



CLERK OF THE COURT

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Archon Corporation,  
10 Paul W. Lowden, and  
11 Suzanne Lowden

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 DAN RAIDER, an individual on his own behalf  
and on behalf of others similarly situated,

15 Plaintiff,

16 vs.

17 ARCHON CORPORATION, a Nevada  
18 corporation; PAUL W. LOWDEN, an individual;  
19 and SUZANNE LOWDEN, an individual,

20 Defendants.

CASE NO. A-15-712113-B

DEPT. XIII

21  
22 **DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT**

23 Defendants Archon Corporation, a Nevada corporation, Paul W. Lowden, an individual,  
24 and Suzanne Lowden, an individual (collectively "Defendants"), by and through their attorneys  
25 of record, DICKINSON WRIGHT, PLLC, file their answer to Plaintiff's Complaint as follows:

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1 **PARTIES, JURISDICTION AND VENUE**

2 1. Defendants are without sufficient knowledge or information to form a belief as to  
3 the truth of the allegations contained in paragraph 1 of Plaintiff's Complaint and on that basis  
4 deny the same.

5 2. Defendants admit the allegations contained in paragraph 2 of Plaintiff's  
6 Complaint.

7 3. Defendants admit that Paul W. Lowden is a resident of Clark County, Nevada.

8 4. Defendants admit that Suzanne Lowden is a resident of Clark County, Nevada.

9 5. Defendants deny the allegations contained in paragraph 5 of Plaintiff's  
10 Complaint.

11 6. Defendants are without sufficient knowledge or information to form a belief as to  
12 the truth of the allegations contained in paragraph 6 of Plaintiff's Complaint and on that basis  
13 deny the same.

14 a. Defendants are without sufficient knowledge or information to form a  
15 belief as to the truth of the allegations contained in paragraph 6(a) of Plaintiff's  
16 Complaint and on that basis deny the same.

17 b. Defendants deny the allegations contained in paragraph 6(b) of Plaintiff's  
18 Complaint.

19 **STATEMENT OF THE CASE**

20 7. Defendants admit the allegations contained in paragraph 7 of Plaintiff's  
21 Complaint.

22 8. Defendants admit the allegations contained in paragraph 8 of Plaintiff's  
23 Complaint.

24 9. Defendants admit the allegations contained in paragraph 9 of Plaintiff's  
25 Complaint.

26 10. Defendants admit that Archon redeemed its outstanding Exchangeable  
27 Redeemable Preferred Stock on August 31, 2007. Defendants deny the remaining allegations  
28 contained in paragraph 10 of Plaintiff's Complaint.

1           11. Defendants deny the allegations contained in paragraph 11 of Plaintiff's  
2 Complaint.

3           12. Defendants deny the allegations contained in paragraph 12 of Plaintiff's  
4 Complaint.

5           13. Defendants are without sufficient knowledge or information to form a belief as to  
6 the truth of the allegations contained in paragraph 13 of Plaintiff's Complaint and on that basis  
7 deny the same.

8           14. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
9 document speaks for itself and Defendants deny any allegations inconsistent with the document  
10 referred to in paragraph 14 of Plaintiff's Complaint.

11                                   **THE REDEMPTION OF THE PREFERRED STOCK**

12           15. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
13 document speaks for itself and Defendants deny any allegations inconsistent with the document  
14 referred to in paragraph 15 of Plaintiff's Complaint.

15           16. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
16 document speaks for itself and Defendants deny any allegations inconsistent with the document  
17 referred to in paragraph 16 of Plaintiff's Complaint.

18           17. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
19 document speaks for itself and Defendants deny any allegations inconsistent with the document  
20 referred to in paragraph 17 of Plaintiff's Complaint.

21           18. Defendants admit the allegations contained in paragraph 18 of Plaintiff's  
22 Complaint.

23                                   **THE REDEMPTION PRICE**

24           19. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
25 document speaks for itself and Defendants deny any allegations inconsistent with the document  
26 referred to in paragraph 19 of Plaintiff's Complaint.

