

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Concert Investor, LLC,

Plaintiff,

v.

SMALL BUSINESS ADMINISTRATION, and
ISABELLA CASILLAS GUZMAN,

Defendants.

Civil Action No. 21-3150-CJN

SECOND 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, Isabella Casillas Guzman.

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 Casillas Guzman.

3. In early spring 2020, the COVID-19 pandemic and associated restrictions on live entertainment decimated Concert Investor's concert tour design and production business. The Company suffered a 94% loss in revenue in 2020 as compared to 2019. Concert Investor desperately needs an SVOG award to sustain operations—exactly the purpose of the SVOG Program.

4. Concert Investor demonstrated its eligibility for a SVOG award in its application to the SBA and, following an initial denial, its appeal to the SBA. The SBA denied both Concert Investor's application and its appeal. After the agency rescinded the appeal denial to reconsider, on March 23, 2022, the agency issued another denial.

5. The SBA's most recent denial disregards substantial evidence that Concert Investor submitted of its SVOG eligibility as a live performing arts organization operator, fails to adhere to the eligibility criteria established by the Economic Aid Act, and treats Concert Investor disparately from similarly situated competitors without legitimate reason.

6. SVOG funds are limited, and once the SBA has depleted the appropriated amount through awards, eligible businesses may not be able to receive the emergency assistance. Thus, even though Concert Investor demonstrated that it is an eligible live performing arts organization operator, it may receive no assistance if SVOG funds are depleted before the SBA corrects the erroneous denial of Concert Investor's application.

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, management and production of live concert tours. The majority of Concert Investor's business in 2018 and 2019 was creating and producing The Banditø Tour for the 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, country to country, and by air from continent to continent. The Company hand-picked all of the production assets, including not only audio and lighting, but also 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 of the vendors and service providers on time, 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.

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 Isabella Casillas Guzman is the Administrator of the SBA and oversees its operations. Administrator Casillas Guzman is sued in her official capacity.

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 a 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 a 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), 9009a(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 (as well as a live venue operator, live venue promoter, or theatrical producer) to be eligible, it must have

additional characteristics. It must 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 the following 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 Denial

21. On April 26, 2021, Concert Investor applied for a SVOG award of \$4,946,650.35.

22. 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.

23. 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.

24. 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.

25. 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 Tour. Concert Investor's spreadsheet depicts the Company's (i) weekly payments for labor, video, audio, lighting, rigging, special effects, lasers, and staff, (ii) costs for 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.

26. 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 also included invoices to 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.

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

28. 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 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

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

30. 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.

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

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

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

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

35. On March 23, 2022, the SBA issued another decision on Concert Investor's application that again denied it. That decision is attached as Exhibit A.

36. The SBA's March 23, 2022 decision grossly mischaracterizes Concert Investor's business as limited to providing lighting and sound to find the Company ineligible for a SVOG award.

37. The March 23, 2022 decision ignores Concert Investor's explanation in its appeal letter that its business is a full-service concert design and production company, inexplicably focuses on just three of the 68 documents the Company submitted to the SBA, and disregards the substantial evidence that Concert Investor submitted demonstrating that the Company creates, organizes, produces, manages, and presents entire concert tours.

38. For example, Concert Investor submitted, and the SBA disregarded, a magazine article about the Company's production of The Banditø Tour for Twenty Øne Piløts that describes Concert Investor as "produc[ing] the tour's live elements, help[ing] with TV moments, manag[ing] the production budget, production design, programming, vendor selection, and coordination, and deal[ing] with hiring touring personnel." The magazine article is attached as Exhibit B. Concert Investor also submitted, and the SBA disregarded, a comfort letter from the Company's certified public accountant attesting that "Concert Investor is solely engaged in the business of producing live concert events on an international scale in venues ranging from small music clubs to arenas." The comfort letter is attached as Exhibit C. And the SBA disregarded Concert Investor's detailed spreadsheet documenting its production and management of every aspect of The Banditø Tour, also submitted by the Company, including management of the tour budget (described *supra* ¶ 25).

39. The March 23, 2022 decision ignores the eligibility of businesses that produce or manage live concerts and receive production fees as revenue under the Economic Aid Act, 15 U.S.C. § 9009a(a)(3)(i)(A).

40. The March 23, 2022 decision baselessly characterizes Concert Investor as a mere "service provider that support[s] eligible entities."

41. The March 23, 2022 decision erroneously concludes that Concert Investor is unlike concert and design production businesses that are its competitors and received SVOG awards. The decision fails to consider the multiple similarities between Concert Investor and those businesses. For example, like Activated Events, LLC, Concert Investor is involved in all aspects of the concert tours it designs and produces. The agency provided no legitimate reason for treating Concert Investor differently from Activated Events, LLC, which received a SVOG award. The SBA failed altogether to consider three businesses that Concert Investor identified as competitors and that

received SVOG awards. For example, the agency failed to consider that Silent House Productions and Concert Investor offer overlapping services such as design, production and lighting for concert tours.

42. The SBA's March 23, 2022 denial of Concert Investor's appeal is the agency's final decision.

CLAIMS FOR RELIEF

43. The courts recognize a strong presumption favoring judicial review of administrative action.

44. 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.

45. 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.

46. 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.

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

COUNT I—ARBITRARY AND CAPRICIOUS AGENCY ACTION

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

49. The SBA disregarded evidence submitted by Concert Investor that establishes the Company's principal business activity as producing and managing concerts.

50. The SBA's conclusion that Concert Investor's business is limited to lighting and sound runs counter to the evidence the Company presented to the SBA.

