

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PENNSYLVANIA AVENUE FUNDS, On  
Behalf of Itself and All Others Similarly  
Situated,

Plaintiff,

v.

EDWARD J. BOREY, STEVEN N. MOORE,  
MICHAEL R. KOUREY, MICHAEL R.  
HALLMAN, RICHARD A. LeFAIVRE,  
WILLIAM J. SCHROEDER, FRANCISCO  
PARTNERS, L.P., GLADIATOR  
CORPORATION, VECTOR CAPITAL  
CORPORATION, VECTOR CAPITAL III,  
L.P., ALEXANDER R. SLUSKY,

Defendants,

No. 2:06-cv-1737-JLR

SECOND AMENDED COMPLAINT  
BASED UPON SELF-DEALING  
BREACH OF FIDUCIARY DUTIES  
AND VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS

**CLASS ACTION COMPLAINT**

**JURY TRIAL REQUESTED**

1 Plaintiff Pennsylvania Avenue Funds ("Plaintiff"), by and through counsel,  
2 alleges the following based upon the investigation of counsel, which included a review of United  
3 States Securities and Exchange Commission ("SEC") filings, as well as other regulatory filings,  
4 reports, and advisories, press releases, and media reports about WatchGuard Technologies, Inc.  
5 and its former directors, Francisco Partners L.P., Vector Capital Corporation, and their related  
6 entities and principals thereof, as well as interviews with various former WatchGuard employees,  
7 (including two of WatchGuard's executive vice presidents). Plaintiff believes that substantial  
8 additional evidentiary support exists for the allegations set forth herein after a reasonable  
9 opportunity for discovery.

### 11 INTRODUCTION

12 1. This is a shareholder class action alleging breaches of fiduciary duty owed to the  
13 WatchGuard shareholders by members of the board of directors of WatchGuard Technologies,  
14 Inc. ("WatchGuard" or the "Company"). The directors' breaches of fiduciary duty resulted in  
15 defendants Francisco Partners, L.P. ("FP") and Vector Capital Corporation's ("Vector")  
16 acquisition of WatchGuard (the "Acquisition") at a price per share significantly lower than  
17 would have resulted had defendants acted properly. Specifically, WatchGuard's Chairman of the  
18 Board and Chief Executive Officer ("CEO") Edward J. Borey ("Borey") capitalized on the  
19 board's refusal to safeguard the Company's shareholders as required by law, and seized control  
20 of the Acquisition process and its surrounding events in order to obtain material personal  
21 emoluments and benefits not shared with, or disclosed to, WatchGuard's shareholders.

22 2. Defendant Borey intentionally frustrated third party interest in acquiring or  
23 merging WatchGuard, by failing to negotiate in good faith with numerous potential suitors who  
24 made, and were willing to make, offers for the Company representing prices materially higher  
25  
26  
27

1 than the Acquisition price per share that Borey sponsored, and which the Directors <sup>1</sup> reflexively  
2 approved. Borey intentionally concealed critical information from the directors and from the  
3 shareholders, adopted takeover defense measures intended to force prospective suitors to  
4 acquiesce to his demands, and struck a secret deal with FP to be kept on after the Acquisition as  
5 interim CEO in exchange for facilitating a favorable (to FP) price for WatchGuard. Borey also  
6 systematically purged members of WatchGuard management knowledgeable and uncomfortable  
7 about his activities, and with the assistance of WatchGuard general counsel Mike Piraino  
8 (“Piraino”), destroyed key documents evidencing this misconduct.

10 3. Other directors of WatchGuard named herein as defendants, Steven N. Moore,  
11 Michael R. Kourey, Michael R. Hallman, Richard A. LeFaivre, and William J. Schroeder turned  
12 a blind eye to the activities of Borey in conscious disregard and abdication of their duties of  
13 loyalty and independence by ignoring the obvious signals and sources of information that  
14 indicated Borey was improperly conducting the sale of the Company.

16 4. The Directors’ breaches of fiduciary duties as described herein, allowed FP to  
17 exploit and facilitate the Directors’ breaches of fiduciary duty.

18 5. This action also alleges insider trading by Vector in purchasing shares of  
19 WatchGuard based on undisclosed material information related to Vector’s interest in the  
20 Company and on confidential due diligence materials given to Vector for the sole purpose of  
21 allowing Vector to make a formal bid for WatchGuard. Vector’s activities violated, at least,  
22 Section 10(b) of the Securities And Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. §  
23

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26 <sup>1</sup> “Directors” as used herein, collectively refers to Edward J. Borey, Steven N.  
27 Moore, Michael R. Kourey, Michael R. Hallman, Richard A. LeFaivre, and William J.  
Schroeder

1 78j(b)), Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), and Section 20A of the  
2 Exchange Act (15 U.S.C. § 78t-1).

3 6. The public shareholders of WatchGuard have not received the loyalty,  
4 independence and diligence required of fiduciaries, have been damaged by Vector's insider  
5 trading, and deprived of the true economic value of their holdings by being "squeezed out" at an  
6 artificial, insufficient price, .

### 8 JURISDICTION AND VENUE

9 7. This Court has jurisdiction over Defendants because they conduct business in  
10 Washington and/or are citizens of the State of Washington.

11 8. Jurisdiction is conferred upon this Court by Section 27 of the Exchange Act (15  
12 U.S.C. § 78aa); 28 U.S.C. §§ 1331, 1332(d) and 1367(a). The amount in controversy is greater  
13 than \$5,000,000 exclusive of interest and costs and members of the plaintiff class are citizens of  
14 states different from defendants herein. None of the exclusions in 28 U.S.C. § 1332(d)(3) or  
15 (d)(4) apply.

16 9. Venue is found in this district pursuant to: 28 U.S.C. § 1391(b), and (c). Venue is  
17 proper in this judicial district because: (a) one or more of the Defendants resided, transacted  
18 business, was found, or had agents in this district, and because a substantial part of the events  
19 giving rise to Plaintiff's claims occurred, and a substantial portion of the affected interstate trade  
20 and commerce described below has been carried out, in this district; (b) FP and Vector maintain  
21 offices, have agents, transact business, or are found within this judicial district; and/or (c)  
22 WatchGuard's principal place of business is located at 505 Fifth Avenue South, Suite 500,  
23 Seattle, Washington and certain of the Directors (including Edward J. Borey) are residents and  
24 citizens of the State of Washington.  
25  
26  
27

1 **PARTIES**

2 10. Non-party WatchGuard is a Delaware corporation that at all times material  
3 maintained its corporate headquarters in Seattle, Washington. WatchGuard provides Internet  
4 security solutions to enterprises that use the Internet for e-commerce and secure communications  
5 worldwide.

6  
7 11. Plaintiff Pennsylvania Avenue Funds is a Delaware statutory trust, headquartered  
8 at 4201 Massachusetts Ave. NW, Suite 8037C, Washington DC, 20016. Plaintiff was a  
9 shareholder of WatchGuard at all times relevant hereto, and voted 10,000 shares “against” the  
10 Acquisition on October 4, 2006. Plaintiff tendered or otherwise relinquished its shares pursuant  
11 to the Acquisition on or about October 12, 2006.

12 12. Defendant Edward J. Borey (“Borey”) was, prior to the October 4, 2006  
13 Acquisition, Chairman of the Board and Chief Executive Officer of the Company.

14  
15 13. Defendant Steven N. Moore (“Moore”) co-founded WatchGuard in February  
16 1996 and served as a director since inception and until the October 4, 2006 Acquisition. Moore  
17 has served as: chairman of the board, chief executive officer, and president of WatchGuard from  
18 December 2003 through June 2004 and as corporate secretary from inception through February  
19 2004. Mr. Moore served as executive vice-president of strategic financial operations of  
20 WatchGuard from October 2000 to June 2003, as chief financial officer and treasurer of  
21 WatchGuard from inception to October 2000, as executive vice-president of finance from March  
22 1999 to October 2000 and as vice-president of finance and operations from inception to March  
23 1999.

24  
25 14. Defendant Michael R. Kourey (“Kourey”) was a director of the Company from  
26 April 2003 until the October 4, 2006 Acquisition.

1 15. Defendant Michael R. Hallman ("Hallman") was a director of the Company from  
2 November 2000 until the October 4, 2006 Acquisition.

