

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Plaintiff,

vs.

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

Defendants.

Civil Action No. 06-cv-1737 JLR

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

CLASS ACTION COMPLAINT
JURY TRIAL REQUESTED

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1 Plaintiff Pennsylvania Avenue Funds (“Plaintiff”), by and through counsel, alleges the
2 following based upon the investigation of counsel, which included a review of United States
3 Securities and Exchange Commission (“SEC”) filings, as well as other regulatory filings, reports,
4 and advisories, press releases, and media reports about WatchGuard Technologies, Inc. and its
5 former directors, Francisco Partners L.P., Vector Capital Corporation, and their related entities
6 also named herein as defendants. Plaintiff believes that substantial additional evidentiary support
7 will exist for the allegations set forth herein after a reasonable opportunity for discovery.

8 INTRODUCTION

9 1. This is a shareholder class action brought to remedy the breaches of fiduciary duty
10 arising out of the going private transaction (the “Acquisition”) of WatchGuard Technologies, Inc.,
11 a Seattle-based Internet security company (“WatchGuard” or the “Company”). WatchGuard’s former
12 directors Edward J. Borey, Steven N. Moore, Michael R. Kourey, Michael R. Hallman, Richard A.
13 LeFavre, and William J. Schroeder (the “Directors”), refused to act reasonably or as legally required
14 in disposing of WatchGuard and its assets, and encouraged improper and collusive offers by
15 Francisco Partners L.P. (“FP”)¹ and Vector Capital Corporation (“Vector”)² to acquire the Company,
16 and acted at critical times to perpetuate their individual control and gain emoluments at shareholder
17 expense. As senior management and/or insiders of WatchGuard, the Directors enacted and then
18 encouraged ratification of a poison pill, entered into support agreements and lock up provisions
19 requiring the Directors to abdicate their fiduciary duties, frustrated competing offers and transactions
20 for WatchGuard, and concealed material information about support agreements and lockup
21 provisions, and aspects of consideration for the Acquisition in an effort to frustrate shareholder
22 appraisal rights and discourage higher competing bids, agreed to an excessive termination fee, and
23 justified their actions based on conflicted advice set up by the Directors’ investment bank.

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26 ¹“FP” herein refers to Francisco Partners L.P, and its affiliate companies Gladiator Corporation, Francisco
Partners II L.P., Francisco Partners Parallel Fund II, L.P., as well as its principals herein named as defendants, David
Stanton and Dipanjan Deb.

27 ²“Vector” herein refers to Vector Capital Corporation, and its affiliate company Vector Capital III, as well as
28 its principal named herein as a defendant Alexander Slusky.

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2 2. Plaintiff seeks to hold the Directors responsible for the harm caused to WatchGuard's
3 public shareholders in abdicating and failing to fulfill their fiduciary responsibilities as directors,
4 including the duty to: disclose all material information relevant to the shareholders in the Directors'
5 solicitation and consideration of offers by FP and Vector (jointly the "Private Equity Defendants")
6 as required by the duty of loyalty, failing to maximize shareholder value by not responding to bids
7 by, and failing to prevent the illegal activities of, the Private Equity Defendants, refusing to negotiate
8 in good faith, and otherwise enacting provisions and taking actions preventing the shareholders from
9 maximizing value and/or failing to prevent the dissipation of WatchGuard assets to the detriment
10 of the public shareholders.

11 3. This action also seeks to remedy insider trading and tender offer fraud undertaken by
12 Vector in purchasing shares of WatchGuard, and in purchasing or otherwise acquiring 50 percent
13 of WatchGuard from FP based on undisclosed material information revealed to Vector as
14 confidential due diligence materials, given to Vector for the sole purpose of allowing Vector to make
15 a formal bid for WatchGuard. Vector's activities violated, at least, Section 14(e) of the Williams
16 Act (15 U.S.C. § 78n(e)), Rule 14e-3 promulgated thereunder (17 C.F.R. § 240.14e-3), Section
17 10(b) of the Securities And Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. § 78j(b)), Rule
18 10b-5 promulgated thereunder (17 C.F.R. 240.10b-5), and Section 20A of the Exchange Act (15
19 U.S.C. 78t-1).

20 4. The sale of WatchGuard proceeded through a bid rigging or price-fixing scheme that
21 went unchallenged, whereby the Private Equity Defendants, after initially submitting purportedly
22 independent bids, communicated and conspired, with the Directors concurrence or inexplicable
23 inattention, to avoid competitive bidding or a market check and instead reach a secret agreement
24 benefitting the Private Equity Defendants and insulating the WatchGuard sale from a competitive
25 bidding process. This was done in violation of, at least, Section 1 of the Sherman Act (15 U.S.C. §
26 1). As a result, the public shareholders of WatchGuard have been deprived of the true economic
27 value of their holdings and "squeezed out" at an artificially low price, have not received the loyalty

1 and diligence required of fiduciaries, and have been victims of defendants' insider trading and
2 antitrust manipulations.

3 **JURISDICTION AND VENUE**

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

6 6. Jurisdiction is conferred upon this Court by Section 27 of the Exchange Act (15
7 U.S.C. § 78aa); 28 U.S.C. §§ 1331, 1332(d) and 1337, and by Sections 4 and 16 of the Clayton Act,
8 15 U.S.C. §§ 15(a) and 26, to recover treble damages and costs of suit, including reasonable
9 attorneys' fees, against Defendants for the injuries sustained by Plaintiff and the members of the
10 Class by reason of the violations, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C.
11 § 1.

12 7. Venue is found in this district pursuant to: (a) Sections 4, 12, and 16 of the Clayton
13 Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391(b), and (c). Venue is proper in this judicial
14 district because one or more of the Defendants resided, transacted business, was found, or had agents
15 in this district, and because a substantial part of the events giving rise to Plaintiff's claims occurred,
16 and a substantial portion of the affected interstate trade and commerce described below has been
17 carried out, in this district.

18 (b) FP and Vector maintain offices, have agents, transact business, or are found
19 within this judicial district.

20 (c) WatchGuard's principal place of business is located at 505 Fifth Avenue
21 South, Suite 500, Seattle, Washington and certain of the Directors (including Edward J. Borey) are
22 residents and citizens of the State of Washington.

23 8. This Court has in personam jurisdiction over each of the Defendants because each
24 was engaged in an illegal scheme and/or price-fixing and anti-competitive conspiracy that was
25 directed at and had the intended effect of causing injury to persons and entities residing in, located
26 in, or doing business throughout the United States.

1 **PARTIES**

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

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

10 11. Defendant Edward J. Borey ("Borey") was, prior to the October 4, 2006 Acquisition,
11 Chairman of the Board and Chief Executive Officer of the Company.

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

20 13. Defendant Michael R. Kourey ("Kourey") was a director of the Company from April
21 2003 until the October 4, 2006 Acquisition.

22 14. Defendant Michael R. Hallman ("Hallman") was a director of the Company from
23 November 2000 until the October 4, 2006 Acquisition.

24 15. Defendant Richard A. LeFavre ("LeFavre") was a director of the Company from
25 April 2003 until the October 4, 2006 Acquisition.

26 16. Defendant William J. Schroeder ("Schroeder") was a director of the Company from
27 April 2002 until the October 4, 2006 Acquisition.