51. The SBA's conclusion that Concert Investor is a mere service provider that supports eligible entities runs counter to the evidence the Company presented to the SBA.

52. The SBA treated Concert Investor disparately, without a legitimate reason, from similarly situated competitors that were granted SVOG awards.

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

COUNT II—AGENCY ACTION CONTRARY TO LAW

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

55. The March 23, 2022 decision disregards the Economic Aid Act's provision that businesses that produce or manage live concerts and receive production reimbursements as the primary source of revenue are eligible for a SVOG award. 15 U.S.C. § 9009a(a)(3)(i)(A).

56. 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.

57. For these reasons, the SBA's denial of Concert Investor's SVOG award request violated the Economic Aid Act and is contrary to law.

COUNT III—AGENCY DECISION UNSUPPORTED BY SUBSTANTIAL EVIDENCE

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

59. The SBA's denial of Concert Investor's SVOG award request is supported by no evidence in the record, let alone substantial evidence. Concert Investor's application and appeal presented evidence which demonstrates Concert Investor's eligibility for a SVOG award.

60. 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' denial of Concert Investor's SVOG award request.
2. Preliminarily and permanently order Defendants 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 award Concert Investor \$4,946,650.35 in SVOG funds.
4. Preliminarily and permanently order Defendants to grant Concert Investor a supplemental SVOG award of \$2,473,325.175.
5. Preliminarily and permanently order Defendants 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: March 27, 2022

Respectfully submitted,

/s/ Caroline L. Wolverton

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Counsel for Plaintiff Concert Investor, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CONCERT INVESTOR, LLC,

Plaintiff,

v.

SMALL BUSINESS ADMINISTRATION, *et al.*,

Defendants.

Civil Action No. 1:21-cv-03150-CJN

Judge Carl J. Nichols

**PLAINTIFF'S INDEX OF EXHIBITS TO
SECOND AMENDED COMPLAINT**

Exhibit

Description

- | | |
|---|--|
| A | March 23, 2022 SVOG Application Decision Letter |
| B | Lighting & Sound America, <i>Twenty One Pilots. New Design Ideas on The Bandito Tour</i> (Jan. 2019) |
| C | August 5, 2021 Certified Public Accountant Comfort Letter |

Exhibit A



U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

March 23, 2022

Dear Mr. Roddick:

Based on assertions Concert Investor, Inc. (“Concert Investor”) made in *Concert Investor, Inc. v. Small Business Administration et al.*, Civil Action No. 21-3150 (D.D.C.), I directed the Small Business Administration (“SBA”) to rescind its decision to decline Concert Investor’s application for a Shuttered Venue Operators Grant (“SVOG”) to issue a new decision after further review of the administrative record. After further review, I have concluded that SBA’s original November 2, 2021 decision was correct, and that Concert Investor is not eligible for a SVOG.

Despite Concert Investor’s website identifying it as a “[t]heatrical [p]roducer,” by letter dated August 11, 2022, Concert Investor appealed SBA’s July 10, 2021 denial of Concert Investor’s request for a SVOG as a theatrical producer and requested that SBA award Concert Investor a SVOG as a live performing arts organization operator. A live performing arts organization operator is, in part, “an individual or entity (I) that, as a principal business activity, organizes, promotes, produces, manages, or hosts live concerts, comedy shows, theatrical productions, or other events by performing artists...” 15 U.S.C. § 9009a(a)(3)(A)(i). SBA has consistently defined a live performing arts organization operator in the definition section of its frequently asked questions, as:

any entity (including a theatrical management business) whose principal business activity is to create, produce, perform, and/or present live performances for audiences in qualifying venues, including amphitheaters, concert halls, auditoriums, theatres, clubs, festivals, and schools.

See, e.g., Shuttered Venue Operators Grants, Frequently Asked Questions, March 22, 2021 ¶ 16, publicly available at: <https://www.sba.gov/sites/default/files/2021-03/3-22-21%20SVOG%20FAQ%20FINAL-508.pdf> (last accessed Feb. 24, 2022); Shuttered Venue Operators Grants, Frequently Asked Questions, October 20, 2021 ¶ 24, publicly available at https://www.sba.gov/sites/default/files/2021-10/10-20-21%20SVOG%20FAQ%20FINAL_508_final.pdf (last accessed Feb. 24, 2022).

To determine whether Concert Investor is a performing arts organization operator, I examined the administrative record including (1) your appeal letter dated August 11, 2021; (2) the draft red-line contract between Concert Investor and Twenty-one pilots which you represented describes the services Concert Investors typically provides its clients; and (3) an August 13, 2021 letter which you submitted entitled “Venue Staff”.

In the appeal letter, you assert that “Concert Investor is a small and independently owned company . . . comprised of two owner-operators with an evolving crew of independent contractors and vendors.” Concert Investor came into existence in 2012 because of its owner-operators’ prior music venue in Nashville, 12th & Porter. There, the owner-operators designed “massive lighting, audio and video rigs” for a concert conducted by a band known as Twenty-one pilots. The band subsequently “hired Concert Investor to create and develop and execute a similar intricate live music experience that they could take . . . out on their first headlining tour in 2013.”

The non-final red-line copy of Concert Investor’s agreement for 2018 to 2019 with Twenty-one pilots—titled Standard Touring for Equipment and Services—identifies Concert Investor as an independent contractor that provided equipment and related services to Twenty-one pilots. Twenty-one pilots was responsible for the transportation of the equipment and personnel retained by Concert Investor as well as the lodging of and per diem rates for the personnel. The draft agreement also purports to render Twenty-one pilots liable for any damage to the equipment that Concert Investor provides should any damages occur.