3 16. Defendant Richard A. LeFaivre ("LeFaivre") was a director of the Company from  
4 April 2003 until the October 4, 2006 Acquisition.

5 17. Defendant William J. Schroeder ("Schroeder") was a director of the Company  
6 from April 2002 until the October 4, 2006 Acquisition.

7 18. Defendant Francisco Partners, L.P. ("FP") is a private equity firm organized as a  
8 Delaware limited partnership, that at all times material maintained its corporate office at 2882  
9 Sand Hill Road, Suite 280, Menlo Park, CA 94025, and is the parent entity of Defendant  
10 Gladiator Corporation  
11

12 19. Defendant Gladiator Corporation ("Gladiator") is a FP affiliate company  
13 organized as a Delaware corporation formed solely for the purpose of entering into the  
14 Acquisition with WatchGuard, and which pursuant to the July 24, 2006 Agreement and Plan of  
15 Merger, is now the parent company of WatchGuard and successor to its liabilities.  
16

17 20. Defendant Vector Capital Corporation ("Vector") is a private equity firm  
18 organized as a Delaware corporation, that at all times material maintained its corporate office at  
19 456 Montgomery Street, 19th Floor, San Francisco, CA 94104, and is the parent entity of  
20 Defendant Vector Capital III, L.P.  
21

22 21. Defendant Vector Capital III, L.P. ("Vector III") is a Vector affiliate company  
23 organized as a Delaware limited partnership that purchased voting shares or other like interests in  
24 Gladiator on behalf of Defendant Vector.

25 22. Defendant Alexander R. Slusky ("Slusky") is the founder and managing partner  
26 of Vector Capital.  
27

1 **BACKGROUND TO THE WATCHGUARD SALE**

2 23. WatchGuard is a provider of Internet security solutions that are designed to  
3 protect small to medium-sized businesses in using the Internet for e-commerce and secure  
4 communications. The Company went public in July 1999 at \$13.00 per share, peaking at a price  
5 of over \$120 per share in 2000 before falling precipitously. by 2002 WatchGuard stock had  
6 plummeted to a single digit price per share.  
7

8 24. Under the Directors' stewardship, the Company failed to perform as had been  
9 expected. WatchGuard's revenues had steadily declined and understandably, shareholders  
10 became increasingly frustrated with the performance and capabilities of the Company. Pressure  
11 mounted to replace management.  
12

13 25. According to the Directors' September 1, 2006 Definitive Notice and Proxy  
14 Statement (the "September 1<sup>st</sup> Proxy"), an initial expression of interest from Vector came in  
15 March of 2005. The September 1<sup>st</sup> Proxy states that "[i]n March and April 2005, representatives  
16 from Vector Capital contacted representatives of WatchGuard to express general interest in a  
17 strategic transaction with WatchGuard. Soon thereafter, representatives of WatchGuard met with  
18 representatives of Vector Capital to discuss WatchGuard's business based on publicly available  
19 information." This statement was incomplete, inaccurate and misleading.  
20

21 26. According to Confidential Witness Number 1 ("CW1"),<sup>1</sup> the "representatives of  
22 WatchGuard" were defendant Borey and WatchGuard general counsel Piraino who met with  
23 Vector's managing partner, defendant Slusky. During their meetings, Borey stated that his  
24 support of any transaction, whether a merger or acquisition by Vector was dependant on, inter  
25 alia, Vector keeping Borey employed as interim CEO. Defendant Slusky refused Borey on this  
26

27 <sup>1</sup> Confidential Witness Number 1 ("CW1") was an executive vice president of WatchGuard who reported directly to defendant Borey. CW1 was intimately involved in the acquisition process.

1 point. Slusky's insistence that offers be presented not to Borey but to the Company's board of  
2 directors (the "Board") caused discussions to stall.

3 27. According to CW1, immediately following Vector's contact in late March 2005 as  
4 above referenced, Borey reviewed his compensation package received when Borey was hired on  
5 June 30, 2004 (the "2004 Compensation Package").

6 28. Borey then recognized that the significant decline in WatchGuard's stock price  
7 since Borey's hire left his options to purchase 1,000,000 shares of WatchGuard stock  
8 "underwater" (i.e., worthless). Borey's options had a strike price of \$7.21 per share, and at the  
9 time, on or about April 1, 2005, WatchGuard was trading at approximately \$3.25 per share. This  
10 was a significant concern for Borey, who enjoyed by far the largest share, (16.54 percent) of  
11 outstanding options. Borey concluded that the 2004 Compensation Package, with its heavy  
12 weight on stock option compensation, conferred inadequate benefit in a change in control  
13 transaction. Borey directed that Piraino immediately revise the 2004 Compensation Package and  
14 stock option plan.  
15

16 29. With the assistance of outside counsel, Orrick, Herrington & Sutcliffe ("Orrick"),  
17 within days of Borey's directive, Piraino had drafted a "Change in Control Severance  
18 Agreement" (the "Enhanced Severance Agreement") for Borey that contained the following  
19 changes to his 2004 Compensation Package:  
20

21 (a) Borey would receive all severance benefits if he resigned or was terminated  
22 within eighteen (18) months after a corporate transaction;

23 (b) Borey would receive his performance bonus for the year of termination prorated  
24 by the number of calendar days Borey was employed by the Company during such year; and  
25  
26  
27



1 (c) Cash payments thus owing to Borey would be made in lump sum payment within  
2 7 days after Borey's execution of a severance agreement executed in connection with any change  
3 of control transaction.

4 30. According to CW1, at Borey's instruction, the Enhanced Severance Agreement  
5 provided that Borey would collect severance benefits for up to 18 months following a change in  
6 control transaction because Borey was determined to collect severance only after enjoying a  
7 period as interim CEO of the entity resulting from a change in control.

8 31. In addition, at Piraino's instruction, Orrick was instructed to draft an option  
9 exchange agreement providing that options previously granted and having a strike price above  
10 \$6.00 per share would be cancelled and replaced with new options in the following ratio:

11 - Cancelled options with an exercise price of between \$6.00 and \$8.00 per share  
12 would be replaced at an exchange ratio of 9 replacement options for every 10 cancelled options,  
13 or 90%;

14 - options with an exercise price of between \$8.01 and \$10.00 per share would be  
15 replaced at an exchange ratio of 75%; and

16 - options with an exercise price of \$10.01 per share or greater would be replaced at  
17 an exchange ratio of 33.3%.

18 The exercise price of the replacement options would be determined as the average of the high  
19 and low trading price of WatchGuard shares on the date the option holder elected to exercise the  
20 exchange (the "Option Regrant").

21 32. CW1 reported that Borey instructed Piraino to have the Option Regrant drafted in  
22 a manner particularly beneficial to his interests but to attempt to disguise this objective.  
23 Unsurprisingly, Borey stood to gain the most from the Option Regrant. Borey's options to buy  
24  
25  
26  
27

1 1,000,000 shares at an exercise price of \$7.21 per share could be exchanged for options to buy  
2 900,000 shares, with guaranteed profitability in the event of WatchGuard's sale or other  
3 disposition.

4 33. The Option Regrant was significantly dilutive of WatchGuard shareholders'  
5 interest in the Company. The options reissued pursuant to the Regrant represented approximately  
6 10.27 percent of WatchGuard's outstanding stock as of April 18, 2005.

7  
8 34. On April 13, 2005, Borey conducted a Board meeting and presented the Enhanced  
9 Severance Agreement and Option Regrant for Board approval. Borey represented to the Board  
10 that the Option Regrant resulted from a need to provide key employees an incentive to grow the  
11 company. In fact, Borey's Option Regrant was intended to enrich Borey in a change of control  
12 transaction that he recognized was imminent and pursuant to which his options would become  
13 fully vested by the Enhanced Severance Agreement. The Enhanced Severance Agreement was  
14 presented to the Board with a "Form of Change in Control Severance Agreement" for other  
15 executives that was broadly worded and needed to be finalized at a later date. According to  
16 CW1, defendant Borey intentionally did not disclose Vector's interest to the Board, or that the  
17 purpose of the Option Regrant and Borey's Enhanced Severance Package were to benefit Borey  
18 in a change in control transaction.  
19

20 35. On April 19, 2005, WatchGuard issued a Form 8-K disclosing that:

- 21 (a) on April 13, 2005, the Board had approved the Option Regrant. and  
22 (b) the Company executed Borey's Enhanced Severance Agreement.  
23

24 36. According to CW1, from late March to early April 2005, defendant Slusky  
25 repeatedly attempted to have Borey present Vector's proposed strategic transaction and high  
26 level of interest to the Board. However, Borey refused to do so unless Vector agreed to keep  
27

1 Borey as interim CEO. CW1 reported that defendant Slusky viewed Borey as incompetent and  
2 refused Borey any personal quid pro quo. After Borey's initial meetings with Slusky and  
3 Slusky's refusal to "play ball", Borey intentionally sought to frustrate subsequent initiatives by  
4 Vector to pursue an acquisition of the Company except on terms dictated by Borey.

