.*

14 There is a pattern to these events. At the same time that TuSimple is closing
15 down its U.S. operations, ostensibly on the basis of market dynamics, Defendants
16 have resurrected an interest in TuSimple’s Asia Pacific business, which they had
17 earlier indicated they wanted to sell. Simultaneously, Hydron — which is backed
18 by Chao, whom CFIUS effectively forced off TuSimple’s Board through the
19 National Security Agreement — is up-and-leaving to China, just as federal
20 authorities are scrutinizing Hydron’s dealings with TuSimple. These events are not
21 mere coincidences. Defendants are engaged in a brazen plan to relocate to China,
22 transfer TuSimple’s intellectual property assets to Hydron, and evade the
23 jurisdictional reach of any U.S. judgment.

24 Once the various trade secret assets — whether intellectual property or
25 otherwise — are improperly taken by Defendants and transferred overseas to China
26 via Hydron, they will be beyond the reach of TuSimple’s public stockholders. Lu
27 undoubtedly is facilitating this as TuSimple’s CEO beholden to Chen, who has

1 stood squarely on both sides of all dealings between TuSimple and Hydron.
 2 Meanwhile, it does not appear that TuSimple’s Special Litigation Committee or
 3 Government Security Committee are empowered to meaningfully stand up to
 4 TuSimple’s leadership and stop what is already in motion. To be sure, neither has
 5 taken any action to stop the ongoing IP theft and relocation to China.

6 LEGAL STANDARD

7 The purpose of a TRO is to “preserv[e] the status quo and prevent[]
 8 irreparable harm” until a preliminary injunction can be held. *Granny Goose Foods,*
 9 *Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974).
 10 Similarly, a preliminary injunction is appropriate when it prevents irreparable loss
 11 prior to judgment. *Sierra OnLine, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415,
 12 1422 (9th Cir. 1984).

13 A plaintiff seeking preliminary relief “must establish that he is likely to
 14 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
 15 preliminary relief, that the balance of equities tips in his favor, and that an
 16 injunction is in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los*
 17 *Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def.*
 18 *Council, Inc.*, 555 U.S. 7, 20 (2008)).

19 ARGUMENT

20 **I. A TRO Is Needed to Preserve the Status Quo and Stop Defendants from** 21 **Sending TuSimple’s Trade Secrets to a Competitor with Ties to the** 22 **Chinese Government**

23 Defendants’ misappropriation of TuSimple’s trade secrets and efforts to
 24 abandon the United States in favor of China establish the need for preliminary
 25 injunctive relief. Without preliminary relief, Defendants’ actions will irreparably
 26 harm the Company and its public shareholders by allowing Defendants to steal the
 27 Company’s key intellectual property for the benefit of themselves and Hydron. The

1 Individual Defendants will also succeed, absent injunctive relief, in insulating
2 themselves from the reach of U.S. Courts. Specifically, Plaintiffs seek an order
3 enjoining Hydron, TuSimple, and the other Defendants, and all those acting in
4 concert with any of them, from:

- 5 • Violating the National Security Agreement.
- 6 • Transferring or disclosing TuSimple trade secrets to people or entities
7 outside the United States, including to TuSimple’s China-based
8 businesses.
- 9 • Transferring or disclosing TuSimple trade secrets to Hydron.
- 10 • Transferring any proceeds obtained from the sale, transfer, or
11 disclosure of TuSimple’s trade secrets outside the United States.
- 12 • Transferring any proceeds obtained from the sale, transfer, or
13 disclosure of TuSimple’s assets other than trade secrets outside the
14 United States.

15 **A. Plaintiffs Are Likely to Succeed on the Merits of Their DTSA and**
16 **CUTSA Claims**

17 “To state a claim for misappropriation of trade secrets under CUTSA, a
18 plaintiff must allege: (1) the existence and ownership of a trade secret, and (2)
19 misappropriation of the trade secret. A claim for misappropriation under the
20 Defend Trade Secrets Act ... has substantially similar elements.” *Sun Distrib. Co.,*
21 *LLC v. Corbett*, 2018 U.S. Dist. LEXIS 176224, at *6 (S.D. Cal. Oct. 12, 2018)
22 (internal citations omitted); *see also Alpha Capital, LLC v. Khanukov*, 2023 U.S.
23 Dist. LEXIS 127167, at **8–14 (S.D. Cal. July 21, 2023) (stating same and
24 analyzing DTSA and CUTSA claims under a single framework).