1 17. Defendant Francisco Partners, L.P. (“FP”) is a private equity firm organized as a
2 Delaware limited partnership, that at all times material maintained its corporate office at 2882 Sand
3 Hill Road, Suite 280, Menlo Park, CA 94025, and is the parent entity of Defendants Gladiator
4 Corporation – FP’s merger vehicle for the Acquisition–, Francisco Partners II, L.P., and Francisco
5 Partners Parallel Fund II, L.P.

6 18. Defendant Gladiator Corporation (“Gladiator”) is a FP affiliate company organized
7 as a Delaware corporation formed solely for the purpose of entering into the Acquisition with
8 WatchGuard.

9 19. Defendant Francisco Partners II, L.P. (“FP II”) is a FP affiliate company organized
10 as a Delaware limited partnership that agreed to contribute cash to Gladiator to pay a portion of the
11 aggregate Acquisition consideration.

12 20. Defendant Francisco Partners Parallel Fund II, L.P. (“FP Parallel”) is a FP affiliate
13 company organized as a Delaware limited partnership that agreed to contribute cash to Gladiator to
14 pay a portion of the aggregate Acquisition consideration.

15 21. Defendant David Stanton (“Stanton”) is a founder of Francisco Partners and has been
16 its Managing Partner since its formation in August 1999.

17 22. Defendant Dipanjan Deb (“Deb”) is a founder and Managing Partner of Francisco
18 Partners and has been a Partner since its formation in August 1999.

19 23. The Defendants named above in ¶¶ 17-22, inclusive, are herein collectively referred
20 to as “FP”.

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

25 25. Defendant Vector Capital III, L.P. (“Vector III”) is a Vector affiliate company
26 organized as a Delaware limited partnership that purchased voting shares or other like interests in
27 Gladiator on behalf of Defendant Vector.

1 33. On May 5, 2005, concerned about a change in control transaction that would
2 jeopardize the monetary and non-monetary perquisites and emoluments of their positions, the
3 Directors (unilaterally) adopted a shareholder rights plan (i.e. the "Poison Pill"). The terms of the
4 Poison Pill prevented an offer for the Company from being consummated without the personal
5 approval of the Directors. WatchGuard's shareholders were required to approve and ratify the Poison
6 Pill a year later at the May 4, 2006 shareholders meeting.

7 34. During the week of August 5, 2005 WatchGuard received expression of interest from
8 a party interested in pursuing a possible acquisition. The partner had discussions with WatchGuard
9 management that reached a head on August 23, 2005.³

10 35. In September 2005, the Directors met with six investment banking firms, including
11 Wachovia Capital Markets LLC ("Wachovia") to pursue strategic alternatives. The recommendation
12 from Wachovia and the other investment banks was that the Directors should sell or merge
13 WatchGuard.

14 36. On or about February 17, 2006, Vector, one of the Company's largest shareholders,
15 sent a letter to the Directors proposing to acquire the Company. The letter stated:

16 Dear Members of the Board of Directors:

17 We would like to express our strong interest in acquiring WatchGuard
18 Technologies, Inc. (The "Company") via an all-cash merger or tender offer that
19 would provide a significant premium to your current shareholders. Vector Capital
20 Corporation (with its affiliates, "Vector") is a technology private equity boutique
21 specializing in buyouts, spinouts and recapitalization of established technology
22 businesses. We have become very familiar with the Company through publicly
23 available sources and numerous conversations with those knowledgeable about the
24 Company and its competitors. We have formed a fundamental investment thesis
25 regarding the Company's potential in the enterprise security solution sector and have
26 become a significant shareholder of the Company. It now appears clear, however,
27 that the Company's status as a sub-scale public company is preventing WatchGuard
28 from achieving its potential.

The Company's shareholders, employees, and customers would all benefit
from Vector's acquisition of the Company. In addition to delivering a value-
maximizing premium to current shareholders, such a transaction would relieve all
stakeholders from the ongoing risks and costs associated with the hostile
environment for small, publicly-traded technology companies. Finally, as a well-
capitalized, nimble private company, WatchGuard could more effectively pursue its

³On August 31, 2005, Defendant Borey purchased 2000 shares of WatchGuard.

1 strategic objectives. We believe that the case in favor of this course of action is
2 compelling and is virtually demanded by the Company's present circumstances.

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

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

17 37. From January 2006, through March 22, 2006, Vector III acquired shares of
18 WatchGuard on the open market at prices of between \$3.95 and \$4.48 per share. In response to its
19 February 17, 2006 letter, Vector was given access to WatchGuard's books and records and had
20 repeated discussions with WatchGuard management and its representatives, including Wachovia,
21 whereby Vector was given material non-public information, including information that caused
22 Vector to continue purchasing WatchGuard stock. Vector III purchased an additional 1.57 million
23 shares on the open market between March 14, 2006 and March 22, while in possession of material
24 non-public information. WatchGuard's share price thereby increased nearly 11 percent.
25 Consequently, Vector first disclosed its purchases, access to and involvement with WatchGuard
26 management in a 13-D filing of March 23, 2006.

27 38. Though Vector had represented it would pay a "value maximizing premium to current
28 shareholders", the Directors did not publicly disclose either the activities of FP or Vector in generic
form or otherwise. The Directors hoped that non-disclosure might cause the shareholders to ratify
the Poison Pill at the May 2006 annual meeting. The Directors knew that if shareholders were aware
of negotiation for WatchGuard's purchase, investors would vote down the Poison Pill, recognizing
it as an impediment to gaining the highest price per share.

1 39. With weeks passing since its February 2006 offer, the Directors not responding, and
2 the annual shareholder meeting rapidly approaching, Vector made its offer public through the above
3 mentioned March 23, 2006 13-D.

4 40. Shareholder and analyst sentiment immediately coalesced around pursuing the Vector
5 transaction or otherwise disposing of WatchGuard. However, the Directors failed to act in their
6 capacity as fiduciaries and frustrated expressions of interest, even failing to effectively engage
7 Vector in negotiations, and otherwise acting without urgency or proper care for the shareholders.
8 Neither a market check nor public invitation for bids ensued, the Directors instead urging the
9 Company's shareholders to ratify the 2005 Poison Pill.

10 41. On April 24, 2006 – the eve of the 2006 annual meeting – the Directors announced
11 the hiring of Wachovia as a financial advisor to assist in the evaluation of strategic alternatives.

12 42. Vector's March 23, 2006 13-D caused WatchGuard's shareholders to be increasingly
13 aggressive in expressing their dissatisfaction with the Directors' course of actions. For example, on
14 May 3, 2006, another large WatchGuard shareholder, SACC Partners LP, issued a press release
15 disclosing its earlier letter to the Directors:

16 Members of the Board of Directors:

17 As you are aware, SACC Partners, LP has been a shareholder of WatchGuard
18 (WGRD) for the past two years having acquired approximately 2% of the outstanding
19 shares. As a large shareholder and a proud user of several WatchGuard Firebox
20 Core, SOHO and Firebox Edge appliances, we are excited about the opportunities in
21 front of the Company. That said, however, we have been very disappointed with the
22 financial performance of the Company over the past few years. Thus, we were
23 encouraged to learn that Vector Capital Corporation ("Vector") has expressed an
24 interest in acquiring WatchGuard as indicated in a letter from Vector, dated February
25 17, 2006 and disclosed in a recent 13-D filing. While we are encouraged by your
26 recent hiring of Wachovia to review strategic alternatives, we want to emphasize to
27 you that we are strongly against your proposal to put a Rights Agreement in place at
28 the annual meeting scheduled to take place Thursday, May 4th. 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 acquisition of the Company. Therefore, we have submitted our vote
AGAINST the Rights Agreement.