5  
6 37. According to CW1, Borey was thereafter concerned that Vector would attempt to  
7 acquire control of WatchGuard through open market share purchases, or pursue similar avenues  
8 to gain control of the Company. To address this contingency, and prevent Vector from gaining  
9 control of WatchGuard, Borey directed that Piraino and Orrick draft a "rights agreement" (i.e.  
10 "Poison Pill).

11 38. The Poison Pill was adopted by the Board on May 5, 2005. It had the intended  
12 effect of making WatchGuard much more expensive and difficult to acquire via open market  
13 purchases, and/or required a potential suitor to negotiate with the Board concerning the terms of  
14 any change in control transaction. WatchGuard's shareholders were required to approve and  
15 ratify the Poison Pill, a step calendared for May 4, 2006 shareholders meeting.

16  
17 39. On May 6, 2005, WatchGuard issued a press release concerning the Board's  
18 adoption of the Poison Pill, which was filed with the SEC on May 9, 2006 as an attachment to  
19 Form 8-K. The press release stated, inter alia, that "WatchGuard is not currently aware of any  
20 attempts to acquire control of the Company." This statement was deceptive, false and  
21 misleading, as defendant Borey and Piraino, at least, were aware that Vector had expressed  
22 interest in acquiring WatchGuard.

23  
24 40. On May 18, 2005, pursuant to the Option Regrant, defendant Borey exchanged  
25 his options to purchase 1,000,000 shares of WatchGuard at a strike price of \$7.21 for options to  
26 buy 900,000 shares at \$3.45 per share.

1           41.     The “Background to the Merger” section of the September 1<sup>st</sup> Proxy stated that on  
2 June 20, 2005, a potential suitor identified solely as a member of “Group A” began a series of  
3 discussions with WatchGuard management concerning a sale of WatchGuard. The September 1<sup>st</sup>  
4 Proxy identifies the prospective suitors as: Companies A through H, and Funds A through G  
5 (collectively referred to as the “Alphabet Suitors”).  
6

7           42.     According to CW1, Borey’s interest in maintaining his salary and other  
8 perquisites following a change in control transaction was not limited to discussions involving  
9 Vector. In fact, CW1 reported that Borey frustrated numerous potential suitors by his insistence  
10 on being retained as interim CEO. As reported by CW1 and Confidential Witness No. 2  
11 (“CW2”),<sup>2</sup> in order to keep information from the Board and employees, defendant Borey and  
12 Piraino kept the sale of WatchGuard extremely “close to the chest”. Borey instituted a  
13 systematic, “top secret” process designated by code name as “Project Warrior” by which  
14 potential suitors were screened to facilitate discussions only with those potential suitors willing  
15 to cede to Borey’s demands. CW1 and CW2 report that all persons involved in Project Warrior  
16 were instructed by Borey and Piraino to refer to Project Warrior only by its code name.  
17

18           43.     According to CW1, only defendant FP was willing to keep Borey as interim CEO.  
19 Other prospective acquirers or suitors identified in the September 1<sup>st</sup> Proxy by letter designation  
20 were intentionally steered away by Borey’s insistence on self-aggrandizement and his  
21 presentation of unreasonable terms and conditions pursuant to Project Warrior. Among prospects  
22 expressing interest in WatchGuard but discouraged by Project Warrior were: SonicWALL, Inc.  
23 (network security products), Cisco Systems, Inc. (networking equipment and network  
24  
25

26           <sup>2</sup> Confidential Witness No. 2 (“CW2”) was also an executive vice president of WatchGuard who reported to  
27 defendant Borey. CW2’s involvement in the acquisition process consisted of presenting information about  
WatchGuard to potential suitors.

1 management), Symantec Corporation (internet security), D-Link Corporation (networking  
2 systems), NETGEAR, Inc. (computer networking products), and Citrix Systems, Inc.  
3 (application delivery). CW1 reported that representatives of these companies driven off by Borey  
4 uniformly expressed disappointment at being denied the opportunity to seriously negotiate the  
5 acquisition of WatchGuard.  
6

7 44. According to CW1, defendant Borey and Piraino hermetically sealed virtually  
8 every meeting with Vector, FP and the Alphabet Suitors and then sterilized the information  
9 presented to the Directors or did not report the content of meetings.

10 45. According to CW1, at no time did the Directors supervise Borey's conduct of  
11 meetings and negotiations with potential suitors, never actively participated in any negotiations  
12 with potential suitors, never instituted appropriate safeguards to ensure that Borey and Piraino's  
13 activities were undertaken for the best interests of the shareholders, never created a committee to  
14 consider and manage acquisition interest, never privately interfaced or communicated with  
15 WatchGuard's investment banker or its law firm charged with assisting the Acquisition process,  
16 and never met with prospects or professionals assisting the process without the attendance of  
17 Borey.  
18

19 46. In essence, the Directors turned a "blind eye" even though they were aware of the  
20 importance of a change in control transaction and its imminence.  
21

22 47. In September 2005, Borey and Vice President of Corporate Development Miles  
23 Goda<sup>3</sup> met with six investment banking firms, including Wachovia Capital Markets LLC  
24

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25 <sup>3</sup> According to CW1 Miles Goda was dismissed by Borey as executive vice president of corporate  
26 development for his refusal to acquiesce to Borey's self-serving conduct during the Acquisition process. Other  
27 vice presidents purged by Borey for having too much knowledge and/or objecting to Borey's practices were:  
Dale Bastian, Senior Vice President of Worldwide Sales; John Stuckey, Vice President of Product Marketing.  
According to CW1, most importantly, James Richman, the Company's Interim Chief Financial Officer was  
purged as Chief Financial Officer to be replaced by Borey's "yes man", Bradley Sparks.

1 (“Wachovia”) to choose a firm for a strategic sale or merger alternatives. CW1 reported that  
2 defendant Borey invariably hired service partners and consultants on a basis apart from their  
3 competence. Borey did not select Wachovia because Wachovia had superior abilities in mergers  
4 and acquisitions– which it did not – but because Borey had a personal relationship with members  
5 of Wachovia’s investment banking team that would maximize his ability to control their actions.  
6 Concerning Wachovia, the other Directors completely left the interview process and engagement  
7 of investment bankers to Borey ignoring their duty to stay informed about Borey’s activities  
8 concerning a sale of the Company.  
9

10 48. The September 1<sup>st</sup> Proxy states that on December 13, 2005, Company A sent a  
11 letter to WatchGuard proposing a strategic transaction between WatchGuard and Company A,  
12 with consideration consisting of 50 % stock in Company A and 50 % cash, representing a value  
13 of approximately \$4.75 to \$5.00 per share as of the date of the offer. However, based on reports  
14 from CW1, Borey would not support a strategic transaction with Company A, because Company  
15 A’s proposal required Borey and other management to step down, a result inconsistent with  
16 Borey’s Project Warrior.  
17

18 49. On February 17, 2006, in an attempt to circumvent Borey’s negotiating stance and  
19 work directly with the Board, Vector sent a letter to the Directors proposing to acquire the  
20 Company (the “February 17 Letter”). The Letter stated:  
21

22 Dear Members of the Board of Directors:

23 We would like to express our strong interest in acquiring WatchGuard  
24 Technologies, Inc. (The “Company”) via an all-cash merger or tender offer that  
25 would provide a significant premium to your current shareholders. Vector Capital  
26 Corporation (with its affiliates, “Vector”) is a technology private equity boutique  
27 specializing in buyouts, spinouts and recapitalization of established technology  
businesses. We have become very familiar with the Company through publicly  
available sources and numerous conversations with those knowledgeable about  
the Company and its competitors. We have formed a fundamental investment  
thesis regarding the Company’s potential in the enterprise security solution sector

1 and have become a significant shareholder of the Company. It now appears clear,  
2 however, that the Company's status as a sub-scale public company is preventing  
3 WatchGuard from achieving its potential.

