

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Cathy L. Waldor
 :
 v. : Mag. No. 21-9344
 :
 NIVAH GARCIS : CRIMINAL COMPLAINT

I, Special Agent Vincent Flynn, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with United States Internal Revenue Service, Criminal Investigation, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.

by [Signature]

Special Agent Vincent Flynn
U.S. Internal Revenue Service
Criminal Investigation

Special Agent Vincent Flynn attested to this Complaint by telephone pursuant to Federal Rule of Criminal Procedure 4.1(b)(2)(A) on June 23, 2021 in New Jersey.

June 23, 2021
Newark, New Jersey

HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE

[Signature]

Signature of Judicial Officer

ATTACHMENT A

Count One
(Bank Fraud)

From at least in or about April 2020 through in or about June 2020, in Somerset County, in the District of New Jersey and elsewhere, defendant

NIVAH GARCIS

did knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud one or more financial institutions, to wit: Lender 1, the deposits of which are insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, and credits owned by and under the control of such financial institution by means of materially false and fraudulent pretenses, representations, and promises.

In violation of Title 18, United States Code, Section 1344(2).

Count Two
(Money Laundering)

On or about May 4, 2020, in the District of New Jersey and elsewhere,
defendant

NIVAH GARCIS

did knowingly engage and attempt to engage in a monetary transactions by, through, or to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a greater value than \$10,000, that is, the transfer of approximately \$16,757.61 of U.S. currency from the Allstar Development Account (defined in Attachment B), to a used car dealership, such property having been derived from a specified unlawful activity, that is, bank fraud, in violation of Title 18, United States Code, Section 1344.

In violation of Title 18, United States Code, Section 1957.

ATTACHMENT B

I, Vincent Flynn, a Special Agent with the U.S. Internal Revenue Service (“IRS”), Criminal Investigation, having conducted an investigation and having discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. Rather, I have set forth only the facts that I believe are necessary to establish probable cause. Unless specifically indicated, all dates described in this affidavit are approximate and all statements or representations described in this affidavit are related in substance and in part.

Overview

1. From in or about April 2020 through in or about June 2020, defendant NIVAH GARCIS (“GARCIS”) made false statements to fraudulently obtain over \$1 million in federal COVID-19 emergency relief funds meant for distressed small businesses. GARCIS submitted fraudulent loan applications that fabricated employees, falsified tax records, and misclassified business revenues and other company information. GARCIS then misused the proceeds to buy, among other things, real estate and a luxury vehicle.

Background

The Paycheck Protection Program

2. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is a federal law enacted in or about March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (“PPP”). In or about April 2020, Congress authorized over \$300 billion in additional PPP funding.

3. To obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The PPP loan application requires the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the loan application, the small business must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures are used to calculate the amount of money the small business is eligible to receive under the PPP. In

addition, businesses applying for a PPP loan must provide documentation showing their payroll expenses.

4. A PPP loan application must be processed by a participating lender. If a PPP loan application is approved, the participating lender funds the PPP loan using its own money, which is 100% guaranteed by the U.S. Small Business Administration (“SBA”). Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA in the course of processing the loan.

5. PPP loan proceeds must be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

Economic Injury Disaster Loan

6. The Economic Injury Disaster Loan (“EIDL”) program is an SBA program that provides low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

7. The CARES Act authorized the SBA to provide EIDLs of up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic.

8. In order to obtain an EIDL, a qualifying business must submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues, and cost of goods sold in the 12-month period preceding the disaster.¹ The amount of the EIDL is determined based, in part, on the information the applicant provides regarding the revenue, employees, and cost of goods of the company. SBA directly issues any funds disbursed under an EIDL to the applicant company. A company may use EIDL funds for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If an applicant also obtains a loan under the PPP, the applicant company is prohibited from using EIDL funds for the same purpose as the PPP funds.

¹ The EIDL loan submission documents require applicants to list gross revenues and costs of goods for the “twelve (12) months prior to the date of the disaster (January 31, 2020).”