Although the sample agreement you provide does not state the scope of equipment and related services that Concert Investors provides, you state in the appeal letter that:

Our unwavering mission has been to produce the most dynamic, efficient and innovative concert productions for some of the world’s most talented and recognized artists While our independent company does not own or rent equipment and does not have a warehouse, we are the architects and orchestrators of individual tours. As the initial step, Concert Investor creates an artist-approved concert design before we source and hire the vendors, engineers, electricians, programmers and technicians for each of our productions or tours.

Your August 13, 2021 letter states that “every venue that Concert Investor operated in was nationally recognized in 2019 as a professional music venue,” “had a box office manager and security staff,” “was booked by a professional talent agency[,] and a majority of the venues were operated and promoted by Live Nation.” You also provided a number of photographs which appear to depict the

lighting and sound rigs that Concert Investors contracts with third parties to provide and run during concerts.

Based on this information and the other submissions provided, I conclude that Concert Investor, at best, serves the needs of touring concert artists for lighting and sound, designing the plots and obtaining subcontractors to install and operate the necessary equipment during a concert.¹

This is insufficient to meet the definition of a performing arts organization operator. Concert Investor does not create, perform, or present live performances – its client/artists do. Concert Investor also does not organize or host live concerts. According to your August 13, 2021 letter, a different entity is responsible for that function.²

In the appeal letter, you classify Concert Investor as a “producer,” but the administrative record establishes that Concert Investors is a service provider for lighting and sound. SBA specifically addressed the eligibility of concerns like Concert Investors in its Frequently Asked Questions:

21. Are service and support companies that provide stages, lighting, sound, casts, and other support for live performing arts events or which showcase performers or pre-packaged productions to potential buyers eligible to apply for an SVOG?

¹ You have provided copies of several invoices which you submitted to your clients in 2019. However, all of these invoices are for “production reimbursement.” There is nothing in these documents which show that Concert Investor provided any services beyond those connected with light and sound.

² As previously stated, Concert Investor originally applied for a SVOG as a theatrical producer. Definition 38 in SBA’s Frequently Asked Questions defines theatrical producer as follows:

38. Theatrical producer

“A theatrical producer is an eligible individual or entity (including the entity that employs the performers in a theatrical production) which has the responsibility for creating, producing, or operating live theatrical productions and that have either a non-passive profit (net income or loss) interest in a theatrical production (other than as a vendor or service provider) or sole or joint rights to control a theatrical production. Theatrical producers are responsible for functions such as negotiating debt or equity financing with lenders or investors, financial and tax reporting, and closing the production...”

While my determination in this reconsideration is limited to Concert Investor’s claim to be a live performance art organization operator, it does not appear that Concert Investor was a theater producer either. Concert Investor was not a theatrical producer because (a) it did not have responsibility for creating, producing or operating the production, (b) it did not have either a non-passive profit interest in the concert productions or the rights to control the productions, (c) it did not negotiate financing, (d) it did no financial or tax reporting and (e) it had no authority to close productions.

No. The Economic Aid Act is designed to assist only those eligible entities identified in the statute. SVOGs are not available for service providers that support eligible entities.

The evidence and guidance recited in this letter shows that the limited services which Concert Investor provided for its client renders it ineligible for a SVOG.

Concert Investor has maintained in its lawsuit, *Concert Investors v. SBA*, Civ. A. No. 21-3150-RDM (D.D.C.) , that SBA awarded SVOGs to seven alleged competitors based on information and representations on those entities' respective websites: (1) Beaver Productions, Inc.; (2) Matt Davenport Productions, (3) Digital Sound Systems, Inc., (4) Activated Events, LLC, and (5) Silent House Productions, (6) Blackbird Production Partners, LLC, and (7) ClearWing Productions Arizona, LLC. See Compl., ECF Nos. 1 & 23.³ I have examined these concerns to see if they are similar to Concert Investor.⁴

First, unlike Concert Investor LLC, Beaver Productions, Inc.'s website (<https://beaverproductions.com/>) (last accessed Mar. 23, 2022) identifies it as "promoting and producing major concerts and tours." Concert Investors does not claim to promote concerts.

Second, Matt Davenport Productions applied for a SVOG as a theatrical producer. As its website (<https://mattdavenportproductions.com/>) (last accessed Mar. 23, 2022) indicates, Matt Davenport Productions provides original content, music composition and arrangement, creative development, costuming, directing, choreography, project management and many other services in

³ In December 2021, Concert Investor's initial Complaint listed five alleged Competitors: (i) The Relay Group; (ii) Matt Davenport Productions; (iii) Andy Reuter; (iv) SRae Productions; and (v) Silent House Productions. See ECF No. 1. While the SBA was researching and analyzing the five alleged competitors listed in the initial Complaint, in February 2022, Concert Investor amended its Complaint to eliminate three alleged competitors and added additional alleged competitors for a total of seven. ECF No. 23, ¶ 27. Specifically, the Amended Complaint eliminated the Relay Group, Any Reuter, and SRae Production as alleged competitors, and added (i) Beaver Production, (ii) Digital Sound System; (iii) Activated Events; (iv) Blackbird Production Partners; and (v) Clear Wing Production Arizona. ECF No. 23, ¶ 27. Only Matt Davenport and Silent House Production remained from the initial Complaint. *Id.* Concert Investor's replacing and adding alleged competitors caused delays and disrupted the SBA's orderly review and analysis of Concert Investor's overall application, including its claims that it is similarly situated with the alleged comparators.

