IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

DELAND SENIOR CARE, LLC and HOME HEALTH CARE OF FLORIDA, LLC

Plaintiffs,

JURY DEMAND

CIVIL NO:_____

vs.

UNITED STATES OF AMERICA, VENSURE EMPLOYER SERVICES, INC, PEOPLE, INC., COHESIVE NETWORKS, INC., and COHESIVE NETWORKS 2, INC.

Defendants.

COMPLAINT

DeLand Senior Care, LLC (hereinafter "Plaintiff DeLand" or "DeLand") and Home Health Care of Florida, LLC (hereinafter "Plaintiff Home Health" or "Home Health") (collectively together hereinafter "Plaintiffs"), by and through its undersigned counsel files this Complaint against Defendants, United

States of America ("Defendant USA" or "United States"), Vensure Employer Services, Inc. ("Defendant Vensure" or "Vensure"), People, Inc. ("Defendant People HRO" or "People HRO"), Cohesive Networks, Inc. ("Defendant Cohesive 1" or "Cohesive 1"), and Cohesive Networks 2, Inc. ("Defendant Cohesive 2" or "Cohesive 2"), pursuant to 26 U.S.C. §§ 7422, 6532 & 3504.[1]

Plaintiffs file this civil action for a federal tax refund totaling $1,637,438.33, claimed for refund against Plaintiff DeLand's payroll tax returns for quarterly tax periods ending June 30, 2021 and September 30, 2021 (the 2nd & 3rd quarters of 2021) that was duly and timely claimed and filed with the Defendant USA's nonparty agency, the Internal Revenue Service (the "IRS" or the "Service") on or before May 23, 2023 via Plaintiff DeLand's 26 U.S.C. § 3504 third-party payor ("TPP"), Defendant Cohesive 2, whom in-turn was acting along with Defendants' Vensure, People HRO, and Cohesive 1 in a collective TPP business enterprise, yet remain unchallenged and unpaid to Plaintiffs by any of the Defendants or the IRS.

I. PARTIES, JURISDICTION AND VENUE

1. Plaintiff DeLand is a Limited Liability Company (LLC) formed under the laws of the State of Delaware, registered to conduct business in the

[1] *See also* Fed. R. Civ. Proc. 19(a)(1) & 20(a)(2)(A)-(B).

State of Florida, and whose principal business address is 5270 N. U.S. Hwy 1, Suite 101, Palm Shores, FL 32940.

2. Plaintiff Home Health is a Limited Liability Company (LLC) formed under the laws of the State of Florida and whose principal business address is 5270 N. U.S. Hwy 1, Suite 102, Palm Shores, FL 32940.

3. Plaintiffs operate together and individually within a business enterprise offering continuing care and health services in central Florida.

4. Defendant USA is the United States of America and may be served by mailing two copies of this Complaint, along with a copy of the Court-issued Summons, by certified mail to the civil-process clerk of the United States Attorney for the Middle District of Florida at 400 North Tampa Street, Suite 3200, Tampa, FL 33602, and mailing two copies of the Complaint by certified mail to the Honorable Pamela Bondi, Attorney General of the United States, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

5. Jurisdiction of this Court as to Defendant USA is proper pursuant to 28 U.S.C. §§ 1340 and 1346.

6. Venue of this Court as to Defendant USA is proper pursuant to 28 U.S.C. §§ 1396 and 1402.

7. Defendant USA's nonparty agency, the Internal Revenue Service (the "IRS" or the "Service"), has factual relevance to this action, and the IRS

may be additionally served by mailing two copies of this Complaint by certified mail, along with a copy of the Court-issued Summons, by certified mail to the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

8. Defendant Vensure is a domestic for-profit business corporation incorporated under the laws of the State of Arizona, registered to conduct business within the State of Florida, with principal businesses addresses of 1475 S. Price Rd, Chandler, AZ 85286, and whom may be served via Vensure's registered agent for service of process in the State of Florida, Cogency Global Inc., at 115 North Calhoun St, Suite 4, Tallahassee, FL 32301.