27           20. Defendants deny the allegations contained in paragraph 20 of Plaintiff's  
28 Complaint.

1           21. Defendants deny the allegations contained in paragraph 21 of Plaintiff's  
2 Complaint.

3           22. Defendants admit the allegations contained in paragraph 22 of Plaintiff's  
4 Complaint.

5           23. Defendants deny the allegations contained in paragraph 23 of Plaintiff's  
6 Complaint.

7           24. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
8 document speaks for itself and Defendants deny any allegations inconsistent with the document  
9 referred to in paragraph 24 of Plaintiff's Complaint.

10          25. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
11 document speaks for itself and Defendants deny any allegations inconsistent with the document  
12 referred to in paragraph 25 of Plaintiff's Complaint.

13          26. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
14 document speaks for itself and Defendants deny any allegations inconsistent with the document  
15 referred to in paragraph 26 of Plaintiff's Complaint.

16          27. Defendants admit the allegations contained paragraph 27 of Plaintiff's Complaint.

17          28. Defendants admit that Archon has not declared dividends. Defendants deny the  
18 remaining allegations contained in paragraph 28 of Plaintiff's Complaint.

19          29. Defendants admit that dividends accrued following the sixth Dividend Payment  
20 Date. Defendants deny the remaining allegations contained in paragraph 29 of Plaintiff's  
21 Complaint.

22          30. Defendants deny the allegations contained in paragraph 30 of Plaintiff's  
23 Complaint.

24          31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's  
25 Complaint.

26          32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's  
27 Complaint.

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1 **CLASS ACTION ALLEGATIONS**

2 33. Defendants are without sufficient knowledge or information to form a belief as to  
3 the truth of the allegations contained in paragraph 33 of Plaintiff's Complaint and on that basis  
4 deny the same.

5 34. Defendants deny the allegations contained in paragraph 34 of Plaintiff's  
6 Complaint.

7 35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's  
8 Complaint.

9 36. Defendants deny the allegations contained in paragraph 36 of Plaintiff's  
10 Complaint.

11 37. Defendants deny the allegations contained in paragraph 37 of Plaintiff's  
12 Complaint.

13 38. Defendants deny the allegations contained in paragraph 38 of Plaintiff's  
14 Complaint.

15 a. Defendants deny the allegations contained in paragraph 38(a) of Plaintiff's  
16 Complaint.

17 b. Defendants deny the allegations contained in paragraph 38(b) of Plaintiff's  
18 Complaint.

19 39. Defendants deny the allegations contained in paragraph 39 of Plaintiff's  
20 Complaint.

21 40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's  
22 Complaint.

23 41. Defendants deny the allegations contained in paragraph 41 of Plaintiff's  
24 Complaint.

25 **PRIOR LITIGATION REGARDING THE CALCULATION**  
26 **OF THE REDEMPTION PRICE**

27 42. Defendants admit the allegations contained paragraph 42 of Plaintiff's Complaint.  
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1           a.       Defendants admit the allegations contained paragraph 42(a) of Plaintiff's  
2 Complaint.

3           b.       Defendants admit a second action was filed by David Rainero "as an  
4 individual on behalf of himself and on behalf of others similarly situated," on November  
5 20, 2007, and that the case was assigned to Judge Gloria Navarro. Defendants deny the  
6 remaining allegations contained in paragraph 42(b) of Plaintiff's Complaint.

7           c.       Defendants admit the allegations contained in paragraph 42(c) of  
8 Plaintiff's Complaint.

9           43.       Defendants admit that summary judgment was granted in favor of the Plaintiffs in  
10 the D.E. Shaw and Leeward actions and that final judgment was entered. Defendants deny the  
11 remaining allegations of paragraph 43 of Plaintiff's Complaint.

12          44.       Defendants admit the allegations contained in paragraph 44 of Plaintiff's  
13 Complaint.

14          45.       Defendants admit the allegations contained in paragraph 45 of Plaintiff's  
15 Complaint.

