**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF MICHIGAN**

**SOUTHERN DIVISION**

**,**

**On Behalf of Themselves**

**and All Others Similarly Situated,**

 **Plaintiff, Case No. 18-cv- -SFC-APP**

**v.**

**CAVALRY SPV I, LLC**

**CAVALRY PORTFOLIO SERVICES, LLC,**

**ROOSEN, VARCHETTI & OLIVIER PLLC,**

**and RICHARD ROOSEN,**

 **Defendants.**

**PLAINTIFFS’ RESPONSE TO DEFENDANT RVO AND RICHARD ROOSEN’S MOTION FOR JUDGMENT ON THE PLEADINGS**

*“The Defendants Misrepresented the Amount owed on the debt…the amounts alleged to be owed in the State Collection Lawsuits against Michigan residents are not authorized by any agreement”*

*-* ***Paragraph #2 of the Plaintiffs’ originating complaint***

*“…but there are no allegations that the amount sued upon in the specific collection cases was false”*

***- top of p. 6 of Defendants’ Motion for Judgment***

 NOW COME the Plaintiffs, by and through counsel, and for their Response to the Defendants’ Rule 12(c) Motion for Judgment on the Pleadings and Brief in Support state as follows:

1. The Plaintiffs affirm that the RVO Defendants filed suits within Michigan State courts on behalf of Cavalry SPV I, LLC (but not in the attorneys’ own name) in an effort to collect the debt, but otherwise deny that any debts were due and owing between the Plaintiffs and Cavalry.

2.) The Plaintiffs deny the allegation within this averment to the extent that their argument is not that the Defendants initiated suit while lacking admissible, dispositive evidence that Cavalry owned the debts at issue, but rather that Cavalry simply was never legally assigned those debts and had no legal right to pursue collection of Plaintiffs. The lack of documentation is a natural corollary to this argument- not the argument itself.

3.) The Plaintiffs affirm that the Defendants have violated various sections of the Fair Debt Collection Practices Act and related Michigan statutes as set forth in more substantive detail in their originating complaint in this matter.

4.) The Plaintiffs deny the allegation within this averment for the reasons to be set forth in more comprehensive detail below, but to summarize in brief *Harvey* has little if any applicability to the present case as the Plaintiffs’ claims extend far beyond the mere filing of a complaint (the sole issue upon which *Harvey* was based).

5.) The Plaintiffs deny the allegation within this averment for both the foregoing reasons as well as those set forth below.

6.) The Plaintiffs deny the allegation within this averment for both the foregoing reasons as well as those set forth below.

7.) The Plaintiffs affirm the allegation within this averment.

 WHEREFORE, the Plaintiffs respectfully request this Honorable Court deny the Defendant RVO’s Motion for Judgment on the Pleadings.

**BRIEF IN SUPPORT**

Like their co-Defendant predecessors in interest, the RVO Defendants seem intent on purposefully misrepresenting the Plaintiff’s positions to this Court in a misguided effort to have it interpret those claims solely through the prism of *Harvey v. Great Seneca Financial Corp.*, 453 F.3d 324 (6th Cir. 2006). In *Harvey*, the court had to ferret out what allegations Ms. Harvey was making before analyzing the pleadings under Rule 12(b)(6). On the third page on Defendant’s Harvey attachment under the section, **B. Harvey’s Complaint**, The Court stated that:

“Because Harvey’s complaint uses imprecise language, we must decide whether Harvey intended to allege that (1) Seneca and Javitch filed the complaint without having on hand at the time of filing the means to prove the complaint, or (2) Seneca and Javitch filed the complaint without the means of ever being able to obtain sufficient proof of the debt-collection action.”

The *Harvey* Court found that their analysis should apply only to Ms. Harvey alleging that the debt collector did not have the means on hand of proving the complaint at *the time of* *filing the complaint*. The *Harvey* Court held that, “The conclusion that Seneca and Javitch had no means of ever proving their claim would therefor be both an unreasonable extension and a strained reading of Harvey’s allegation that Seneca and Javitch filed “a lawsuit to collect a purported debt without the means of proving the existence of the debt, the amount of the debt, or that Seneca owned the debt.” At the same section of **B. Harvey’s Complaint**.

