IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Concert Investor, LLC,

Plaintiff,

v.

SMALL BUSINESS ADMINISTRATION, and KELLY LOEFFLER,

Defendants.

Civil Action No. 21-3150-CJN

Judge Carl J. Nichols

FOURTH AMENDED COMPLAINT

Plaintiff Concert Investor, LLC ("Concert Investor"), by and through its attorneys, alleges and states as follows:

INTRODUCTION

1. This is an action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking emergency federal financial assistance unlawfully withheld by Defendants Small Business Administration ("SBA") and its Administrator, Kelly Loeffler.

2. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, as amended, 15 U.S.C. § 9009a ("Economic Aid Act"), established the Shuttered Venue Operators Grant ("SVOG") Program to provide emergency financial assistance to eligible live entertainment businesses impacted by the global COVID-19 pandemic. The SVOG Program is administered by the SBA and Administrator Loeffler.

3. In early spring 2020, the COVID-19 pandemic and associated restrictions on live entertainment decimated Concert Investor's concert tour production business. The Company

suffered a 94% loss in revenue in 2020 as compared to 2019. Given the upfront costs concert producers, organizers, and managers such as Concert Investor must provide, Concert Investor desperately needs an SVOG award to sustain operations—exactly the purpose of the SVOG Program.

4. Concert Investor demonstrated its eligibility for an SVOG award in its application to the SBA, but the SBA denied it. Concert Investor brought suit in this court. Despite years of litigation, including D.C. Circuit and summary judgment rulings in Concert Investor's favor, the agency has stubbornly issued four separate denials of Concert Investor's application.

5. The latest denial—and the one on review—was issued on June 15, 2026, shortly after this court granted summary judgment to Concert Investor.

6. Like its prior denials, the SBA's latest denial fails to adhere to the eligibility criteria established by the Economic Aid Act, disregards substantial evidence that Concert Investor submitted demonstrating its SVOG eligibility as a live performing arts organization operator, and treats Concert Investor disparately from similarly situated competitors without legitimate reason.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it presents federal questions under the APA.

8. Venue lies in this district under 28 U.S.C. § 1391(e)(1).

9. This Court has authority to issue declaratory and injunctive relief under 5 U.S.C. § 706 and 28 U.S.C. §§ 2201 and 2202.

PARTIES

10. Plaintiff Concert Investor, LLC, a Tennessee corporation, specializes in the custom creation, design, organization, management, and production of live concert tours.

11. Defendant Small Business Administration is an independent agency of the federal government. The SBA's mission is to help Americans start, build, and grow businesses.

12. Defendant Kelly Loeffler is the Administrator of the SBA and oversees its operations. Administrator Loeffler is sued in her official capacity. Administrator Loeffler was automatically substituted as a defendant in this litigation when she stepped into the official position previously held by former Administrator Isabella Casillas Guzman.

BACKGROUND

A. Shuttered Venue Operators Grant Program

13. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (the "Act"), signed into law December 27, 2020, included $15 billion for grants to operators of shuttered venues. Pub. L. No. 116-260, § 324. The American Rescue Plan, enacted March 11, 2021, amended the Act by providing an additional $1,249,500,000 for SVOG awards. Pub. L. No. 117-2, § 5005(a).

14. SVOG awards may be used for specified business expenses, including payroll, rent, and utility payments, that are incurred between March 1, 2020, and December 31, 2021. 15 U.S.C. § 9009a(d)(1)(A)(i).

15. An eligible entity may receive an SVOG award in an amount equal to 45% of its gross earned revenue in 2019 or, if it began operations after January 1, 2019, in an amount equal to its average 2019 monthly gross earned revenue multiplied by 6, up to a maximum award of $10 million. 15 U.S.C. § 9009a(c).

16. Eligible businesses with 2021 first quarter revenues of no more than 30% of their 2019 first quarter revenues are eligible for supplemental grants in the amount of 50% of the original award amount, up to a maximum combined initial and supplemental SVOG award amount of $10

million. 15 U.S.C. § 9009a(b)(3)(A); SBA, SBA Opens Supplemental Grant Applications for Shuttered Venue Operators Grant Awardees (Aug. 27, 2021), https://www.sba.gov/article/2021/aug/27/sba-opens-supplemental-grant-applications-shuttered-venue-operators-grant-awardees. Supplemental awards can be used for costs incurred through June 30, 2022. 15 U.S.C. § 9009a(d)(1)(A)(i).