16          46.       Defendants admit that the final amended judgments in D.E. Shaw and Leeward  
17 have been satisfied. Defendants deny the remaining allegations in paragraph 46 of Plaintiff's  
18 Complaint.

19          47.       Defendants admit that a void order was entered in the Rainero action on  
20 November 7, 2013. To the extent Plaintiff purports to quote from that void order, the document  
21 speaks for itself and Defendants deny any allegation inconsistent with the order. Defendants  
22 deny all remaining allegations in Paragraph 47 of the Complaint.

23          48.       Defendants admit that on September 11, 2014, the District Court in Rainero issued  
24 a Minute Order for Plaintiff to show cause as to why the Court should not dismiss the action for  
25 lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(9). Defendants further admit  
26 that the parties submitted briefs and that on September 29, 2014, the District Court issued an  
27 order finding that it did not have subject matter jurisdiction and dismissing the action. Finally,  
28 Defendants admit that an appeal to the U.S. Court of Appeals for the Ninth Circuit is currently

1 pending. Defendants deny all remaining allegations in Paragraph 48 of the Complaint.

2 49. Defendants admit the allegations contained paragraph 49 of Plaintiff's Complaint.

3 50. Defendants deny the allegations contained in paragraph 50 of Plaintiff's  
4 Complaint.

5 **COUNT I – DECLARATORY RELIEF**

6 51. Defendants incorporate by reference their responses to paragraphs 1 through 50 of  
7 Plaintiff's Complaint as though set forth fully herein.

8 52. Defendants deny the allegations contained in paragraph 52 of Plaintiff's  
9 Complaint.

10 53. Defendants are without sufficient knowledge or information to form a belief as to  
11 the truth of the allegations contained in paragraph 53 of Plaintiff's Complaint and on that basis  
12 deny the same.

13 54. Defendants admit that they disputed Plaintiff's contentions. Defendants deny the  
14 remaining allegations contained in paragraph 54 of Plaintiff's Complaint.

15 55. Defendants are without sufficient knowledge or information to form a belief as to  
16 the truth of the allegations contained in paragraph 55 of Plaintiff's Complaint and on that basis  
17 deny the same.

18 **COUNT II – BREACH OF CONTRACT**  
19 **(UNPAID BALANCE OF THE REDEMPTION PRICE)**

20 56. Defendants incorporate by reference their responses to paragraphs 1 through 55 of  
21 Plaintiff's Complaint as though set forth fully herein.

22 57. Defendants deny the allegations contained in paragraph 57 of Plaintiff's  
23 Complaint.

24 58. Defendants deny the allegations contained in paragraph 58 of Plaintiff's  
25 Complaint.

26 59. Defendants admit the allegations contained paragraph 59 of Plaintiff's Complaint.

27 60. Defendants deny the allegations contained in paragraph 60 of Plaintiff's  
28 Complaint.

1           61. Defendants deny the allegations contained in paragraph 61 of Plaintiff's  
2 Complaint.

3           62. Defendants deny the allegations contained in paragraph 62 of Plaintiff's  
4 Complaint.

5           **COUNT III – BREACH OF CONTRACT (POST-AUGUST 31, 2007 DIVIDENDS)**

6           63. Defendants incorporate by reference their responses to paragraphs 1 through 62 of  
7 Plaintiff's Complaint as though set forth fully herein.

8           64. To the extent that Plaintiff purports to paraphrase or quote from a document, the  
9 document speaks for itself and Defendants deny any allegations inconsistent with the document  
10 referred to in paragraph 64 of Plaintiff's Complaint.

11           65. Defendants deny the allegations contained in paragraph 65 of Plaintiff's  
12 Complaint.

13           66. Defendants deny the allegations contained in paragraph 66 of Plaintiff's  
14 Complaint.

15           67. Defendants deny the allegations contained in paragraph 67 of Plaintiff's  
16 Complaint.

17           68. Defendants deny the allegations contained in paragraph 68 of Plaintiff's  
18 Complaint.

19           69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's  
20 Complaint.