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

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

16 While we believe there are significant growth opportunities in the IT Security
17 market overall, we are concerned that increasing competition as well as the costs of
18 being a public company will limit WatchGuard's growth potential in both the near-
19 term and long-term. Given how fragmented the IT Security industry is, especially as
20 it relates to UTM providers, we believe that consolidation is inevitable and we have
21 indicated many times that we believe WatchGuard would make a compelling
22 acquisition target for a strategic or financial buyer. We also believe strongly that
23 your size and growth prospects make it difficult to be a profitable public company
24 given the costs associated with being public. For example, selling to a private
25 company would result in the streamlining of executive management, removal of
26 Board fees and related costs including D & O insurance, rationalization of sales and
27 research as well as auditing costs to name a few. Whether a purchase by Vector or
28 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*).

43. The Directors failed to effectively respond or act consistent with the above
observation or their fiduciary duties.

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

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

46. On May 22, 2006, FP submitted to the Directors a conditional bid of \$5.00 per share.

47. On May 26, 2006, Vector offered to purchase WatchGuard for cash consideration of
\$5.10 per share through a statutory merger. This offer was disclosed in a May 31, 2006 amended 13-

1 D. This purportedly represented a 35% premium to the trading price of the stock on the day
2 preceding Vector's (May 26, 2006) letter presenting the \$5.10 offer. The letter stated *inter alia*, that
3 “[w]e believe... the best course for WatchGuard shareholders is a cash transaction at a meaningful
4 premium.” (*emphasis added*). Significantly, Vector’s offer was not contingent on third party
5 financing or third party approvals, and was pre- approved by Vector’s investment committee. The
6 “offer sheet” stated that a merger agreement could be reached expeditiously. Vector ultimately
7 withdrew its \$5.10 offer preferring to proceed with FP, avoid competitive bidding, and buy into the
8 Acquisition based on undisclosed insider information.

9 48. The Directors responded to Vector’s formal \$5.10 offer by failing to commence
10 negotiation to bind Vector’s offer as a “floor” by publicizing the process to precipitate a broad
11 interest and open bidding.

12 49. With a \$5.10 initial offer on the table and the sale of WatchGuard and/or its assets
13 imminent following the May 4, 2006 shareholder rejection of the Poison Pill, the Directors abdicated
14 their fiduciary duties by frustrating, delaying and impeding an open process for the sale of
15 Watchguard.

16 50. On June 26, 2006 FP lowered its proposed consideration to \$4.60 per share. No
17 justification for this decrease was ever disclosed by the Directors in proxy solicitations or otherwise.
18 Also on June 26, Vector submitted a revised conditional proposal to acquire WatchGuard for \$4.65
19 per share. According to Vector’s amended 13-D, the offer would remain open for 30 days pending
20 the Directors pursuit of a transaction. Although Vector stated that it “continue[d] to believe that
21 WatchGuard shareholders strongly prefer a sale of the company as soon as possible to the highest
22 cash bidder,” the Directors’ proxy materials provide no explanation as to the Directors failure to
23 accept the \$4.65 per share offer, whether it was withdrawn, or why.

24 51. The Private Equity Defendants were given access to WatchGuard’s books, records,
25 and other confidential materials that reflected undisclosed material information about WatchGuard’s
26 business and assets, information that was not publicly known and was not reflected in the trading
27 price of Watchguard shares.

1 52. During the course of its due diligence, Vector received material non-public
2 information from the Directors, and persons acting on behalf of the Directors, regarding the business
3 and/or assets of WatchGuard. The information provided to Vector for the sole purpose of allowing
4 Vector's formal bid and not to make insider trades.

5 53. Vector (a) executed non-disclosure agreements prior to receiving due diligence
6 materials, (b) was provided confidential information from WatchGuard or agents of WatchGuard,
7 including Wachovia, regarding business, financial and legal matters, and (c) had direct availability
8 and detailed access to WatchGuard consultant(s), various members of WatchGuard management,
9 WatchGuard's legal counsel and three of WatchGuard's value added resellers.

10 54. On or about June 26, 2006 that Vector and FP entered into a contract, combination
11 or conspiracy to artificially fix the price, refrain from bidding, or rig the tender offer bids for
12 WatchGuard shares. Vector and FP agreed that Vector would withdraw from the bidding process,
13 or otherwise refrain from pursuing an acquisition of the Company for \$4.65 per share. This was to
14 facilitate FP, – which had yet to make a formal bid – to offer \$4.25 per share unopposed, any other
15 suitors having dropped out, and with knowledge that Vector would vote, or cause its shares to be
16 voted, for the \$4.25 bid.

17 55. The Private Equity Defendants' contract, combination or conspiracy constituted
18 material non-public information obtained from or with FP, which Vector failed to publicly disclose
19 prior to purchasing interests in Gladiator exchangeable for WatchGuard shares, and which
20 significantly depressed the consideration paid to the public shareholders pursuant to the Acquisition.

21 56. On July 25, 2006 the Directors announced they had entered into a definitive
22 agreement (the "Agreement") to accept \$4.25 per WatchGuard share, an 18% decrease from earlier
23 offers. This revelation, stunning in itself given the pendency of a significantly higher initial offer(s),
24 was indefensible given the Directors' many opportunities to pursue or encourage multiple alternative
25 bidders and, at least, ensure recourse to \$5.10 per share from Vector. The Directors failed to
26 maximize shareholder value, abdicated their fiduciary responsibilities in that regard, and encouraged,
27 facilitated, and/or failed to prevent the illegal activities of the Private Equity Defendants.

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

3 **Ben Stoller - Harman Stoller Capital - Analyst**

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

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

9 No. There is a customary breakup fee that is associated with the deal. It is slightly less than
10 4%. That breakup fee, fees and expenses, probably comes to about \$6 million. I would also
11 like to comment, Ben, on a couple other things that you mentioned[,] certainly there is
12 opportunity for someone in the process to offer a topping bid and the Company, the Board
13 would have to – would follow its fiduciary responsibilities and would evaluate such a thing.
(emphasis added).

14 58. Defendant Borey failed to mention however, that contemporaneously with the July
15 24, 2006 Acquisition Agreement, the Directors had executed support agreement(s) (the “Support
16 Agreement”) whereby the Directors agreed to use “their best efforts” not to, directly or indirectly,
17 solicit, initiate, facilitate or intentionally encourage the submission of a competing transaction, or
18 participate in any discussions or negotiations regarding a competing transaction, or furnish to any
19 third party any information or data with respect to a competing transaction, or provide access to the
20 properties, offices, books, records, officers, directors or employees of WatchGuard , or take any
21 action to knowingly facilitate, induce or encourage the making of any proposal that constitutes, or
22 may reasonably be expected to lead to any competing transaction. By executing the Support
23 Agreements under the circumstances, the Directors completely abdicated and breached their
24 fiduciary duties as directors to act for the benefit and best interest of WatchGuard’s public
25 shareholders. The Directors thereby thwarted a competing transaction by Vector or others for
26 consideration in excess of \$4.25 per share.