17. Eligible entities under the Act include live performing arts organization operators, as well as theatrical producers, live venue operators and promoters, museum operators, motion picture theatre operators, and talent representatives. 15 U.S.C. § 9009a(a)(1)(A).

18. In addition to falling within an eligible business category, to qualify for an SVOG award a business must meet general eligibility criteria including, inter alia, that the business was fully operational on February 29, 2020, suffered at least a 25% reduction of gross earned revenue during at least one quarter of 2020 as compared to 2019, and has reopened or intends to reopen. 15 U.S.C. § 9009a(a)(1)(A). The Act lists a number of characteristics that would render an entity ineligible, including, inter alia, issuance of securities on a national securities exchange, and presenting live performances of a prurient sexual nature. *Id.* § 9009a(a)(1)(A)(vi), (a)(1)(B).

19. The Act defines live performing arts organization operator to include an entity that as a principal business activity organizes, promotes, produces, manages or hosts “live concerts” for which there is a ticketed cover charge, performers are paid, and not less than 70% of revenue of the entity is generated through “production fees or production reimbursements.” 15 U.S.C. § 9009a(a)(3)(A)(i).

20. The Act specifies that for a live performing arts organization operator to be eligible, it must also put on events with a defined performance and audience space; use mixing equipment, a public address system and a lighting rig; engage one or more individuals to carry out at least two

of specified roles (sound engineer, booker, promoter, stage manager, security personnel, or box office manager); sell tickets or impose a cover charge for most performances; fairly pay artists; and market its events including through print or electronic publications, websites, mass email, or social media. 15 U.S.C. § 9009a(a)(1)(A)(iii).

B. Concert Investor's SVOG Application and the SBA's Denials

21. In the years before the pandemic, Concert Investor produced, managed, and organized live concert tours.

22. The majority of Concert Investor's business in 2018 and 2019 was creating and producing The Banditø Tøur for a major band, twenty øne Piløts. The Company served as the creative producer, tour producer, line producer, production designer, lighting designer, and lighting programmer for the international tour. Concert Investor managed the entire tour budget, negotiated with all of the vendors, hired all of the service providers, hired all of the necessary crew with specific talents, created all of the custom technology, organized all of the different production assets to fit together onstage, found or built all of the props, finished all of the product testing, met with gear manufacturers, and organized how the tour would travel in semi-trailers from city to city and country to country, as well as by air from continent to continent. The Company hand-picked all of the production assets, including audio and lighting, video cameras and lenses, LED, projection, custom 3D LED set pieces, staging, automation, rigging, kinetic motors, custom props, custom fabrics, custom lifts, custom content for the video surfaces, special effects including pyro, cryo, lasers, confetti, custom transportation carts, custom wireless software, custom programming software (which the Company helped develop), a classic Cadillac DeVille that was engulfed in flames during each show, and a custom bridge that lowered over the audience to connect two stages. Concert Investor wrote and designed the cues (ranging from 800 to 1200 per song) for

these assets for each performance down to 1/30th of a second accuracy to sync with the music. Once the tour was on the road, Concert Investor managed all the payroll, paid all the vendors and service providers, paid for insurance, and supported the tour logistically when any issues arose—from broken gear, to reprogramming the show to accommodate a creative change by the artist, to chartering a 747 to transport the entire show from New Zealand to Europe.

23. On April 26, 2021, Concert Investor applied for an SVOG award of $4,988,317.35.

24. In its application, Concert Investor demonstrated that it satisfied the SVOG eligibility criteria. Concert Investor demonstrated that its losses in 2020 exceeded the 25% statutory threshold by submitting its federal tax returns for 2019 and 2020. It submitted invoices between performing artists and Concert Investor for production reimbursements as well as documentation showing that it met the other application criteria. Concert Investor also provided the certifications of eligibility required by the SBA's guidance on SVOG applications.