4 The Company's shareholders, employees, and customers would all benefit from  
5 Vector's acquisition of the Company. In addition to delivering a value-  
6 maximizing premium to current shareholders, such a transaction would relieve all  
7 stakeholders from the ongoing risks and costs associated with the hostile  
8 environment for small, publicly-traded technology companies. Finally, as a well-  
9 capitalized, nimble private company, WatchGuard could more effectively pursue  
10 its strategic objectives. We believe that the case in favor of this course of action  
11 is compelling and is virtually demanded by the Company's present circumstances.

12 We are deeply concerned that there may already be a board-initiated process, or  
13 other initiative being pursued, to sell the Company without our involvement. In  
14 particular, market rumors suggest that Wachovia Securities has already begun to  
15 contact potential buyers. If true, we feel it appropriate – and likely mandated by  
16 the Board's fiduciary duties – to immediately include us in that process and afford  
17 us the same access to information and management that is being afforded to other  
18 participants. If our information is not accurate, please confirm to us that  
19 investment bankers have not been engaged and that no sales process is being  
20 considered.

21 In either event, we request a prompt meeting with the Board to explain our  
22 investment philosophy, our concerns with the Company's present direction and  
23 our proposed value-maximizing alternative. As we have demonstrated in our  
24 recent acquisitions of Register.com and Corel Corporation, we have significant  
25 experience completing transactions that fairly balance the interests of public  
26 shareholders and those of the post-transaction stakeholders. (*emphasis added*).

27 50. The September 1<sup>st</sup> Proxy stated that on February 17, 2006, FP also made an offer  
to acquire the Company for between \$5.00 and \$5.50 per share.

51. According to CW1, Vector's February 14 Letter was received at one of the  
Company's fax machines located near the executive offices. Borey and Piraino intercepted  
Vector's February 14 Letter and never presented it to the other Directors as addressed. By  
burying the February 17 Letter, Borey effectively postponed Vector's attempt access the Board.

52. Based on reports by CW1, Borey instead responded to the February 17 Letter by  
holding meetings with defendant Slusky, and according to CW2, did so the week of March 13,  
2006. The September 1<sup>st</sup> 2006 Proxy stated that: "[i]n response to the letter received from Vector

1 Capital dated February 17, 2006, on February 24, 2006, a member of WatchGuard management  
2 met with a representative of Vector Capital to discuss more fully the nature and extent of Vector  
3 Capital's possible interest in a strategic transaction involving WatchGuard." This statement was  
4 misleading and omitted material information by failing to disclose that defendant Slusky had not  
5 only met with Borey and Piraino, but also received presentations from several of WatchGuard's  
6 executive vice presidents to undertake extensive due diligence.  
7

8 53. Prior to Borey's meetings with Vector on or about March 13, 2006, defendant  
9 Slusky executed the customary non-disclosure and standstill agreements. At the request of  
10 Bradley Sparks, Watchguard's Chief Financial Officer ("Sparks"), CW2 made a presentation to  
11 Vector during the week of March 13, 2006. Communications about the meeting were extremely  
12 sensitive and accomplished using the code name Project Warrior. CW2 reported that attendees of  
13 the meeting were defendant Borey, Piraino, Sparks, defendant Slusky and an "oriental gentleman  
14 from Vector". CW2's presentation lasted several hours and disclosed confidential and  
15 proprietary information about WatchGuard's product, product demand, marketing strategy,  
16 development and long term plans, as well as a "financial component" of the product information  
17 provided. Slusky and the "oriental gentleman" were both given copies of the presentation  
18 materials. CW2 reported that the meeting was one in a series of due diligence presentations made  
19 to Vector by WatchGuard's team of executive vice presidents.  
20  
21

22 54. From January 23 through March 22, 2006, Vector III acquired shares of  
23 WatchGuard on the open market at prices of between \$3.95 and \$4.48 per share. Vector III  
24 purchased an additional 1.57 million shares on the open market between March 14, 2006 and  
25 March 22, without publicly disclosing its February 17 Letter or the information accessed through  
26  
27



1 the meetings and due diligence procedures. Vector's February 17 Letter was extremely material,  
2 evidencing Vector's knowledge (not public) that WatchGuard was "in play".

3 55. According to the September 1<sup>st</sup> Proxy, Vector was given access to WatchGuard's  
4 books and records and had repeated discussions with WatchGuard management and its  
5 representatives, including Wachovia. Vector partially disclosed its January 23 through March 22,  
6 2006 purchases of WatchGuard stock, the February 17 Letter, and its access to and involvement  
7 with WatchGuard management in a 13-D filing of March 23, 2006.

8 56. Though Vector had represented it would pay a "value maximizing premium to  
9 current shareholders", Borey did not publicly or timely disclose Vector's interest in WatchGuard.  
10 Borey's believed that impeding disclosure would cause the shareholders to ratify the Poison Pill  
11 at the May 2006 annual meeting and therefore allow Borey to control the terms of any eventual  
12 transaction pursuant to Project Warrior. Borey knew that if shareholders were aware of the status  
13 of WatchGuard and its prospective sale, investors would vote down the Poison Pill, recognizing  
14 it as an impediment to gaining the highest price per share.

15 57. With weeks passing since its February 17 Letter and subsequent due diligence  
16 meetings, the Directors not responding, and the annual shareholder meeting rapidly approaching,  
17 Vector made its offer public through the above mentioned March 23, 2006 13-D.

18 58. According to CW1, when defendant Borey learned that defendant Slusky had  
19 circumvented Project Warrior by disclosing the February 17 Letter in a public filing, Borey  
20 became enraged and vowed to oppose any transaction involving Vector.

21 59. Shareholder and analyst sentiment immediately coalesced around pursuing the  
22 Vector transaction or otherwise disposing of WatchGuard. However, the Directors still failed to:  
23 fulfill the duty owed to shareholders by prudently engaging in the sale process, interfacing with  
24  
25  
26  
27

1 Orrick<sup>4</sup> or Wachovia (without management), institute a board committee to consider expressions  
2 of interest, monitor negotiations with suitors, or otherwise undertake affirmative acts to  
3 safeguard the shareholders. The Directors did not act in their capacity as fiduciaries by allowing  
4 Borey to frustrate expressions of interest pursuant to Project Warrior. The Directors instead  
5 urged the Company's shareholders to ratify the 2005 Poison Pill.  
6

7 60. On April 24, 2006 – the eve of the 2006 annual meeting – the Directors  
8 announced the hiring of Wachovia as a financial advisor to assist in the evaluation of strategic  
9 alternatives.

10 61. Vector's March 23, 2006 13-D caused WatchGuard's shareholders to be  
11 increasingly aggressive in expressing their dissatisfaction with the course of events at  
12 WatchGuard and to place the Board on notice of a heightened role. For example, on May 3,  
13 2006, a large WatchGuard shareholder, SACC Partners LP, issued a press release disclosing an  
14 earlier letter sent to the Directors:  
15

16 Members of the Board of Directors:

17 As you are aware, SACC Partners, LP has been a shareholder of  
18 WatchGuard (WGRD) for the past two years having acquired approximately 2%  
19 of the outstanding shares. As a large shareholder and a proud user of several  
20 WatchGuard Firebox Core, SOHO and Firebox Edge appliances, we are excited  
21 about the opportunities in front of the Company. That said, however, we have  
22 been very disappointed with the financial performance of the Company over the  
23 past few years. Thus, we were encouraged to learn that Vector Capital  
24 Corporation ("Vector") has expressed an interest in acquiring WatchGuard as  
25 indicated in a letter from Vector, dated February 17, 2006 and disclosed in a  
26 recent 13-D filing. While we are encouraged by your recent hiring of Wachovia  
to review strategic alternatives, we want to emphasize to you that we are strongly  
against your proposal to put a Rights Agreement in place at the annual meeting  
scheduled to take place Thursday, May 4<sup>th</sup>. We agree with ISS that having a  
poison pill in place is NOT in the best interest of shareholders as it entrenches  
management and the board and discourages legitimate suitors from pursuing an

27 <sup>4</sup> CW1 reported that the professionals at Orrick were giving Borey direct instructions and were managing  
the Acquisition process as Borey's personal investment advisor rather than as attorneys for the Company.