⁴ Each applicant's submission is in large part, proprietary, due to the nature of the information submitted by the entity for approval purposes. Although I reviewed each of the competitors' propriety and no-proprietary information, I have endeavored to share only non-proprietary information and my reasoning for the award of each entity.

addition to lighting and sound. Concert Investor does not provide this range of services.

Third, Activated Events, LLC is a premier independent event production company that produces a wide range of large-scale festivals and events. Example of events and festivals which Activated Events produced include Coastal Country Jam, Boots In The Park, Wet Electric, Fiesta De Taco, BeachFront Cinema, and Starlite Movies. As a producer, Activated Events was involved in all aspects of these festivals. Concert Investor, on the other hand, is involved solely with lighting and sound.

Fourth, Blackbird Production Partners, LLC is a full-service production company which offers budget and schedule oversight, shop and vendor coordination, trucking, storage, load-in and staffing. As the website says, "Blackbird Production Services, Ltd provides full service technical supervision to the artistic and creative teams, management staff, and technicians involved in bringing projects to fruition." See the website at <http://www.blackbirdproduction.nyc/home2.html> (last accessed Mar. 23, 2022).

Other SBA personnel and I are reevaluating and reconsidering the eligibility of the other remaining listed competitors: Digital Sound Systems, Inc., Silent House Productions and ClearWing Productions. If we determine that the awards to those three companies were improvidently granted, we will rescind them. I thank you for bringing these matters to our attention.

However, to be clear, any potential mistaken award that SBA might have granted to an ineligible company has no bearing on Concert Investor's own eligibility or the lack thereof. I determined Concert Investor's eligibility based on the information provided and independently from any consideration given to the alleged competitors. At base, the limited services which Concert Investor provides do not meet the requirements of Shuttered Venue Operator's Grant eligibility.

This is the final decision of SBA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Stevens', with a stylized flourish at the end.

Matthew Stevens
Director, Shuttered Venue Operators Grant Program
U.S. Small Business Administration

Exhibit B

Lighting & Sound America

\$10.00

plasma media

Twenty One Pilots

New Design Ideas
on *The Bandito Tour*

ALSO:

Josh Groban's *Bridges Tour*

La Traviata and *Marnie*
at Metropolitan Opera

DTS Synergy 5 Profile

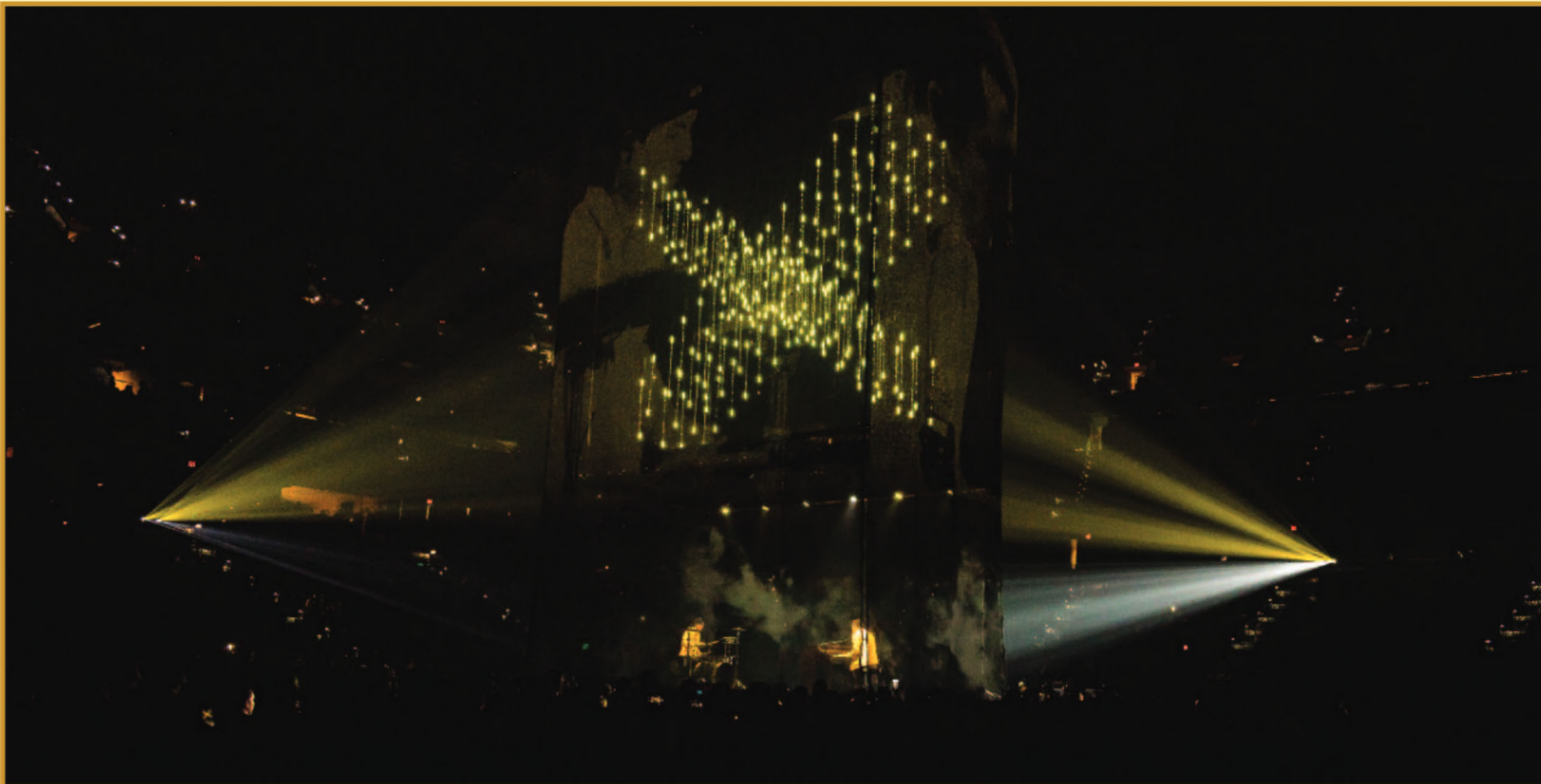
Mixing Audio with Toby Francis

LSA NAMM
featured exhibitors
on page 10

DESTINATION UNKNOWN

Twenty One Pilots' design team delivers on the promise to create something totally original

