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7 Attorneys for Plaintiff
8 80 PERCENT ARMS INC.

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 80 PERCENT ARMS INC., a California
14 Corporation

15 Plaintiff

16 vs.

18 MODULUS DESIGNS, INC., a Nevada
19 Corporation; Charles E. Chang; and Wayne
20 R. Partington; and DOES 1-10, inclusive

20 Defendants

Case No. 8:15-cv-00953 JVS (FFMx)

**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT OF U.S.
PATENT NO. 9,009,986**

DEMAND FOR JURY TRIAL

22 **COMPLAINT**

23 Plaintiff, 80 Percent Arms, avers and alleges as follows:

24 **PARTIES**

25 1. Plaintiff, 80 Percent Arms Inc. or “Plaintiff” is a corporation organized
26 and existing under the laws of the State of California, and having a principal place of
27 business at 3480 West Warner Avenue, Suite N, Santa Ana 92704.

28 2. Upon information and belief, defendant Modulus Designs, Inc. or

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1 “Modulus” is a corporation organized and existing under the laws of the State of
2 Nevada, and having a mailing address of P.O. Box 17103, Irvine, California 92623,
3 and also registered in the State of California with an address of 2701 West Aurora
4 Street, Apartment 3, Santa Ana, California 92704.

5 3. Upon information and belief, Modulus Designs, Inc. is also operating
6 under the name of Modulus Arms, having a business address of 1 Marchin Drive,
7 Trabuco Canyon, California 92679-5237.

8 4. Upon information and belief, Charles E. Chang, or “Chang” is an
9 individual having an address of 1 Marchin Drive, Trabuco Canyon, California 92679-
10 5236, and is the President of Modulus.

11 5. Upon information and belief, Wayne R. Partington, or “Partington” is an
12 individual having an address of 285 Plantation Street, Apartment 213, Worcester,
13 Massachusetts 01604-7727, and is the Secretary of Modulus.

14 6. The true names and capacities of the Defendants named herein as DOES
15 1 through 10, whether individual, corporate, associate, or otherwise, are unknown to
16 Plaintiff, who therefore sues said Defendants by said fictitious names. Plaintiff is
17 informed and believes, and thereon alleges, that each of the Defendants designated
18 herein as DOE is legally responsible for the events and happenings hereinafter
19 alleged and legally caused injury and damages proximately thereby to Plaintiff as
20 herein alleged. Plaintiff will seek leave to amend the Complaint when the true names
21 and capacities of said DOE Defendants have been ascertained. Modulus Arms, Inc.,
22 Charles E. Chang, Wayne R. Partington, and DOES 1 through 10 are hereinafter
23 collectively referred to as “Defendants.”

24 7. Plaintiff is informed and believes, and on that basis alleges, that each of
25 the Defendants participated in and is in some manner responsible for the acts
26 described in this Complaint and any damages resulting therefrom.

27 8. Plaintiff is informed and believes, and on that basis alleges, that each of
28 the Defendants has acted in concert and participation with each other concerning each

1 of the claims in this Complaint.

2 9. Plaintiff is informed and believes, and on that basis alleges, that each of
3 the Defendants were empowered to act as the agent, servant and/or employees of each
4 of the other Defendants, and that all the acts alleged to have been done by each of
5 them were authorized, approved and/or ratified by each of the other Defendants.

6 **JURISDICTION AND VENUE**

7 10. This action, as hereinafter more fully appears, arises under the patent
8 laws of the United States of America (35 U.S.C. §§1 *et seq.*), and is for patent
9 infringement. Jurisdiction for all counts is based upon 28 U.S.C. §§1331, 1338(a)
10 and (b).

11 11. Venue is proper under 28 U.S.C. §§1391(b) and (c) as Defendants have
12 committed acts of infringement in this judicial district.

13 **BACKGROUND OF THE CONTROVERSY**

14 12. Plaintiff is the owner of all right, title and interest in and to United States
15 Patent No. 9,009,986 entitled “Jig for Firearm Lower Receiver Manufacture”
16 (hereinafter the “’986 patent”) attached hereto as Exhibit 1. The ‘986 patent was duly
17 and lawfully issued on April 21, 2015 and is presently valid and in full effect.