27 59. On July 25, 2006 – the date of the above conference call – the Support Agreement
28 was not publicly known or available, and therefore defendant Borey’s statement that the board would
“follow its fiduciary responsibilities,” was false.

1 60. Defendant Borey also failed to disclose that the Agreement contained a lock-up
2 provision (the “Lock Up”) that prevented the Director’s – or any WatchGuard representative,
3 including Wachovia – from soliciting, initiating, facilitating, or intentionally encouraging the
4 submission of a competing transaction, or to participate in any discussions or negotiations regarding
5 a competing transaction, or to offer a competing suitor access to any of WatchGuard’s books,
6 records, officers or employees, or in any way do anything that might lead to a competing proposal.

7 61. The Directors ultimately accepted the \$4.25 price per share out of concern that
8 personal liability could arise if the material non-public information about WatchGuard (that was
9 revealed to the Private Equity Defendants) were made public, knowing that when the Company was
10 taken private, the truth would never be revealed. The Directors thereby permitted or failed to prevent
11 the formation of a coalition between Vector and Francisco Partners, though clearly improper, that
12 allowed a lower, artificially fixed and rigged bid for corporate control of WatchGuard.

13 62. The Directors represented in their proxy solicitations that the Company’s
14 shareholders would receive approximately \$151 million in consideration for their shares. However,
15 *nowhere* in Defendants’ proxy solicitations for the Acquisition did the Directors disclose that \$60
16 million of said consideration, or 40 percent thereof, would be contributed by WatchGuard. The
17 Directors’ failure to disclose this material fact made it impossible for WatchGuard’s public
18 shareholders to properly exercise their appraisal rights.

19 63. The termination fee agreed to by the Directors was grossly excessive. While
20 termination fees are typically no greater than 1% of a transaction, the Directors approved, in
21 complete disregard of their fiduciary duties, a termination fee of \$6 million – 4% of total
22 Acquisition value – that represented approximately \$0.17 per share and operated to thwart
23 competing transactions by Vector and others.

24 64. Although the Directors commissioned Wachovia to issue a fairness opinion for the
25 Acquisition (the “FO”), Wachovia and its affiliates had a fatal disability. Wachovia is/was a
26 significant creditor of FP and was therefore incapable of issuing an objective opinion. The Directors
27 were required to use an independent advisor for the FO, and the Directors are precluded from

1 indicating that the opinion was meaningful or competent.

2 65. On August 16, 2007, Vector, having earlier dropped out of formal bidding pursuant
3 to its contract, combination or conspiracy with FP to do so, by and through its wholly owned
4 subsidiary Vector III agreed to purchase 50 percent of the voting shares or other like interests in
5 Gladiator that were subsequently converted, exchanged, or merged into the outstanding, publicly
6 owned shares of WatchGuard (the "Letter Agreement"). The Letter Agreement formalized the
7 Private Equity Defendants' contract, combination, or conspiracy that required, *inter alia*, Vector to
8 withdraw from the bidding process to facilitate acceptance of FP's bid of \$4.25, in exchange for 50%
9 of the Acquisition.

10 66. With FP's tender offer commenced, and being in possession of such material non-
11 public information, with Vector knowing or having reason to know that such information was non-
12 public, Vector purchased or caused to be purchased voting shares or other like interests in Gladiator
13 – FP's merger vehicle for the Acquisition –, which were fully convertible into or exchangeable for
14 WatchGuard shares, without first publicly disclosing the content and substance of the contract,
15 combination or conspiracy or the content and substance of its due diligence materials in violation
16 of, at least, Section 14(e) of the Williams Act, Rule 14e-3 promulgated thereunder, and Section 20A
17 of the Exchange Act (prohibiting insider trading).

18 67. The non-public due diligence materials, as well as the contract, combination or
19 conspiracy to fix or rig the bids for WatchGuard, was material because it resulted in a decrease in
20 consideration of nearly 20% to the WatchGuard shareholders.

21 68. Per the above, the entire WatchGuard Acquisition was tainted as particularized above.
22 The Directors impeded the sales process by placing unreasonable restraints on any acquisition, failed
23 to disclose material information relevant to the shareholders, relied on biased advice, and abdicated
24 their fiduciary responsibilities by entering into the Support Agreements, Lock Up and termination
25 fee provisions, and by acquiescing to the illegal activities of the Private Equity Defendants. The
26 Acquisition was further tainted when Vector purchased shares in Gladiator on insider information,
27 and by the contract, combination or conspiracy herein alleged that artificially fixed the price of, or

1 rigged the bids for, corporate control of WatchGuard.

2 69. As such, shareholder approval of the Acquisition on October 4, 2006 was based on
3 materially incomplete and/or misleading information, and was not the result of a fully informed vote.

4 **ADDITIONAL ALLEGATIONS**
5 **AGAINST THE PRIVATE EQUITY DEFENDANTS**

6 70. Defendants FP and Vector are in the private equity business. This business is
7 experiencing unparalleled growth. Private equity funds are the pools of capital invested by private
8 equity firms like the Private Equity Defendants. The funds operated by the Private Equity
9 Defendants are generally organized as limited partnerships, which are controlled by the private
10 equity firm. Most private equity funds have only a 10 year life, at which point they are dissolved.

11 71. The Private Equity Defendants use their pools of capital to bid for control of
12 technology companies, as occurred with WatchGuard, in what is often termed a “going private
13 transaction”. According to an October 30, 2006 article in *BusinessWeek*, nearly \$159 billion has
14 poured into private equity funds in 2006, compared to \$41 billion in all of 2003. Annual returns on
15 the funds average approximately 20%.

16 72. The private equity community is tightly knit, trying to shield its inner workings and
17 methods from the press. The effort to remain out of the public eye, however, has not deterred the
18 Department of Justice (the “DOJ”) from investigating potential collusion by these firms.
19 Specifically, in October 2006, news reports confirmed that the DOJ has initiated an investigation by
20 sending letters of inquiry to major players in the industry. According to industry experts, as reported
21 in the October 13, 2006 edition of the *Financial Times*, the DOJ is investigating private equity firms’
22 potential collusion and bid-rigging. In particular, the DOJ is focused on whether the private equity
23 “players” work together to establish prices and fix the value of bids in order to keep the targets’ price
24 low. These practices impede the target (i.e., WatchGuard) from running a fully competitive auction
25 and realizing maximum value for stockholders.

1 73. Plaintiff is not alleging joint bidding or other joint venture by the Private Equity
2 Defendants that would be permissible under the antitrust laws. Rather, the Private Equity
3 Defendants, after initially submitting independent bids for WatchGuard, agreed that Vector would
4 withdraw its bid or otherwise refrain from bidding, and take other action that would facilitate the
5 Private Equity Defendants acquiring corporate control of WatchGuard for the lowest possible price.
6 The Private Equity Defendants communicate and share price information in order to proceed. For
7 its participation in the scheme, FP allowed Vector a fifty percent stake in the going private
8 transaction for WatchGuard.