25. On July 10, 2021, Concert Investor learned from the SBA's portal that its application was denied. The portal's denial notice gave no explanation of why the SBA found Concert Investor ineligible.

26. On August 13, 2021, Concert Investor submitted an administrative appeal of the denial to the SBA in which it changed its eligibility category to live performing arts organization operator from theatrical producer, as permitted by the SBA's procedures.

27. Concert Investor's application and appeal explained in detail and with supporting documentation how the company meets each of the general eligibility requirements for a SVOG award and each of the specific eligibility requirements for a live performing arts organization operator. Concert Investor's supporting documentation included its week-by-week budget and planning spreadsheet for the design, production and management of The Banditø Tøur. Concert

Investor's spreadsheet details its incurred costs for (i) weekly payments for labor, video, audio, lighting, rigging, special effects, lasers, and staff, (ii) shipping, including for a Boeing 747 charter to transport tour equipment from Auckland, New Zealand to London, England, and (iii) worker's compensation insurance for tour personnel.

28. The documentation also included: photographs of the Company's productions depicting the complex visual effects, lighting and sound systems; detailed stage design plans (including lighting plots, speaker stacks, and video walls); and a venue floorplan designating seating for audience members and stages for performers. Concert Investor's evidence additionally included invoices for live performing artists for production reimbursements, as well as invoices for engagements between Concert Investor and multiple tour personnel, including stage manager, sound engineer, lighting technician and video crew chief.

29. Concert Investor's evidence reflected several financial risks the Company undertook, including but not limited to: substantial upfront production expenditures; vendor and personnel payment obligations; liability for transportation and shipping expenses, including for the Boeing 747 charter to transport tour equipment from Auckland, New Zealand to London, England; and exposure to nonpayment or non-reimbursement if a tour were cancelled or otherwise failed to proceed as planned.

30. On August 25, 2021, Concert Investor received notice from the SBA that the Company's appeal was denied without any explanation of the decision.

31. The SBA has approved SVOG awards for Concert Investor's competitors, including:

- $7,453,158 to Beaver Productions, Inc. on June 25, 2021
- $1,181,749 to Matt Davenport Productions, Inc. on June 28, 2021

- $3,837,482 to Digital Sound Systems, Inc. on July 3, 2021
- $5,929,161 to Activated Events, LLC on July 6, 2021
- $2,751,170 to Silent House Productions, Inc. on July 12, 2021
- $10,000,000 to Blackbird Production Partners, LLC on July 15, 2021
- $9,187,800 to ClearWing Productions Arizona, LLC on August 12, 2021

32. Like Concert Investor, each of these businesses designs and produces live concerts or other events.

33. The SBA's disparate treatment of Concert Investor relative to these businesses hinders the Company's ability to compete in the marketplace and its ability to recover from its pandemic-induced shutdown.

34. On September 3, 2021, the SBA notified Concert Investor that it would re-evaluate the appeal decision.

35. On November 2, 2021, the SBA notified Concert Investor that its appeal remained denied but again provided no explanation of the agency's reasoning.

36. On December 1, 2021, Concert Investor filed this action seeking judicial review of the November 2 denial.

37. On February 11, 2022, the SBA rescinded the November 2, 2021 denial.

38. On March 23, 2022, the SBA issued another decision on Concert Investor's application that again denied it.

39. On July 25, 2022, this Court granted Defendants' Motion for Summary Judgment and denied Concert Investor's Motion for Summary Judgment.

40. On May 3, 2024, the D.C. Circuit vacated this Court's ruling and remanded the case for further proceedings. *Concert Inv., LLC v. SBA*, 100 F.4th 215 (D.C. Cir. 2024). It held that

"the SBA defined 'produces' too narrowly," as the "plain reading" of the term requires recognition of a firm's "significant financial, creative, and managerial role" in putting on an event, rather than "control over all aspects of a concert." *Id.* at 222. It further found that the agency "apparently ignored 107 pages of creative elements" and "also ignored evidence of Concert Investor's significant managerial role on the tour." *Id.* That record evidence "paints a picture that Concert Investor has substantial responsibility over many different aspects of the tour." *Id.* Finally, "the SBA ignored Concert Investor's financial role on the tour." *Id.*

41. In response to the D.C. Circuit's opinion, the agency *sua sponte* rescinded its prior decision on May 13, 2024, before the D.C. Circuit issued its mandate or the case was remanded to this Court, and without providing Concert Investor any opportunity to address the D.C. Circuit's opinion or submit additional evidence.