The present lawsuit extends far beyond the basis of the *Harvey* Court analysis that dismissed Ms. Harvey’s complaint. Instead, Plaintiffs’ lawsuit centers upon a far more significant issue- namely, that Defendants are filing collection lawsuits “*without the means of ever being able to obtain sufficient proof of the debt-collection action*.” **The *Harvey* analysis would not apply to this case**.

The Plaintiffs are not, as the Defendants suggest, asking that this Court to impose some sort of heightened pleading standard for state court collection cases by requiring attorneys representing assignees to include “admissible, dispositive evidence” of the assignment. The Plaintiffs are arguing that no assignment of the Plaintiffs’ respective debts ever occurred at all, that Cavalry has presented no legal right to sue them related to the Citibank debt at issue, and that by extension in doing so (among a multitude of violations) misrepresented the amounts due and/or the legal character and status of the debts at issue in clear and unequivocal violation of the FDCPA and associated Michigan statutes. Even the account statements added to the complaints are from 2012 and 2014 with no attempt to provide any admissible proof that Plaintiffs owe these specific debts to Cavalry.

**A. FACTS PLED IN COMPLAINT**

Remarkably, none of the seven (7) allegations of the Defendants’ state collection complaints refer to any ownership paperwork, assignments or any proof that each Plaintiff owes the debt to Cavalry. There are just some documents marked “Exhibit” that are not referenced or relied upon in each of the Defendants state complaints. Here is the complaint against Mr. Schuemann as an example:



There is no contract attached that Cavalry is claiming is breached and none of the attachments support the pleadings or provide any proof that Plaintiffs owe the specific debt to Cavalry. The Bill of Sale and Assignment attached to each state complaint refers to a Purchase and Sale Agreement that is not attached along with an Exhibit 1 that says nothing about any of the Plaintiffs specific debts. The Bill of Sale and Assignment is unsigned by Cavalry so there is no evidence of an Assignment of even the pool of debts it refers to at Exhibit 1.





As stated in Plaintiffs’ complaint, a chain of title to the Plaintiffs’ debts does not exist. Without any evidence that Cavalry owns even the pool of debts that they claim the specific plaintiffs are part of but offer no proof, the Plaintiffs would first point out that the underlying complaint clearly and unequivocally alleged that SPV was not the real or proper party to bring the collection suits at issue. The Plaintiffs’ myriad (and non-exhaustive) claims extending the scope of this ligation well beyond *Harvey* include-

**(a)** *Misrepresenting the amount(s) owed* by each respective Plaintiff (Paragraph 2 of the originating complaint in this matter)

**(b)** That the amounts alleged to be owed in the corresponding state court lawsuits are *not authorized by agreement* (Paragraph 2)

**(c)** Defendants’ purchasing of debt through purchase agreements which demonstrably *disavow responsibility for the accuracy of the information* contained in the spreadsheet upon which they are based, which given the dearth of additional documentation otherwise provided seemingly leaves the Defendants with no tangible way to prove they are in fact owed the amounts they claim (Paragraph 51)

**(d)** The *lack of any representations demonstrated to have been made by the purported original seller of the debts at issue (Citibank) to Cavalry regarding the accuracy of the information* they transferred to Cavalry during the course of the claimed sale (Paragraph 52).

**(e)** No *valid and specific debt* assignment between Citibank and Cavalry (Paragraph 68). In violation of MCL 566.132(1)(f), none of the *Bill of Sale and Assignments* attached to the State lawsuits by Calvary and RVO are signed by Cavalry.

**(f)** Lack of written assignment of debt *containing authorized signature* as required by the party to be charged with an agreement or contract under Michigan law (MCL 566.132(1) (f), (Paragraphs 69 and 70)- this runs directly contrary to the Defendants’ false suggestion in their Motion that “there is no such requirement” in Michigan or under the FDCPA

**(g)** Contracts at issue were assigned to Defendant Roosen by CPS and Cavalry in contravention of MCL 339.901(e) which stipulate that creditor or principal *shall not include a person who receives the assignment or transfer of debt solely for the purpose of facilitating collection of the debt for the assignor or transferor* (Paragraphs 74 and 75).