9. Defendant People HRO is a profit corporation incorporated under the laws of the State of Florida, with principal businesses addresses of 1475 S. Price Rd, Chandler, AZ 85286 and 3501 East Frontage Road, Suite 350, Tampa, FL 33607, and whom may be served via People HRO's registered agent for service of process in the State of Florida, Cogency Global Inc., at 115 North Calhoun St, Suite 4, Tallahassee, FL 32301.

10. Defendant Cohesive 1 is a profit corporation incorporated under the laws of the State of Florida, with principal business addresses of 1475 S. Price Rd, Chandler, AZ 85286 and 3501 East Frontage Road, Suite 350, Tampa, FL 33607, and whom may be served via Cohesive 1's registered agent for service of

process in the State of Florida, Cogency Global Inc., at 115 North Calhoun St, Suite 4, Tallahassee, FL 32301.

11. Defendant Cohesive 2 is a profit corporation incorporated under the laws of the State of Florida, with principal business addresses of 1475 S. Price Rd, Chandler, AZ 85286 and 3501 East Frontage Road, Suite 350, Tampa, FL 33607, and whom may be served via Cohesive 2's registered agent for service of process in the State of Florida, Cogency Global Inc., at 115 North Calhoun St, Suite 4, Tallahassee, FL 32301.

12. Defendants' Vensure, People HRO, Cohesive 1, and Cohesive operate together and individually within a business enterprise offering, amongst others, 26 U.S.C. § 3504 third-party [tax] payor ("TPP") services (hereafter referred collectively together as the "Vensure TPP Enterprise Defendants" or "Vensure TPP Enterprise Defendant Group").

13. Jurisdiction of this Court is proper as to the Vensure TPP Enterprise Defendants, together and individually, pursuant to 28 U.S.C. §§ 1331 and 1340.

14. Venue of this Court is proper as to the Vensure TPP Enterprise Defendants, together and individually, pursuant to 28 U.S.C. §§ 1391(b)(2) and 1396.

II. NATURE OF THE FEDERAL TAX ISSUE AND ACTION

A. Federal Employment Taxes

15. Pursuant to federal law, employers are required to withhold certain federal income taxes and taxes from the Federal Insurance Contributions Act ("FICA Payroll Taxes") from their employee's wages and other compensation.

16. Pursuant to 26 U.S.C. §§ 3102, 3111, 3301, and 3402, employers are also required to pay their own portion of FICA Payroll Taxes and taxes from the Federal Unemployment Taxes and Federal Unemployment Tax Act ("FUTA Taxes"), and FICA Payroll Taxes and FUTA Taxes are collectively commonly referred to as "employment taxes" or "payroll taxes".

17. Pursuant to 26 U.S.C. §§ 6302 and 6157, as well as 26 C.F.R. §§ 31.6302-1, 31.6302(c)-1, and 31.6302(c)-3, employers are required to periodically deposit employment tax payments in certain prescribed federal deposit banks.

18. Pursuant to 26 U.S.C. § 6011, as well as 26 C.F.R. § 31.6071(a)-1, employers are further required to file quarterly payroll tax returns ("IRS Form 941" or "Form 941") and annual returns for their payroll Taxes.

B. Third-Party Payors of Employment Taxes – 26 U.S.C. § 3504

19. Pursuant to 26 U.S.C. § 3504, employers can employ a fiduciary, agent, or other person to have the control, receipt, custody, and/or disposal of the wages of its employees.

20. Pursuant to 26 C.F.R. § 31.3504-1, the IRS may permit such Section 3504 agents to perform such required employer actions, as if they were the employer whom they were contracted.

