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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA

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U.S. DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

FIRST CHOICE MANAGEMENT  
SERVICES, INC. and  
GARY VAN WAEYENBERGHE

Defendants.

CIVIL ACTION

No.

3:00CV0446RM

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), for its  
Complaint states as follows:

NATURE OF THE COMPLAINT

1. This matter involves a multi-million dollar fraudulent scheme that is still ongoing. The scheme raised in excess of \$ 21 million and millions of dollars of investor funds have been misappropriated. From approximately November 1999 through the present, First Choice Management Services, Inc. ("First Choice") and its President and Chief Executive Officer, Gary Van Waeyenberghe, through others, solicited investors to invest in unregistered securities identified as Enhanced Automotive Receivables ("EAR's").

2. In excess of 200 investors in more than 29 states invested more than \$21 million in First Choice's EAR program. First Choice and Van Waeyenberghe used investor funds to purchase approximately \$2 million in auto receivables and misappropriated vast amounts of investor funds to pay for, among other things, real estate

including Van Waeyenberghe's home, jewelry, stock trading, and various other personal investments and expenses.

3. First Choice and Van Waeyenberghe made, or caused to be made, numerous other material misrepresentations and omitted to state material information in connection with the offer, purchase and sale of the EAR's which included the following: (1) the existence of "default insurance" allegedly issued by Lloyd's of London; (2) the existence of "sub-accounts" for each investor at a broker-dealer, Merrill Lynch; (3) the risk and rate of return of the investment; (4) the guaranteed nature of the investment; and (5) the criminal and disciplinary history of Van Waeyenberghe including two felony convictions for fraud.

4. Van Waeyenberghe and First Choice directly and indirectly, have engaged in and, unless enjoined, will continue to engage in transactions, acts, practices and courses of business which constitute and will constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a) and 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5]. There is a reasonable likelihood that defendants Van Waeyenberghe and First Choice, if not enjoined, will continue to engage in transactions, acts, practices and courses of business, the same as, or similar to, those set forth above, and as more fully set forth below in this Complaint, in violation of the federal securities laws.

5. The Commission brings this action to enjoin such transactions, acts, practices and courses of business pursuant to Section 20(b) of the Securities Act [15

U.S.C. §77t(b)] and Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§78u(d) and (e)].

### JURISDICTION

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], Section 27 of the Exchange Act [15 U.S.C. §78aa] and 28 U.S.C. § 1331.

7. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices and courses of business alleged herein occurred in the Northern District of Indiana.

8. Defendants Van Waeyenberghe and First Choice have, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices and courses of business alleged herein in the Northern District of Indiana and elsewhere.

### DEFENDANTS

9. Defendant Gary Van Waeyenberghe is a resident of Mishawaka, Indiana. From at least November 1999 and up to the present time, Van Waeyenberghe has served in the capacity as president and Chief Executive Officer of First Choice. Van Waeyenberghe has a criminal history which includes two felony fraud convictions in the late 1980's. He is currently under an indictment returned by a grand jury in this district for bank fraud and is named as a defendant in a criminal complaint alleging bankruptcy fraud. He also filed a Chapter 7 bankruptcy in 1997.

10. Defendant First Choice was incorporated in Nevada in November, 1999. Its president and chief executive officer is Gary Van Waeyenberghe. First Choice maintains an office in Mishawaka, Indiana as well as offices in Florida, Mississippi and Nevada.

### FACTS

11. From at least November 1999 to the present, defendants sold through others, investments in an investments scheme identified as Enhanced Automotive Receivables ("EAR's).

12. Defendants have raised at least \$21 million from over 200 investors located in at least 29 states.

13. According to offering materials generated, or caused to be generated, by the defendants, investors were to send money to First Choice which would then locate, purchase and service receivables which would then presumably generate returns for the investor. First Choice investors were told that their funds would only be used to purchase receivables.

14. As part of the EAR Program, defendants generated materials, which were disseminated by others to investors, which described the existence and safety of this program. These material representations, including, but not limited to, the following statements:

a. First Choice promised that investors would never miss a monthly payment and guaranteed investors an annual percentage rate or return of 11% return regardless of when receivables were actually purchased on behalf of the investor;

b. First Choice promised that if a specific receivable defaulted, it would be replaced with another receivable without any additional charge to the investor;

c. First Choice promised that the receivables were insured against default by Lloyd's of London;

d. First Choice promised that the investment was further protected by diversifying repayment obligation to numerous borrowers whose responsibility is to honor the debt;

e. First Choice stated that investor funds would be placed in an individual "sub-account" at Merrill Lynch from which funds would be used to purchase receivables; and

f. First Choice described its management team as "a highly successful and seasoned management team, most of whom have maintained senior level positions with top-level corporations for almost 20 years."