1 **1. The Complaint Alleges the Existence and Ownership of**
2 **Trade Secrets**

3 TuSimple’s confidential information surrounding its autonomous trucking
4 platform easily meets the criteria for the relevant statutory definitions of “trade
5 secret.” Both the DTSA and CUTSA define “trade secret” as:

6 all forms and types of financial, business, scientific, technical,
7 economic, or engineering information, ... if-

8 (A) the owner thereof has taken reasonable measures to keep such
9 information secret; and

10 (B) the information derives independent economic value, actual or
11 potential, from not being generally known to, and not being readily
12 ascertainable through proper means by, another person who can obtain
13 economic value from the disclosure or use of the information.

14 18 U.S.C. § 1839(3); *see also* CAL. CIV. CODE § 3426.1(d).

15 Broken down, to show that confidential information constitutes a trade secret,
16 (1) the information must be the right type of information (financial, scientific, *etc.*);
17 (2) the owner must have taken reasonable steps to protect it; and (3) the information
18 must derive value from its secrecy.

19 First, the information in question is “scientific, technical, ... or engineering
20 information,” as it includes TuSimple’s full-stack onboard autonomous driving
21 software, additional software used to develop the AFN such as TuSimple Path,
22 TuSimple Connect, semi-truck-specific driving data, its driving simulation
23 platform, data infrastructure, and related designs, blueprints, schematics,
24 specifications, software, source code, summaries of technical analyses, status
25 reports, and other Company-developed know-how surrounding TuSimple’s L4
26 autonomous driving technology. *See* Dkt. No. 1, ¶ 41.

27 Second, TuSimple has taken reasonable measures to keep its proprietary
28 information secret. “Confidentiality provisions constitute reasonable steps to
maintain secrecy. It is also well established that confidential disclosures to

1 employees, licensees, or others will not destroy the information’s status as a trade
2 secret.” *Inteliclear, LLC v. ETC Global Holdings, Inc.*, 978 F.3d 653, 660–661 (9th
3 Cir. 2020) (internal citations, quotations omitted); *see also VBS Distrib., Inc. v.*
4 *Nutrivita Lab., Inc.*, 811 F. App’x 1005, 1009 (9th Cir. 2020) (Table), *cert. denied*,
5 141 S. Ct. 454 (2020) (“Providing alleged trade secrets to third parties does not
6 undermine a trade-secret claim, so long as the information was provided on an
7 understanding of confidentiality.”).

8 As detailed throughout the complaint, TuSimple’s extensive efforts include
9 entering into agreements with employees, consultants, contractors, scientific
10 advisors, and third parties that contain non-disclosure and non-use provisions.
11 TuSimple has also required that key employees, including Defendants Chen, Lu,
12 and Hou, enter into agreements requiring them to keep TuSimple’s trade secret
13 information in the strictest confidence and only for use in connection with their
14 employment.

15 Third, TuSimple’s trade secrets “derive independent economic value” from
16 the fact that they are secrets kept out of the hands of TuSimple’s competitors, who
17 could “obtain economic value” from their disclosure or use. TuSimple has spent
18 over \$1 billion developing its proprietary technology over the last several years.
19 Chang Decl., ¶ 7. The Company achieved an \$8.5 billion valuation and obtained \$1
20 billion in funding from public stockholders in its IPO, based on the notion that
21 TuSimple’s competitors did not have the same information. *Id.* ¶ 9, Ex. 5. And the
22 Company repeatedly confirmed in its public disclosures exactly this point, *i.e.*, that
23 its technology was valuable because it was not generally known or readily
24 ascertainable. TuSimple’s 2021 Annual Report was particularly clear:

- 25 • “If any of our trade secrets were to be lawfully obtained or independently
26 developed by a competitor or other third party, we would have no right to
27 prevent them from using that trade secret to compete with us.”

- 1 • “If any of our trade secrets were to be disclosed (whether lawfully or
2 otherwise) to or independently developed by a competitor or other third
3 party, it could have a material adverse effect on our business, operating
4 results, and financial condition.”
- 5 • “Failure to adequately protect our intellectual property rights could result
6 in our competitors offering similar products, potentially resulting in the
7 loss of our competitive advantage.”