21. A third-party "payor" ("TPP") of a client employees' wages and respective payroll taxes is such pursuant to a "service agreement" defined by 26 C.F.R. § 31.3504-2(b)(2)(i) as an agreement where the payor:

a. "Asserts it is the employer (or "co-employer") of the individual(s) performing services for the client;"[2]

b. "Pays wages or compensation to the individual(s) for services the individual(s) perform for the client;"[3]

c. "Assumes responsibility to collect, report, and pay, or assumes liability for, any taxes applicable under subtitle C of the Code with respect to the wages or compensation paid by the payor to the individual(s) performing services for the client."[4]

22. Pursuant to 26 C.F.R. § 31.3504-2(b)(2)(ii), a payor may "implicitly or explicitly" provide that it is the employer, or co-employer, of the employees providing services to its client for purposes of permanent and temporary

[2] 26 C.F.R. § 31.3504-2(b)(2)(i)(A).
[3] *Id.* at (B).
[4] *Id.* at (C).

employee recruitment and hiring, its own direct hiring for performing services back to its client, and for purposes of employment tax returns' filings for payroll tax purposes using the payor's employer identification number not the client's.

23. A type of third-party payor for the outsourcing payroll services is a "Professional Employer Organization" ("PEO") that may or may not be voluntarily "certified."[5]

C. The COVID-19 Pandemic-Related "CARES" Act Employee Retention Credit ("ERC")

24. At the outset of the global COVID-19 pandemic, the United States enacted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") on March 27, 2020, which provided numerous federal government programs and funding in response to the economic challenges faced by the American people, businesses, and taxpayers.[6]

25. Amongst the CARES Act provisions, section 2301 provided for a new Employee Retention Credit ("ERC" or "ERTC"), which is a "refundable" tax credit applied against the employer-portion of businesses employment taxes

[5] *See* Internal Revenue Service (IRS), "Outsourcing payroll and third-party payers," https://www.irs.gov/businesses/small-businesses-self-employed/outsourcing-payroll-and-third-party-payers.

[6] *See* The Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. No 116-136, 134 Stat. 281 (2020).

for the period from March 12 through December 31, 2020.[7] Section 2301 of the CARES Act was later amended by the Taxpayer Certainty and Disaster Relief Act of 2020 (the "Relief Act") to extend ERC into the first two quarters of 2021.[8] The American Rescue Plan Act of 2021 ("ARPA" or "ARPA 2021") further extended ERC through the end of 2021.[9] The Infrastructure Investment and Jobs Act ("IIJA") later removed eligibility for most employers in the fourth quarter of 2021.[10] The ERC credit was ultimately codified as 26 U.S.C. § 3134, where Title 26 is the "Internal Revenue Code."

26. Pursuant to 26 U.S.C § 3134(c)(2)(A)(ii), ERC provides a few different avenues of qualification, and all aimed at both incentivizing and rewarding businesses maintaining employment during the COVID-19 pandemic in 2020 and 2021. Specifically:

a. Certain businesses meeting certain defined business disruption criteria by quarter were equally eligible for the same per employee refundable ERC tax credit by quarter,

b. Businesses who demonstrated certain quantitatively defined gross receipt drops by quarter, as compared to pre-pandemic periods,

[7] *See id.*
[8] *See* The Taxpayer Certainty and Disaster Relief Act of 2020, Pub. L. 116-260, Div. EE (2020).
[9] *See* The American Rescue Plan Act of 2021, Pub. L. 117-2, 135 Stat. 4 (March 11, 2021).
[10] *See* Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (Nov. 15, 2021).

were eligible for a per employee per quarter refundable ERC tax credit, or

c. Certain businesses defined as "recovery startup businesses."

D. ERC Qualification – Significant Reduction in Gross Receipts Qualification

27. For the March 12 through December 31, 2020 time periods and pursuant to section 2301 of the CARES Act, employers are eligible for the ERC tax credit in quarters beginning when gross receipts are less than 50 percent of gross receipts for the same calendar quarter in 2019 and ending in the first calendar quarter after the calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter in 2019.