18 13. Upon information and belief, Defendants have been making, selling,
19 using, importing and/or offering for sale, and continue to make, sell, use, import,
20 and/or offer for sale a firearm receiver machining jig product identified as “Universal
21 AR-15 80% Lower Receiver Jig.” A copy of Defendants’ web page advertisement
22 illustrating the Universal AR-15 80% Lower Receiver Jig product is attached hereto
23 as Exhibit 2. The Universal AR-15 80% Lower Receiver Jig infringes one or more
24 claims of Plaintiff’s U.S. Patent No. 9,009,986.

25 14. Upon information and belief, Defendants have been making, selling,
26 using, importing and/or offering for sale, and continue to make, sell, use, import,
27 and/or offer for sale a firearm receiver machining jig product identified as “Universal
28 AR-308 / AR-10 80% Lower Receiver Jig.” A copy of Defendants’ web page

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1 advertisement illustrating the Universal AR-308 / AR-10 80% Lower Receiver Jig
2 product is attached hereto as Exhibit 3. The Universal AR-308 / AR-10 80% Lower
3 Receiver Jig infringes one or more claims of Plaintiff's U.S. Patent No. 9,009,986.

4 15. Upon information and belief, Defendants operate an internet website
5 with the URL *www.modulusarms.com* wherein Defendants offer the Universal AR-15
6 80% Lower Receiver Jig and the Universal AR-308 / AR-10 80% Lower Receiver Jig
7 (hereinafter "the Accused Products") for sale, such website being accessible
8 nationwide, including this judicial district. Upon further information and belief, the
9 Accused Products have been sold to one or more entities within this judicial district.

10 16. Plaintiff filed this action against Defendants on June 16, 2015, and on
11 that date, Plaintiff sent a Cease and Desist letter, along with a courtesy copy of the
12 initial Complaint [Dkt No. 1] and accompanying Exhibits 1-3 to Defendants via
13 United States Postal Service first class mail. A copy of the Cease and Desist letter is
14 attached hereto as Exhibit 4. On June 30, 2015, Plaintiff sent a copy of the Cease and
15 Desist letter to Defendants via electronic mail at the addresses of
16 wayne@modulusarms.com, wrrpartington@gmail.com, and
17 charles.ed.chang@gmail.com. A copy of the cover letter is attached hereto as Exhibit
18 5. Additionally, Plaintiff sent a copy of the Cease and Desist letter and the Complaint
19 to Defendants via United States Postal Service certified mail. Therefore, Modulus,
20 Chang, and Partington have knowledge of Plaintiff's U.S. Patent No. 9,009,986, and
21 have had knowledge since at least June 16, 2015.

22 17. Upon information and belief, Defendants have been making, selling,
23 using, importing and/or offering for sale, and continue to make, sell, use, import,
24 and/or offer for sale, a replacement component that is part of the "Universal AR-15
25 80% Lower Receiver Jig," referred to as "AR-15 Jig Replacement Drill Guide." A
26 copy of Defendants' web page advertisement illustrating the AR-15 Jig Replacement
27 Drill Guide is attached hereto as Exhibit 6.

28 18. Upon information and belief, Defendants have been making, selling,

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1 using, importing and/or offering for sale, and continue to make, sell, use, import,
2 and/or offer for sale, a replacement component that is part of the “Universal AR-15
3 80% Lower Receiver Jig,” referred to as “AR-15 Jig Replacement Side Plate.” A
4 copy of Defendants’ web page advertisement illustrating the AR-15 Jig Replacement
5 Side Plate is attached hereto as Exhibit 7.

6 19. Upon information and belief, Defendants have been making, selling,
7 using, importing and/or offering for sale, and continue to make, sell, use, import,
8 and/or offer for sale, a replacement component that is part of the “Universal AR-15
9 80% Lower Receiver Jig,” referred to as “AR-15 Jig Replacement Template.” A copy
10 of Defendants’ web page advertisement illustrating the AR-15 Jig Replacement Side
11 Plate is attached hereto as Exhibit 8.