**(h)** *Lack of standing to initiate lawsuits* under MCL 339.901 and/or MSA 18.425(901), neither of which relates to the “mere filing” of a collection complaint alone (Paragraph 76).

**(i)** Defendant Roosen’s specific violation of MCL 339.915a which prevents the *combination of attorneys and collection agencies from being housed in the same office* (Paragraph 77). See the changes to the specific section by the Michigan Legislature on March 13, 2018 at **Exhibit 2** for the purposes of highlighting RVO’s inclusion as a collection agency here.

**B. STANDARD OF REVIEW**

 As the Defendants rightfully point out, motions for judgment such as the one now before this Court are often reviewed in much the same manner as motions to dismiss- however, they fail to note that a court construes the originating complaint in the light most favorable to the Plaintiff, and draws all reasonable inferences in the Plaintiff’s favor. *Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012). The moving party has the initial burden of showing that there is an absence of evidence to support the nonmoving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548 (1986). Only if that burden is met must the nonmoving party then produce evidence that would support a finding in its favor. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250, 106 S. Ct. 2505 (1986). A claim is facially plausible when a plaintiff pleads factual content that permits a court to reasonably infer that the defendant is liable for the alleged misconduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The plausibility standard is not equivalent to a probability requirement.  *Id* at 556.

**C. PLAINTIFF’S ALLEGATIONS CONCERNING RVO DEFENDANTS’ EFFORTS TO COLLECT THE WRONG AMOUNT OR LACK OF MEANINGFUL ATTORNEY INVOLVEMENT ARE SUFFICIENT TO SATISFY RULE 8.**

Although the Defendants attempt to cite *Mellentine* as standing for the supposedly prevailing proposition that “general allegations concerning ‘faulty information’ used in connection with debt collection efforts…will not survive a motion to dismiss,” they otherwise fail to note that more recent precedent has clearly and unequivocally established that “[Section] 1692e establishes a right to *truthful information* regarding the collection of a debt,” the violation of which constituted “real harms and not merely procedural violations.” *Hill v. Accounts Receivable Servs. LLC,* No. 16-219 (DWF/BRT), 2016 WL 6462119, at \*4 (D. Minn. Oct. 31, 2016).

The Sixth Circuit has also definitively established that *complaints, liens, and other court filings* can in and of themselves sufficiently constitute a legally-actionable “threat” for purposes of the FDCPA. *Currier v. First Resolution Inv. Corp*., 762 F.3d 529, 535 (6th Cir. 2014); see also *Gionis* at 28. RVO initiated litigation premised upon a debt that was not owned by Cavalry, and such was put forth as a direct allegation time and time again throughout the Plaintiffs’ complaint.

Furthermore, a “plaintiff asserting a claim under § 1692e need not prove *actual reliance* on a false representation.” *Neild v. Wolpoff & Abramson, LLP*, 453 F. Supp. 2d 918, 923 (E.D. Va. 2006). Other courts have long held that the making of a false statement in connection with an attempt to collect a debt is sufficient harm to establish injury-in-fact for standing purposes. *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F.3d 292, 307 (2dCir. 2003). In other words, a plaintiff who receives such a misrepresentation (e.g., receipt of a debt collection lawsuit which misrepresented that the debt at issue had been lawfully assigned to the Defendants when it had not been) “has suffered injury in precisely the form [Section 1692e of the FDCPA] was intended to guard against,” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373- 74 (1982).

A scheme like the one perpetrated by the Defendants in this case was otherwise addressed in *Kuria v. Palisades Acquisition XVI, LLC,* 752 F.Supp.2d 1293 (N.D.Ga. Nov. 16, 2010). In that case, similar to Plaintiffs’ allegations in the instant matter, Plaintiff Kuria essentially alleged in his complaint that Defendant Palisades sued him on an invalid debt—one that Palisades similarly could not ever properly prove its’ legal right to collect upon—and that it intended to either obtain a default judgment or coerce him into a settlement due to “a pattern and practice of abusive, scattershot litigation to collect debts.” *Id*. at 1302. The ultimate violation in that case was more succinctly summarized as the Defendant’s knowledge “when filing the suit not only that it lacked knowledge of the validity of the underlying debt, but also that it never intended to investigate or verify the debt’s validity.”