28. For the January 1 through September 30, 2021 time periods and pursuant to section 2301 of the CARES Act, as amended by section 207 of the Relief Act and section 9651 of ARPA 2021 and IIJA, employers are eligible for the ERC tax credit in quarters where gross receipts are less than 80 percent of the same quarter in 2019, and furthermore, the employers are permitted to use the preceding calendar year quarter when comparing to the same 2019 quarter in making these determinations.

E. ERC – Single Aggregated Employer Rule

29. Pursuant to section 2301(d) of the CARES Act, as amended by section 207(a)(1) of the Relief Act, additionally amended by ARPA and IIJA, and finally codified in 26 U.S.C. § 3134(d), "[a]ll persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as one employer for purposes of this section."

30. Pursuant to 26 U.S.C. § 52(a), a "controlled group of corporations" treated as the same employer further incorporates 26 U.S.C. § 1563(a) and is ultimately defined as:

a. A "parent-subsidiary" controlled group of corporations where the "parent" entity owns more than fifity-percent (50%) of a "subsidiary," and

b. A "brother-sister" controlled group of corporations where multiple potential sibling entities are owned by five (5) or few owners who have more than fifty-percent (50%) combined ownership least eighty-percent (80%) of the total combined voting power of all sibling entities, and

c. Certain combinations, including those entities with overlapping fiscal periods, thereof.[11]

F. ERC – Credit Amount Determination

31. For the March 12 through December 31, 2020 time periods and pursuant to section 2301 of the CARES Act, employers are eligible for the ERC tax credit in quarters beginning when gross receipts are less than 50 percent of gross receipts for the same calendar quarter in 2019 and ending in the first calendar quarter after the calendar quarter in which gross receipts are greater than 80 percent of gross receipts for the same calendar quarter in 2019.

32. For the January 1 through September 30, 2021 time periods and pursuant to section 2301 of the CARES Act, as amended by section 207 of the Relief Act and section 9651 of ARPA 2021 and IIJA, employers are eligible for the ERC tax credit in quarters where gross receipts are less than 80 percent of the same quarter in 2019, and furthermore, the employers are permitted to use the preceding calendar year quarter when comparing to the same 2019 quarter in making these determinations.

33. Section 2301(g) of the CARES Act, as amended by section 206(c)(2) of the Relief Act, and 26 U.S.C. § 3134(h)(2) provide that any payroll costs covered as "forgiven" by the Paycheck Protection Program (PPP) of the 2020

[11] *See also* 26 C.F.R. § 1.1563-1

CARES Act are excluded "qualifying wages" for purposes of the ERC tax credits.[12]

G. ERC – Refundability and Amendment for Refund Claim

34. Pursuant to section 2301(b), *et al*, and 26 U.S.C. § 3134(b), ERC tax credit claims are first used to offset employment taxes for the respective period, and any excess is further "refunded" to the taxpayer claimant per 26 U.S.C. §§ 6402(a) and 6413(b).

35. Pursuant to 26 U.S.C. § 6511, taxpayers have up to three (3) years from the date of filing a tax return to amend the same return for a claim for refund or credit of taxes, and further pursuant to 26 U.S.C. § 6513(c), the date of filing for payroll tax returns are deemed filed on April 15th of the succeeding calendar year.

H. Submitting Amended Tax Returns and Other Tax Documents to IRS

36. Pursuant to 26 U.S.C. § 7502, the "date of delivery" of any taxpayer's submission or filing of "any return, claim, statement, or other document" submitted by mail is the postmark date of the mailing.

37. Pursuant to 26 U.S.C. § 7502(c) and 26 C.F.R. § 301.7502-1, such mailings described in statement no. 36 above that are mailed via the United

[12] *See also* The Coronavirus Aid, Relief and Economic Security Act (CARES Act), Pub. L. No 116-136, 134 Stat. 281(2020).

States Postal Service (USPS) via "registered mail" or "certified mail" is *prima facie* evidence that such a mailing was "delivered" to the IRS on the postmark date; the postmark date being the date of registered mail registration and/or certified mail payment.