8 Chang Decl., ¶ 11a–c, Ex. 7.

9 In short, the Company’s trade secrets derived value because they were not
10 known to others.

11 2. Defendants’ Misappropriation of TuSimple’s Trade Secrets

12 Under the DTSA, misappropriation means the “(a) acquisition of a trade
13 secret by a person who knows or should know the secret was improperly acquired
14 or (b) disclosure or use of a trade secret of another without express or implied
15 consent. ... Simply stated, the DTSA contemplates three theories of liability: (1)
16 acquisition, (2) disclosure, or (3) use.” *Kimera Labs Inc. v. Jayashankar*, 2022 U.S.
17 Dist. LEXIS 192025, at *16 (S.D. Cal. Oct. 20, 2022) (internal quotations, citations
18 omitted); *see also Khanukov*, 2023 U.S. Dist. LEXIS 127167, at *13 (the definition
19 of misappropriation under the CUTSA is “nearly identical” to the definition under
20 the DTSA). Furthermore, the DTSA permits a court to enjoin “any actual or
21 threatened misappropriation.” 18 U.S.C. § 1836(b)(3)(A)(i); *see also ExamWorks,*
22 *LLC v. Baldini*, 835 F. App’x 251, 252 (9th Cir. 2020) (Table) (similarly holding
23 that under CUTSA, “‘actual or threatened’ trade secret misappropriation may be
24 enjoined.”) (quoting CAL. CIV. CODE § 3426.2(a)).

25 The facts here present a straightforward portrait of Defendants’ improper
26 disclosure, acquisition, and use of TuSimple’s trade secrets, because TuSimple has
27

1 admitted as much in its SEC filings. On October 31, 2022, TuSimple announced
2 that it had “shared confidential information with Hydron and its partners, which
3 was not brought to the attention of the Audit Committee and Government Security
4 Committee, and before entering into relevant non-disclosure and other cooperation
5 agreements.” Chang Decl., ¶ 18b, Ex. 14. The Company also admitted that it did
6 “not know whether Hydron shared, or publicly disclosed, the information” to
7 others. *Id.* The Board considered Hou’s first batch of misappropriation to be so
8 serious that it immediately terminated him as the Company’s CEO, President, CTO,
9 and Chairman of the Board. *Id.* ¶ 22, Ex. 18. In short, misappropriation is
10 established by Defendants’ disclosure of TuSimple’s trade secrets to its direct
11 competitor. *See Indep. Techs., LLC v. Otodata Wireless Network, Inc.*, 836 F.
12 App’x 531, 533 (9th Cir. 2020) (Table) (affirming preliminary injunction under
13 DTSA where plaintiff “provided sufficient evidence demonstrating Defendants ...
14 used and disclosed [its] trade secrets to its competitor ... in contravention of their
15 confidentiality agreements.”).

16 Hydron has already used, and will continue to use, TuSimple’s trade secrets.
17 Indeed, there is no other reasonable explanation for Hydron’s advanced position
18 vis-à-vis Level 4 autonomy. Hydron was founded in March 2021. It is startling,
19 then, that just seven months later, on November 5, 2022, Hydron claimed on its
20 website that it was autonomous ready: “At Hydron we design, manufacture, and sell
21 autonomous ready trucks powered by clean hydrogen fuel cells.” Chang Decl.,
22 ¶ 32, Ex. 27. Hydron added that its advanced technology “allow[s] fleet owners to
23 operate our trucks nearly continuously stopping only for refueling and preventative
24 maintenance.” *Id.* Having received disclosures surrounding TuSimple’s trade
25 secrets, Hydron is using those secrets to leap to the front of the line in L4
26 technological development. This is sufficient to show improper use in establishing
27 misappropriation of TuSimple’s trade secrets. *See Apple Inc. v. Rivos, Inc.*, 2023

1 U.S. Dist. LEXIS 140628, at *19 (N.D. Cal. Aug. 11, 2023) (“[t]he sheer quantity
2 and content of data exfiltrated . . . , in conjunction with the substantially similar roles
3 and technology they are working with at [a competitor], readily lend themselves to
4 an inference that these defendants have used or are using” plaintiff’s trade secrets);
5 *see also Alta Devices, Inc. v. LG Elecs., Inc.*, 343 F. Supp. 3d 868, 883 (N.D. Cal.
6 2018) (“[A]s discovery has not yet commenced, it would be unreasonable to require
7 a plaintiff to demonstrate the precise ways in which Defendants may have used
8 their trade secrets, given that Defendants are the only ones who possess such
9 information.”) (internal quotations, citation omitted).