12 20. Upon information and belief, Defendants have been making, selling,
13 using, importing and/or offering for sale, and continue to make, sell, use, import,
14 and/or offer for sale, a replacement component that is part of the “Universal AR-308 /
15 AR-10 80% Lower Receiver Jig,” referred to as “AR-308 / AR-10 Jig Replacement
16 Drill Guide.” A copy of Defendants’ web page advertisement illustrating the AR-308
17 / AR-10 Jig Replacement Drill Guide is attached hereto as Exhibit 9.

18 21. Upon information and belief, Defendants have been making, selling,
19 using, importing and/or offering for sale, and continue to make, sell, use, import,
20 and/or offer for sale, a replacement component that is part of the “Universal AR-308 /
21 AR-10 80% Lower Receiver Jig,” referred to as “AR-308 / AR-10 Jig Replacement
22 Side Plate.” A copy of Defendants’ web page advertisement illustrating the AR-308 /
23 AR-10 Jig Replacement Side Plate is attached hereto as Exhibit 10.

24 22. Upon information and belief, Defendants have been making, selling,
25 using, importing and/or offering for sale, and continue to make, sell, use, import,
26 and/or offer for sale, a replacement component that is part of the “Universal AR-308 /
27 AR-10 80% Lower Receiver Jig,” referred to as “AR-308 / AR-10 Jig Replacement
28 Template.” A copy of Defendants’ web page advertisement illustrating the AR-308 /

1 AR-10 Jig Replacement Template is attached hereto as Exhibit 11.

2 23. Upon information and belief, Defendants are providing instructions for
3 the use of the Universal AR-15 80% Lower Receiver Jig as well as the Universal AR-
4 308 / AR-10 80% Lower Receiver Jig. A copy of a user manual for the Universal
5 AR-15 80% Lower Receiver Jig is attached as Exhibit 12. A copy of a user manual
6 for the Universal AR-308 / AR-10 80% Lower Receiver Jig is attached as Exhibit 13.

7 **FIRST CLAIM FOR RELIEF**

8 **(Direct and Contributory Patent Infringement and Inducing Infringement of**
9 **U.S. Patent No. 9,009,986 by Modulus)**

10 24. Plaintiff realleges and repeats the allegations of paragraphs 1-23 above.

11 25. Upon information and belief, Modulus is directly infringing the ‘986
12 patent within this district and elsewhere in the United States by making, using,
13 selling, importing, distributing and/or offering for sale products that infringe one or
14 more of the claims of the ‘986 patent.

15 26. Upon information and belief, Modulus is contributorily infringing the
16 ‘986 patent within this district and elsewhere in the United States by making, using,
17 selling, importing, distributing or offering for sale in the United States materials
18 and/or apparatus for use in practicing the inventions set forth in the ‘986 patent. Since
19 at least June 16, 2015, by virtue of the initial Complaint and the Cease and Desist
20 letter, Modulus had knowledge of the ‘986 patent. Upon information and belief,
21 Modulus has known that the AR-15 Jig Replacement Drill Guide, the AR-15 Jig
22 Replacement Side Plate, the AR-15 Jig Replacement Template, the AR-308 / AR-10
23 Jig Replacement drill guide, the AR-308 / AR-10 Jig Replacement Side Plate, and the
24 AR-308 / AR-10 Jig Replacement Template are material parts of the invention, and
25 are especially made or especially adapted for use in the infringement of the ‘986
26 patent and is not a staple article or commodity of commerce suitable for substantially
27 non-infringing uses. As shown in Exhibit 6, Modulus’s web page advertisement for
28 the AR-15 Jig Replacement Drill Guide states prominently that it is a “Replacement