1 acquisition of the Company. Therefore, we have submitted our vote AGAINST  
2 the Rights Agreement.

3 Over the past year, WatchGuard's execution has been poor and we have  
4 not seen any material progress in the "eighteen-month turnaround" program,  
5 which was initiated soon after the Company hired its current CEO and Chairman.  
6 The company has shown five straight quarters of declining revenues (year-over-  
7 year) and the Company generated its tenth year of operating losses since its  
8 inception in 1996. In our opinion, WatchGuard's performance has simply been  
9 unacceptable.

10 Additionally, we have been disappointed in the Company's lack of a  
11 buyback program over the last year and a half. You have publicly stated that  
12 acquisitions are not in your long-term plan and that the Company and  
13 shareholders would be rewarded by focusing on improving operations. However,  
14 you have refrained from a share buyback despite exiting the 4<sup>th</sup> quarter with \$77.8  
15 million in cash and a relatively small cash burn. Given your apparent lack of need  
16 for cash and your belief that a focus on operations will result in stronger  
17 profitability we are disappointed that you have refrained from repurchasing shares  
18 even when the company's enterprise value, based on share prices in the market,  
19 has fallen to as low as \$30 million dollars.

20 While we believe there are significant growth opportunities in the IT  
21 Security market overall, we are concerned that increasing competition as well as  
22 the costs of being a public company will limit WatchGuard's growth potential in  
23 both the near-term and long-term. Given how fragmented the IT Security  
24 industry is, especially as it relates to UTM providers, we believe that  
25 consolidation is inevitable and we have indicated many times that we believe  
26 WatchGuard would make a compelling acquisition target for a strategic or  
27 financial buyer. We also believe strongly that your size and growth prospects  
make it difficult to be a profitable public company given the costs associated with  
being public. For example, selling to a private company would result in the  
streamlining of executive management, removal of Board fees and related costs  
including D & O insurance, rationalization of sales and research as well as  
auditing costs to name a few. Whether a purchase by Vector or a purchase by a  
competitor, we believe that the timing is appropriate and that you should  
aggressively pursue this opportunity. We agree with Vector that as a nimble  
private company WatchGuard could more effectively pursue its strategic  
objectives. Thus, we urge you to seriously consider Vector's offer and pursue a  
sale of the Company sooner rather than later (*emphasis added*).

62. SACC's May 3, 2006 letter would have reasonably alerted the Directors to the  
need to adopt suitable controls to protect shareholders. Instead, the Directors disregarded clear

1 signals indicating communication problems, failed to monitor or check Borey's activities, and  
2 did not otherwise effectively act to safeguard Company shareholders.

3 63. On May 4, 2006, WatchGuard's shareholders voted against the Poison Pill and the  
4 Directors recommendation for its continued effect.

5 64. Following the shareholders' May 4, 2006 vote, the Directors refused to engage in  
6 competent, responsible, fair and open negotiations to sell the Company, its assets, or otherwise  
7 maximize shareholder value.  
8

9 65. On May 22, 2006, FP submitted to Borey a conditional bid of \$5.00 per share.  
10 While not binding, the May 22, 2006 bid invited negotiation and the prospect of a higher price.

11 66. On May 26, 2006, Vector offered to purchase WatchGuard for cash consideration  
12 of \$5.10 per share through a statutory merger. This offer was disclosed in a May 31, 2006  
13 amended 13-D. This purportedly represented a 35% premium to the trading price of the stock on  
14 the day preceding Vector's (May 26, 2006) letter presenting the \$5.10 offer. The letter stated  
15 *inter alia*, that "[w]e believe.. the best course for WatchGuard shareholders is a cash transaction  
16 at a meaningful premium." (*emphasis added*). Significantly, Vector's offer was not contingent on  
17 third party financing or third party approvals, and was pre- approved by Vector's investment  
18 committee. The "offer sheet" stated that a merger agreement could be reached expeditiously and  
19 the prospect for a higher negotiated price was clear.  
20

21 67. Although Vector's offer was definite, concrete, and \$0.10 per share higher than  
22 FP's offer, Borey continued his refusal to support the transaction unless Vector agreed to employ  
23 him as interim CEO. CW1 reported that although Borey would not retreat from his self-dealing  
24 demands, Vector continued to conduct due diligence into WatchGuard's business and assets  
25 believing Borey would necessarily have to proceed with good faith negotiations. However, CW1  
26  
27

1 reported that Vector's concerns about Borey's competence was only enhanced when he fell  
2 asleep during a due diligence presentation.

3 68. According to CW1, although the other Directors were aware of Vector's \$5.10 per  
4 share bid, Borey's criticism of Vector did not cause the Directors to take a single initiative to  
5 independently safeguard the shareholders. The Directors responded to Vector's \$5.10 offer by  
6 failing to commence negotiation to bind Vector's offer as a "floor" by publicizing the process to  
7 precipitate a broad interest and open bidding. According to CW1, Borey's control prevented  
8 Vector from *ever* presenting an offer to the Board, explain its pricing or determine pricing  
9 flexibility.  
10

11 69. With a \$5.10 initial offer on the table and the sale of WatchGuard and/or its assets  
12 imminent following the May 4, 2006 shareholder rejection of the Poison Pill, the Directors  
13 abdicated their fiduciary duties by permitting Borey to frustrate, delay and impede an open  
14 process for the sale of Watchguard and instead pursue Project Warrior.  
15

16 70. Based on reports by CW1, following FP's May 22, 2006 \$5.00 offer, Borey  
17 actively pursued FP and offered to support its transaction proposal provided that FP allow Borey  
18 to be interim CEO consistent with Project Warrior. FP agreed to keep Borey as interim CEO, and  
19 because Piraino was the other member of WatchGuard management actively involved in  
20 negotiations, FP offered Piraino the position of interim Chief Operation Officer ("COO"). In  
21 exchange, Borey and Piraino agreed to give FP preferential treatment in the acquisition process.  
22

23 71. On June 26, 2006, FP lowered its proposed consideration to \$4.60 per share. No  
24 justification for this decrease was ever disclosed by the Directors in proxy solicitations or  
25 otherwise. However, according to CW1, FP lowered its bid to \$4.60 per share specifically  
26 because it had purchased the support of Borey and Piraino.  
27

1           72.     Responding to FP's decreased offer of \$4.60, also on June 26, Vector submitted a  
2 revised conditional proposal to acquire WatchGuard for \$4.65 per share. According to Vector's  
3 amended 13-D, the offer would remain open for 30 days pending the Directors' pursuit of a  
4 transaction. Although Vector stated that it "continue[d] to believe that WatchGuard shareholders  
5 strongly prefer a sale of the company as soon as possible to the highest cash bidder," and had  
6 temporarily out-bid FP, Borey had already committed himself to sell the Company to FP by this  
7 time.  
8

9           73.     The September 1<sup>st</sup> Proxy states that in response to FP and Vector's decreased  
10 bids, the Board directed Borey, Piraino and representatives of Wachovia to contact Vector and  
11 FP to express a willingness to sell the Company for consideration in excess of \$5.00 per share.  
12 However, Borey and Piriano knew this to be valueless at the time, not informing the Directors  
13 that the two had already agreed to support a transaction involving FP in exchange for personal  
14 benefits.  
15

16           74.     Based on reports from CW1, Borey contacted Vector and communicated that the  
17 Board would not accept bids of less than \$5.00 per share. Based on CW1's reports, Borey  
18 approached FP and communicated that he effectively controlled the Directors and acquisition  
19 process and could convince the Directors to accept FP's offer of \$4.60 per share provided Vector  
20 did not offer a bid topping \$5.00.  
21

22           75.     According to the September 1<sup>st</sup> Proxy, on July 18, 2006, FP again lowered its  
23 price per share bid for WatchGuard shares to \$4.25 per share, and represented that the offer  
24 would expire if not accepted by 12:01 p.m. on July 21, 2006, a mere three days later.  
25

26           76.     On July 20, 2006, Vector again contacted members of WatchGuard management  
27 to reiterate its continued interest in acquiring the Company. Instead of negotiating with Vector,

1 defendant Borey instructed Wachovia and Orrick to communicate to Vector that an alternative  
2 transaction with FP was imminent. Later that evening, Vector responded further, telling Borey's  
3 representatives at Wachovia that Vector would put forth an additional bid. Based on reports by  
4 CW1, at Borey's direction, Wachovia provided Vector with a draft merger agreement that  
5 included a provision for the continued employment of Borey and Piraino as interim CEO and  
6 COO, respectively.