The Defendant and Relevant Entities

9. At all times relevant to this complaint:
- a. GARCIS was a resident of North Plainfield, New Jersey and controlled or was otherwise associated with the following entities through which she fraudulently applied for PPP and EIDL loans:
 - i. Headway LLC (“Headway”), which was a New Jersey limited liability company that purported to be in the construction industry and listed GARCIS on its incorporation documents as the company’s registered agent and owner.
 - ii. Allstar Development Enterprises LLC (“Allstar Development”), which was a limited liability company that purported to be in the real estate, rental, and leasing industry and listed GARCIS on its incorporation documents as a member/manager.
 - iii. Advanced Rapid Property Clean-Up LLC (“Advanced Rapid Property”), which was a limited liability company that purported to provide property cleaning services and listed GARCIS on its incorporation documents as the registered agent, authorized representative, and Chief Executive Officer.
 - b. GARCIS was also associated with the following business entities that were used to fraudulently transfer PPP and EIDL loan funds:
 - i. Bigly Motors LLC, which was a New Jersey limited liability company, established on or about January 22, 2021, that purported to be in the wholesale and retail car sales business and listed GARCIS on its incorporation documents as the company’s registered agent and general partner nationwide.
 - ii. Haven International LLC, which was a New Jersey limited liability company, established on or about January 22, 2021, that purported to administer housing programs, among other things, and listed GARCIS on its incorporation documents as its registered agent and member/manager.

- c. Lender 1 was a FDIC-insured financial institution headquartered in Salt Lake City, Utah.
- d. Bank 1 was a FDIC-insured financial institution headquartered in New York, New York.
- e. Bank 2 was a FDIC-insured financial institution headquartered in San Francisco, California.
- f. Bank 3 was a FDIC-insured financial institution headquartered in Cherry Hill, New Jersey.
- g. Bank 4 was a FDIC-insured financial institution headquartered in Wayne, New Jersey.

The Scheme to Defraud

10. From in or about April 2020 through on or about June 2020, GARCIS submitted, or caused to be submitted, fraudulent loan applications to approved lenders, including Lender 1 and the SBA, in order to fraudulently obtain funds through the PPP and EIDL programs.

11. In connection with her fraud, GARCIS submitted, or caused to be submitted, the following PPP and EIDL applications to Lender 1 and the SBA:

Name of Business Applicant	Approximate Amount Approved	Lender	Approximate Submission Date	Status
Headway	\$159,900	SBA	April 3, 2020	Funded
Headway	\$549,295	Lender 1	May 28, 2020	Funded
Allstar Development	\$66,458	Lender 1	June 16, 2020	Funded
Advanced Rapid Property	\$159,900	SBA	June 16, 2020	Funded
Allstar Development	\$119,900	SBA	June 25, 2020	Funded

Falsified Headway EIDL Application to SBA

12. On or about April 3, 2020, GARCIS applied for an EIDL loan from the SBA on behalf of Headway. The application was submitted in GARCIS's name and

listed GARCIS's Social Security Number ("SSN"), a North Plainfield, New Jersey address, a telephone number subscribed to by GARCIS, and an e-mail address of headwayllc2015@gmail.com. The EIDL application identified GARCIS as 100% owner of Headway and further indicated that Headway had 25 employees, gross revenues of \$2,500,000, and cost of goods sold of \$650,000 for the 12-months prior to the listed disaster date, *i.e.*, January 31, 2019 through January 31, 2020.

13. On or about April 30, 2020 the U.S. Treasury dispersed approximately \$10,000 into the Headway business bank account at Bank 1 (the "Headway Bank Account"). On or about June 9, 2020, the U.S. Treasury dispersed approximately \$149,900 into the Headway Bank Account.

14. As noted above, SSA records revealed that Headway did not report any wages paid to employees for the period between 2018 and 2020. Nor did the SSA receive any Transmittal of Wage and Tax Statements (IRS Forms W-3) or Wage and Tax Statements (Forms W-2). IRS records also show that Headway did not file any Employer's Quarterly Federal Tax Returns (Forms 941) for the tax quarters of 2019 and 2020. In addition, bank records also revealed that from on or about January 1, 2019 through on or about March 29, 2021, Headway had total deposits of approximately \$372,100, excluding the approximate \$709,195 in CARES Act funds received. This amount of deposited funds in the Headway Bank Account was significantly lower than the \$2.5 million in gross revenue that GARCIS claimed for the company on its EIDL loan application.