By: Sharon Stancavage



"We presented 107 pages of creative elements in the second meeting," Sleazinger notes, adding that virtually all of them were employed.

Twenty One Pilots' *he Bandito our* is codesigned by Daniel Sleazinger and Tyler Shapard; both handle the production design, lighting design, and programming. Shapard, who also serves as lighting director, says, "Daniel and I wanted to find things that had never been done before. The motto we took on was: 'If it's easy, everyone would do it'."

Nashville based Concert Investor produces the tour's live elements, helps with TV moments, manages the production budget, production design, programming, vendor selection, and coordination, and deals with hiring touring personnel; all other firms involved are subcontractors. "Concert Investor bent over backwards for this tour, time and time again," Shapard says. "They did everything you could ask of a production company and more." Justin Roddick, production broker and co owner of Concert Investor with Sleazinger and Michael Gibson, says, "We have been extremely fortunate to be a part of the Twenty One Pilots team since 2013. Key partnerships with our close knit group of vendors allow us to really maximize the art without sacrifice. Tony Macre, Brent Dannen [both of

VER], Molly Gray [video content provider Tantrum], and Ted Maccabee [Strictly FX] have been instrumental partners who haven't missed a beat over the years."

Initially, Tyler Joseph [the band's front man] worked with Brandon Rike, at TNSN DVSN, which offers creative direction, and Mark Eshleman, at Reel Bear Media, to develop the general tone of *he Bandito our*. Sleazinger explains, "After the first meeting, the production puzzle pieces were created by the creative team, taking into consideration the vibe painted by the TNSN DVSN and Reel Bear Media collaboration. We presented 107 pages of creative elements in the second meeting. The idea was that all the production ideas could stand on their own but could fit together if desired, so that the artist and management could decide which elements made it into the show. Pretty much all of the ideas became part of the tour in some fashion."

One issue the design team faced was the production's song list, which took in more than the numbers featured on the 2018 album *rench*. Sleazinger says, "We didn't want to go so scenic around *rench* because we wanted to keep [the 2015 album] *Blurryface* songs' developed brand



The tour draws on the albums *rench* and *Blurryface*. "We relied heavily on video content to move back and forth between the environments," Slezinger says.

ing intact and have the ability to transition freely with our color schemes. We relied heavily on video content to move back and forth between the environments. There are some subliminal production elements; for example, the bridge [a key scenic element] illustrates the struggle between two places, which is part of the *rench* theme. It can represent anything in your life...maybe a relationship, a decision you have to make, or a life struggle."

The onstage bridge has a Plexiglas walking surface as well as netting; the latter is a safety feature masquerading as a scenic detail. Shapard notes, "We had two problems. For one, the lower the bridge hung, the more obstruction there would be for the audience; next, we had to have a safety element, which could prevent it from hanging correctly. VER rigging took generic GT truss, put Plexi on top of it, and, using the holes that you'd typically use to stack them, built custom arms for the netting that is rounded so we can put our bridge 6" to 1' from the mother grid. The whole concept of the bridge was for it not to look like a walking surface until it comes down. Up in the air, it looks like a lighting truss." Sixteen Robe Pointes and 16 GLP

JDC1 strobes are hung off the bridge.

The bridge leads to a B stage. "We found out that our B stage was going to be a low key moment within the show," Shapard says, "so it had to stand on its own when the guys sit there and play. Daniel came up with the idea of putting the scrim around it and shooting it with projection." However, he adds, "How do you shoot the upstage side? There is nowhere to hang projectors. I came up with the idea of putting them on automation points." Thus, eight Barco UDX 4K32 laser projectors deliver images to a Rose Brand sharkstooth scrim. Shapard adds, "The biggest concern was shooting on the scrim, which is black. We were pumping light from inside it and we wondered if the projectors would be bright enough." During rehearsals at Rock Lititz, in Lititz, Pennsylvania, this scheme was found to work well. The projectors are sub contracted through VER's Nashville office and the B stage was subcontracted through TAIT, also based in Lititz.

Also at the B stage are 14 Kinetik LED battens provided by Nashville based Glow Motion, a wireless LED company owned by Roddick and Slezinger. "They move up and

down independently inside of the projection Austrian to create three dimensional shapes that mirror the content," Slezinger says.

The main stage—which includes an 8' thrust—also features three Winvision Air 9 LED screens, from VER, placed upstage. "I love their size and portrait style; they really work for us," Shapard says. Control is handled by three disguise [formerly D3] media servers: two 4x4 pros and a 4x2 pro, acting as a pure master. The IMAG package is subcontracted through Nashville's High End TV; as mentioned earlier, content is provided by Tantrum, located in Cincinnati.

In addition to the upstage LED walls, Slezinger says, "We wanted something upstage that would fill in the camera shot, so whenever the cameras are tight on them there's something cool in the background. We wanted to create depth and have layers, so I drew in an LED grid of three dimensional cubes."

