

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NORMAN WILHOITE and JUDITH
WILHOITE, derivatively on behalf of
TUSIMPLE HOLDINGS, INC.,
Plaintiffs,

vs.

XIAODI HOU, MO CHEN, CHENG
LU, GUOWEI “CHARLES” CHAO,
and HYDRON, INC.,
Defendants,

- and -

TUSIMPLE HOLDINGS, INC.,
Nominal Defendant.

Case No. 23cv2333 BEN (MSB)

**FINAL JUDGMENT AND
ORDER OF DISMISSAL
WITH PREJUDICE**

1 On July 18, 2025, the final settlement fairness hearing was held. At that
2 time there were no objections to the settlement amount of \$42.5 million or the
3 reasonableness of the attorney fee and expense amount. Two formal objections
4 were filed. Objector Xiaodi Hou (“Hou”) was represented by counsel at the
5 hearing. Objector Camac Fund, LP, (“Camac”) did not appear at the hearing.
6 Both Objectors argued that the Court should deny the Motion for Final Approval of
7 Settlement, “or alternatively, require the settlement to be modified to provide for
8 payment of the settlement amount directly to TuSimple’s public shareholders
9 (excluding the wrongdoers and their affiliates) or otherwise restrict the funds to
10 ensure they benefit the Company and its shareholders, not the alleged
11 wrongdoers.” Obj. 321 at 25 ¶ 12-17. The Court finds neither Objector has
12 standing.

13 In the Ninth Circuit, when “determining whether a party has standing to object
14 to a settlement of a derivation action, a number of courts have looked to the
15 standard that they employ to determine whether the same shareholder could act as
16 a representative plaintiff in the derivative action.” *Zarowitz v. BankAmerica Corp.*,
17 866 F.2d 1164, 1165 (9th Cir. 1989). “Under this approach, an objector, in effect,
18 claims to be better able to represent the shareholders than the representative
19 plaintiffs who have decided to settle.” *Id.* A representative plaintiff is “one or
20 more shareholders . . . bring[ing] a derivative action to enforce a right that the
21 corporation . . . may properly assert but has failed to enforce.” Fed. R. C. P.
22 23.1(a). “The derivative action may not be maintained *if it appears that the*
23 *plaintiff does not fairly and adequately represent the interests of shareholders or*
24 *members who are similarly situated* in enforcing the right of the corporation or
25 association.” Fed. R. C. P. 23.1(a) (emphasis added). If an objector “would not be
26 qualified to serve as a representative plaintiff . . . this disqualification appreciably
27 impairs the strength and cogency of his objections.” *Zarowitz*, 866 F.2d at 1166.
28 Additionally, it is not the objector’s “objection to the settlement, but his
independent conflict of interest that brings his standing into question.” *Id.*

1 For Hou and Camac to maintain standing as objectors they need to “better
2 represent the shareholders than the representative plaintiffs who have decided to
3 settle.” *Zarowitz*, 866 F.2d at 1165. Here, neither Objector has submitted
4 information that reflects the “better representation” that is necessary. Quite the
5 opposite, Hou has a significant conflict of interest not only as a Defendant in the
6 current action, but as a litigant against TuSimple Holdings, Inc., in two other
7 separate actions in Delaware and Texas. ECF No. 325 at 11 ¶ 12-15. Similar to
8 Hou, Camac’s involvement in additional litigation raises significant conflict of
9 interest concerns. Camac was an attempted intervenor plaintiff in the securities
10 class action, *Dicker v. TuSimple Holdings, Inc. et al.*, although it was not an
11 eligible class member. *Dicker v. TuSimple Holdings, Inc.*, No. 3:22-cv-01300-
12 BEN-MSB, 2024 U.S. Dist. LEXIS 232628 (S.D. Cal. Dec. 18, 2024). The \$189
13 million *Dicker* case settlement was reportedly the largest class action settlement
14 fund in the history of the Southern District of California.

15 Additionally, Camac was not a shareholder at the time of the alleged harm and
16 only acquired shares on January 17, 2024, approximately one month after this
17 action was commenced on December 22, 2023. ECF No. 320-1 (Camac Obj.) ¶ 4.
18 The Supreme Court has also observed that there is a “settled principle of equity”
19 where “a shareholder may not complain of acts of corporate mismanagement if he
20 acquired his shares from those who participated or acquiesced in the allegedly
21 wrongful transactions.” *Bangor Punta Operations, Inc. v. Bangor & A. R. Co.*, 417
22 U.S. 703, 710 (1974). Essentially, by purchasing the shares after the action had
23 commenced, Camac had acquiesced and accepted the allegedly wrongful
24 transactions of the Company. Therefore, Camac’s date of stock purchase raises
25 significant concerns of “standing in equity.”