Falsified Headway PPP Application to Lender 1

15. On or about May 28, 2020, GARCIS submitted a PPP application to Lender 1 for Headway seeking approximately \$549,295. The application was submitted in GARCIS's name and listed her SSN. The application listed GARCIS as the owner of Headway with a business address located in North Plainfield, New Jersey, and a telephone number subscribed to by GARCIS. In addition, GARCIS provided her home address in North Plainfield, New Jersey and a copy of her New Jersey driver's license with the application. In connection with the application, GARCIS represented that the PPP loan would be used for payroll, lease payments, mortgage interest, and utilities.

16. The application submitted to Lender 1 stated that Headway's average monthly payroll was approximately \$219,718 and that the company had 25 employees. As part of the application, GARCIS included four purported Employer's Quarterly Federal Tax Returns (Form 941) for 2019.

17. The Headway application to Lender 1 contained the following materially false and fraudulent information:

- a. The purported Forms 941 claimed that Headway LLC had paid its employees approximately \$2,636,616.17 for 2019 and withheld approximately \$440,994 in federal income tax. Records obtained from the Social Security Administration (“SSA”), however, revealed that Headway LLC reported no wages paid for the period between 2018 and 2020. In addition, the SSA did not receive any Transmittal of Wage and Tax Statements (Forms W-3), Wage or Tax Statements (Forms W-2) from Headway LLC. IRS records also show that Headway LLC did not file any Forms 941 for the tax quarters of 2019 and 2020.
- b. As part of the application, GARCIS provided the purported business address for Headway as a certain address on Greenbrook Road in North Plainfield, New Jersey (the “Fake Business Address”). Law enforcement determined that a pre-school, and not Headway, was in fact located at this address.

18. Bank records show that on or about June 1, 2020, Headway received the full amount of the approximately \$549,295 loan from Lender 1 into the Headway Bank Account.²

19. On or about July 1, 2020, GARCIS withdrew approximately \$12,000 from the Headway Bank Account. On or about June 26, 2020, GARCIS transferred approximately \$30,000 from the Headway Bank Account to the Advanced Rapid Property business bank account at Bank 3 (the “Advanced Rapid Bank Account”).

Falsified Allstar Development PPP Application to Lender 1

20. On or about June 16, 2020, GARCIS submitted a PPP application to Lender 1 for Allstar Development seeking approximately \$66,458. The application was submitted in GARCIS’s name and listed her SSN. The application indicated that GARCIS was an 80% owner of Allstar Development with a business address in East Orange, New Jersey, and a telephone number subscribed to by GARCIS. In addition, GARCIS also provided her home address in North Plainfield, New Jersey and a copy of her New Jersey driver’s license. GARCIS represented that the PPP loan would be used for payroll, lease, and utilities.

21. The application submitted to Lender 1 stated that Allstar Development’s monthly payroll was approximately \$26,583.32 and that the company had four employees. As part of the application, GARCIS included four purported Form 941s for 2019.

² GARCIS maintained signatory authority for the Headway Bank Account.

22. The Allstar Development application to Lender 1 contained the following materially false and fraudulent information:

- a. The purported Form 941 claimed that Allstar Development had paid its employees approximately \$318,999.84 for 2019 and withheld approximately \$50,616 in federal income tax. Records obtained from the SSA, however, revealed that Allstar Development reported no wages paid for the period between 2018 and 2020. In addition, the SSA did not receive any Forms W-3, Transmittal or Wage and Tax Statements (Form W-3) or Wage and Tax Statements (Form W-2) from Allstar Development. IRS records also show that Allstar Development did not file any Forms 941 for the tax quarters of 2019 and 2020.

23. Bank records show that on or about June 17, 2020, Allstar Development received the full amount of the approximately \$66,458 loan from Lender 1 into Allstar Development's business bank account at Bank 2 (the "Allstar Development Bank Account").³

24. On or about July 16, 2020, GARCIS transferred approximately \$16,757.61 to a used car dealership to purchase a 2019 BMW X3 SUV. The vehicle was subsequently registered to GARCIS and has been observed by law enforcement at her residence. Additionally, on or about August 31, 2020, GARCIS withdrew approximately \$100,000 from the Allstar Development Bank Account and deposited those funds into her personal bank account at Bank 2.