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1 drill guide for AR15 Universal Jig”. As shown in Exhibit 7, Modulus’s web page
2 advertisement for the AR-15 Jig Replacement Side Plate states prominently that it is a
3 “Replacement side plate for the Modulus Arms AR15 Jig”. As shown in Exhibit 8,
4 Modulus’s web page advertisement for the AR-15 Jig Replacement Template states
5 prominently that it is a “Replacement template top plate for the Modulus Arms AR15
6 Universal Jig.” As shown in Exhibit 9, Modulus’s web page advertisement for the
7 AR-308 / AR-10 Replacement Side Plate states prominently that it is a “Replacement
8 drill guide for the AR308 / AR10 Jig.” As shown in Exhibit 10, Modulus’s web page
9 advertisement for the AR-308 / AR-10 Replacement Side Plate states prominently
10 that it is a “Replacement side plate for the Modulus Arms AR308 / AR10 Jig.” As
11 shown in Exhibit 11, Modulus’s web page advertisement for the AR-308 / AR-10
12 Replacement Template states prominently that it is a “Replacement template top plate
13 for the Modulus Arms AR308/AR10 Universal Jig.”

14 27. Upon information and belief, Modulus is inducing infringement of the
15 ‘986 patent within this district and elsewhere in the United States by others, including
16 but not limited to Modulus’s employees, customers, and end users by taking active
17 steps to encourage and facilitate direct infringement by others with knowledge of that
18 infringement, such as, upon information and belief, by Modulus providing
19 instructions in the use of materials and/or apparatuses that Modulus sells in a manner
20 that infringe one or more of the claims of the ‘986 patent. Upon information and
21 belief, Modulus is, either directly or through intermediaries, making available for
22 download via its website user manuals for the Universal AR-15 80% Lower Receiver
23 Jig and the Universal AR-308 / AR-10 80% Lower Receiver Jig to its customers, end
24 users, and any interested party as shown in Exhibits 12 and 13, respectively.
25 Modulus’s employees, customers, end users who use the Universal AR-15 80%
26 Lower Receiver Jig or the Universal AR-308 / AR-10 80% Lower Receiver Jig
27 directly infringe the claims of the ‘986 patent. Since at least June 16, 2015, by virtue
28 of the initial Complaint and the Cease and Desist letter, Modulus had knowledge of

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1 the '986 patent and has known that the use of the Universal AR-15 80% Lower
2 Receiver Jig or the Universal AR-308 / AR-10 80% Lower Receiver Jig by its
3 employees, customers, and end users constituted direct infringement of the '986
4 patent. Despite Modulus's actual knowledge of the '986 patent and knowledge that its
5 employees, customers, and end users infringed, Modulus continued to, and still
6 continues to, actively encourage, assist, induce, aid, and abet its employees,
7 customers, and end users to directly infringe by using the Universal AR-15 80%
8 Lower Receiver Jig or the Universal AR-308 / AR-10 80% Lower Receiver Jig that is
9 covered by one or more claims of the '986 patent.

10 28. Upon information and belief, by the acts of patent infringement herein
11 complained of, Modulus has made substantial profits to which they are not entitled.

12 29. By reason of the aforementioned acts of Modulus, Plaintiff has suffered
13 great damage in an amount which cannot be ascertained at this time.

14 30. Upon information and belief, Modulus continues to infringe Plaintiff's
15 '986 patent, and will continue to infringe Plaintiff's '986 patent to Plaintiff's
16 irreparable harm, unless enjoined by this Court.

17 31. Upon information and belief, Modulus is aware of the '986 patent and
18 nonetheless continue to knowingly infringe the claims of the '986 patent and such
19 knowing infringement constitutes willful infringement. Upon information and belief,
20 even though Modulus has been aware of the '986 patent and that its employees,
21 customers, and end users infringe the '986 patent, since at least June 16, 2015, to date
22 Modulus has neither made any changes to the functionality, operations, marketing,
23 sales, or technical support of the Universal AR-15 80% Lower Receiver Jig or the
24 Universal AR-308 / AR-10 80% Lower Receiver Jig, nor has Modulus informed its
25 employees, customers, or end users how to avoid infringing the '986 patent. Modulus
26 therefore continues to specifically intend for and encourage its employees, customers,
27 and end users to use its products that infringe one or more claims of the '986 patent.