21           **COUNT IV – UNJUST ENRICHMENT**

22           70. Defendants incorporate by reference their responses to paragraphs 1 through 69 of  
23 Plaintiff's Complaint as though set forth fully herein.

24           71. Defendants deny the allegations contained in paragraph 71 of Plaintiff's  
25 Complaint.

26           72. Defendants deny the allegations contained in paragraph 72 of Plaintiff's  
27 Complaint.

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1           73. Defendants deny the allegations contained in paragraph 73 of Plaintiff's  
2 Complaint.

3           74. Defendants deny the allegations contained in paragraph 74 of Plaintiff's  
4 Complaint.

5           **COUNT V – CONSTRUCTIVE TRUST AND OTHER EQUITABLE RELIEF**

6           75. Defendants incorporate by reference their responses to paragraphs 1 through 74 of  
7 Plaintiff's Complaint as though set forth fully herein.

8           76. Defendants deny the allegations contained in paragraph 76 of Plaintiff's  
9 Complaint.

10          77. Defendants deny the allegations contained in paragraph 77 of Plaintiff's  
11 Complaint.

12          78. Defendants deny the allegations contained in paragraph 78 of Plaintiff's  
13 Complaint.

14          79. Defendants are without sufficient knowledge or information to form a belief as to  
15 the truth of the allegations contained in paragraph 79 of Plaintiff's Complaint and on that basis  
16 deny the same.

17               (a) Defendants are without sufficient knowledge or information to form a  
18 belief as to the truth of the allegations contained in paragraph 79(a) of Plaintiff's  
19 Complaint and on that basis deny the same.

20               (b) Defendants are without sufficient knowledge or information to form a  
21 belief as to the truth of the allegations contained in paragraph 79(b) of Plaintiff's  
22 Complaint and on that basis deny the same.

23               (c) Defendants are without sufficient knowledge or information to form a  
24 belief as to the truth of the allegations contained in paragraph 79(c) of Plaintiff's  
25 Complaint and on that basis deny the same.

26               (d) Defendants are without sufficient knowledge or information to form a  
27 belief as to the truth of the allegations contained in paragraph 79(d) of Plaintiff's  
28 Complaint and on that basis deny the same.

1 (e) Defendants are without sufficient knowledge or information to form a  
2 belief as to the truth of the allegations contained in paragraph 79(e) of Plaintiff's  
3 Complaint and on that basis deny the same.

4 (f) Defendants are without sufficient knowledge or information to form a  
5 belief as to the truth of the allegations contained in paragraph 79(f) of Plaintiff's  
6 Complaint and on that basis deny the same.

7 (g) Defendants are without sufficient knowledge or information to form a  
8 belief as to the truth of the allegations contained in paragraph 79(g) of Plaintiff's  
9 Complaint and on that basis deny the same.

10 **COUNT VI – BREACH OF FIDUCIARY DUTY**

11 80. Defendants incorporate by reference their responses to paragraphs 1 through 79 of  
12 Plaintiff's Complaint as though set forth fully herein.

13 81. Defendants admit the allegations contained paragraph 81 of Plaintiff's Complaint.

14 a. Defendants admit the allegations contained paragraph 81(a) of Plaintiff's  
15 Complaint.

16 b. Defendants admit the allegations contained paragraph 81(b) of Plaintiff's  
17 Complaint.

18 c. Defendants admit the allegations contained paragraph 81(c) of Plaintiff's  
19 Complaint.

20 d. Defendants admit the allegations contained paragraph 81(d) of Plaintiff's  
21 Complaint.

22 e. Defendants deny the allegations contained in paragraph 81(e) of Plaintiff's  
23 Complaint.

24 82. Defendants admit the allegations contained paragraph 82 of Plaintiff's Complaint.

25 a. Defendants admit the allegations contained paragraph 82(a) of Plaintiff's  
26 Complaint.

27 b. Defendants admit the allegations contained paragraph 82(b) of Plaintiff's  
28 Complaint.

1           c.       Defendants admit the allegations contained paragraph 82(c) of Plaintiff's  
2       Complaint.