7  
8 77. The September 1<sup>st</sup> 2006 Proxy states that, "[l]ater during the evening of July 24,  
9 2006, *following the conclusion of the WatchGuard board meeting [approving FP's \$4.25 per*  
10 *share offer]*, Vector Capital sent an email to representatives of Wachovia Securities and  
11 WatchGuard management stating its intention to provide by July 27, 2006 a revised proposal to  
12 acquire WatchGuard... [at] a 'substantial premium' to WatchGuard's then-current share price of  
13 \$3.73." (emphasis added). However, according to CW1, the above statement is false. According  
14 to CW1, Vector contacted the Directors before the Directors held their vote to approve the  
15 Acquisition. Upon receipt of Vector's July 24 overture, Borey insisted to the Directors that too  
16 much had been invested in the deal with FP to consider Vector's offer.

17  
18 78. On July 25, 2006, the Directors announced that on July 24, 2006 WatchGuard,  
19 Gladiator and FP's merger vehicle Warrior Merger Sub, Inc. had entered into an Agreement and  
20 Plan of Merger (the "Merger Agreement") to accept \$4.25 per WatchGuard share, an 18%  
21 decrease from earlier offers. This revelation, stunning in itself given the pendency of a  
22 significantly higher initial offer(s), was indefensible given the Directors' many opportunities to  
23 pursue or encourage multiple alternative bidders and, at least, ensure recourse to \$5.10 per share  
24 from Vector. The Directors failed to maximize shareholder value, abdicated their fiduciary  
25 responsibilities in that regard.  
26  
27

1           79.     When Vector analysed the \$4.25 price per share accepted by the Directors, Vector  
2 realized that the proceeds from tendering its shares pursuant to the Acquisition would be below  
3 its investment cost and profit threshold. In other words, \$4.25 was too low for Vector to accept,  
4 given the investment return requirements of Vector as a private equity firm.

5           80.     CW1 reported that, Bradley Sparks, WatchGuard's CFO told CW1 that there were  
6 in fact offers made for the Company better than Vector and FP's offer, but that Borey's  
7 insistence on closing a deal with FP operated to foreclose such other offers. Sparks reportedly  
8 told CW1 that had the Directors not blindly followed Borey and Piraino's recommendations to  
9 accept FP's \$4.25 per share offer, other potential suitors that had not lost interest but merely  
10 driven off, had intended to submit higher offers.

11           81.     In a section of the September 1<sup>st</sup> Proxy summarizing the terms of the Merger  
12 Agreement entitled "Board of Directors of the Surviving Corporation", the Proxy represented  
13 that "[t]he directors and officers of Warrior immediately prior to the merger will become the  
14 directors and officers of the surviving corporation following the merger." However, based on  
15 reports from CW1, this statement was false. Defendant Borey and Piriano had then existent  
16 agreements with FP to be retained following the Acquisition as interim CEO and COO,  
17 respectively.

18           82.     On July 25, 2006, Defendant Borey held a conference call to discuss the  
19 Acquisition in which, when asked directly about potential competing offers, directly stated:

20           **Ben Stoller - Harman Stoller Capital - Analyst**

21           Congratulations on signing a deal, I guess. No[w] in terms of the breakup fee[],  
22 any color in terms of what the breakup fee and does it still allow the Company to  
23 be shopped? I agree that putting a deal on the table and creating a floor for the  
24 stock, but is the Company still in play or is it off the market now? Is there a  
25 prohibitive breakup fee for anybody else to come in?  
26

27           **Ed Borey - watchguard Technologies, Inc. - Chairman, President and CEO**



1 No. There is a customary breakup fee that is associated with the deal. It is slightly  
2 less than 4%. That breakup fee, fees and expenses, probably comes to about \$6  
3 million. I would also like to comment, Ben, on a couple other things that you  
4 mentioned[,] certainly there is opportunity for someone in the process to offer a  
topping bid and the Company, the Board would have to – would follow its  
fiduciary responsibilities and would evaluate such a thing. (emphasis added).

5 83. Defendant Borey failed to mention however, that contemporaneously with the  
6 Merger Agreement, the Directors had executed support agreement(s) a “no shop” provision and  
7 termination fee (the “Defensive Measures”), the combined effect of which eliminated any ability  
8 to solicit or encourage higher competing offers by Vector and others. The Defensive Measures  
9 were not negotiated as a way to protect a superior bid, advance the auction process, or otherwise  
10 act to enhance shareholder value.

11 84. Given the Defensive Measures and the history of negotiations between Vector and  
12 Borey, it was necessary for Vector to find a means of translating its willingness to pay a higher  
13 price per share into an opportunity to purchase WatchGuard. To accomplish this, on or about  
14 August 1, 2006 Vector contacted FP and stated that it was prepared to legally challenge the  
15 legality of the Merger Agreement, or alternatively, Vector would pay to be FP’s partner in the  
16 acquisition. FP accepted Vector’s proposal to buy-into the Acquisition.

17 85. On August 16, 2007, Vector, having earlier dropped out of formal bidding, by and  
18 through its wholly owned subsidiary Vector III agreed to purchase 50 percent of the voting  
19 shares or other like interests in Gladiator, the parent company of WatchGuard pursuant to the  
20 Merger Agreement (the “Letter Agreement”). The Letter Agreement made Vector a 50% owner  
21 of WatchGuard and all liabilities appertaining thereto. The announcement confirmed the  
22 agreement between FP and Vector as referenced in paragraph 84 above.

23 86. CW1 reported that (s)he witnessed Piraino destroy key documents concerning  
24 Borey and Piraino’s secret deal with FP, as well as other documents concerning the process  
25  
26  
27

1 leading up to the Acquisition. CW1 reported that such destruction of documents occurred on or  
2 about October 4, 2006 at WatchGuard's executive offices.

3 87. Per the above, the entire WatchGuard Acquisition was tainted as particularized  
4 above. As such, shareholder approval of the Acquisition on October 4, 2006 was based on  
5 materially false, incomplete and/or misleading information, and was not the result of a fully  
6 informed vote.  
7

### 8 CLASS ALLEGATIONS

9 88. Plaintiff brings this action on its own behalf and as a class action pursuant to  
10 Federal Rule of Civil Procedure 23(a) and (b)(3). The class Plaintiff represents is comprised of:  
11 WatchGuard public shareholders that sold, tendered or otherwise disposed of their shares  
12 pursuant to the Acquisition as described herein (the "Class"). Plaintiff also seeks to represent a  
13 sub-class of sellers of WatchGuard securities who sold WatchGuard securities  
14 contemporaneously with Vector III (the "10(b) Subclass") from March 14, 2006 to March 22,  
15 2006, inclusive (the "Class Period"), and were damaged thereby. Excluded from the Class are  
16 Defendants herein and any natural person, firm, trust, corporation, or other entity related to or  
17 affiliated with any Defendant.  
18

19 89. The Class is so numerous that joinder of all members is impracticable. According  
20 to WatchGuard's SEC filings, there were nearly 35 million shares of WatchGuard common stock  
21 outstanding as of March 2006 among a diverse shareholder base. Record owners and other  
22 members of the Class may be identified from records maintained by the defendants, and may be  
23 notified of the pendency of this action by mail, using the form of notice similar to that  
24 customarily used in securities class actions.  
25  
26  
27

1           90.    There are questions of law and fact which are common to the Class and which  
2 predominate over questions affecting any individual Class member. These common questions  
3 include, but are not limited to:

4                   (a) whether the Directors, and in particular Borey, breached their fiduciary duties  
5 of undivided loyalty, independence, good faith, diligence, fair dealing and/or full disclosure with  
6 respect to Plaintiff and the other members of the Class by their activities concerning the  
7 disposition of WatchGuard, rejection of earlier offers by Vector, FP and others;

8                   (b) whether the Directors failed to be, or stay, informed about the progress of  
9 negotiations with potential suitors, failed to properly institute appropriate supervision or  
10 safeguards over the activities of Borey and Piriano and thereby abdicated their duties as  
11 fiduciaries in the context of a change in control transaction;