42. On December 11, 2024, the SBA issued a third denial that failed to correct the agency's errors in denying Concert Investor's appeal. In that decision, the SBA concluded that, to "produce" a live event, an entity must demonstrate "primary responsibility" for the creative, financial, and managerial work required throughout all stages of the live event.

43. Concert Investor again challenged the December 11, 2024 denial in this Court.

44. On March 13, 2026, this Court denied Defendants' motion to dismiss, denied Defendants' motion for summary judgment, and granted Concert Investor's motion for summary judgment in part. *Concert Inv., LLC v. SBA*, No. 1:21-cv-03150, 2026 WL 710211, at *9 (D.D.C. Mar. 13, 2026). The Court held that the SBA's "primary responsibility" definition departed from the D.C. Circuit's decision and was inconsistent with the statutory text. The Court explained that the D.C. Circuit used "significant," rather than "primary," when describing the degree of financial, creative, and managerial responsibility relevant to whether an entity produces live concerts. *Id.* at

*7. The Court further held that the SBA's "primary responsibility" definition went beyond the D.C. Circuit's decision. *Id.*

45. As a result, this Court then vacated the SBA's December 11, 2024 denial and remanded the matter to the SBA for further proceedings consistent with the Court's opinion.

46. On June 15, 2026, the SBA issued a new final decision—once again without giving Concert Investor an opportunity to be heard or submit any additional evidence or briefing—denying Concert Investor's SVOG application for a fourth time. SBA's rationale was that Concert Investor does not play a "significant" enough financial role in the concerts it produces.

47. The SBA "only consider[ed] if Concert qualifies for a grant as a live performing arts organization operator based on its role in producing concerts," and did not consider Concert Investor's "managing" and "organizing" roles.

48. The June 15, 2026 denial is the SBA's final decision.

CLAIMS FOR RELIEF

49. The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

50. The APA provides that "final agency action for which there is no other adequate remedy in a court" is "subject to judicial review." 5 U.S.C. § 704.

51. The APA provides that courts will "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "without observance of procedure required by law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (D), and (E), respectively.

52. The SBA is an "agency" whose final agency actions are reviewable under the APA.

COUNT I—AGENCY ACTION CONTRARY TO LAW

53. Concert Investor realleges and incorporates by reference each of the preceding paragraphs and allegations.

54. The June 15, 2026 decision is contrary to the Economic Aid Act. Among other reasons, the SBA imposed an extra-statutory requirement—inconsistent with concert industry usage, the D.C. Circuit's opinion, and the agency's guidance—that an entity must invest capital without a legal guarantee of remuneration, hold a residual profit-or-loss interest, or arrange third-party financing to have a significant financial role in producing concerts.

55. In addition, the SBA's interpretation conflicts with the Economic Aid Act's express recognition that live performing arts organization operators may generate qualifying revenue through "production fees or production reimbursements." 15 U.S.C. § 9009a(a)(3)(A)(i).

56. The SBA's June 15, 2026 decision is also contrary to law (as well as arbitrary and capricious) because Concert Investor "manage[s]" or "organize[s]" live concerts, yet the SBA refused to consider whether Concert Investor qualifies under those independent statutory bases. 15 U.S.C. § 9009a(a)(3)(A)(i). The record contains substantial evidence that Concert Investor manages and organizes live concerts, in addition to producing live concerts.

57. Concert Investor satisfies the Act's general eligibility criteria for a SVOG award and specific eligibility criteria for an award as a live performing arts organization operator.

58. For these reasons, the SBA's June 15, 2026 denial of Concert Investor's SVOG award request violates the Economic Aid Act and is contrary to law.