In the matter now before this Court the Defendants likewise, despite *possessing no supporting proof*, chain of title/transfer, and/or the authorization/card hold agreements necessary to win at trial, sued each Plaintiff anyway without ever bothering to ascertain whether the debt was valid. The Debtor and Debtor account statements are from 2014 and the Debtor accounts end at 2012. With no admissible payment proof, all three actions are barred by the six (6) year statute of limitations in the State of Michigan. See MCL 600.5807.

There is not even a minimum of effort to provide proof of the amount owed in 2018 because the Defendants have nothing other than old statements from years ago. Which means the attorney did not review the cardholder contract here as, had that occurred, the amount sought would include the fees, charges and costs stated in the contract. Given interest and costs accumulated (in six years in Debtor’s case) since the date of the statements, clearly the lawsuits were signed without any reasonable inquiry that is well grounded in a review of the facts or the cardholder agreement between Citibank and the Plaintiffs.

This Honorable Court should reach the same conclusion as in *Kuria*, which held that the plaintiff’s claims stated a plausible case against the Defendants for violations of the FDCPA as result.” *Id*. at 1303. The false, deceptive, and misleading representations employed by Defendants as set forth above in their state collection complaints to collect these alleged debts are material to the due process rights of the consumers—who are being sued with false documentation and verifications— in being able to properly respond, and, but-for these material misrepresentations, Plaintiffs would be able to assert meritorious defenses to Plaintiffs’ claims, such as a “lack of ownership of the debt,” or “a no assignment of sale of the debt,” among others.

1. ***New Michigan Court of Appeals case on point***.

 *Midland Funding, LLC v Michael Bassett*, No. 338404, **April 24, 2018** just came down from the Michigan Court of Appeals based upon a trial that Plaintiff’s Counsel litigated in Washtenaw Circuit Court. Plaintiffs’ defense in state court and the Federal complaint here against Cavalry and RVO are based upon the same arguments that form the basis of the Appeals Court’s Opinion attached at **Exhibit 1**. Mr. Basset had argued at trial that the debt collector had failed to provide any proof of ownership of the debt specifically to Mr. Basset. In overturning the Trial Court’s finding that the debt pool assignments were enough to show ownership by Midland Funding, The Appeals Court held:

“However, there was no information identifying any individual debtors in any of the chain of sale documents with respect to the sale between FIA Card Services, N.A. and Asset Acceptance, LLC, and likewise, no field data report, or similar document, was produced with respect to that sale. Therefore, there is a break in the chain of title as it relates to the inclusion of defendant’s debt in the charged off debt pool.

Based on the foregoing, we conclude that plaintiff failed to affirmatively establish a continuous chain of title to defendant’s debt between FIA Card Services, N.A. and Midland Funding. Instead, plaintiff only established a continuous chain of title to a generic debt pool… Because Midland Funding failed to prove by a preponderance of the evidence that it owned defendant’s debt, defendant was entitled to judgment in his favor.” **Page 5 of the COA Opinion at Exhibit 1**.

This is exactly the facts of the Federal case and state Court defense of Plaintiffs. There are no specific assignments between Cavalry and Citibank, that show any connection to the Plaintiffs debts. Just a “***generic debt pool***.” Also, the Bill of Sale and Assignment between Citibank and Cavalry ***is not signed by any “assignee,”*** such as Cavalry. So, there is no assignment of the debt under Michigan’s Statute of Frauds showing any ownership of the specific debts of Plaintiffs.

There exists no current or future right for Cavalry to sue the Plaintiffs. At any time before the lawsuit someone could have created an assignment or affidavit saying the specific debt of Plaintiffs passed with each sale but that has not happened. You have nothing more than a “generic pool of debt” and no assignment specific to the debt they sue upon that the Attorney, Mr. Roosen felt was enough to sign off on.