28 32. Modulus's actions of making, using, selling, importing, distributing

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1 and/or offering for sale products that infringe one or more of the claims of the ‘986
2 patent constitute an objectively high likelihood of infringement of the ‘986 patent,
3 which was duly issued by the United States Patent and Trademark Office and is
4 presumed valid. Since at least June 16, 2015, Modulus is aware that there is an
5 objectively high likelihood that its actions constituted, and continue to constitute,
6 infringement of the ‘986 patent and that the ‘986 patent is valid. Despite Modulus’s
7 knowledge of that risk, upon information and belief, Modulus has not made any
8 changes to the Universal AR-15 80% Lower Receiver Jig, the Universal AR-308 /
9 AR-10 80% Lower Receiver Jig, the AR-15 Jig Replacement Drill Guide, the AR-15
10 Jig Replacement Side Plate, the AR-15 Jig Replacement Template, the AR-308 / AR-
11 10 Jig Replacement drill guide, the AR-308 / AR-10 Jig Replacement Side Plate, or
12 the AR-308 / AR-10 Jig Replacement Template, and has not provided its employees,
13 customers, and/or end users with instructions on how to avoid infringement of the
14 ‘986 patent.

15 33. Any continuing infringement of the ‘986 patent by Modulus after
16 receiving notice of the ‘986 patent will be willful, entitling Plaintiff to enhanced
17 damages.

18 **SECOND CLAIM FOR RELIEF**

19 **(Inducing Infringement of U.S. Patent No. 9,009,986 by Chang and Partington,**
20 **Officers of Modulus)**

21 34. Plaintiff realleges and repeats the allegations of paragraphs 1-33 above.

22 35. The ‘986 patent claims priority to a United States provisional
23 application, serial number 61/902,357 (hereinafter, “357 Provisional Application”)
24 filed on November 11, 2013.

25 36. Chang is a named inventor of United States Patent No. 9,009,986.

26 37. By an assignment recorded in the United States Patent and Trademark
27 Office at Reel 034167, Frame 0927, attached as Exhibit 14, Chang transferred the
28 entirety of his right, title, and interest in the ‘357 Provisional Application, and any

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1 and all Letters Patents of the United States and any countries foreign thereto which
2 may be granted for the invention disclosed in the '357 Provisional Application,
3 including the '986 patent, to 80 Percent Arms, Inc.

4 38. Upon information and belief, the inventive subject matter of the '986
5 patent, including designs for jigs used in the machining of firearms lower receivers,
6 was in part developed by Chang as outlined in a project proposal presented to
7 Plaintiff.

8 39. Upon information and belief, Chang aided, directed, and assisted
9 Modulus to copy the designs for the jigs used in the machining of firearms receivers
10 that Chang developed for Plaintiff to create Modulus's firearm receiver machining jig
11 products variously identified as "Universal AR-15 80% Lower Receiver Jig" and
12 "Universal AR-308 / AR-10 80% Lower Receiver Jig"

13 40. Upon information and belief, Chang was informed directly by Plaintiff
14 of Modulus's infringement of the '986 patent upon receipt of Plaintiff's Cease and
15 Desist letter, attached as Exhibit 4.

16 41. Despite the notice and information provided by Plaintiff, Plaintiff is
17 informed and believes that Chang actively aided and abetted Modulus's infringement
18 of the '986 patent by authorizing and directing it to continue manufacturing,
19 marketing, and selling the jigs in accordance with the copied designs, without making
20 any changes to those designs, and in a manner that infringes the '986 patent.

21 42. Upon information and belief, Chang actively aided, participated in,
22 approved, ratified, and induced infringement of the '986 patent by Modulus despite
23 Chang's knowledge of the '986 patent.

24 43. Partington is a named inventor of United States Patent No. 9,009,986.