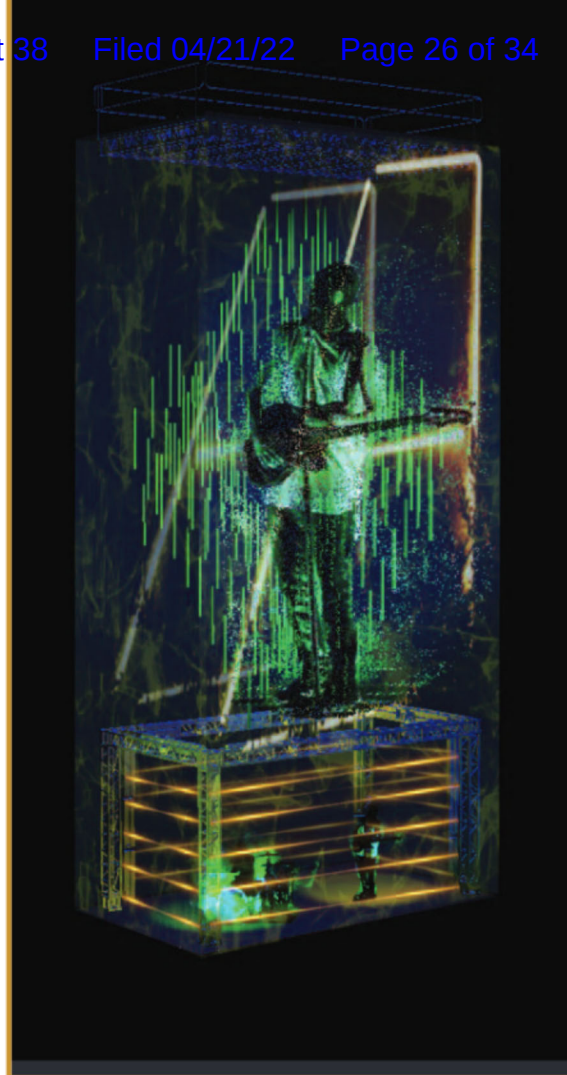
This led to Symmetry Labs, based in San Francisco. "They already had a cube product," Slezinger says, "but we wanted to build something custom. We reached out to them because they had already created volumetric software, so we could create 3D content and push it through a three dimensional surface. It's not just a flat LED wall; you have three dimensional control over the content in X, Y, and Z planes. We used their volumetric based software and worked with their programmer; they even sat with Shap [Shapard] and me during some pre viz sessions." One hundred sixty eight LED cubes span the width of the main stage; they are assembled and transported using carts. "They're on their own separate network," Shapard says, "so there is no control over them other than the operator on the side stage. We're just sending them time code."

Lighting

Slezinger says, "One of our kinetic goals was to hang an automated truss pod directly over another automated truss pod taking up the same vertical footprint, but which could be controlled independently. This is where four automated squares above the downstage area came about. They were positioned in a way that they could be lowered around and under the stage lifts directly below. This, for example, allows us to put Josh [Dun, on drums] 'inside' of the automation at the end of the song 'Lane Boy'."

The pods, made of 12" box truss, posed a bit of a rigging challenge. "I can take the bottom pod, bring it down, and oscillate it, then take the top pod and do whatever I want," Shapard says. "There was a lot of R&D on that, trying to figure out the parameters of tilt that we could use for the pods, considering how the chains and cabling lay inside of them; it's another moment of the show that no one else has done before."

A Kinesys system is used to control the lighting rig and



At the B stage, eight Barco UDX 4K32 projectors deliver images to a sharktooth scrim.

pods; the latter are filled with Robe Spikies. "We were looking for a very small fixture that could stand on its own for the automated pods," Shapard says. "The Spikie has a prism; it rotates, zooms, and has gobos; and, for us, it was a no brainer. We were both nervous about putting it on the show, because to me it's not quite bright enough—but when you have 256 of them, you're good, because you have so many beams." The pods are assembled using pre-rigged carts.

Also featured in the rig are 80 Robe MegaPointes. "In terms of picking the fixtures, Daniel lets me drive that train, and I was very adamant about the MegaPointes," Shapard says. "There is no other light in the world like the MegaPointe," Slezinger adds.

"Twenty One Pilots has never toured without Robe fixtures," Slezinger continues. "The workhorse on the *Blurryface* and *Emotional Roadshow* tours was the Robe Pointe. Its only shortfall was that it did not have color mixing. Not only did Robe add this into the new fixture, it is extremely bright even when layering in multiple items like

ON ERTS

gobos and prisms. We were able to pull some looks out of these fixtures that we've never seen before. Even though most of our main stage [lighting] rig is over the stage, the beams reach really pulls the audience in the back of the room into the show. It almost becomes an optical illusion that you are closer to the stage than you really are."

"We saw the [Robe BMFL] WashBeam, which we saw before in a shoot out, and were taken aback by how bright it was," Shapard says. "We ended up adding them into the show because of that." Twenty WashBeams are located on the downstage angled trusses. The lighting rig, provided through VER, includes Robe Pointes, GLP impression X4S units, Ayrton MagicPanel FX units, and GLP impression X Bar 20s.

For spotlights, the initial plan was to use PRG's GroundControl remote followspot system; however, a visit to Robe caused a change. "The Robe [RoboSpot] followspot system is something we fell in love with," Slezinger says. It's being used with eight Robe BMFL FollowSpots; two supplemental house spots are also employed.