3           d.       Defendants admit the allegations contained paragraph 82(d) of Plaintiff's  
4       Complaint.

5           e.       Defendants admit the allegations contained paragraph 82(e) of Plaintiff's  
6       Complaint.

7       83.       Defendants deny the allegations contained in paragraph 83 of Plaintiff's  
8       Complaint.

9       84.       Defendants deny the allegations contained in paragraph 84 of Plaintiff's  
10      Complaint.

11      85.       Defendants deny the allegations contained in paragraph 85 of Plaintiff's  
12      Complaint.

13      86.       Defendants deny the allegations contained in paragraph 86 of Plaintiff's  
14      Complaint.

15      87.       Defendants deny the allegations contained in paragraph 87 of Plaintiff's  
16      Complaint.

17      88.       Defendants deny the allegations contained in paragraph 88 of Plaintiff's  
18      Complaint.

19      89.       Defendants deny the allegations contained in paragraph 89 of Plaintiff's  
20      Complaint.

21      90.       Defendants deny the allegations contained in paragraph 90 of Plaintiff's  
22      Complaint.

23           (a)       Defendants deny the allegations contained in paragraph 90(a) of Plaintiff's  
24      Complaint.

25           (b)       Defendants deny the allegations contained in paragraph 90(b) of Plaintiff's  
26      Complaint.

27           (c)       Defendants deny the allegations contained in paragraph 90(c) of Plaintiff's  
28      Complaint.

1 (d) Defendants deny the allegations contained in paragraph 90(d) of Plaintiff's  
2 Complaint.

3 (e) Defendants deny the allegations contained in paragraph 90(e) of Plaintiff's  
4 Complaint.

5 91. Defendants deny the allegations contained in paragraph 91 of Plaintiff's  
6 Complaint.

7 (a) Defendants deny the allegations contained in paragraph 91(a) of Plaintiff's  
8 Complaint.

9 (b) Defendants deny the allegations contained in paragraph 91(b) of Plaintiff's  
10 Complaint.

11 (c) Defendants deny the allegations contained in paragraph 91(c) of Plaintiff's  
12 Complaint.

13 92. Defendants deny the allegations contained in paragraph 92 of Plaintiff's  
14 Complaint.

15 (a) Defendants deny the allegations contained in paragraph 92(a) of Plaintiff's  
16 Complaint.

17 (b) Defendants deny the allegations contained in paragraph 92(b) of Plaintiff's  
18 Complaint.

19 (c) Defendants deny the allegations contained in paragraph 92(c) of Plaintiff's  
20 Complaint.

21 (d) Defendants deny the allegations contained in paragraph 92(d) of Plaintiff's  
22 Complaint.

23 (e) Defendants deny the allegations contained in paragraph 92(e) of Plaintiff's  
24 Complaint.

25 93. Defendants deny the allegations contained in paragraph 93 of Plaintiff's  
26 Complaint.

27 (a) Defendants deny the allegations contained in paragraph 93(a) of Plaintiff's  
28 Complaint.

1 (b) Defendants deny the allegations contained in paragraph 93(b) of Plaintiff's  
2 Complaint.

3 (c) Defendants deny the allegations contained in paragraph 93(c) of Plaintiff's  
4 Complaint.

5 94. Defendants deny the allegations contained in paragraph 94 of Plaintiff's  
6 Complaint.

7 95. Defendants deny the allegations contained in paragraph 95 of Plaintiff's  
8 Complaint.

9 (a) Defendants deny the allegations contained in paragraph 95(a) of Plaintiff's  
10 Complaint.

11 (b) Defendants deny the allegations contained in paragraph 95(b) of Plaintiff's  
12 Complaint.

13 (c) Defendants deny the allegations contained in paragraph 95(c) of Plaintiff's  
14 Complaint.

15 (d) Defendants deny the allegations contained in paragraph 95(d) of Plaintiff's  
16 Complaint.

17 (e) Defendants deny the allegations contained in paragraph 95(e) of Plaintiff's  
18 Complaint.