25 44. By the assignment recorded in the United States Patent and Trademark
26 Office at Reel 034167, Frame 0927, attached as Exhibit 14, Partington transferred the
27 entirety of his right, title, and interest in the '357 Provisional Application, and any
28 and all Letters Patents of the United States and any countries foreign thereto which

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1 may be granted for the invention disclosed in the ‘357 Provisional Application,
2 including the ‘986 patent, to 80 Percent Arms, Inc.

3 45. Upon information and belief, the inventive subject matter of the ‘986
4 patent, including designs for jigs used in the machining of firearms lower receivers,
5 was in part developed by Partington as outlined in a project proposal presented to
6 Plaintiff.

7 46. Upon information and belief, Partington aided, directed, and assisted
8 Modulus to copy the designs for the jigs used in the machining of firearms receivers
9 that Partington developed for Plaintiff to create Modulus’s firearm receiver
10 machining jig products variously identified as “Universal AR-15 80% Lower
11 Receiver Jig” and “Universal AR-308 / AR-10 80% Lower Receiver Jig.”

12 47. Upon information and belief, Partington was informed directly by
13 Plaintiff of Modulus’s infringement of the ‘986 patent upon receipt of Plaintiff’s
14 Cease and Desist letter, attached as Exhibit 4.

15 48. Despite the notice and information provided by Plaintiff, Plaintiff is
16 informed and believes that Partington actively aided and abetted Modulus’s
17 infringement of the ‘986 patent by authorizing and directing it to continue
18 manufacturing, marketing, and selling the jigs in accordance with the copied designs,
19 without making any changes to those designs, and in a manner that infringes the ‘986
20 patent.

21 49. Upon information and belief, Partington actively aided, participated in,
22 approved, ratified, and induced infringement of the ‘986 patent by Modulus despite
23 Partington’s knowledge of the ‘986 patent.

24 50. By reason of the aforementioned acts of Chang and Partington, Plaintiff
25 has suffered great damage in an amount which cannot be ascertained at this time.

26 51. Upon information and belief, Chang and Partington both individually
27 continue to induce the infringement of the ‘986 patent by Modulus, and will continue
28 to induce the infringement of the ‘986 patent to Plaintiff’s irreparable harm, unless

1 enjoined by this Court.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

4 A. A judgment that Modulus has directly and contributorily infringed the
5 '986 patent, and induced the infringement of the '986 patent.

6 B. A judgment that Modulus's infringement of the '986 patent has been
7 willful.

8 C. A judgment that Chang has induced the infringement of the '986 patent
9 by Modulus.

10 D. A judgment that Partington has induced the infringement of the '986
11 patent by Modulus.

12 E. A preliminary and permanent injunction, pursuant to 35 U.S.C. §283,
13 enjoining Defendants, and all persons in active concert or participation with them,
14 from any further acts of infringement, contributory infringement or inducement of
15 infringement of the '986 patent of the '986 patent.

16 F. An order, pursuant to 35 U.S.C. §284, awarding Plaintiff damages
17 adequate to compensate Plaintiff for Defendants' infringement of the '986 patent, in
18 an amount to be determined at trial, but in no event less than a reasonable royalty.

19 G. An order, pursuant to 35 U.S.C. §284, trebling all damages awarded to
20 Plaintiff based on Defendants' willful infringement of the '986 patent.

21 H. An order, pursuant to 35 U.S.C. §285, finding that this is an exceptional
22 case and awarding to Plaintiff its reasonable attorneys' fees incurred in this action.

23 I. That Plaintiff have such other and further relief that the court may deem
24 just and proper.

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Dated: September 30, 2015

STETINA BRUNDA GARRED & BRUCKER

By: /s/Shunsuke S. Sumitani
Shunsuke S. Sumitani
William J. Brucker
Attorneys for Plaintiff
80 Percent Arms Inc.

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DEMAND FOR JURY TRIAL

Plaintiff, 80 Percent Arms Inc. hereby demands a jury trial in this action.

Dated: September 30, 2015

STETINA BRUNDA GARRED & BRUCKER

By: /s/Shunsuke S. Sumitani
Shunsuke S. Sumitani
Attorneys for Plaintiff
80 Percent Arms Inc.

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