9 74. FP and Vector are both Internet and technology focused funds with considerable
10 portfolio holdings and market power in the computer and Internet sector. For example, Vector owns
11 all or significant portions of *Safenet, Inc.* (Internet security), *Savi Technology* (supply chain
12 software), *LANdesk Software* (systems and management IT software), *Corel Corporation* (graphics,
13 web, desktop publishing, photo-editing and business software), *Register.com* (domain name
14 registration), *Epicor* (custom business software), *Extricity* (business to business integration
15 software), *Flextronics* (worldwide electronics design, fabrication, and assembly), *NetGravity*
16 (advertising and direct marketing Internet software), *Niku Corporation* (services relationship
17 management software), *ProcessClaims* (software connectivity and business process Internet
18 solutions), *Quintus* (e-commerce relationship management software), *Real Networks* (Internet media
19 delivery software), *Triplos, Inc.* (biotechnology, pharmaceutical and life science industries), *UUNet*
20 (enterprise Internet access), and *WinZip Computing* (file compression software).

21 75. FP's technology portfolio includes, *Aderant* (software for services organizations),
22 *AKQA* (customer relationship management, digital product design), *AMI Semiconductor* (leading
23 designer and manufacturer of application-specific integrated circuits), *AttachmateWRQ* (world's
24 largest independent provider of access and integration software for legacy systems), *Barracuda*
25 *Networks* (enterprise-class spam, spyware, virus and IM threat protection), *Blue Coat* (secures web
26 communications and accelerates business applications), *C-MAC* (microcircuits and frequency control
27 products), *Credence* (semiconductor test and diagnostic systems), *Ex Libris* (software solutions for

1 libraries, academic institutions and information centers), *Foundation 9 Entertainment* (video
2 games), *FrontRange Solutions* (small business software), *GXS* (business to business integration
3 software), *Hover-Davis* (electronics assembly), *Legerity* (voice integrated circuits), *LYNX Medical*
4 *Systems* (medical documentation software), *MagnaChip* (semiconductor manufacturer), *Meterologic*
5 (data capture), *OfficeTiger* (information processing systems for financial institutions), *Primavera*
6 (custom software), *SMART Modular* (memory cards), *Universal Instruments* (circuit board
7 assembly), *Webtrends* (web analytics), and *XcelleNet* (remote and mobile network software).

8 76. Together FP and Vector possess significant market power in the market for corporate
9 control of WatchGuard and other technology companies.

10 CLASS ALLEGATIONS

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

19 78. 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 members
22 of the Class may be identified from records maintained by the defendants, and may be notified of
23 the pendency of this action by mail, using the form of notice similar to that customarily used in
24 securities class actions.

25 79. There are questions of law and fact which are common to the Class and which
26 predominate over questions affecting any individual Class member. These common questions
27 include, but are not limited to:

1 (a) whether the Directors breached their fiduciary duties of undivided loyalty,
2 independence, good faith, diligence, fair dealing and/or full disclosure with respect to Plaintiff and
3 the other members of the Class by their activities concerning the disposition of WatchGuard,
4 rejection of earlier offers by Vector, FP and others, and by entering into the Support and Lock Up
5 Agreements;

6 (b) whether the Directors failed to be, or stay, informed about the progress of
7 negotiations, failed to properly solicit or safeguard offers for WatchGuard and thereby were unable
8 to encourage alternative offers and/or initiate a fair and competitive process for the sale of
9 WatchGuard assets;

10 (c) whether the Directors attempted to perpetuate their governance, to preserve
11 lucrative and prestigious perquisites to the detriment of shareholder interests and, among other
12 things, failed to properly consider, encourage, negotiate and manage various good faith offers and
13 opportunities for Company assets;

14 (d) whether the Directors, improperly or for improper purposes, erected barriers
15 intended to impede or discourage competitive offers for the Company or its assets, and/or favored
16 select entities to the shareholders' detriment;

17 (e) whether the Directors concealed material non-public information from the
18 investing public;

19 (f) whether Vector traded on insider information in its purchases of WatchGuard
20 stock between March 14, 2006 and March 22, 2006, and whether Vector's trades violate the insider
21 trading laws;

22 (g) whether Vector received material non-public information from the Directors
23 and persons acting on behalf of the Directors regarding the business and/or assets of WatchGuard;

24 (h) whether Vector's purchase of voting shares or other like interests in Gladiator,
25 that were fully exchangeable for, convertible or merged into, WatchGuard shares, without first
26 disclosing the material non-public information received during due diligence constitutes tender offer
27 fraud and insider trading in violation of Section 14(e) of the Williams Act (15 U.S.C. § 78n(e)),

1 Rule 14e-3 promulgated thereunder (17 C.F.R. § 240.14e-3), and Section 20A of the Exchange Act
2 (15 U.S.C. 78t-1);

3 (i) whether Private Equity Defendants and their co-conspirators engaged in a
4 contract, combination or conspiracy among themselves and/or with the participation of the Directors,
5 to fix, maintain or stabilize the Acquisition price of WatchGuard, or rig bids therefor;

6 (j) the identity of the participants in the conspiracy;

7 (k) the duration of the conspiracy and its nature and the character of the acts of
8 the Private Equity Defendants in furtherance thereof;

9 (l) whether the actions herein specified violate Section 1 of the Sherman Act;

10 (m) whether the conduct of the Private Equity Defendants, as alleged in this
11 Complaint, caused injury to Plaintiff and the Class; and

12 (n) whether Plaintiff and members of the Class have been harmed by the conduct
13 complained of herein and the amount of such harm.

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

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

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

1 **FIDUCIARY DUTIES OF THE DIRECTOR DEFENDANTS**

2 83. By reason of the Directors' positions with the Company as officers and/or directors,
3 said individuals owed fiduciary duties to WatchGuard's public stockholders under applicable law,
4 including duties of good faith, fair dealing, loyalty, and candid and full disclosure.

5 84. As corporate directors, the Directors were required to act in good faith, in the best
6 interests of the Company's shareholders and with such care, including reasonable inquiry and
7 concern, as would be expected of similarly situated prudent persons. In circumstances where bona
8 fide acquisition(s) or tender offer(s) are presented to the Company that represent a substantial
9 premium to the trading price of its stock, the Directors were required to take all reasonable steps to
10 properly evaluate and pursue such offers, if reasonable, including responding to offers in a manner
11 consistent with the shareholder's best interests. To act diligently and comply with these duties, a
12 director of a corporation may not take action that:

- 13 (a) adversely affects the available value to the corporation's shareholders;
- 14 (b) contractually prohibits a director from complying with, pursuing, or carrying
15 out his fiduciary duties;
- 16 (c) mislead Company shareholders or the investing public;
- 17 (d) discourages or inhibits the receipt, encouragement, or consideration of
18 alternative higher offers to purchase the Company or its assets;
- 19 (e) otherwise adversely affect a duty to search, solicit, and secure the best value
20 reasonably available under the circumstances for the benefit of the Company's shareholders; or
- 21 (f) assist the Private Equity Defendants' actions.