19 96. Defendants deny the allegations contained in paragraph 96 of Plaintiff's  
20 Complaint.

21 (a) Defendants deny the allegations contained in paragraph 96(a) of Plaintiff's  
22 Complaint.

23 (b) Defendants deny the allegations contained in paragraph 96(b) of Plaintiff's  
24 Complaint.

25 (c) Defendants deny the allegations contained in paragraph 96(c) of Plaintiff's  
26 Complaint.

27 97. Defendants deny the allegations contained in paragraph 97 of Plaintiff's  
28 Complaint.

1 98. Defendants deny the allegations contained in paragraph 98 of Plaintiff's  
2 Complaint.

3 99. Defendants deny the allegations contained in paragraph 99 of Plaintiff's  
4 Complaint.

5 WHEREFORE, Defendants deny that Plaintiff is entitled to any of the relief requested in  
6 the prayer for relief.

7 **GENERAL DENIAL**

8 Archon denies each and every allegation of the Complaint not specifically admitted or  
9 otherwise pled to herein.

10 **AFFIRMATIVE DEFENSES**

11 **AFFIRMATIVE DEFENSE NO. 1**

12 Archon hereby incorporates those defenses enumerated in Rule 8 of the Federal Rules of  
13 Civil Procedure as though fully set forth herein. In the event further investigation and discovery  
14 reveals the applicability of such defenses, Archon reserves the right to seek leave of Court to  
15 assert such defenses. Such defenses are specifically incorporated herein by reference for the  
16 purpose of not waiving any such defense.

17 **AFFIRMATIVE DEFENSE NO. 2**

18 Plaintiff's Complaint is barred by the doctrine of issue preclusion.

19 **AFFIRMATIVE DEFENSE NO. 3**

20 Plaintiff's Complaint is barred by the doctrine of equitable estoppel.

21 **AFFIRMATIVE DEFENSE NO. 4**

22 Plaintiff's Complaint is barred to the extent Plaintiff and the putative class members lack  
23 standing because they were not holders of record of Archon's Exchangeable Redeemable  
24 Preferred Stock.

25 **AFFIRMATIVE DEFENSE NO. 5**

26 Plaintiff's Complaint is barred, in whole or in part, because Plaintiff and each member of  
27 the putative class failed to mitigate any damages they allegedly suffered.

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1 **AFFIRMATIVE DEFENSE NO. 6**

2 Plaintiff, and each putative class member, by their words, conduct or actions, intentionally  
3 and voluntarily waived any and all claims, further obligations, or liabilities as to any and all  
4 matters raised in the Complaint.

5 **AFFIRMATIVE DEFENSE NO. 7**

6 Plaintiff, and each putative class member, accepted, authorized, approved and/or ratified  
7 Archon's calculation of accrued and unpaid dividends and the redemption price. As a  
8 consequence, Plaintiff and the putative class members are estopped from asserting any claim  
9 based on such conduct.

10 **AFFIRMATIVE DEFENSE NO. 8**

11 Plaintiff's claims are barred to the extent that damages, if any, resulted from the acts  
12 and/or omissions of Plaintiff.

13 **AFFIRMATIVE DEFENSE NO. 9**

14 This action is barred and the district court lacks jurisdiction under NRS 11.500.

15 **AFFIRMATIVE DEFENSE NO. 10**

16 Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

17 **AFFIRMATIVE DEFENSE NO. 11**

18 Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

19 **AFFIRMATIVE DEFENSE NO. 12**

20 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
21 damages under Nevada law would violate Defendants' procedural and substantive due process  
22 rights and equal protection rights under the Fifth and Fourteenth Amendments to the United  
23 States Constitution and Defendants' due process rights under Article 1, Sections 8 and 15 of the  
24 Nevada Constitution.