COUNT II—ARBITRARY AND CAPRICIOUS AGENCY ACTION

59. Concert Investor realleges and incorporates by reference each of the preceding paragraphs and allegations.

60. The SBA's June 15, 2026 decision is arbitrary, capricious, and an abuse of discretion.

61. The SBA arbitrarily adopted a financial-risk requirement under which an entity has a "significant" financial role in producing concerts only if it invests its own money without an ex ante legal guarantee of remuneration, bears a residual profit-or-loss interest, or arranges third-party financing.

62. The SBA's financial-risk requirement is unsupported by the SVOG statute or the concert-industry customs and norms the SBA was required to consider, and it conflicts with the D.C. Circuit's prior opinion in this case as well as the agency's own guidance.

63. The agency's decision is also unreasonably and inadequately explained. For example, the SBA fails to explain rationally why an entity must "bear financial risk" to play a significant financial role while an entity that merely "arrange[s] for a third party to finance the concert[,]" without bearing any financial risk, also qualifies under the agency's interpretation. Similarly, the SBA fails to explain how the agency determines (and how industry participants could reasonably know) when an ex ante liability reflects just "some risk of nonpayment" and when it reflects "a significant risk of nonpayment." For those reasons and others, the agency's explanation is inadequate.

64. In addition, the SBA disregarded or irrationally discounted record evidence of Concert Investor's significant financial role, including that Concert Investor managed production budgets, advanced production expenses, paid vendors and tour personnel, procured insurance, financed transportation, hired and funded subcontractors, and received production fees and reimbursements for its concert-production work.

65. The SBA also arbitrarily and capriciously failed to consider evidence that Concert Investor "manages" and "organizes" concerts in addition to "producing" them. 15 U.S.C. § 9009a(a)(3)(A)(i).

66. The SBA treated Concert Investor disparately, without a legitimate reason, from similarly situated competitors that played similar financial roles but were granted SVOG awards.

67. For each of these reasons, the SBA's June 15, 2026 denial of Concert Investor's SVOG award request is arbitrary and capricious.

COUNT III—AGENCY DECISION UNSUPPORTED BY SUBSTANTIAL EVIDENCE

68. Concert Investor realleges and incorporates by reference each of the preceding paragraphs and allegations.

69. The SBA's conclusion that Concert Investor does not play a significant financial role in producing concerts is not supported by substantial evidence.

70. The administrative record demonstrates that Concert Investor has significant financial responsibilities for live concerts, including evidence that for The Banditø Tour, Concert Investor managed production budgets, administered vendor and personnel payments, procured insurance, coordinated transportation-related costs, hired and managed subcontractors, maintained payroll and ledger records, and received production fees and reimbursements for its concert-production work. The administrative record also demonstrates that Concert Investor bore a meaningful degree of financial risk for the concerts it produced, including a significant risk of nonpayment at the time that a contract was made.

71. The SBA's conclusion that Concert Investor claimed only that it "produces" concerts also lacks substantial evidence. The administrative record demonstrates that Concert Investor manages and organizes concerts in addition to producing them.

72. The SBA's denial of Concert Investor's SVOG award request is thus unsupported by substantial evidence.

PRAYER FOR RELIEF

For the foregoing reasons, Concert Investor respectfully requests that this Court:

1. Declare unlawful and set aside Defendants' June 15, 2026 denial of Concert Investor's SVOG award request.

2. Preliminarily and permanently order the SBA to consider Concert Investor's application for a SVOG award consistent with applicable law and the evidence before the SBA.

3. Preliminarily and permanently order Defendants to approve Concert Investor's grant application in the amount of $4,988,317.35 in SVOG funds.

4. Declare Concert Investor eligible for a supplemental SVOG award of $2,494,158.67.

5. Preliminarily and permanently order Defendants to record an obligation of the United States in the amount of $7,482,476 in SVOG funds and set them aside for payment to Concert Investor and to retain appropriations from the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. No. 116-260, § 324) and/or the American Rescue Plan (Pub. L. No. 117-2, § 5005(b)) in an amount sufficient to fund Plaintiff's SVOG initial and supplemental grant awards.

6. Award Plaintiff its costs and reasonable attorney fees; and

7. Grant such other and further relief as the Court deems just and proper.

Dated: August 6, 2026

Respectfully submitted,

/s/ Caroline L. Wolverton

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