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

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

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

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

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

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

11 86. The Directors, separately and together, violated the fiduciary duties owed to Plaintiff
12 and the other public shareholders of WatchGuard, including duties of loyalty, good faith, full
13 disclosure and independence, insofar as they: a) failed to adopt a suitable process or procedure for
14 consideration of offers to purchase WatchGuard, including an offer by Vector to purchase
15 WatchGuard at a 35% premium to the trading price of the Company's stock, or otherwise take
16 measures to avoid wasting of WatchGuard's assets, and otherwise sought to discourage or failed to
17 encourage a competitive bidding process for the sale of WatchGuard; b) sought to benefit from their
18 lucrative positions as directors and/or officers of this publicly traded corporation at the expense, and
19 to the detriment, of the shareholders; c) entered into the Support Agreement and Lock Up and
20 termination fee provisions; d) failed to disclose material facts and events relating to the Acquisition;
21 and e) allowed, permitted or encouraged the wrongful actions of the Private Equity Defendants.

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1 **FIRST CAUSE OF ACTION**
2 **Breach of Fiduciary Duty Against the Director Defendants**

3 87. Plaintiff repeats and realleges each and every allegation above as though fully set
4 forth herein.

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

10 89. The Directors violated their fiduciary duties of care, loyalty, full disclosure and
11 independence owed to WatchGuard's public shareholders, placed personal interests above the
12 interests of WatchGuard shareholders, and allowed waste of Company assets in the course of their
13 conflicting loyalties.

14 90. The Directors violated their fiduciary duties by failing to encourage, provide for and
15 sustain reasonable good faith offers for the Company (like the Vector offer) and encourage other
16 offers. The Directors disregarded the benefit or fairness of prospective transactions for WatchGuard
17 shareholders, including the significant premium these offers represented to the public shareholders
18 and instead allowed themselves to be co-opted by the Private Equity Defendants.

19 91. The Directors abdicated their fiduciary duties and violated their duties of good faith,
20 loyalty, independence, and full disclosure by concealing material non-public information from the
21 shareholders regarding the true value of WatchGuard's business and assets, and concerning the
22 source of consideration for the Acquisition, thereby frustrating the shareholders' appraisal rights.
23 Further, by entering into the Support Agreement(s) and Lock Up and termination fee provisions with
24 the Private Equity Defendants, the Directors intentionally caused themselves to disregard and
25 actively frustrate any higher competing offers in gross disregard of their duties of good faith and
26 loyalty.

1 92. Defendant Borey knowingly, and with the knowledge, acquiescence, participation or
2 support of the other Directors misrepresented the character and terms of the Agreement in his July
3 25, 2006 conference call and thereby induced WatchGuard's public shareholders to ratify the
4 Acquisition Agreement.

5 93. Each of the Directors knowingly participated in the unlawful conduct alleged herein
6 in order to advance his own economic interests, or the interests of friends and colleagues, or the
7 Private Equity Defendants, and/or to shield the Directors from liability, same to the detriment of
8 WatchGuard's shareholders.

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

15 95. The Directors breached and/or aided and abetted each other Directors' breach of
16 fiduciary duties to WatchGuard and the public stockholders.

17 96. By reason of the foregoing acts, practices and course of conduct, the Directors have
18 abdicated and otherwise failed to discharge their fiduciary duties of loyalty, independence and full
19 disclosure as corporate directors of WatchGuard.

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

23 98. As a result of the Directors unlawful actions, WatchGuard's public shareholders have
24 suffered damages.

1 **SECOND CAUSE OF ACTION**

2 **Tender Offer Fraud And Insider Trading In Violation Of Section 14(e) Of The Williams
3 Act And Rule 14e-3 Promulgated Thereunder Against Vector III**

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

6 100. In connection with the WatchGuard Acquisition and solicitation of tenders therefor,
7 Vector III, jointly and severally, carried out a plan, scheme and course of conduct that was intended
8 to and did: (1) deceive the investing public, including Plaintiff and the Class, as alleged herein; and
9 (2) operate to artificially depress the Acquisition price of WatchGuard's common stock as alleged
10 herein. In furtherance of this unlawful scheme, plan and course of conduct, Vector III, jointly and
11 severally, took the actions set forth herein.

12 101. Vector III engaged in fraudulent, deceptive, and manipulative acts or practices; and/or
13 engaged in acts, practices, and a course of conduct that operated as a fraud and deceit upon Plaintiff
14 and the Class in an effort to artificially depress the tender offer price for WatchGuard stock and other
15 like interests in violation of Section 14(e) of the Williams Act and Rule 14e-3 promulgated
16 thereunder.

17 102. Vector III, individually and in concert, directly and indirectly, by the use, means, or
18 instrumentalities of interstate commerce and/or the mails, engaged and participated in a continuous
19 course of conduct to conceal material information about the business, operations, assets and future
20 prospects of WatchGuard as specified herein.

21 103. Vector III employed fraudulent, deceptive, and manipulative acts or practices while
22 in possession of material non-public information about WatchGuard's business, operations, assets
23 and future prospects, and relating to the contract, combination or conspiracy with FP herein alleged,
24 and engaged in acts, practices, and a course of conduct as alleged herein in an effort to
25 misappropriate WatchGuard's business and assets and thereby "squeeze out" WatchGuard
26 shareholders at artificially low prices.
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1 104. On or about July 25, 2006 FP entered into a definitive agreement to acquire all
2 outstanding shares of WatchGuard stock that constituted a substantial step toward, or the
3 commencement of, a tender offer.

4 105. The Directors' September 1, 2006 definitive proxy solicitations for the merger state
5 that Vector (a) executed non-disclosure agreements prior to receiving due diligence materials, (b)
6 were provided confidential information from WatchGuard or agents of WatchGuard, regarding
7 business, financial and legal issues, and (c) had direct and detailed access to WatchGuard
8 consultant(s), various members of WatchGuard management, WatchGuard's legal counsel and three
9 of WatchGuard's value added resellers.

10 106. The nature and content of the above mentioned confidential due diligence materials
11 was significant to Plaintiff, the Class, and any reasonable shareholder in considering and determining
12 whether to tender their shares pursuant to the Acquisition or otherwise exercise their appraisal rights,
13 as the nature and content of the above mentioned confidential due diligence materials reflect the true
14 value of WatchGuard shares.

15 107. By virtue of the above mentioned non-disclosure agreements, and the confidential
16 nature of the information itself, Vector III knew or had reason to know that the information to which
17 they had access, and which they were given was non-public at the time Vector received it, and which
18 remained non-public at the time the Vector III purchased or caused to be purchased shares or other
19 like interests in Gladiator. In light of this conscious strategy, the failure to disclose the content and
20 substance of the due diligence information in Vector III's possession raises a strong inference of
21 scienter.

22 108. As a participant in the contract, combination or conspiracy with FP herein alleged,
23 Vector III knew about such contract, combination or conspiracy, but left in place watered-down
24 disclosures about the nature and scope of its involvement with FP and participation in the
25 Acquisition. In light of this conscious strategy, the failure to disclose the content and substance of
26 the contract, combination or conspiracy with FP, raises a strong inference of scienter. The fact that
27 Vector III repeatedly lowered its bids, continued to express interest in pursuing a transaction with

1 consideration in excess of \$4.25 per share, yet ultimately decided to carve WatchGuard jointly with
2 FP, further creates a strong inference of scienter.