38. Further, pursuant to 26 U.S.C. § 7502(c) and 26 C.F.R. § 301.7502-1, the IRS may also identify "Private Delivery Services" ("PDS"), e.g. DHL Express, FedEx, and UPS, from time-to-time that are permitted to serve in place of USPS mailings for purposes of applying the rules of 26 U.S.C. § 7502 and 26 C.F.R. § 301.7502-1.[13]

39. To the extent an employer hires a 26 U.S.C. § 3504 TPP for purposes of reporting and payment of its employees' wages and payroll taxes to the IRS, such third-party payor may be responsible for part or all of one or more related tax document submissions, per statement nos. 36 through 38 above, on behalf of its client common employer.

III. PLAINTIFF BACKGROUND AND FACTUAL ASSERTIONS

A. Company Overview

40. Plaintiff DeLand is a Continuing Care Retirement Community ("CCRC") located in DeLand, Florida which provides a group living

[13] *See also* Private Delivery Services PDS, Internal Revenue Service, https://www.irs.gov/filing/private-delivery-services-pds.

environment and typically cater to an elderly population who needs some assistance in day-to-day living or prefers more companionship.

41. Plaintiff Home Health is a home care company that supports and cares for communities by providing compassionate, innovative and personalized care in the DeLand, Florida-area.

42. During the 2nd & 3rd quarters of 2021, Plaintiffs DeLand and Home Health were in a business enterprise offering continuing care and health services in central Florida.

43. During the 2nd & 3rd quarters of 2021, Plaintiffs DeLand and Home Health's ownership constituted a single employer for purposes of section 2301(d) of the CARES Act.

44. During the 2nd & 3rd quarters of 2021, there were other taxable entities with related ownership to Plaintiffs DeLand and Home Health, but none had an ownership constitution such that they would be additionally included within the single employer for purposes of section 2301(d) of the CARES Act and statement no. 43 above.

45. As relevant to this Complaint, Plaintiffs' quarterly gross receipts, within the meaning of the Employee Retention Credit of section 2301 of the CARES Act, as amended by section 207 of the Relief Act and ultimately codified in 26 U.S.C. 3134, are summarized in the table below:

i. Payroll Tax Quarter End	ii. DeLand Gross Receipts	iii. Home Health Gross Receipts	iv. CARES Sec. 2301(d) Agg. GRs.
a. 6/30/2019	3,623,570	1,243,298	4,866,868
b. 9/30/2019	3,497,243	1,030,861	4,528,104
c. 6/30/2021	2,992,885	451,981	3,444,866
d. 9/30/2021	3,076,567	630,058	3,706,625

46. Accordingly, Plaintiff DeLand's quarterly gross receipt comparisons for potential ERC qualification pursuant to section 2301 of the CARES Act, as amended by section 207 of the Relief Act and ultimately codified in 26 U.S.C. 3134, are summarized in the table below:

i. Payroll Tax Quarter End	i. Comparison to 2019 (%)	ii. Alternative Quarter Comparison to 2019 (%)
a. 6/30/2019	n/a	n/a
b. 9/30/2019	n/a	n/a
c. 6/30/2021	70.78%	n/a
d. 9/30/2021	81.86%	70.78%

47. During the 2nd & 3rd quarters of 2021, Plaintiffs had less than five-hundred (500) employees for its payroll tax return filings subject to payroll taxes.

B. Plaintiff DeLand Employment of Vensure TPP Enterprise Defendants

48. Prior to the 2nd & 3rd quarters of 2021 and on or about March 11, 2021, Defendant People HRO proposed to Plaintiff DeLand a services agreement for People HRO's contracted entities, Defendants Cohesive 1 and Cohesive 2, to provide for the payment of DeLand's employees wages and payroll taxes on an on-going basis.

49. Defendant People HRO is part of Defendant Vensure's greater business enterprise to provide to domestic businesses, such as Plaintiff DeLand, human resources, employer, payroll, third-party payor, and other similar services.[14]

50. Pursuant to its proposal to Plaintiff DeLand of March 11, 2021, Defendant People HRO presented Defendants Cohesive 1 and Cohesive 2 as "third-party management/administrative company[ies]" and further as "Professional Employer Organizations" or "PEOs".