With no charge off information or credit card holder agreement, the Court here can’t infer that the attorney signing the State lawsuits made a meaningful review of each client account and believed that account statements from as far back as 2012 and 2014 were enough to prove the correct debt amount and that the lack of any specific assignment from the original creditor to Cavalry showed ownership of the debt and supported a case against the Plaintiffs.

As the complaint here details, Mr. Roosen and his law firm signed off on the computer template complaint with:

1. No ownership proof of the Plaintiffs’ debt;
2. No Cardholder agreement;
3. No proof of what was owed in 2018 and with account statements as far back as 2012;
4. No specific assignment for each Plaintiff other than a Bill of Sale and Assignment of a generic pool of debt with no attachment to the debtor being sued; and
5. All three actions are barred by the six (6) year statute of limitations. See MCL 600.5807.

There are no documents or ownership paperwork attached to the collection lawsuits that show the attorney could sign his name to the lawsuit “to the best of his or her knowledge, information, and belief formed after reasonable inquiry and the document is well grounded in fact” under the signature rules of MCR 2.114(D).

Appropriately, the court should find a lack of meaningful involvement of the specific debt information of Plaintiffs prior to signing the lawsuits under MCR 2.114 and deny Defendants’ Motion.

**D. PLAINTIFFS STATE A SUFFICIENT CLAIM UNDER THE FDCPA**

a. ***Cavalry has not signed any documents for even the pool of debts it claims to own and has not alleged that the specific Plaintiffs’ debts are part of.***

A review of the seven (7) allegations of Defendants in the state collection complaints against each Plaintiff refers no ownership paperwork, assignments or any proof that the Plaintiffs owe the debts to Cavalry. No allegations in the state complaint show any connection to each nondescript “Exhibit” stapled to lawsuits.

Unlike the *Harvey* debt collectors, the Defendants are filing collection lawsuits “without the means of ever being able to obtain sufficient proof of the debt-collection action.” The *Harvey* Court’s analysis was based upon allegations where debt collectors filed lawsuits that do not have the means on hand of proving the complaint at *the time of* *filing the complaint*. The “gist” of the Plaintiffs’ principal claims is not that the RVO Defendants violated the FDCPA by failing to produce mere paperwork confirming that SPV purchased the Plaintiff’s specific debts from Citibank- it’s that SPV did not purchase the Plaintiffs’ specific debts from Citibank (which of course then extends to the logical corollary that the Defendants could not produce paperwork confirming otherwise, because it does not exist). Cavalry has noting to show any ownership of the debt and their failure to show specific assignments of each Plaintiff or even sign the “Bill of Sale and Assignment” with the state complaint shows they never will.

 While it may be otherwise true that the Sixth Circuit rejected the Defendants’ chosen theory of the case in *Harvey*, they’ll unfortunately have to save that argument for another case- the Plaintiffs’ claims are entirely distinguishable from the holding set forth in *Harvey.* Unlike *Harvey* where the plaintiffs’ FDCPA claims were based on the mere *filing* of a lawsuit alone, the Plaintiffs’ position instead is that no such assignment documentation exists *at all,* because the Defendants were never legally assigned the debts at issue. Cavalry has not even signed the document title *Bill of Sale and Assignment* attached to each lawsuit. Defendants no proof of ownership or any proof of use of the card or credit by the Plaintiffs in six years. All three actions should be barred by the six (6) year statute of limitations. See MCL 600.5807.