25 **AFFIRMATIVE DEFENSE NO. 13**

26 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
27 damages under Nevada law, subject to no predetermined limit, such as a maximum multiple of  
28 compensatory damages or a maximum amount of punitive damages that a jury may impose, and

1 providing no protection against multiple awards of punitive damages for the same course of  
2 conduct, would violate Defendants' procedural and substantive due process rights and equal  
3 protection rights under the Fifth and Fourteenth Amendments to the United States Constitution  
4 and Defendants' due process rights under Article 1, Sections 6, 8 and 15 of the Nevada  
5 Constitution, and would be improper under the common law and public policies of the State of  
6 Nevada.

7 **AFFIRMATIVE DEFENSE NO. 14**

8 Plaintiff's claim for punitive damages against Archon cannot be sustained because an  
9 award of punitive damages under Nevada law by a jury that (1) is not provided constitutionally  
10 adequate standards of sufficient clarity for determining the appropriate imposition of, and the  
11 appropriate size of, a punitive damages award; (2) is not adequately instructed on the limits of  
12 punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not  
13 expressly prohibited from awarding punitive damages, or determining the amount of an award of  
14 punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics,  
15 including without limitation the residence, wealth, and corporate status of Defendants; (4) is  
16 permitted to award punitive damages under a standard for determining liability for punitive  
17 damages that is vague and arbitrary and does not define with sufficient clarity the conduct or  
18 mental state that makes punitive damages permissible; (5) is not properly instructed regarding  
19 Plaintiff's burden of proof with respect to each and every element of a claim for punitive  
20 damages; and (6) is not subject to trial court and appellate judicial review for reasonableness and  
21 furtherance of legitimate purposes on the basis of constitutionally adequate and objective  
22 standards, would violate Defendants' due process and equal protection rights guaranteed by the  
23 Fifth and Fourteenth Amendments to the United States Constitution and by Article 1, Sections 8  
24 and 15 of the Nevada Constitution.

25 **AFFIRMATIVE DEFENSE NO. 15**

26 Plaintiff's claim for punitive damages cannot be sustained because an award of punitive  
27 damages under Nevada law, without a bifurcated trial, would violate Defendants' rights to equal  
28 protection and due process under the Fifth and Fourteenth Amendments to the United States



1 Constitution and under Article 1, Section 8 of the Nevada Constitution.

2 **AFFIRMATIVE DEFENSE NO. 16**

3 Plaintiff's Complaint fails to state facts sufficient to entitle Plaintiff to an award of  
4 punitive damages.

5 **AFFIRMATIVE DEFENSE NO. 17**

6 Defendants oppose class certification on the basis that this lawsuit may not be properly  
7 maintained as a class action because: (1) Plaintiff has failed to plead and cannot establish the  
8 necessary procedural elements for class treatment; (2) a class action is not an appropriate method  
9 for the fair and efficient adjudication of the claims described in the Complaint; (3) common issues  
10 of fact or law do not predominate over individual issues; (4) Plaintiff's claims are not  
11 representative or typical of the claims of the putative class; (5) Plaintiff is not a proper class  
12 representative; (6) putative class counsel is not adequate to represent the putative class; and (7)  
13 the alleged putative class is not ascertainable, nor are its members identifiable.

14 **AFFIRMATIVE DEFENSE NO. 18**

15 Defendants oppose class certification and dispute the propriety of class treatment. If the  
16 Court certifies a class in this case over Defendants' objections, then Defendants assert the  
17 affirmative defenses set forth herein against each and every member of the certified class.

18 **AFFIRMATIVE DEFENSE NO. 19**

19 Defendants oppose class certification to the extent absent class members cannot be  
20 located. The Court should require Plaintiff to amend his Complaint to eliminate any and all  
21 allegations regarding representation of absent persons.

22 **AFFIRMATIVE DEFENSE NO. 20**

23 Defendants affirmatively state that they are not liable for the damages alleged by Plaintiff  
24 and many of the purported class members because those damages were caused by intervening or  
25 superseding actions of Plaintiff, the purported class members and third parties beyond the control  
26 of Defendants.

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1 **AFFIRMATIVE DEFENSE NO. 21**

2 Plaintiff is not entitled to any recovery from Defendants because the alleged damages, if  
3 any, are speculative, unsupportable, and highly improbable.