3 109. On or about August 16, 2007 Vector III entered into the above mentioned Letter
4 Agreement whereby Vector III agreed to purchase 50 percent of the voting shares or other like
5 interests in Gladiator that were subsequently converted, exchanged, equivalent to, or merged into the
6 outstanding, publicly owned shares of WatchGuard.

7 110. Having received confidential non-public information from WatchGuard and/or agents
8 of WatchGuard, solely for the purpose of submitting a formal bid for WatchGuard, Vector III owed
9 fiduciary and contractual duties to WatchGuard and its shareholders to abstain from using such
10 confidential information to purchase shares or other like interests in Gladiator pursuant to the Letter
11 Agreement, and to protect the confidentiality of said material, nonpublic information concerning
12 WatchGuard, its business and assets.

13 111. Pursuant to the Acquisition, Plaintiff and the Class sold, tendered or otherwise
14 relinquished their shares, stock or other like interests of WatchGuard directly to Vector III , or were
15 otherwise in privity with them, and thereby “traded contemporaneously” with Vector III .

16 112. Plaintiff and all other Class members that tendered their shares pursuant to the
17 Acquisition were at all times unaware of the fact that the tender offer price per WatchGuard share
18 was artificially depressed as a result of Vector III’s non-disclosure of material non-public
19 information about the business, assets, and future prospects of Watchguard, and relating to the
20 contract, combination or conspiracy herein alleged.

21 113. By virtue of the foregoing, Vector III is guilty of insider trading and has violated
22 Section 14(e) of the Williams Act, and Rule 14e-3 promulgated thereunder.

23 114. As a direct and proximate result of Vector III ’s wrongful conduct, Plaintiff and other
24 members of the Class contemporaneously tendering their WatchGuard shares or other like interests
25 pursuant to the Acquisition, have suffered damages in connection with their respective tender of
26 shares or other like interests.

1 115. This action is being brought within two years after the discovery of the insider trading
2 violation(s) and within five years after Plaintiff tendered its shares.

3 **THIRD CAUSE OF ACTION**
4 **Insider Trading In Violation Of Section 10(b) Of The Exchange Act**
5 **And Rule 10b-5 Promulgated Thereunder**
6 **Against Vector Capital III On Behalf Of The 10(b) Subclass**

7 116. Plaintiff repeats and realleges each and every allegation above as though fully set
8 forth herein.

9 117. This third cause of action is asserted against Vector III for violations of Section 10(b)
10 of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder on behalf of the
11 10(b) Subclass.

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

18 119. 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 such
22 material facts about the business, assets and/or future prospect of WatchGuard in violation of Section
23 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

24 120. Vector III, individually and in concert, directly and indirectly, by the use, means or
25 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
26 continuous course of conduct to conceal adverse material information about the business, operations,
27 assets and future prospects of WatchGuard as specified herein.

1 121. Vector III employed devices, schemes, and artifices to defraud, while in possession
2 of material nonpublic information and engaged in acts, practices, and a course of conduct as alleged
3 herein in an effort to misappropriate and profit from confidential non-public information regarding
4 such business, assets, and/or future prospects of WatchGuard as alleged herein, such information
5 having been reposed in Vector III for the sole purpose of Vector making a formal bid for the
6 Company, which included engaging in transactions, practices and a course of conduct that operated
7 as a fraud and deceit upon the purchasers of WatchGuard's shares during the Class Period.

8 122. In ignorance of the fact that market prices for WatchGuard's shares were artificially
9 inflated during the Class Period, and relying upon the integrity of the market in which the shares
10 trade, and/or on the absence of material information that was known to or recklessly disregarded by
11 Vector III in public statements by Vector III during the Class Period, Plaintiff and the other members
12 of the 10(b) Subclass acquired WatchGuard shares during the Class Period at artificially high prices
13 and were damaged thereby.

14 123. Had Plaintiff and other members of the 10(b) Subclass known about Vector III's
15 misappropriation of material nonpublic information, Plaintiff and other members of the 10(b)
16 Subclass would not have purchased or otherwise acquired their WatchGuard shares, or, if they had
17 acquired such shares during the Class Period, they would not have done so at the artificially inflated
18 prices which they paid.

19 124. By virtue of the foregoing, Vector III has violated Section 10(b) of the Exchange Act,
20 and Rule 10b-5 promulgated thereunder.

21 125. As a direct and proximate result of vector III's wrongful conduct, Plaintiff and the
22 other members of the Class suffered damages in connection with their respective purchases and sales
23 of the Company's shares during the Class Period.

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

1
2 **FOURTH CAUSE OF ACTION**
3 **Insider Trading In Violation Of Section 20A Of The Exchange Act**
4 **Against Vector Capital III**

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

7 130. This fourth cause of action is asserted against Vector III for violations of § 20A of
8 the Exchange Act, 15 U.S.C. § 78t-1, and the rules and regulations promulgated thereunder for
9 insider trading.

10 131. By virtue of the foregoing, and Vector III's violations of Section 14(e) of the
11 Williams Act, and Rule 14e-3 promulgated thereunder, and Section 10(b) of the Exchange Act and
12 Rule 10b-5 promulgated thereunder as complained of herein, Vector III is guilty of insider trading
13 and has violated Section 20A of the Exchange Act, and the rules promulgated thereunder.

14 132. As a direct and proximate result of Vector III's wrongful conduct, Plaintiff and the
15 other members of the Class contemporaneously tendering their shares or other like interests of
16 WatchGuard have suffered damages in connection with their respective tender of shares or other like
17 interests.

18 **FIFTH CAUSE OF ACTION**
19 **Violation Of Section 20(a) Of The Exchange Act Against Vector Capital Corporation And**
20 **Alexander Slusky**

21 133. Plaintiff repeats and realleges each and every allegation above as though fully set
22 forth herein.

23 134. This claim is brought pursuant to Section 20 of the Exchange Act, 15 U.S.C. § 78t,
24 against Vector Capital Corporation and Alexander Slusky (the "Control Persons") as control persons
25 of Vector III. By virtue of their ownership and/or senior managerial positions, participation in and/or
26 awareness of the tender offer fraud and insider trading as alleged above, the Control Persons had and
27 have the power to influence and control and did influence and control, directly and indirectly, the
28 decision making of Vector III, including receipt, unlimited access, and/or control of the material non-
public due diligence materials as described herein, had the ability to prevent the tender offer fraud

1 and insider trading, and consequently, the Control Persons are control persons with the meaning of
2 Section 20(a) of the Exchange Act as alleged herein.

3 135. It is appropriate to treat Vector III and the Control Persons as a group for pleading
4 purposes and presume that the tender offer fraud and insider trading complained about herein are the
5 collective actions of Vector III and the Control Persons.

6 136. Vector III violated Section 14(e) of the Williams Act, and Rule 14e-3 promulgated
7 thereunder, Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, as well as
8 Section 20A of the Exchange Act as alleged in this complaint. By virtue of their positions as
9 controlling persons, the Control Persons are liable pursuant to Section 20(a) of the Exchange Act.

10 137. As a direct and proximate result of the Control Persons' wrongful conduct, Plaintiff
11 and the Class suffered damages in connection with their respective tender(s) of WatchGuard shares
12 or other like interests pursuant to the Acquisition.