10 Furthermore, as federal investigations and stockholder suits close in on
11 Defendants, it has become apparent that whatever trade secrets have not already
12 been shared with Hydron will in fact be shared once Defendants relocate
13 TuSimple’s operations entirely to China. The only mechanism standing to protect
14 TuSimple’s trade secrets will be easily evaded once its disloyal fiduciaries are
15 outside the scope of U.S. intellectual property protection.

16 **B. Plaintiffs and TuSimple Are Likely to Suffer Irreparable Harm**
17 **Absent Preliminary Relief**

18 TuSimple is suffering and will continue to suffer irreparable harm if
19 Defendants are permitted to continue disclosing and using its trade secrets.

20 An “intention to make imminent or continued use of a trade secret or to
21 disclose it to a competitor will almost always certainly show irreparable harm.”
22 *Sun Distrib. Co.*, 2018 U.S. Dist. LEXIS 176224, at *18 (internal quotation marks
23 & citations omitted). The rationale is that a “trade secret once lost is, of course, lost
24 forever” and typically represents a loss “of great value” that “cannot be measured in
25 money damages.” *FMC Corp. v. Taiwan Tainan Giant Indus. Co.*, 730 F.2d 61, 63
26 (2d Cir. 1984); *see also Beckman Instruments, Inc. v. Cincom Sys., Inc.*, 1998 U.S.
27 App. LEXIS 28429, at *6, 165 F.3d 914 (9th Cir. 1998) (table) (“Once a trade

1 secret is enabled to fly from its oubliette, it cannot be recaptured. Once lost, it is
2 lost forever. The harm is irreparable.”).

3 Several factors militate in favor of a finding of irreparable harm here. The
4 first is the most obvious: TuSimple’s value, and even its viability as a going
5 concern, rest largely on its ability to keep its propriety information confidential. As
6 TuSimple made clear in its SEC filings, and as discussed above, the Company has
7 already admitted that Defendants caused the Company to share its trade secrets with
8 Hydron and that the sharing “was not brought to the attention of the Audit
9 Committee and Government Security Committee, and before entering into relevant
10 non-disclosure and other cooperation agreements.” Chang Decl., ¶ 17b, Ex. 14.
11 TuSimple will likely suffer an enormous impact on its business and financial
12 condition if this “sharing” is not enjoined.³ Given Defendants’ rush to leave the
13 country and the effective reach of the U.S. courts, preliminary injunctive relief is
14 the only way to stop them from absconding with TuSimple’s trade secrets.

15 The unique circumstances of this case add another layer of irreparable harm.
16 Namely, TuSimple has an interest in complying with the National Security
17 Agreement. All the while, Defendants have shown their utter disregard for the
18 National Security Agreement by, among other things, purging the Board in
19 November 2022 (and thus removing the entire Government Security Committee)
20 and disclosing trade secret information to Hydron without going through the formal
21 committee approval channels. These violations have percolated into ongoing
22

23 ³ By way of example, the Company has publicly stated: “If any of our trade
24 secrets were to be disclosed (whether lawfully or otherwise) to ... a competitor or
25 other third party, it could have a material adverse effect on our business, operating
26 results, and financial condition.” Chang Decl., ¶ 11b, Ex. 7.
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1 investigations by the FBI, SEC, and CFIUS — three agencies that stand ready to
2 bring the full weight of the federal government down upon TuSimple without a path
3 toward an easy remedy — into the Hydron-related transactions.

4 Defendants’ misappropriation of trade secrets threatens irreparable injury to
5 TuSimple.

6 **C. The Balance of Equities Weighs in Favor of Preliminary Relief**

7 In contrast to the potentially dire consequences facing TuSimple absent
8 relief, Defendants will suffer little or no harm if a TRO is granted. The proposed
9 order will simply serve to preserve the status quo, command compliance with the
10 National Security Agreement, and stop Defendants from funneling the Company’s
11 hard-earned trade secrets (and funds earned from such) to Hydron, Chen, Chao, or
12 TuSimple’s China-based subsidiaries that are prohibited from accessing this
13 information under the National Security Agreement.