Falsified Advanced Rapid Property EIDL Application to the SBA

25. On or about June 16, 2020, GARCIS applied for an EIDL loan from the SBA on behalf of Advanced Rapid Property. The contact information listed on the application was for GARCIS, with her SSN, the Fake Business Address, and a telephone number subscribed to by GARCIS. The EIDL application identified GARCIS as 100% owner of Advanced Rapid Property and further indicated that the company had 55 employees, gross revenues of \$3,250,000 for the 12-months prior to the disaster, and cost of goods sold of \$2,400,000 for the 12-months prior to the disaster, *i.e.*, January 31, 2019 through January 31, 2020.

26. On or about July 1, 2020 the U.S. Treasury dispersed \$149,900 into the Advanced Rapid Property Bank Account. On or about July 9, 2020, the U.S. Treasury dispersed approximately \$10,000 into the Advanced Rapid Property Bank Account.

³ GARCIS maintained signatory authority for the Allstar Development Bank Account.

27. SSA records show that Advanced Rapid Property did not report any wages paid to employees for the period between 2018 and 2020. Nor did the SSA receive any Transmittal of Wage and Tax Statements (Form W-3) or Wage and Tax Statements (Form W-2). IRS records show that Advanced Rapid Property did not file any Forms 941 for the tax quarters of 2019 and 2020. In addition, bank records revealed that the Advanced Rapid Property Bank Account was opened on or about June 26, 2020, with an opening deposit of approximately \$30,000.00 from the Headway Bank Account. The only other transfers into the Advanced Rapid Property Bank Accounts occurred on July 1, 2020 and July 9, 2020 in the amounts of \$10,000 and \$149,900.00, respectively, both transfers associated with the EIDL. Bank records also revealed that Advanced Rapid Property was opened shortly before GARCIS submitted her EIDL application and its deposits never exceeded approximately \$200,000, an amount substantially lower than the \$3.25 million in gross revenue that GARCIS claimed on the company's EIDL application.

Falsified Allstar Development EIDL Application to SBA

28. On or about June 25, 2020, GARCIS applied for an EIDL loan from the SBA on behalf of Allstar Development. The contact information listed on the application was for GARCIS, with her SSN, a business address in East Orange, New Jersey, and a telephone number subscribed to by GARCIS. The EIDL application identified GARCIS as 33% owner of Allstar Development and further indicated that Allstar Development had 12 employees, gross revenues of \$350,000 for the 12-months prior to the disaster, and cost of goods sold of \$110,000 for the 12-months prior to the disaster. The application further indicated that GARCIS had two business partners.

29. On or about June 30, 2020 the U.S. Treasury dispersed approximately \$10,000 into the Allstar Development Bank Account. On or about July 15, 2020, the U.S. Treasury dispersed approximately \$109,900 into the Allstar Development Bank Account.

30. As noted above, SSA records revealed that Allstar Development did not report any wages paid to employees for the period between 2018 and 2020. Nor did the SSA receive any Transmittal of Wage and Tax Statements (Form W-3) or Wage and Tax Statements (Form W-2). IRS records also show that Allstar Development did not file any Forms 941 for the tax quarters of 2019 and 2020. In addition, bank records also revealed that from January 16, 2019 through March 9, 2021, Allstar Development had total deposits of approximately \$4,800 excluding the approximate \$186,358 in CARES Act funds received. This amount of deposited funds was significantly lower than the \$350,000 in gross revenue that GARCIS claimed for the company on its EIDL application.

Misuse of PPP and EIDL Loan Proceeds

31. Bank records show that upon receiving the PPP proceeds from Lender 1 and the EIDL proceeds from the SBA, GARCIS used approximately \$225,147 of the total proceeds to, among other things: (1) purchase a BMW X3 SUV for approximately \$16,757.61; (2) deposit approximately \$30,000 into the Advance Rapid Property Bank Account; (3) transfer approximately \$78,390 to an auto auctions company; and (4) deposit approximately \$100,000 into her personal account at Bank 2.