12                   (c) whether the Directors failed or abdicated their duties to solicit or safeguard  
13 offers for WatchGuard and encourage alternative offers and/or initiate a fair and competitive  
14 process for the sale of WatchGuard assets;

15                   (d) whether defendant Borey attempted to perpetuate his governance, to preserve  
16 lucrative and prestigious perquisites to the detriment of shareholder interests and, among other  
17 things, refused to act in good faith to consider, encourage, negotiate and manage various good  
18 faith offers and opportunities for Company assets;

19                   (e) whether the Directors, and Borey in particular improperly or for improper  
20 purposes, erected or sought to erect barriers intended to impede or discourage competitive offers  
21 for the Company or its assets, and/or favored select entities to the shareholders' detriment;

22                   (f) whether the Directors concealed material non-public information from the  
23 investing public;

1 (g) whether Vector traded on insider information in its purchases of WatchGuard  
2 stock between March 14, 2006 and March 22, 2006, and whether Vector's trades violate the  
3 insider trading laws;

4 (h) whether FP and Gladiator were aided and abetted and/or knowingly assisted  
5 defendant Borey and the other Directors in their breaches of fiduciary duty alleged herein;

6 (i) whether the conduct of the Directors, and defendant Borey in Particular,  
7 Vector and/or FP, as alleged in this Complaint, caused injury to Plaintiff and the Class(es); and  
8

9 (j) whether Plaintiff and members of the Class(es) have been harmed by the  
10 conduct complained of herein and the amount of such harm.

11 91. Plaintiff's claims are typical of the claims of the other members of the Class as all  
12 members of the Class are similarly affected by defendants' wrongful conduct in violation of state  
13 and federal law as complained of herein. Plaintiff does not have interests adverse to the Class.  
14

15 92. Plaintiff, a major institutional investor with a significant financial stake in the  
16 outcome of this litigation, is an adequate representative for the Class, has retained competent  
17 counsel experienced in litigation of this nature, and will fairly and adequately protect the  
18 interests of the Class.

19 93. A class action is superior to other available methods for the fair and efficient  
20 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as  
21 the damages suffered by individual Class members may be relatively small, the expense and  
22 burden of individual litigation make it impossible for members of the Class to individually  
23 redress the wrongs done to them. There will be no difficulty in the management of this action as  
24 a class action.  
25  
26  
27

1                   **SUCCESSOR LIABILITY OF VECTOR, VECTOR III, FP AND GLADIATOR**

2                   94.     On October 4, 2006, all conditions precedent to closing of the Merger Agreement  
3 were satisfied, and Gladiator’s wholly owned subsidiary, Warrior Merger Sub, Inc., merged into  
4 and with WatchGuard thereby making Gladiator the parent company of WatchGuard and  
5 successor to all WatchGuard’s liabilities. Also on October 4, 2006 Vector III, on behalf of  
6 Vector, contributed its shares of WatchGuard together with cash representing fifty percent (50%)  
7 of the consideration for the Acquisition, in exchange for fifty percent of the shares, units or other  
8 like interests of Gladiator, and thereby making Vector the parent entity of Gladiator with  
9 defendant FP.  
10

11                  95.     Upon the close of the Acquisition, the Directors resigned their positions and  
12 representatives of FP and Vector replaced the Directors as the new WatchGuard board of  
13 directors. In addition, members of FP and Vector replaced certain of WatchGuard management.  
14

15                  96.     WatchGuard, Vector, Vector III, FP and Gladiator thus share a unity of interest  
16 with respect to the issues of this lawsuit and are the alter ego of WatchGuard. Such unity  
17 dictates that Vector, Vector III, FP and Gladiator be held jointly and severably liable for the  
18 liabilities of WatchGuard, its agents and/or representatives as alleged in this complaint.  
19

20                   **AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY BY FP**

21                  97.     FP intentionally aided and abetted Borey in his breaches of fiduciary duty and  
22 did so based on actual and knowing participation including reaching secret agreements with  
23 Borey and Piraino.  
24  
25  
26  
27



1           100. In accordance with their duties of loyalty and good faith, the Directors, as  
2 directors and/or officers of WatchGuard, are obligated to refrain from:

3                   (a) pursuing, allowing or encouraging any feasible act or transaction resulting  
4 from the divided loyalties of directors or officers;

5                   (b) using their positions of control to harm WatchGuard, dissipate its assets, or  
6 extract personal benefits not shared by, or to the detriment of, the public shareholders of the  
7 Company;

8                   (c) improperly entrenching, enriching or pursuing their interests at the expense,  
9 or to the detriment, of WatchGuard's public shareholders;

10                  (d) adopting non-competitive measures and practices that operate to discourage a  
11 competitive bidding process on a level playing field; and/or  
12

13                  (e) unjustly seeking to perpetuate their positions as managers and/or officers of  
14 the Company by failing to pursue, or act in good faith in considering, legitimate offers for the  
15 Company and/or its assets.  
16

17           101. The Directors, separately and together, violated the fiduciary duties owed to  
18 Plaintiff and the other public shareholders of WatchGuard, including duties of loyalty, good  
19 faith, full disclosure and independence, insofar as they: a) failed to adopt a suitable process or  
20 procedure for consideration of offers to purchase WatchGuard, including an offer by Vector to  
21 purchase WatchGuard at a 35% premium to the trading price of the Company's stock, and/or  
22 supervise the activities of Borey by means of appropriate procedures, and otherwise sought to  
23 discourage or failed to encourage a competitive bidding process for the sale of WatchGuard; b)  
24 sought to benefit from their lucrative positions as directors and/or officers of this publicly traded  
25  
26  
27

1 corporation at the expense, and to the detriment, of the shareholders; and c) failed to disclose  
2 material facts and events relating to the Acquisition.

3 **FIRST CAUSE OF ACTION**

4 **Breach of Fiduciary Duty Against the Directors**

5 102. Plaintiff repeats and realleges each and every allegation above as though fully set  
6 forth herein.

7  
8 103. The Directors failed to act reasonably, or in good faith, or as legally required and  
9 failed to act in their capacity as directors to maximize the value and benefits available to the  
10 shareholders. The Directors instead took actions or failed to act, for the purpose of allowing the  
11 Directors to retain control and/or enjoy benefits and other personal emoluments as directors  
12 and/or senior insiders of WatchGuard to the detriment of shareholder value.

13  
14 104. The Directors violated their fiduciary duties of care, loyalty, full disclosure and  
15 independence owed to WatchGuard's public shareholders, and placed personal interests above  
16 the interests of WatchGuard shareholders in the course of their conflicting loyalties.

17 105. The Directors violated their fiduciary duties by failing to encourage, provide for  
18 and sustain reasonable good faith offers for the Company (like the Vector offers) and encourage  
19 other offers. The Directors disregarded the benefit or fairness of prospective transactions for  
20 WatchGuard shareholders, including the significant premium these offers represented to the  
21 public shareholders and instead allowed Borey to be co-opted by FP.

22  
23 106. The Directors abdicated their fiduciary duties and violated their duties of good  
24 faith, loyalty, independence, and full disclosure by concealing material non-public information  
25 from the shareholders regarding the true process and procedures concerning the Acquisition and  
26 value of WatchGuard's business and assets. Further, by entering into the Defensive Measures,  
27



1 the Directors intentionally caused themselves to disregard and actively frustrate any higher  
2 competing offers in gross disregard of their duties of good faith and loyalty.

3 107. Defendant Borey knowingly, and with the knowledge, acquiescence, participation  
4 or support of the other Directors sought to enrich himself at the expense of the public  
5 shareholders via Project Warrior.

6 108. Because the Directors dominated and controlled the business and corporate affairs  
7 of the Company, and were/are in possession of private corporate information concerning  
8 WatchGuard's assets, business and future prospects, there exists an imbalance and disparity of  
9 knowledge and economic power between the public shareholders of WatchGuard and the  
10 Directors. Such disparity caused it to be inherently unfair for the Directors to pursue or  
11 otherwise engage in the conduct complained of.

12 109. The Directors breached and/or aided and abetted each other Directors' breach of  
13 fiduciary duties to the public stockholders.