14 **D. Granting Preliminary Relief Is in the Public Interest**

15 Granting the preliminary relief that Plaintiffs seek here would further the
16 public interest because it would simply require Defendants to comply with the law,
17 bring TuSimple into compliance with the National Security Agreement, and protect
18 a California company’s trade secrets. “The public interest is served when a
19 defendant is asked to do no more than abide by trade laws and the obligations of
20 contractual agreements ... Public interest is also served by enabling the protection
21 of trade secrets.” *See Sun Distrib. Co.*, 2018 U.S. Dist. LEXIS 176224, at *19.

22 What is more, a separate, unique public interest factor should influence the
23 analysis — the national security interests of the United States. Under the National
24 Security Agreement, TuSimple is contractually required to consider U.S. national
25 security concerns as part of its business model by, *e.g.*, removing Chao from its
26 Board, installing a Government Security Committee, and screening off TuSimple’s
27

1 China-based subsidiaries from receiving certain data and technology. Issuing a
2 TRO under these circumstances would serve as a first step toward course correction
3 in protecting both TuSimple’s private interests and, by extension, the interests of
4 the United States.

5 **II. Good Cause Supports Expedited Discovery**

6 In addition to a TRO, Plaintiffs seek expedited discovery of a limited set of
7 particularized documents in anticipation of their motion for a preliminary
8 injunction. A TRO is the first step toward a correct course, but its limited 14-day
9 timeframe means that Plaintiffs will need to seek a follow-on preliminary
10 injunction. The Court should order expedited discovery to allow for a fuller record
11 that will provide both Plaintiffs and the Court transparency into the scope of the
12 wrongdoing at issue here and evaluate what scope of longer-lasting interim relief is
13 necessary.

14 District Courts are empowered to order expedited discovery before a Rule
15 26(f) discovery planning conference. FED. R. CIV. P. 26(d)(1). Courts in the Ninth
16 Circuit generally use the “good cause” standard to determine whether to permit
17 such discovery. *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276
18 (N.D. Cal. 2002). “Good cause may be found where the need for expedited
19 discovery, in consideration of the administration of justice, outweighs the prejudice
20 to the responding party.” *Id.* In determining whether good cause justifies expedited
21 discovery, courts commonly consider “(1) whether a preliminary injunction is
22 pending; (2) the breadth of the discovery requests; (3) the purpose for requesting
23 the expedited discovery; (4) the burden on the defendants to comply with the
24 requests; and (5) how far in advance of the typical discovery process the request
25 was made.” *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal.
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1 2009); *see also Apple Inc. v. Samsung Elecs. Co.*, 768 F. Supp. 2d 1040, 1044 (N.D.
2 Cal. 2011).

3 Here, Plaintiffs request a Court order that, within 14 days, TuSimple and
4 Hydron provide to Plaintiffs the following documents in their possession, custody
5 or control:

- 6 • All materials and documents collected and reviewed by TuSimple’s Audit
7 Committee during the investigation referenced in TuSimple’s October 31,
8 2022 Current Report (Form 8-K), as filed with the Securities and
9 Exchange Commission (the “Investigation”).
- 10 • All transcripts, notes, and/or recordings of interviews conducted as part of
11 the Investigation.
- 12 • All reports prepared by or for TuSimple’s Audit Committee during the
13 Investigation.
- 14 • All minutes and board packages of TuSimple’s Audit Committee and
15 Board of Directors meetings where the subject matter of the Investigation
16 was discussed.
- 17 • All documents showing the location of TuSimple’s trade secrets.
- 18 • All documents showing or relating in any way to the disclosure or transfer
19 of any proprietary information and/or intellectual property belonging to
20 TuSimple to Hydron.
- 21 • Documents sufficient to identify any proprietary information and/or
22 intellectual property belonging to TuSimple that has been disclosed or
23 transferred to Hydron.
- 24 • All documents obtained and/or reviewed by TuSimple’s Special Litigation
25 Committee in connection with its investigation into the allegations
26 underlying the Delaware Action.

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