15. Some of the investors were told that their money would be pooled or commingled with other investors' money to purchase a block of receivables from which the investors' interest payments would be generated.

16. In fact, Defendants used only a portion of the funds which it raised to purchase receivables from investors. Defendants misappropriated vast amounts of investor funds for, among other things:

a. the purchase of jewelry approximating \$17,000;

b. the purchase of securities in First Choice's name totaling approximately \$3 million;

- c. the purchase of electronic equipment for Van Waeyenberghe's home including a \$4,000 television;
- d. numerous real estate purchases and deposits including \$140,000 for Van Waeyenberghe's personal residence and \$500,000 for a restaurant;
- e. Visa bills and other personal expenses of Van Waeyenberghe;
- f. the purchase of 6 car dealerships in Missouri and the purchase of cars as inventory for those dealerships;
- g. Cars for persons associated with First Choice, including a Cadillac El Dorado which Van Waeyenberghe regularly uses; and
- h. Cash withdrawals.

17. Defendants did not have the insurance coverage it claimed from Lloyd's of London. The policy which defendants placed in marketing materials was issued to a separate entity and provided no coverage to First Choice.

18. The vast majority of investor funds were never placed in individual "sub accounts" at a broker-dealer. Instead, the funds from all but a few investors were placed directly into a First Choice bank account.

19. Defendants failed to disclose that the receivables which First Choice was to purchase on behalf of investors were in fact very risky and were not as safe as stated by the defendants.

20. Defendants failed to disclose the criminal and disciplinary history of Van Waeyenberghe including two felony convictions for fraud and a prior settlement with the Commission pertaining to alleged securities laws violations. Likewise, the defendants failed to disclose Van Waeyenberghe's 1997 bankruptcy.

21. Defendants used and caused the use of the United States mail and interstate telephone calls, facsimiles and travel in furtherance of his fraudulent scheme.

### COUNT I

#### **Violations of Section 5(a) and 5(c) of the Securities Act [15 U.S.C. §77e(a), (c)]**

22. Paragraphs 1 through 21 are realleged and incorporated by reference.

23. From at least November 1999 through and including July 2000, Defendants Van Waeyenberghe and First Choice, directly and indirectly, made use of the means and instruments of transportation and communication in interstate commerce and of the mails, to sell and offer to sell securities in the form of EAR's through the use and medium of offering materials and otherwise, and carried such securities and caused them to be carried through the mails and in interstate commerce by the means and instruments of transportation for the purpose of sale and delivery after sale.

24. No registration statement was filed or in effect with the Commission, as to the EAR's as more fully described in paragraphs 1-21.

25. By reason of the activities described in Paragraphs 22 through 24, Defendants Van Waeyenberghe and First Choice violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a), e(c)].

### COUNT II

#### **Violations of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)]**

26. Paragraphs 1 through 21 are realleged and incorporated by reference.

27. From at least November 1999 through and including July 2000, Defendants Van Waeyenberghe and First Choice, in the offer and sale of securities in the form of EAR's, by the use of the means and instruments of transportation and

communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, as more fully described in Paragraphs 1 through 21.

28. In the offer and sale of securities in the form of EAR's and as part of the scheme to defraud, Defendants Van Waeyenberghe and First Choice made false and misleading statements of material facts and omitted to state material facts to investors and prospective investors as set forth above in paragraphs 1 - 21.

29. Defendants Van Waeyenberghe and First Choice knew or were reckless in not knowing of the facts and circumstances described in Paragraphs 1 through 21.

30. By reason of the activities described in Paragraphs 26 through 29, Defendants Van Waeyenberghe and First Choice violated Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

### COUNT III

#### **Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)]**

31. Paragraphs 1 through 21 are realigned and incorporated by reference.

32. From at least November 1999 through and including July 2000, Defendants Van Waeyenberghe and First Choice, in the offer and sale of securities in the form of EAR's, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, obtained money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in transactions, practices and courses of business which operated as a fraud and deceit upon



investors and prospective investors, all as more fully described in Paragraphs 1 through 21 above.