51. Pursuant to its proposal to Plaintiff DeLand of March 11, 2021, Defendant People HRO proposed that the employees of DeLand pursuant to the agreement would be "co-employed" by Defendants Cohesive 1 and Cohesive 2.

[14] *See* People, Inc, Webpage Home, https://peoplehro.com/ ("A Vensure Employer Services Company").

52. Pursuant to its proposal to Plaintiff DeLand of March 11, 2021, Defendant People HRO proposed Defendants Cohesive 1 and Cohesive 2 to be responsible for the payment of DeLand employees wages; provided DeLand funded those wages.

53. Pursuant to its proposal to Plaintiff DeLand of March 11, 2021, Defendant People HRO proposed Defendants Cohesive 1 and Cohesive 2 to be responsible to "withhold, collect, report, and remit" any payroll taxes associated with the payment of DeLand employee wages per statement no. 52 above; provided DeLand funded those payments.

54. Plaintiff DeLand agreed to the March 11, 2021 proposal of Defendant People HRO on or about March 15, 2021, including agreeing to the terms as described in statement nos. 51 through 53 above.

55. Throughout the duration of the March 15, 2021 agreement between Plaintiff DeLand and Defendants People HRO, Cohesive 1, and Cohesive 2, including during the 2nd & 3rd quarters of 2021, Plaintiff DeLand complied with all terms required of it, including timely funding of any wage or tax payments for its co-employed employees.

56. For the 2nd & 3rd quarters of 2021, Plaintiff DeLand's payroll taxes were accordingly ultimately paid for and reported by Defendant Cohesive 2 under Cohesive 2's taxpayer employer identification number ("TEIN" or

"EIN") in a manner provided for by Defendant USA's nonparty agency, the IRS.

57. On or about February 18, 2022, Plaintiff DeLand executed an addendum to the March 15, 2021, proposed by Defendant People HRO, that extended the term of the PEO services provided by Defendants Cohesive 1 and Cohesive 2 with no substantive change to the scope of services or any parties' rights or obligations, including no changes to the terms as described in statement nos. 51 through 54 above.

C. Plaintiffs' ERC Credit Claims

58. Subsequently to the conclusion of the 2nd & 3rd quarters of 2021, Plaintiffs determined that they qualified for ERC tax credits, as a CARES Act § 2301(d) single employer, for DeLand's co-employees with the Vensure TPP Enterprise Defendants pursuant to the "Significant Reduction in Gross Receipts" qualification test of section 2301(c)(2)(A)(ii)(II) of the CARES Act, as amended by section 207(d)(1)(A) of the Relief Act, and I.R.C. § 3134(c)(2)(A)(ii)(II).

59. Further, Plaintiffs calculated the ERC tax credits for the 2nd & 3rd quarters of 2021 totaling $ 1,637,438.33 and as summarized in the table below:

i. Payroll Tax Quarter End	ii. Total ERC Credit Refund Claim
a. 6/30/2021	202,428.58

i. Payroll Tax Quarter End	ii. Total ERC Credit Refund Claim
b. 9/30/2021	1,435,009.75
c. Total	1,637,438.33

60. On or about July 25, 2022, Defendant Vensure proposed a two-page "COVID-19 Assistance Addendum" to Plaintiffs, as an addendum to Defendants Cohesive 1 and Cohesive 2 employer service agreement with Plaintiff DeLand, described in statement nos. 48 through 57 above (hereafter the "COVID Addendum").

61. Defendant Vensure's proposed COVID Addendum provided for Defendant Vensure to be responsible to file any necessary amendments of Plaintiff DeLand's original payroll tax return filings to the Defendant USA's nonparty agency, the IRS, for claims for refund of any identified ERC Tax Credits by the Plaintiffs.