Control is provided by a slew of MA Lighting consoles, including three grandMA2s. "We have our Notch [workflow for media production content] and media server program ming, which are done in real time, off of a grandMA2 light," Shapard says. "The Glow Motion Kinetiks are driven from a grandMA2 light, and the pyro is time coded off a dot."

Speaking of the show's palette, Shapard says, "Color means a lot to our brand; red means *Blurryface*, while yellow equals *rench*. More specifically, red and white is bad and yellow and green is good. In the very first song ["Jumpsuit"], our color palette goes back and forth from red and white to green and yellow, because there is a battle going on between the antagonists and the banditos, our heroes. The second song ["Levitate"] is yellow and red, to show that the battle has become a constant struggle. 'Stressed Out' is a *Blurryface* song, so that is red and white. 'Bandito' is yellow and green." Certain songs don't fit the paradigm: "'Car Radio' will always be blue, which doesn't mean anything to our branding; 'Trees' will always be green. In this story, 'Trees' is green and yellow, because that is the last song and the resolve."

Slezinger and Shapard started work on the production 14 months before the tour started and did pre viz at VER in Nashville. "It's the coolest part of the creative process," Slezinger says, "because we got to sit in a room for 60 days and take our time to program, sometimes up to 1,000 lighting cues per song."

Key to the preproduction process were David Perkins, of Orlando based Imaginary Lights, who built a 3D environment in LightConverse, and Thomas Krautscheid, who built a "markers to cues" app for the pair. "Basically," Slezinger says, "I tracked every song, and created cue



lists, go cues, flash buttons, etc., all in [the audio production application] Reaper while looking at the waveforms of every single snare, kick, cymbal, tom, piano hit, vocal, weird sound, and so on. Then, using the app Thomas made, I pushed the information over the network, into the console, and it dropped in everything I've created—the sequences, executors, time code pools, time code data for every cue, and even complex selection order groupings into the group pool. By the time we got in front of the console, we didn't have to think about the logistics of time anymore and everything was already labeled. After the upload, it was all about the creative. When we played songs back, time code was already synched up perfectly



"Color means a lot to our brand," Shapard says. "Red means *Blurryface* while yellow means *rench*." A handful of numbers exist outside this dichotomy.

with the track before any cue data was created in the console. Even video was laid into the Reaper timeline and pushed into the previz machine, so we could see everything playing together at once. Then, using a custom fixture in the console, we could control my computer over the network from the desk and jump around a song, between the verse and chorus, without touching the computer."

Shapard and Slezingler had time during programming to explore all the facets of the MegaPointe. "We do some

thing with it that I've never seen before. Basically, we make a beam inside a beam," Shapard says. The effect makes an appearance during the songs "Morph" and "Lane Boy."

Effects

One of the production's most stunning moments comes near the beginning, when a 1991 Cadillac DeVille is revealed, engulfed in flames. "The car was a complete accident," Shapard admits.



In addition to its striking visuals, the show relies on an extensive Meyer Sound PA to reach audiences.

The concept came through the design team's friend and mentor, Bruce Rodgers, of Tribe Design. "Bruce sent me a page of visual references of cool things, one of which was a car being blown up," Slezinger says. The pair included it in their original 107 page design brief. Much to their surprise, "Tyler said, 'You're telling me we can blow up a car onstage?' I said it was more of a visual reference, but sure, why not?"

"We found some cars that matched the band's music video 'Heavy Dirty Soul'," Slezinger continues, "and we had a local company in Nashville, called Driven, strip out the engine and the floor. We reinforced it, cut it in half, and

put it on casters to move it around. Then we had [the Nashville office of] Strictly FX go in there; by the time they were done, it looked like the inside of the space shuttle."

The ominous, apocalyptic Cadillac is an engineering marvel. "We wanted to focus on it looking and acting organic to execute any possible variant that the design team and artist required," notes Strictly FX partner Ted Maccabee. All of the physical control mechanisms, as well as the tubing and the welding, were done by hand. The control software, which is managed via a PLC touch screen, was created in house at Strictly FX by Reid Nofsinger. "Everything was built from scratch to our spec,

and had to fit inside the vehicle,” Maccabee adds.

Fabricating and touring a custom—and safe—flame based effect isn’t the easiest task. “It was a challenge making a magic effect out of it,” Maccabee notes. “We had to resolve the control issues, the interior is tight, and we have to control a total of 13 different quadrants within the vehicle.” The project was a perfect fit for the firm, however. “Our goal is to give the customer something they can’t get anywhere else. There is pressure on all designers to come up with something unique; we want to be some one they can partner with to create an effect or a gag that is safe and amazing.”

A dozen of Strictly FX’s proprietary 15W Coral Series RGB lasers also make several appearances. Maccabee notes: “The lasers were programmed by Grant Sellers on Pangolin Beyond software; Jackson Frazier is handling them on the road.” They appear during “Fairly Local,” “Stressed Out,” “Heathens,” “Lane Boy,” “Pet Cheetah,” “My Blood,” “Car Radio,” and the finale, “Trees.”

The effects package also includes Le Maitre MKII low smoke generators, working with the company’s G300 smoke machines; four MagicFX Swirl fans; and 12 Magic FX DMX CO2 units that blast out custom cut confetti. Pyro, in the form of concussion blasts, appears in “Jumpsuit” and “My Pet Cheetah.” The downstage is also lined by cryojets that are owned by the band.