33. By reason of the activities described in Paragraphs 31 through 32, Defendants Van Waeyenberghe and First Choice violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)].

#### COUNT IV

#### **Violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].**

34. Paragraphs 1 through 21 are realleged and incorporated by reference.

35. From at least August 1998 through February 1999, Defendants Van Waeyenberghe and First Choice, in connection with the offer and sale of securities in the form of EAR’s, by the use of the means and instruments of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud, as more fully described in Paragraphs 1 through 21 above.

36. Defendants Van Waeyenberghe and First Choice knew or were reckless in not knowing of the facts and circumstances described in paragraphs 34 and 35 above.

37. By reason of the activities described in Paragraphs 34 through 36, Defendants Van Waeyenberghe and First Choice violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

## **RELIEF REQUESTED**

**WHEREFORE**, the Plaintiff respectfully requests that the Court:

### **I.**

Find that Van Waeyenberghe and First Choice committed the violations alleged above.

### **II.**

Grant a Temporary Restraining Order and Orders of Preliminary and Permanent Injunction, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, restraining and enjoining Van Waeyenberghe and First Choice as well as, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order, the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly, engaging in the acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Sections 5(a), 5(c), 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, [15 U.S.C. §77e(a), §77e(c), §77q(a)(1), §77q(a)(2) and §77q(a)(3)], Section 10(b) of the Exchange Act, [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

### **III.**

Enter an Order restraining and enjoining Van Waeyenberghe and First Choice, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the Temporary Restraining Order,

the Order of Preliminary Injunction and the Order of Permanent Injunction by personal service or otherwise, and each of them, from directly or indirectly:

A. transferring, selling, assigning, pledging, dissipating, concealing or otherwise disposing of in any manner, any funds, assets, or other property belonging to, or in the possession, custody or control of the Defendants, wherever located; and

B. destroying, mutilating, concealing, altering or disposing of in any manner, any of the books, records, documents, correspondence, brochures, manuals, obligations or other property of or pertaining to the offer and sale of EAR's and/or First Choice financial and operating information, wherever located.

#### IV.

Grant an Order requiring Van Waeyenberghe and First Choice to repatriate any funds held at any bank or other financial institution not subject to the jurisdiction of the Court, and that they direct the deposit of such funds in identified accounts in the United States, pending conclusion of this matter.

#### V

Grant an Order requiring Van Waeyenberghe and First Choice to:

A. produce to the Plaintiff, within one day of the issuance of the Temporary Restraining Order, all current accountant's reports, bank statements, documents indicating title to real or personal property, and any other indicia of ownership or interest in property of any of the Defendants, which indicia of ownership or interest are now in the Defendants' actual or constructive possession;

B. produce to the Plaintiff, within one day of the issuance of the Temporary Restraining Order, all books, records and other documents in Van Waeyenberghe's and/or First Choices actual or constructive possession relating to the offer or sale of the notes or bonds sold by the Defendants; and

C. provide to the Court, within one day of issuance of the Temporary Restraining Order, an accounting of all funds received from investors in connection with the EAR's sold by Van Waeyenberghe and/or First Choice, the uses to which such investor funds were put and the amounts of any remaining such funds and their location, and an accounting of any remaining assets of the Defendants, and their location; provided, however, that nothing in the Order shall be construed to require Van Waeyenberghe and/or First Choice to abandon any constitutional or other legal privilege which they may have available to them.

#### **VI.**

Grant an Order requiring Van Waeyenberghe and First Choice to disgorge any and all ill-gotten gains (including prejudgment interest).

#### **VII.**

Impose civil penalties against Van Waeyenberghe and First Choice in accordance with Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

#### **VIII.**

Order the appointment of a receiver for First Choice, for the benefit of investors, to marshal, conserve, protect and hold funds and assets obtained by the Defendants and

their officers, agents, servants, employees, and those persons in active concert or participation in the fraudulent scheme, wherever such assets may be found, or, with the approval of the Court, dispose of any wasting asset in accordance with an application and order by the Court.

**IX.**

Order that the parties may commence discovery immediately, and that notice periods be shortened to permit the parties to require the production of documents, or the deposition of any party or party-representative, on 72 hours notice.

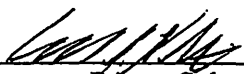
**X.**

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**XI.**

Grant Orders for such further relief as the Court may deem appropriate.

Respectfully submitted,

  
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Dated: July 26, 2000