4 **AFFIRMATIVE DEFENSE NO. 22**

5 Defendants affirmatively allege that no privity of contract exists between Defendants and  
6 many of the purported class members such that Defendants cannot be liable as a matter of law.

7 **AFFIRMATIVE DEFENSE NO. 23**

8 Plaintiff and some or all of the members of the purported class lack standing to assert  
9 claims because they have not suffered any damage or injury.

10 **AFFIRMATIVE DEFENSE NO. 24**

11 The District Court in D.E. Shaw Laminar Portfolios, L.L.C., et al. v. Archon, 2:07-CV-  
12 01146-PMP-LRL and Leeward Capital L.P. v. Archon Corporation, 2:08-CV-00007-PMP-LRL  
13 erroneously assumed that the plaintiffs' dividend calculations (adopted by the Court) naturally  
14 followed from the District Court's ruling regarding the interpretation of a formula in the  
15 Certificate. However, the algorithm employed by the plaintiffs to create a table of calculations for  
16 dividends that are both cumulative and compounding is the mathematical equivalent of applying a  
17 formula that does not appear anywhere in the Certificate. Consequently, the Court in D.E. Shaw  
18 and Leeward improperly rewrote the terms of the contract between the parties and restructured the  
19 Exchangeable Redeemable Preferred Stock. Because the Court's decisions in D.E. Shaw and  
20 Leeward are clearly erroneous and manifestly unjust, those decisions provide no basis for  
21 recovery of damages in this case.

22 **AFFIRMATIVE DEFENSE NO. 25**

23 Defendants hereby give notice that they intend to rely upon any other defense that may  
24 become available or appear during the discovery proceedings in this case and hereby reserve the  
25 right to amend this Answer to assert any such defenses based on applicable law.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Archon prays for relief as follows:

28 A. That Plaintiff takes nothing by way of the Complaint, that the same be dismissed

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with prejudice, and that judgment be entered in favor of Defendants and against Plaintiff;

- B. That the Court deny class certification;
- C. That the Court award Defendants their reasonable attorneys' fees and costs; and
- D. For such other and further relief as may be just and proper.

**JURY DEMAND**

Defendants Archon Corporation, Paul W. Lowden, and Suzanne Lowden, hereby demand a jury trial as provided by the Nevada Rules of Civil Procedure, or as otherwise may be provided for by law.

DATED this 17<sup>th</sup> day of July, 2015.

DICKINSON WRIGHT, PLLC

/s/ Justin J. Bustos  
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Attorneys for Defendants  
Archon Corporation,  
Paul W. Lowden, and  
Suzanne Lowden

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of DICKINSON WRIGHT, PLLC, and that on this date,  
3 pursuant to NRCPC 5(b), I am serving a true and correct copy of **DEFENDANTS' ANSWER**  
4 **TO PLAINTIFF'S COMPLAINT** on the parties as set forth below:

5 XXXX

6 Placing an original or true copy thereof in a sealed envelope  
7 placed for collection and mailing in the United States Mail,  
8 Reno, Nevada, postage prepaid, following ordinary business  
9 practices

10 \_\_\_\_\_ Certified Mail, Return Receipt Requested

11 \_\_\_\_\_ Via Facsimile (Fax)

12 \_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope and  
13 causing the same to be personally Hand Delivered

14 \_\_\_\_\_ Federal Express (or other overnight delivery)

15 addressed as follows:

16 Steven J. Parsons  
17 Law Offices of Steven J. Parsons  
18 7201 W. Lake Mead Blvd.  
19 Suite 108  
20 Las Vegas, NV 89128-8354

21 Steven E. Goren  
22 Goren, Goren & Harris, P.C.  
23 30400 Telegraph Road  
24 Suite 470  
25 Bingham Farms, MI 48025-5818

26 DATED this 17<sup>th</sup> day of July, 2015.

27 \_\_\_\_\_  
28 /s/ Cindy S. Grinstead  
An Employee of DICKINSON WRIGHT, PLLC