26 Consequently, Hou and Camac have no standing as objectors in the current suit.
27 This does not arise from their objections but rather from their inability to qualify as
28 representative plaintiffs. A representative plaintiff under Federal Rules of Civil
Procedure 23.1(a) must “fairly and adequately represent the interests of

1 shareholders or members who are similarly situated in enforcing the right of the
2 corporation or association.” Like the appellant in *Zarowitz*, the Objectors’
3 conflicts of interests do not allow them to “fairly and adequately” represent the
4 plaintiff’s interests. Therefore, without the ability to qualify as representative
5 plaintiffs, Hou and Camac lack standing as objectors.

6 Even if the Objectors had standing, the settlement funds should be paid to the
7 company rather than directly to its shareholders for the following reasons:

8 In the usual case of a shareholder derivative action settlement funds are paid
9 directly to the company. “[C]ourts have insisted that a substantial benefit be
10 conferred *on a corporation* as a result of the suit in order to justify an award.”
11 *Lewis v. Chiles*, 719 F.2d 1044, 1048 (9th Cir. 1983) (emphasis added). The
12 Objectors in this case ask the Court to depart from the general rule. The Objectors
13 (both of which are shareholders)¹ ask instead for the settlement funds to be paid
14 (on a pro rata basis) to the shareholders.

15 The Court has not found binding authority for departing from the usual rule.
16 The Objectors principally rely on *In re El Paso Pipeline Partners, L.P.*, 132 A.3d.
17 67 (Del. Ch. 2015) and its progeny, but in that case there was a final judicial
18 determination of wrongdoing. Because the *El Paso* court had determined that the
19 company’s board had done wrong, it was more equitable to direct damages to the
20 shareholders rather than back to the wrongdoers. In this case there has been no
21 judicial determination of wrongdoing. ECF No. 325 at 20 ¶ 7-9. Instead, if this
22 settlement is approved, the funds would be a product of an arm’s length settlement.
23 As counsel for the nominal plaintiff pointed out, *El Paso* has never been applied to
24 settlement agreements. Further, no courts within the Ninth Circuit have ever
25 applied *El Paso* to a derivative action. Without findings of corporate wrongdoing
26 there is little to justify rejecting the general rule and directing settlement funds to
27 shareholders. *Id.*

28 Lastly, there is no evidence that the Board of Directors cannot perform its

¹ Objector Dr. Hou would receive approximately 5% of the settlement funds, according to his counsel at the hearing.

1 function by law as the Objectors argue. In their objections they state that the
2 Independent Director Provisions in the Settlement are, “Meaningless, Poorly
3 Constructed, and Fail to Fix the Core Problem of Control.” Obj. 321 at 20 ¶ 1-2.
4 Additionally, they state that “[r]eliance on these purportedly ‘independent’
5 directors provides no value to the Company or stockholders.” *Id.* at ¶ 13-15.
6 However, in January they stated and provided approximately four pages of support
7 showing, “The Independent Directors Do Not Lack Independence.” ECF No. 27-1
8 at 14 ¶ 1. The Court therefore finds this argument against the Board of Directors
9 unpersuasive.

10 The Court has considered the Objections, and the record, and finds the
11 Settlement fundamentally fair, reasonable, and adequate.

12 Therefore, WHEREAS, a stockholder derivative action is pending in this Court
13 entitled *Wilhoite, et al. v. Hou, et al.*, Case No. 3:23-cv-02333-BEN-MSB (the
14 “California Action”); and

15 WHEREAS, (a) plaintiffs in the California Action: Norman Wilhoite and Judith
16 Wilhoite (the “California Plaintiffs”), derivatively on behalf of TuSimple
17 Holdings, Inc. (“TuSimple” or the “Company”); (b) settling defendants in the
18 California Action: Guowei “Charles” Chao, Cheng Lu, Mo Chen, and Hydron, Inc.
19 (“Hydron”) and Nominal Defendant TuSimple (collectively, the “Settling
20 California Defendants”); (c) plaintiffs in the consolidated stockholder derivative
21 action pending in the Court of Chancery of the State of Delaware (the “Delaware
22 Court”), captioned as *In re TuSimple Holdings, Inc. Stockholder Litigation*, C.A.
23 No. 2022-1095-PAF (the “Delaware Action” and, together with the California
24 Action, the “Actions”); Jason Nusbaum and Richard A. Green (collectively, the
25 “Delaware Plaintiffs” and, together with the California Plaintiffs, “Plaintiffs”);
26 (d) settling defendants in the Delaware Action: Mo Chen, Brad Buss, Karen
27 Francis, Reed Werner, and Hydron and Nominal Defendant TuSimple
28 (collectively, the “Settling Delaware Defendants” and, together with the Settling
California Defendants, “Settling Defendants”); and (e) the Special Litigation

1 Committee (the “SLC”) of the Board of Directors of TuSimple, acting for and on
2 behalf of TuSimple (Plaintiffs, Settling Defendants, and the SLC, together, the
3 “Settling Parties”), have reached a proposed settlement on the terms and conditions
4 set forth in the Stipulation of Settlement dated December 18, 2024 (the
5 “Stipulation”) subject to the approval of this Court (the “Settlement”); and

6 WHEREAS, the Settlement provides for a complete dismissal with prejudice of
7 the claims asserted in the Actions; and

8 WHEREAS, by Order dated April 16, 2025 (the “Preliminary Approval
9 Order”), this Court (a) preliminarily approved the proposed Settlement; (b) ordered
10 that notice of the proposed Settlement be provided to TuSimple stockholders;
11 (c) provided TuSimple stockholders with the opportunity to object to the proposed
12 Settlement and California Plaintiffs’ Lead Counsel’s application for an award of
13 attorneys’ fees and expenses, including any incentive award payments to the
14 California Plaintiffs (the “Fee and Expense Application”); and (d) scheduled a
15 hearing regarding final approval of the Settlement; and

16 WHEREAS, the Court conducted a hearing on July 18, 2025 (the “Settlement
17 Fairness Hearing”) to consider, among other things, (a) whether the California
18 Plaintiffs and California Plaintiffs’ Lead Counsel have adequately represented the
19 interests of TuSimple and its stockholders; (b) determine whether the proposed
20 Settlement on the terms and conditions provided for in the Stipulation is fair,
21 reasonable, and adequate to TuSimple and its stockholders, and should be
22 approved by the Court; (c) to determine whether this Judgment should be entered
23 dismissing the California Action with prejudice; (d) determine whether the Fee and
24 Expense Application should be approved; and (e) consider any other matters that
25 may properly be brought before the Court in connection with the Settlement; and

26 WHEREAS, it appearing that due notice of the terms of the Settlement and the
27 releases thereunder and the Settlement Fairness Hearing has been given in
28 accordance with the Preliminary Approval Order; the Settling Parties having
appeared by their respective attorneys of record; the Court having heard and

1 considered evidence in support of the proposed Settlement; the attorneys for the
2 respective Settling Parties having been heard; an opportunity to be heard having
3 been given to all other persons or entities requesting to be heard in accordance with
4 the Preliminary Approval Order; the Court having determined that notice to
5 TuSimple stockholders was adequate and sufficient; and the entire matter of the
6 proposed Settlement having been heard and considered by the Court;

7 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND
8 DECREED, this 23rd day of July, 2025, as follows:

9 1. **Definitions** – Unless otherwise defined in this Judgment, the
10 capitalized terms used herein shall have the same meaning as they have in the
11 Stipulation.

12 2. **Jurisdiction** – The Court has jurisdiction over the subject matter of the
13 California Action, including all matters necessary to effectuate the Settlement and
14 this Judgment and over all parties to the California Action and TuSimple
15 stockholders.

16 3. **Incorporation of Settlement Documents** – This Judgment
17 incorporates and makes a part hereof: (a) the Stipulation filed with the Court on
18 December 19, 2024; and (b) the Notice and Summary Notice, which were filed with
19 the Court on May 28, 2025.

20 4. **Derivative Action Properly Maintained; Adequacy of California**
21 **Plaintiffs and California Plaintiffs' Lead Counsel** – Based on the record in the
22 California Action, each of the provisions of Rule 23.1 of the Federal Rules of Civil
23 Procedure has been satisfied and the California Action has been properly maintained
24 according to Rule 23.1. The California Plaintiffs and California Plaintiffs' Lead
25 Counsel have adequately represented the interests of TuSimple and its stockholders
26 both in terms of litigating the California Action and for purposes of entering into and
27 implementing the Settlement.
28

1 5. **Notice** – The Court finds that the mailing or emailing of the Postcard
2 Notice and publishing of the Notice and Summary Notice: (a) were implemented in
3 accordance with the Preliminary Approval Order; (b) constituted notice that was
4 reasonably calculated, under the circumstances, to apprise TuSimple stockholders
5 of: (i) the pendency of the Actions; (ii) the effect of the proposed Settlement
6 (including the releases to be provided under the Stipulation); (iii) the Fee and
7 Expense Application; (iv) their right to object to the Settlement and the Fee and
8 Expense Application; and (v) their right to appear at the Settlement Hearing; (c)
9 constituted due, adequate, and sufficient notice to all persons and entities entitled to
10 receive notice of the proposed Settlement; and (d) satisfied the requirements of Rule
11 23.1 of the Federal Rules of Civil Procedure, the United States Constitution
12 (including the Due Process Clause), and all other applicable law and rules.

13 6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to,
14 and in accordance with, Federal Rule of Civil Procedure 23.1, this Court hereby fully
15 and finally approves the Settlement set forth in the Stipulation in all respects
16 (including, without limitation: the Settlement consideration; the releases under the
17 Settlement, including the release of the Released Plaintiffs Claims as against the
18 Released Defendants Persons; and the dismissal with prejudice of the claims asserted
19 in the California Action), and finds that the Settlement is, in all respects, fair,
20 reasonable, and adequate to TuSimple and its stockholders. The Settling Parties are
21 directed to implement, perform, and consummate the Settlement in accordance with
22 the terms and provisions contained in the Stipulation.

23 7. The California Action is hereby dismissed with prejudice. The Settling
24 Parties shall bear their own costs and expenses, except as otherwise expressly
25 provided in the Stipulation.

26 8. **Binding Effect** – The terms of the Stipulation and of this Judgment
27 shall be forever binding on the Settling Parties and all TuSimple stockholders, as
28

1 well as their respective successors and assigns.

2 9. **Releases** – The releases set forth in paragraphs 4.1 and 4.2 of the
3 Stipulation, together with the definitions contained in Section 1 of the Stipulation
4 relating thereto, are expressly incorporated herein in all respects. The releases are
5 effective as of the Effective Date. Accordingly, this Court orders that:

6 (a) Without further action by anyone, and subject to paragraph 10
7 below, upon the Effective Date of the Settlement, the Releasing Plaintiffs Persons
8 shall be deemed to have, and by operation of this Judgment shall have, irrevocably
9 and unconditionally, fully, finally, and forever waived, released, relinquished,
10 discharged, and dismissed with prejudice each and every one of the Released
11 Plaintiffs Claims against each and every one of the Released Defendants Persons
12 and shall forever and permanently be barred and enjoined from filing, commencing,
13 instituting, prosecuting, continuing, asserting, intervening in, maintaining, or
14 enforcing any action or other proceeding in any forum (including, but not limited to,
15 any foreign, federal, state or local court of law or equity, arbitration tribunal, or
16 administrative forum) asserting any of the Released Plaintiffs Claims against any
17 and all of the Released Defendants Persons.

18 (b) Without further action by anyone, and subject to paragraph 10
19 below, upon the Effective Date of the Settlement, the Releasing Defendants Persons
20 shall be deemed to have, and by operation of this Judgment shall have, irrevocably
21 and unconditionally, fully, finally, and forever waived, released, relinquished,
22 discharged, and dismissed with prejudice each and every one of the Released
23 Defendants Claims against each and every one of the Released Plaintiffs Persons
24 and shall forever and permanently be barred and enjoined from filing, commencing,
25 instituting, prosecuting, continuing, asserting, intervening in, maintaining, or
26 enforcing any action or other proceeding in any forum (including, but not limited to,
27 any foreign, federal, state or local court of law or equity, arbitration tribunal, or
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1 administrative forum), asserting any of the Released Defendants Claims against any
2 and all of the Released Plaintiffs Persons.

3 10. Notwithstanding paragraphs 9(a)-(b) above, nothing in this Judgment
4 shall bar any action by any of the Settling Parties to enforce the terms of the
5 Stipulation or this Judgment. Also, for the avoidance of doubt, the Released
6 Plaintiffs Claims do not cover, include, or release any direct claims of any current
7 or former stockholder of TuSimple, including without limitation any claims asserted
8 under the federal securities laws, including without limitation the claims asserted in
9 *Dicker, et al. v TuSimple Holdings, Inc., et al.*, Case No. 3:22-cv-01300-BEN-MSB
10 (S.D. Cal.).

11 11. **No Admissions** – Neither this Judgment, the Settlement, the Term
12 Sheet, the Stipulation (whether or not consummated), including the Exhibits thereto,
13 the negotiations leading to the execution of the Term Sheet, the Stipulation, and the
14 Settlement, nor any proceedings, communications, drafts, documents, or agreements
15 taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or
16 approval of the Settlement (including any arguments proffered in connection
17 therewith):

18 (a) shall be offered or received against or to the prejudice of any
19 Released Defendants Persons as evidence of or construed as or deemed to be
20 evidence of any presumption, concession, finding, or admission by any Released
21 Defendants Persons of the truth of any allegations by Plaintiffs or the validity of any
22 claim that has been or could have been asserted in the Actions, or the deficiency of
23 any defense that has been or could have been asserted in the Actions or in any other
24 litigation, including, but not limited to, litigation of the Released Plaintiffs Claims,
25 or of any liability, damages, negligence, fault, omission, or wrongdoing of any kind
26 of any of the Released Defendants Persons or in any way referred to for any other
27 reason as against any of the Released Defendants Persons, in any civil, criminal, or
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1 administrative action or proceeding, other than such proceedings as may be
2 necessary to effectuate the provisions of the Stipulation;

3 (b) shall be offered or received against or to the prejudice of the
4 Released Plaintiffs Persons as evidence that Plaintiffs' claims in any way lack merit
5 or the validity of any affirmative defense that has been or could have been asserted
6 in the Actions, including, but not limited to, litigation of the Released Plaintiffs
7 Claims;

8 (c) shall be offered or received against or to the prejudice of any
9 Released Defendants Persons as evidence of a presumption, concession, or
10 admission of any fault, misrepresentation, scheme, or omission with respect to any
11 statement or written document approved or made by any Released Defendants
12 Persons, or against the Released Plaintiffs Persons as evidence of any infirmity in
13 the claims of Plaintiffs;

14 (d) shall be offered or received against or to the prejudice of any
15 Released Defendants Persons as evidence of a presumption, concession, or
16 admission of any liability, damages, negligence, fault, omission, or wrongdoing, or
17 in any way referred to for any other reason as against any of the parties to the
18 Stipulation, in any other civil, criminal, or administrative action or proceeding in
19 any court, administrative agency, or other tribunal; provided, however, that
20 Defendants and the Released Defendants Persons may refer to it to effectuate the
21 release granted them under the Stipulation; or

22 (e) shall be construed against the Released Defendants Persons or
23 the Released Plaintiffs Persons as evidence of a presumption, concession, or
24 admission that the consideration to be given under the Stipulation represents the
25 amount which could be or would have been recovered after trial or in any
26 proceeding other than the Settlement.

27 12. A separate order shall be entered regarding Plaintiffs' Lead Counsel's
28

1 application for an award of attorneys' fees and expenses and service awards to
2 Plaintiffs. Such order shall in no way disturb or affect the finality of this Judgment,
3 shall be considered separate from this Judgment, and shall not affect or delay the
4 Effective Date of the Settlement.

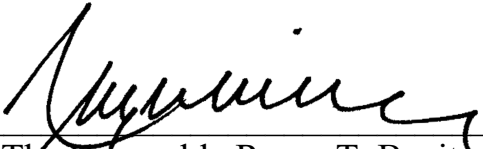
5 13. **Retention of Jurisdiction** – Without affecting the finality of this
6 Judgment in any way, this Court retains continuing jurisdiction over the parties to
7 the California Action and all TuSimple stockholders for purposes of the
8 administration, interpretation, implementation, and enforcement of the Settlement.

9 14. **Modification of the Stipulation** – Any further amendments or
10 modifications of the Stipulation or any exhibits attached thereto to effectuate the
11 Settlement shall only be made with the prior approval of the Court.

12 15. **Termination of Settlement** – If the Settlement is terminated as
13 provided in the Stipulation or the Effective Date of the Settlement otherwise fails to
14 occur, this Judgment shall be vacated, rendered null and void, and be of no further
15 force and effect, except as otherwise provided by the Stipulation, and this Judgment
16 shall be without prejudice to the rights of the Settling Parties or any TuSimple
17 stockholders, and the parties to the Actions shall be restored to their respective
18 positions in the Actions as of immediately prior to the execution of the Term Sheet
19 on September 19, 2024.

20 16. **Entry of Final Judgment** – There is no just reason to delay the entry
21 of this Judgment. Accordingly, the Clerk of the Court is directed to immediately
22 enter this final judgment.

23
24 Dated: July 23, 2025

25
26 
27 The Honorable Roger T. Benitez
28 United States District Judge