13
14 **SIXTH CAUSE OF ACTION**
Violation of Section 1 of the Sherman Act Against the Private Equity Defendants

15 138. Plaintiff repeats and realleges each and every allegation above as though fully set
16 forth herein.

17 139. The allegations against the Private Equity Defendants proceed under Sections 4 and
18 16 of the Clayton Act, which allows recovery of treble damages and costs of suit, including
19 reasonable attorneys' fees, for the injuries sustained by Plaintiff and the members of the Class by
20 reason of their violations of Section 1 of the Sherman Act.

21 140. The Private Equity Defendants and their co-conspirators engaged in a contract,
22 combination and conspiracy in restraint of trade to artificially fix, maintain, stabilize or rig the tender
23 offer bids for corporate control of WatchGuard, which constituted a per se violation of Section 1 of
24 the Sherman Act. The duration of this conspiracy began approximately June 26, 2006 and ended
25 approximately October 4, 2006 when the Acquisition was approved by WatchGuard shareholders.

1 141. The activities of the Private Equity Defendants and their co-conspirators were within
2 the flow of, and substantially affected, interstate commerce. During the time period indicated in this
3 Complaint, the Private Equity Defendants and their co-conspirators, and each of them, used
4 instrumentalities of interstate commerce to purchase equity shares of WatchGuard and acted in
5 concert for that purpose.

6 142. In the market for corporate control of WatchGuard, FP and Vector are buyers seeking
7 complementary assets that create market power in the software and technology product markets.

8 143. The contract, combination and conspiracy consisted of the agreement, understanding
9 and concert of action among the Private Equity Defendants, the substantial terms of which were to
10 artificially fix, maintain, stabilize or rig the tender offer bids for corporate control of WatchGuard
11 in formulating and effectuating the aforesaid contract, combination or conspiracy. The Private
12 Equity Defendants did those things that they combined and conspired to do, including, among other
13 things:

14 (a) working among themselves for the purpose of rigging their bids for
15 WatchGuard;

16 (b) exchanging information among themselves on bids pricing in connection with
17 their Acquisition of WatchGuard;

18 (c) agreeing among themselves as to the amount to offer in connection with the
19 WatchGuard Acquisition;

20 (d) submitting bid(s) for WatchGuard shares at an agreed-upon price in
21 connection with the Acquisition; and

22 (e) monitoring and implementing the agreement to control the price paid by the
23 Private Equity Defendants.

24 144. The activities described above were engaged in by the Private Equity Defendants for
25 the purpose of effectuating the unlawful arrangements to artificially fix, maintain, stabilize or rig the
26 tender offer bids for corporate control of WatchGuard by the Private Equity Defendants in the United
27 States.

1 145. The Private Equity Defendants are not immune from application of the antitrust laws
2 because the actions of Vector in connection with the Acquisition constitute tender offer fraud and
3 insider trading in violation of Section 14(e) of the Williams Act, and Rule 14e-3 promulgated
4 thereunder, and insider trading in violation of Section 10(b) of the Exchange Act, Rule 10b-5
5 promulgated thereunder, and Section 20A of the Exchange Act, and are therefore not expressly or
6 impliedly permitted under the securities laws, and are not inextricably intertwined with such
7 permissible activities.

8 **EFFECTS**

9 146. The unlawful contract, combination or conspiracy has had the following effects,
10 among others:

11 (a) prices paid by the Private Equity Defendants and their co-conspirators to the
12 Plaintiff and the members of the Class for WatchGuard shares were maintained at artificially low
13 and non-competitive levels; and

14 (b) Plaintiff and members of the Class were paid less for WatchGuard shares sold
15 the Private Equity Defendants than they would have paid in a competitive marketplace, unfettered by
16 Defendants' collusive and unlawful price-fixing and/or bid rigging.

17 147. During and throughout the period of the aforesaid contract, combination or
18 conspiracy, Plaintiffs and members of the Class tendered WatchGuard shares to the Private Equity
19 Defendants.

20 148. The Private Equity Defendants paid Plaintiff and the other Class members less for
21 their equity shares than what would have been achieved in a competitive sale.

22 149. Plaintiff and the Class suffered damages in that the contract, combination or
23 conspiracy, and the acts done in furtherance thereof by the Private Equity Defendants were done in
24 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

25 150. As a direct and proximate result of the illegal contract, combination or conspiracy,
26 Plaintiff and the members of the Class have been injured and financially damaged in their respective
27 businesses and property, in precise amounts which are presently undetermined.

1 E. That the Private Equity Defendants, their affiliates, successors, transferees, assignees,
2 and the officers, directors, partners, agents and employees thereof, and all other persons acting or
3 claiming to act on their behalf, be permanently enjoined and restrained from, in any manner
4 continuing, maintaining or renewing the contract, combination or conspiracy having a similar
5 purpose or effect, and from adopting or following any practice, plan, program or device having a
6 similar purpose or effect.

7 F. That judgment be entered for Plaintiff and members of the Class against the Private
8 Equity Defendants for three times the amount of damages sustained by Plaintiffs and the Class, as
9 allowed by law, together with the costs of this action, including reasonable attorneys' fees.

10 G. An award to Plaintiff of the costs and disbursements of this action including
11 reasonable attorneys' and experts' fees.

12 H. That the Private Equity Defendants be subject to the remedies requested above, and
13 that the Directors be subject to damages for allowing and/or aiding and abetting and/or enabling
14 and/or being jointly liable for the damages owed the shareholder class pursuant to the allegations of
15 anti-competitive conduct by the Private Equity Defendants.

16 I. Such other and further relief as this Court may deem just and proper.
17

18 DATED: April 24, 2007

By: /s/ Jeffrey R. Krinsk

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**UNITED STATES DISTRICT COURT
FOR THE 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, FRANCISCO PARTNERS II,)
L.P., FRANCISCO PARTNERS PARALLEL)
FUND II, L.P., VECTOR CAPITAL)
CORPORATION, VECTOR CAPITAL III,)
L.P., ALEXANDER R. SLUSKY, DAVID)
STANTON, DIPANJAN DEB,)

Defendants.)

Case No.: 2:06-cv-1737 JLR

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed FIRST AMENDED COMPLAINT
BASED UPON SELF-DEALING, BREACH OF FIDUCIARY DUTIES AND VIOLATIONS OF
THE FEDERAL SECURITIES AND ANTITRUST LAWS with the Clerk of the Court using the
CM/ECF system, which will send notification of such filing to **Barry Kaplan, James N. Kramer,**
Eric D. Lowney, Louis D. Peterson, Gabriel Z. Reynoso, Jeremy E. Roller, Michael R. Scott,

1 **Richard A. Smith, and Michael D. Torpey** , and I hereby certify that I have mailed by United
2 States Postal Service true and correct copies of said documents to the following non CM/EFC
3 participants:

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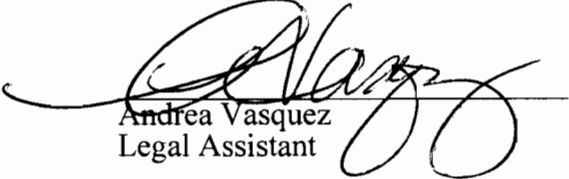
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17
18 I declare under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct.

20 Dated this 24th day of April, 2007 at San Diego, California.

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Andrea Vasquez
Legal Assistant