14 110. By reason of the foregoing acts, practices and course of conduct, the Directors  
15 have abdicated and otherwise failed to discharge their fiduciary duties of loyalty, independence  
16 and full disclosure as corporate directors of WatchGuard.

17 111. By the acts, transactions and courses of conduct alleged herein, the Directors, on  
18 their own and as part of a common plan, and in breach of their fiduciary duties to WatchGuard's  
19 shareholders, engaged in acts that damaged the Company's shareholders.

20 112. As a result of the Directors unlawful actions, WatchGuard's public shareholders  
21 have suffered damages.

1 **SECOND CAUSE OF ACTION**

2 **Insider Trading In Violation Of Section 10(b) Of The Exchange Act**

3 **And Rule 10b-5 Promulgated Thereunder**

4 **Against Vector Capital III On Behalf Of The 10(b) Subclass**

5 113. Plaintiff repeats and realleges each and every allegation above as though fully set  
6 forth herein.

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8 114. This second cause of action is asserted against Vector III for violations of Section  
9 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder on behalf  
10 of the 10(b) Subclass.

11 115. During the Class Period, Defendant Vector III carried out a plan, scheme and  
12 course of conduct which was intended to and, throughout the Class Period did: (1) deceive the  
13 investing public, including Plaintiff and other 10(b) Subclass members as alleged herein; and (2)  
14 caused Plaintiff and other Class members of the Class to purchase WatchGuard shares at  
15 artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct,  
16 Vector III took the actions set forth herein.

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18 116. Vector III (a) employed devices, schemes, and artifices to defraud; (b) failed to  
19 disclose material facts about the business, assets and/or future prospects of WatchGuard; and (c)  
20 engaged in acts, practices, and a course of conduct that operated as a fraud and deceit upon the  
21 purchasers WatchGuard's shares in an effort to misappropriate and profit from nondisclosure of  
22 such material facts about the business, assets and/or future prospect of WatchGuard in violation  
23 of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

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25 117. Vector III, individually and in concert, directly and indirectly, by the use, means  
26 or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
27

1 continuous course of conduct to conceal adverse material information about the business,  
2 operations, assets and future prospects of WatchGuard as specified herein.

3 118. Vector III employed devices, schemes, and artifices to defraud, while in  
4 possession of material nonpublic information and engaged in acts, practices, and a course of  
5 conduct as alleged herein in an effort to misappropriate and profit from confidential non-public  
6 information regarding such business, assets, and/or future prospects of WatchGuard as alleged  
7 herein, such information having been repositied in Vector III for the sole purpose of Vector  
8 making a formal bid for the Company, which included engaging in transactions, practices and a  
9 course of conduct that operated as a fraud and deceit upon the purchasers of WatchGuard's  
10 shares during the Class Period.  
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12 119. In ignorance of the fact that market prices for WatchGuard's shares were  
13 artificially distorted during the Class Period, and relying upon the integrity of the market in  
14 which the shares trade, and/or on the absence of material information that was known to or  
15 recklessly disregarded by Vector III in public statements by Vector III during the Class Period,  
16 Plaintiff and the other members of the 10(b) Subclass acquired WatchGuard shares during the  
17 Class Period at artificially distorted prices and were damaged thereby.  
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19 120. Had Plaintiff and other members of the 10(b) Subclass known about Vector III's  
20 misappropriation of material nonpublic information, Plaintiff and other members of the 10(b)  
21 Subclass would not have purchased or otherwise acquired their WatchGuard shares, or, if they  
22 had acquired such shares during the Class Period, they would not have done so at the artificially  
23 distorted prices which they paid.  
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25 121. By virtue of the foregoing, Vector III has violated Section 10(b) of the Exchange  
26 Act, and Rule 10b-5 promulgated thereunder.  
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1           122. As a direct and proximate result of Vector III's wrongful conduct, Plaintiff and  
2 the other members of the Class suffered damages in connection with their respective purchases  
3 and sales of the Company's shares during the Class Period.

4           123. This action was filed within two years of discovery of the fraud and within five  
5 years of each Plaintiff's purchases of securities giving rise to the cause of action.

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7                           **APPLICABILITY OF PRESUMPTION OF RELIANCE**

8   **FRAUD ON THE MARKET**

9           124. At all relevant times, the market for WatchGuard's common stock was an  
10 efficient market for the following reasons, among others.

11                   (a) WatchGuard's stock met the requirements for listing, and was listed and  
12 actively traded on the NASDAQ stock exchange, a highly efficient and automated market;

13                   (b) During the Class Period, on average, several hundreds of thousands of shares  
14 of WatchGuard stock were traded on a weekly basis, demonstrating a very active and broad  
15 market for WatchGuard stock and permitting a very strong presumption of an efficient market;

16                   (c) As a regulated issuer, WatchGuard filed periodic public reports with the SEC  
17 and the NASDAQ;

18                   (d) WatchGuard regularly communicated with public investors via established  
19 market communication mechanisms, including through regular dissemination of press releases  
20 on the national circuits of major news wire services and through other wide-ranging public  
21 disclosures, such as communications with the financial press and other similar reporting services;

22                   (e) WatchGuard was followed by several securities analysts employed by major  
23 brokerage firms who wrote reports that were distributed to the sales force and certain customers  
24 of their respective brokerage firms during the Class Period;

1 (f) Numerous NASD member firms were active market makers in WatchGuard  
2 stock at all times during the Class Period; and

3 (g) Unexpected material news about WatchGuard was rapidly reflected and  
4 incorporated into the Company's stock price during the Class Period;

5 125. As a result of the foregoing, the market for WatchGuard' shares promptly  
6 digested current information regarding WatchGuard from all publicly available sources and  
7 reflected such information in WatchGuard' stock price. Under these circumstances, all sellers of  
8 WatchGuard's shares during the Class Period suffered similar injuries through their sale of  
9 WatchGuard's shares and a presumption of reliance applies.  
10

### 11 **THIRD CAUSE OF ACTION**

#### 12 **Insider Trading In Violation Of Section 20A Of The Exchange Act**

#### 13 **Against Vector Capital III**

14 126. Plaintiff repeats and realleges each and every allegation above as though fully set  
15 forth herein.  
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17 127. This third cause of action is asserted against Vector III for violations of § 20A of  
18 the Exchange Act, 15 U.S.C. § 78t-1, and the rules and regulations promulgated thereunder for  
19 insider trading.  
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21 128. By virtue of the foregoing, and Vector III's violations of Section 10(b) of the  
22 Exchange Act and Rule 10b-5 promulgated thereunder as complained of herein, Vector III is  
23 guilty of insider trading and has violated Section 20A of the Exchange Act, and the rules  
24 promulgated thereunder.  
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1 complaint. By virtue of their positions as controlling persons, the Control Persons are liable  
2 pursuant to Section 20(a) of the Exchange Act.

3 134. As a direct and proximate result of the Control Persons' wrongful conduct,  
4 Plaintiff and the Class suffered damages in connection with their respective sale of WatchGuard  
5 shares.

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7 **JURY TRIAL DEMAND**

8 135. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands  
9 a trial by jury of all of the claims asserted in this Complaint so triable.

10 **PRAYER**

11 WHEREFORE, Plaintiff and the Class demand relief, as follows:

12 A. Judgment declaring that this action is properly maintained as a class action.

13 B. Declaring and decreeing that the Directors' conduct has been in breach of the  
14 fiduciary duties owed by the Directors to WatchGuard's public stockholders;

15 C. That the insider trading, and the acts done in furtherance thereof by Vector III,  
16 Vector Capital Corporation and Alexander Slusky be adjudged to be in violation of Section 10(b)  
17 of the Exchange Act, Rule 10b-5 promulgated thereunder, Section 20A and 20(a) of the  
18 Exchange Act.  
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1 D. That judgment is entered for Plaintiff and members of the Class against the  
2 Directors, Vector, Vector III, Gladiator and Francisco Partners, jointly and severally, for the  
3 amount of damages sustained by Plaintiff and the Class, and against Vector III, Vector and  
4 Slusky for damages sustained by the 10(b) Subclass, in an amount to be proven at trial including  
5 interest thereon, as allowed by law, together with the costs of this action, including reasonable  
6 attorneys' and expert fees, and  
7

8 E. Such other and further relief as this Court may deem just and proper.

9 Dated: April 16, 2008

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