 While also true that the *Harvey* court established that the “filing of a lawsuit without the immediate means of proving the debt owed” did not constitute a deceptive practice in and of itself, the Defendants (like their fellow co-Defendants) fail to further acknowledge that the Court in *Harvey* went further by additionally distinguishing that case from the case of *Delawder v. Platinum Financial Services Corp*., No. C–1–04–680, 2005 U.S. Dist. LEXIS 40139 (S.D. Ohio March 1, 2005). As is the case here, the district court in *Delawder* upheld claims under 15 U.S.C. § 1692e (10) in a case where the debt collector put forth an unsubstantiated debt-collection claim. *Id*. at \*14–15.” *Harvey* at 331. More specifically, and as exemplified by the Motion now before this Court for consideration, the *Delawder* court concluded,

Defendants wrongly construe Delawder’s claims as based only upon “the mere filing of a lawsuit, and voluntary dismissal.” (See doc. # 14, p. 2.) First, Delawder claims that Defendants violated Section 1692e (2) by falsely representing *the character, amount, or legal status of a debt*. Second, Delawder claims that Defendants violated Section 1692f (1), by attempting to collect an amount of debt when that amount was *not expressly authorized by the agreement* creating the debt *or permitted by law*. (See doc. # 1, ¶ 14.) Courts have recognized claims under Section 1692f (1) where, as here, a debt collector files a lawsuit *seeking an amount allegedly greater than the amount owed under a debt agreement*. See, e.g., *Conner v. Howe*, [344 F.Supp.2d 1164](http://www.leagle.com/cite/344%20F.Supp.2d%201164), 1172-73 (S.D.Ind.2004) (granting plaintiff summary judgment for Section 1692f(1) claim against debt collector-attorney for filing lawsuit seeking to collect amount greater than permitted by loan agreement, that additionally was invalid); see also *Miller v. Wolpoff & Abramson*, [321 F.3d 292](http://www.leagle.com/cite/321%20F.3d%20292), 308 (2nd Cir.2003) (recognizing plaintiffs would state a claim against defendant law firm if law firm sued to collect an amount not permitted by debt agreement or by law.)

 It is important to note that the *Harvey* Court went on to clearly stipulate that it was in fact because the plaintiff in that case did “not *allege* that Defendants attached a false document to the ... complaint, *nor even that [their] claims regarding the debt were false*,” the district court in the present case held that *Harvey* did not state a claim under 15 U.S.C. § 1692e(10).” *Id*. Neither is applicable in this case.

The Plaintiffs have demonstrably set forth that the state court complaints against them were themselves false documents purporting to state a claim for relief which the Defendants did not lawfully possess at that time and as such it was and remains the Plaintiffs’ well-articulated position in their complaint and above that all of the Defendants previous claims regarding ownership of the debt were false.

Thus, this Honorable Court should distinguish the conclusion reached in *Harvey*, and find that Defendants violated the applicable subsections of the FDCPA, MRCPA, and/or MOC via their conduct *and intent* of creating and filing these computer template lawsuit (all three are the same but for the numbers) with the purpose of oppressing, harassing, and abusing Plaintiffs into paying alleged debts to Defendants which the Defendants have no lawful right to collect.

Appropriately and given the lack of any proof that Cavalry signed for or owns even the pool of the debts it claims Plaintiffs are part of, this Court is asked to Deny Defendants’ Motions.

**E. THE COURT SHOULD NOT DISMISS COUNTS II AND III**

 The RCPA/MCPA “prohibits the use of unfair, unconscionable, or deceptive methods, practices in the conduct of trade or commerce.” *Zine v Chrysler Corp,* 236 Mich App 261, 270-271; 600 NW2d 834 (1999). The RCPA "prohibits abusive collection efforts . . . with respect to obligations arising out of a `purchase made primarily for personal, family, or household purposes.'" *Levant v. Am. Honda Fin. Corp.,* [356 F.Supp.2d 776](http://www.leagle.com/cite/356%20F.Supp.2d%20776), 782 (E.D. Mich. 2005). Standing in Michigan is otherwise confirmed where there is a concrete, particularized, and actual injury that is fairly traceable to the challenged action of the Defendants and capable of being redressed by a favorable decision. See *El-Seblani v. IndyMac Mortgage Services*, 510 Fed. Appx. 425, 428 (6th Cir. 2013); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 180-81 (2000).

 There is a compelling and valid basis for this Court to exercise supplemental jurisdiction of Plaintiffs’ claims under the Michigan Regulation of Collection Practices Act (known as MRCPA or MCPA). The most pertinent case in regards to this issue is *Baltierra v. Orlans Associates PC*, No. 15-cv-10008 (E.D. Mich. