

1 when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit requires that this policy
2 favoring amendment be applied with “extreme liberality.” Owens v. Kaiser Found. Health Plan,
3 Inc., 244 F.3d 708, 712 (9th Cir. 2001); Morongo Band of Mission Indians v. Rose, 893 F.2d 1074,
4 1079 (9th Cir. 1990).

5 The court will grant defendants’ Motion and dismiss plaintiff’s Consolidated Amended Class
6 Action Complaint [] (Dkt. 85, “Consolidated Complaint”) with leave to amend. In preparing the
7 Second Amended Consolidated Complaint, plaintiff shall carefully evaluate the issues discussed
8 in this Order and the contentions set forth in defendants’ Motion. For example, the court is
9 skeptical that plaintiff has adequately alleged, with the detail or corroboration required under the
10 Private Securities Litigation Reform Act (“Reform Act”), 15 U.S.C. § 78u-4, that defendants’
11 statements are materially false or misleading. For example, plaintiff appears to argue that
12 defendants’ statements were misleading due to omissions. (See, e.g., Dkt. 104, Opposition to
13 Defendants’ Motion to Dismiss (“Opp.”) at 8) (“Defendants violated their duty to disclose material,
14 adverse facts that contradicted their positive characterization and assessment of Canoo’s
15 engineering services division.”). “To be actionable under the securities laws, an omission must
16 be misleading; in other words it must affirmatively create an impression of a state of affairs that
17 differs in a material way from the one that actually exists.” Brody v. Transitional Hosps. Corp., 280
18 F.3d 997, 1006 (9th Cir. 2002); (see Dkt. 104, Opp. at 8) (asserting that “Defendants violated their
19 duty to disclose material, adverse facts that contradicted their positive characterization and
20 assessment of Canoo’s engineering services division” and citing Brody). Under the Reform Act,
21 a plaintiff must “specify each statement alleged to have been misleading, the reason or reasons
22 why the statement is misleading, and, if an allegation regarding the statement or omission is made
23 on information and belief, the complaint shall state with particularity all facts on which that belief
24 is formed.” 15 U.S.C. § 78u-4(b)(1); see Oregon Pub. Emps. Ret. Fund v. Apollo Grp. Inc., 774
25 F.3d 598, 604 (9th Cir. 2014) (same).

26 Here, the Consolidated Complaint alleges that several statements by defendants regarding
27 Canoo’s contract engineering services, (see Dkt. 85, Consolidated Complaint at ¶¶ 76-77, 85-86,
28 93, 95); (Dkt. 104, Opp. at 8), “were false and misleading because Defendants knew but failed to

1 disclose that . . . revenue derived from the contract engineering services division was the result
2 of a single performance obligation, which had been completed in July 2020[.]” (Dkt. 85,
3 Consolidated Complaint at ¶¶ 79, 88, 94, 96). The Consolidated Complaint appears to suggest
4 that defendants did not reveal this information until Canoo filed its filed its Form 10-K for 2020 with
5 the Securities and Exchange Commission (“SEC”) on March 31, 2021. (See *id.* at ¶ 122).
6 However, it appears that Canoo disclosed this information, using the same language, in at least
7 four earlier SEC disclosures. (See Dkt. 101-1, Memorandum of Points and Authorities [] (“Memo.”)
8 at 7); (Dkt. 104, Opp. at 9).

9 The Consolidated Complaint also alleges that the same set of statements were false and
10 misleading because defendants failed to disclose, during the class period, that “Canoo did not
11 work ‘with or for Hyundai[.]’” (Dkt. 85, Consolidated Complaint at ¶¶ 79, 88, 94, 96) But it is
12 unclear why the identified statements, such as a press release statement on August 18, 2020, that
13 the company’s “technology that has already been validated by key partnerships such as with
14 Hyundai[.]” (*id.* at ¶ 74); (see Dkt. 104, Opp. at 8), could be rendered false or misleading by that
15 omission. For example, plaintiff acknowledges that “the Company announced in February 2020
16 that it had entered into an agreement with Hyundai to co-develop a future EV platform based on
17 Canoo’s modular and scalable skateboard technology.” (Dkt. 85, Consolidated Complaint at ¶
18 169).

19 Based on the foregoing, IT IS ORDERED THAT:

- 20 1. Defendants’ Motion to Dismiss Lead Plaintiff’s Consolidated Amended Class Action
21 Complaint [] (**Document No. 101**) is **granted**.
- 22 2. The Consolidated Amended Class Action Complaint for Violations of the Federal
23 Securities Laws (Dkt. 85) is **dismissed with leave to amend**.
- 24 3. Plaintiff shall file a second amended consolidated complaint, attempting to cure the
25 deficiencies set forth above, as well as the other alleged defects outlined in defendants’ Motion,
26 or a Notice of Intent to Stand on Consolidated Amended Class Action Complaint (“Notice of
27 Intent”), no later than **March 10, 2023**. See *WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1135-36
28 (9th Cir. 1997) (“Unless a plaintiff files in writing a notice of intent not to file an amended complaint,

1 such dismissal order is not an appealable final decision. In a typical case, filing of such notice
2 gives the district court an opportunity to reconsider, if appropriate, but more importantly, to enter
3 an order dismissing the action, one that is clearly appealable.”). The court expects that
4 defendants will agree to any amendments that will or attempt to cure the alleged defects.

5 4. The second amended consolidated complaint must be labeled “Second Amended
6 Consolidated Complaint,” filed in compliance with Local Rule 3-2 and contain the case number
7 assigned to the case. In addition, plaintiff is informed that the court cannot refer to a prior pleading
8 in order to make his Second Amended Consolidated Complaint complete. Local Rule 15-2
9 requires that an amended pleading be complete in and of itself without reference to any prior
10 pleading. This is because, as a general rule, an amended pleading supersedes the original
11 pleading. See Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“It is
12 well-established in our circuit that an amended complaint supersedes the original, the latter being
13 treated thereafter as non-existent. In other words, the original pleading no longer performs any
14 function[.]”) (citations and internal quotation marks omitted).

15 5. Plaintiff is cautioned that failure to timely file a Second Amended Consolidated
16 Complaint or Notice of Intent shall result in this action being dismissed without prejudice for failure
17 to prosecute and failure to comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash
18 R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962); Edwards v. Marin Park, Inc., 356
19 F.3d 1058, 1065 (9th Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s
20 ultimatum – either by amending the complaint or by indicating to the court that it will not do so –
21 is properly met with the sanction of a Rule 41(b) dismissal.”); Ferdik v. Bonzelet, 963 F.2d 1258,
22 1260-63 (9th Cir. 1992) (affirming dismissal for failure to file amended complaint as ordered by
23 district court).

24 6. Defendants shall file their Answer to the Second Amended Consolidated Complaint
25 or a motion pursuant to Fed. R. Civ. P. 12 no later than **March 24, 2023**.