62. On July 25, 2022, Plaintiffs agreed to Defendant Vensure's proposed COVID Addendum.

63. Shortly after agreeing to the COVID Addendum, Plaintiffs submitted all necessary information for Plaintiff DeLand's identified ERC Tax Credits for the 2nd & 3rd quarters of 2021, per statement no. 59 above, to Defendant Vensure.

64. On July 29, 2022, Defendant Vensure confirmed to Plaintiffs that its submitted ERC tax credit claims had been submitted to Defendant Vensure's tax team for processing.

65. None of the Vensure TPP Enterprise Defendants communicated any deficiencies to Plaintiffs as to Plaintiff DeLand's submitted ERC tax credit claims per statement nos. 63 and 64 above.

66. Plaintiffs complied with their obligations pursuant to the agreed-to COVID Addendum per statement no. 62 above.

67. Plaintiffs continual maintained communication regarding the status of its ERC tax credits claims with representatives of the Vensure TPP Enterprises Defendants since July 25, 2022, but none of these communications caused Plaintiff DeLand's requested refunds of the ERC Tax Credit to be issued.

68. On December 14, 2023, Defendant Vensure communicated to Plaintiffs that Defendant Vensure via Defendant Cohesive 2 filed Plaintiff DeLand's ERC tax credit claims for the 2nd & 3rd quarters, as submitted by Plaintiffs per statement nos. 63 and 64 above, on May 23, 2023 with Defendant USA's nonparty agency, the IRS as Plaintiff DeLand's 26 U.S.C. § 3504 third-party payor.

69. Since the filings described in statement no. 68 above, the Vensure TPP Enterprise Defendants, Defendant USA, and Defendant USA's nonparty

agency, the IRS, have failed to issue any refunds to either Plaintifff for the Plaintiff DeLand's ERC Credit Claims for the 2nd & 3rd quarters of 2021, and Defendants and IRS have further failed to issue any notices of audit, examination, disallowance, or deficiency that may justify any further refund delays.

70. Since the filings described in statement no. 68 above, the Vensure TPP Enterprise Defendants, Defendant USA, and Defendant USA's nonparty agency, the IRS, have made no claim to the Plaintiffs of any federal taxes owed by Plaintiffs, regardless of nature and time period, under Title 26 of the United State Code that the ERC credits for the Plaintiff DeLand's ERC Credit Claims would be appropriate to use as an offset for any such owed taxes.

IV. CAUSE OF ACTION – 26 U.S.C. §§ 7422, 6532 & 3504

71. A taxpayer of the United States is permitted to file a delayed refund suit against the United States, pursuant to 26 U.S.C. §§ 7422 and 6532, for the recovery of taxes imposed under Title 26 of the U.S. Code in U.S. District Court, provided:

a. a claim for refund has been filed with the IRS,

b. it has been at least six months from the date of such filing, or

c. it has been two years from the date the IRS notified the taxpayer that such a claim has been disallowed.

72. For purposes of payroll taxes reporting and payments, a taxpayer of the United States is further permitted to employ a third-party payor pursuant to a services agreement compliant with 26 U.S.C. § 3504 and 26 C.F.R. § 1.3504-1 & -2.

73. Plaintiffs are taxpayers of the United States who employed a 26 U.S.C. § 3504 third-party payor, the Vensure TPP Enterprise Defendants to be both responsible for the original quarterly payroll tax filings, reporting, and payments, and subsequently the amendments for the latter-defined ERC Tax Credits for Plaintiff DeLand's 2nd & 3rd quarters of 2021.

74. Plaintiffs fully complied and satisfactorily performed all obligations required of them, pursuant to any agreements with Plaintiffs and the Vesnure TPP Enterprise Defendants.

75. Plaintiffs filed claims for refunds of Plaintiff DeLand's employment taxes imposed under Title 26 of $ 1,637,438.33 for the 2nd & 3rd quarters of 2021 no later than May 23, 2023 with Defendant USA's nonparty agency, the IRS, via Plaintiff DeLand's duly-engaged 26 U.S.C. § 3504 third-party payor, Defendant Cohesive 2 as part of the on-going TPP business with the other Vensure TPP Enterprise Defendants.