32. Specifically, the movement of PPP and EIDL Loan proceeds from the Headway Bank Account to other accounts occurred as follows:

- a. On or about June 26, 2020, GARCIS transferred approximately \$30,000 of the combined \$549,295 Lender 1 PPP loan proceeds, and \$159,900 SBA EIDL loan proceeds previously sent to the Headway Bank Account to the Advanced Rapid Property Bank Account.
- b. On or about June 26, 2020 and on or about July 2, 2020, GARCIS made payments of approximately \$4,770.94 and approximately \$2,328.76 from the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL proceeds previously sent to the Headway Bank Account towards the mortgage on a property in GARCIS's name located in Irvington, New Jersey.
- c. Between on or about June 26, 2020 and on or about April 22, 2021, GARCIS made approximately 11 payments totaling approximately \$22,014.56 from the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL proceeds previously sent to the Headway Bank Account towards the mortgage on a property in GARCIS's name located in Linden, New Jersey.
- d. Between on or about June 26, 2020 and on or about April 21, 2021, GARCIS made approximately 8 payments totaling approximately \$9,096.80 from the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL loan proceeds previously sent to the Headway Bank Account, representing monthly payments to Mercedes Benz Financial Services towards a 2017 Mercedes-Benz GLE350 W4 registered to GARCIS.
- e. On or about September 30, 2020, GARCIS wired approximately \$166,177.00 of the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL loan proceeds previously sent to the Headway Bank Account to a known title company for the purchase of a property

located in East Orange, New Jersey. The property was purchased under the name of another GARCIS business entity, Haven International LLC.

- f. On or about January 22, 2021, GARCIS transferred approximately \$78,390 of the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL loan proceeds previously sent to the Headway Bank Account, to Manheim Auto Auctions on behalf of Bigly Motors LLC.
- g. On or about March 11, 2021, GARCIS withdrew approximately \$8,000 of the combined \$549,295 Lender 1 PPP loan proceeds and \$159,900 SBA EIDL loan proceeds previously sent to the Headway Bank Account via a drive-up teller withdrawal. Bank 1 recorded surveillance video of the drive-up teller lane, which captured a white Mercedes Benz SUV registered to GARCIS pull up to the teller window and completed the transaction. The corresponding \$8,000 withdrawal slip was endorsed by GARCIS.

33. The movement of PPP and EIDL Loan proceeds from the Allstar Development Bank Account to other accounts occurred as follows:

- a. On or about July 16, 2020, GARCIS wire transferred approximately \$16,757.61 of the combined \$66,458 Lender 1 PPP loan proceeds and \$119,900 SBA EIDL loan proceeds previously sent to the Allstar Development Bank Account to the account of a used car dealership to purchase the 2019 BMW X3 SUV.
 - i. Records obtained from the used car dealership confirmed that GARCIS purchased the 2019 BMW X3 SUV on or about August 17, 2020 through the used car dealership's buy program for a purchase price of approximately \$29,300. GARCIS provided a copy of her New Jersey Driver License to facilitate the purchase of the vehicle. The balance of the vehicle was financed through Pentagon Federal Credit Union.
 - ii. Between on or about September 9, 2020 and March 11, 2020, GARCIS made approximately seven payments to a federal credit union from the Headway Bank Account. The payments totaled approximately \$3,261.08.
- b. On or about August 31, 2020, GARCIS withdrew approximately \$100,000 of the combined \$66,458 Lender 1 PPP loan proceeds and \$119,900 SBA EIDL loan proceeds previously sent to the Allstar Development Bank Account and deposited the funds into her personal

account at Bank 2.

- i. Subsequent to the deposit into GARCIS's personal account at Bank 2, GARCIS used a portion of the funds for personal expenses, cash withdrawals from an automated teller machine, and to make investments via a financial services company [.

34. The movement of EIDL Loan proceeds from the Advanced Property Bank Account to other accounts occurred as follows: On or about December 11, 2020, GARCIS withdrew approximately \$25,000 of the \$159,900 SBA EIDL loan proceeds previously sent to the Advanced Property Bank Account in the form of a check made payable to the Borough of Bernardsville, New Jersey. The check was subsequently deposited into GARCIS's personal bank account at Bank 3.