Audio

For sound reinforcement, the band’s longtime front of house audio engineer, Shane Bardiau, is using a Meyer Sound LEO/LYON PA, provided through VER Tour Sound. “It’s good for so many reasons,” he says, “but, most of all, it’s one of the few boxes I’ve mixed this artist on where I can push it to what I would consider a high SPL and it still doesn’t hurt. The main factor for carrying Meyer is the 1100 LFC; I’ve never heard a sub so controlled in an arena environment. I’ve got a lot of digital sub frequencies that my mix depends on and the 1100s are not only audible, but they are clean. It’s also easy to keep my mix from getting muddy, which is a hard thing to do in a boomy arena.”

Bardiau’s rig consists of 138 cabinets. “The main hang is 14 Leos over four Lyon Ws a side and the side hang is eight Leos over eight Lyon Ms a side; the 220 hang is 16 Lyon Ws per side. There are six 1100 LFCs flown a side, and fourteen 1100 LFCs on the ground, which are in seven stacks of two in an arc across the front of the stage.” Finally, there are eight MINAs and two UPMs for front fills, with two UPJ 1Ps as utility fills. The system drive and optimization are supplied by nine Meyer Galileo GALAXY and two Meyer Galaxy AES processors.

Bardiau runs the show on a DiGiCo SD5; he’s been using it for about a year and a half. “It is amazing, and the open architecture is a game changer,” he notes. “The fact that I can put whatever channel strip/fader wherever I want is nice.”

He’s also a fan of the SD5’s macros: “I’ve got a macro for everything! One button to switch between live input or virtual playback, one button to switch from my Waves world to bypassing my inserts and using only the console features in order to compare the differences, and one button to switch between the various vocal mics that we use on stage. I’ve got alternate inputs setup in case my main inputs die and there’s just one button for that—one button to save my snapshot and show file. DiGiCo really has thought of it all.”

In terms of plug ins, Bardiau says, “They’re the cherry on top.” He’s using Waves SoundGrid Extreme Server, two DiGiGrid MGBs, and a network switch. “I switched this up from the last tour, freeing up some CPU on the console. It runs much faster and smoother than having my plug ins in the desk. With the new way of integrating waves on DiGiCo, it still follows my snapshots and pulls up the plug ins when I solo things.”

Bardiau makes ample use of plug ins: “They’re on my master bus, parallel drum bus, vocal bus, almost all my drum inputs, piano, bass guitar, ukulele, and playback, which is just about everything. I’ve got a few that I just can’t go without: MaxxVolume [volume leveler] on my vocals has been a game changer. I really like the API 2500 compressor on my piano, SSL G Master Buss Compressor on my busses, and, of course, the one plug in that makes it all fit together is the C6 [multiband compressor]. I actually use all Waves plug ins, as well as their multi tracking software called Tracks Live.”

Bardiau adds, “The vocal is very important to me; my artist has a very clear message he’s trying to portray to the audience and it’s very important for it to be understood. I’ve got my vocals going through the console channel strip using EQ and compressors; then it goes to Waves for C6 and then MaxxVolume, as well as my vocal effects. For the vocal effects, I’m using the Waves H Series plug ins.” He also has a vocal trick or two up his sleeve: “I’m side chaining his vocal bus to the master bus C6 on the 1K band so that when he sings, I squash it a little for his vocal to pop out of the mix. It works pretty well.”

For those considering a move to the SD5, Bardiau says, “It may look daunting and complicated at first sight, but it’s really intuitive once you start pushing buttons. When I made the switch to DiGiCo I didn’t do any previous research; I wanted to learn it on my own. I walked into the shop and had it dialed in on my first day of prep.”

The microphone package on stage can be described in one word: Shure. Bardiau has a Shure 91A and Beta 52 on the kick, and a combination of a Beta 57 and a SM57 on all the snares. On the toms there are [Beta] 98AMPs and “137s for the hat and ride and KSM32s for overheads,” he remarks. For vocals, he’s using a Shure KSM9HS. “I chose this mic from day one and it really works for my artist’s voice. It’s so crisp and you can really understand every



nuance and subtlety in every word." He manages the bass, ukulele, piano and synth all via DIs.

On the B stage is an electronic drum kit and a piano. "For the kit," Bardiau, says, "we took the samples from the

record and imported them into the Roland Drum Brain; I'm taking those straight out of the Brain into my console to mix via a [DiGiCo] SD Mini Rack at the front of house. The piano is a keyboard with a stereo DI. Simple and easy."



Strictly FX provided the stunning confetti effects, made by MagicFX.

Bardiau concludes, "We've really taken this tour to the next level; we've added 10 more trucks making it a 19 truck tour, and we've added a ton of crew, which now puts us at

65 plus touring crew members. There are lots of things moving, lots of fire, confetti and cryo. It's quite the show!" Twenty One Pilot's *Bandito* tour continues through June. 🎵

Exhibit C

vaden group | elliottdavis

August 5 2021

Re: Concert Investor, LLC – SVOG Application Appeal

Dear SBA Administrator:

This letter certifies that our firm, Elliott Davis – Vaden Group has handled the day to day accounting and business management services for Concert Investor since January 2019. Our firm prepared the Federal tax returns for Concert Investor 2019 and 2020. To my knowledge, Concert Investor has been operating in Nashville, TN since 2012.

Concert Investor is solely engaged in the business of producing live concert events on an international scale in venues ranging from small music clubs to arenas. Due to the Covid-19 pandemic, Concert Investor has been unable to generate any substantial revenue due to lock downs and local restrictions on live entertainment.

Our firm is assisting Concert Investor in its efforts to obtain a Shuttered Venue Operator Grant from the SBA by providing the necessary required financial documentation.

Sincerely,



Vicki Cherry, CPA