76. Subsequently, Defendant USA via its nonparty agency, the IRS, has failed to issue the claimed refunds to neither the any of the Vensure TPP

Enterprise Defendants for subsequent payment to Plaintiff DeLand, nor has it issued any refunds directly to Plaintiff DeLand; and it has further failed to notify Plaintiffs or the Vesnure TPP Enterprise Defendants of any claim disallowances.

77. It has been longer than six months, over two (2) years in fact, since Plaintiff DeLand has filed the refund claims with Defendant USA's nonparty agency, the IRS, via Plaintiff DeLand's 26 U.S.C. § 3504 third-party payor, Defendant Cohesive 2 as part of the on-going TPP business with the other Vensure TPP Enterprise Defendants.

78. It has been approximately three (3) years since Plaintiffs provided all necessary information and documentation for the ERC Tax Credit refund claims to the Vensure TPP Enterprise Defendants to have Defendant Cohesive 2, within that enterprise, file the tax refund claims as Plaintiff DeLand's 26 U.S.C. § 3504 third-party payor.

79. Since the IRS has failed to notify Plaintiffs or any of the Vensure TPP Enterprise Defendants of any claim disallowances, it has yet been two years from such a notification.

80. Plaintiffs are entitled to the credits and its claims for refund as claimed and identified in statement no. 75 above, including any additional interest it is entitled to under 26 U.S.C. § 6611.

81. Plaintiffs are additionally entitled to reasonable attorney's fees and legal costs associated with this cause of action pursuant to 26 U.S.C. § 7430.

82. The Vensure TPP Enterprise Defendants are each persons who are subject to service of process.[15]

83. The Vensure TPP Enterprise Defendants joined as co-defendants to Defendant USA will not deprive the court of subject-matter jurisdiction.[16]

84. The Vensure TPP Enterprise Defendants if absent to the underlying action as to Defendant USA could risk complete relief to Plaintiffs.[17]

85. The Vensure TPP Enterprise Defendants rights in relation to Plaintiffs arise out of the same transaction, occurrence, or series of transactions or occurrences, as to Defendant USA and this 26 U.S.C. §§ 7422; 6532 delayed tax refund cause of action, per 26 U.S.C. § 3504.[18]

86. Questions of law and fact are common to all Defendants as related to Plaintiffs' underlying claims.[19]

V. PRAYER FOR RELIEF

87. WHEREFORE, the Plaintiffs prays this Court orders the Defendant United States:

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[15] *See* Fed. R. Civ. Proc. 19(a)(1).
[16] *See id.*
[17] *See id.*
[18] *See id* at 20(a)(2)(A).
[19] *See id* at (B).

a. Issue refunds for the Plaintiffs claim for refund of Plaintiff DeLand's taxes of $ 1,637,438.33 to Plaintiff DeLand,

b. Issue additional refunds to Plaintiff DeLand for any interest entitled to it under 26 U.S.C. § 6611, and

c. Award Plaintiffs reasonable attorney's fees and other legal costs permissible under 26 U.S.C. § 7430; and

88. IN DOING SO, the Plaintiffs PRAY FURTHER this Court order all 26 U.S.C. § 3504 mutual rights and obligations between Plaintiffs and the Vensure TPP Enterprise Defendants, jointly and severally, per their July 25, 2022 COVID Addendum and described in statement no. 62 above as satisfied, but without any adjudication of any rights and obligations under any other 26 U.S.C. § 3504 arrangements between any Plaintiff and any of the Vensure TPP Enterprise Defendants, described above *herein* or otherwise.

VI. TRIAL BY JURY DEMANDED

89. Plaintiffs demand a trial by jury for all issues triable.

Dated: July 18, 2025

Respectfully submitted,

/s/ Carl D. Berry

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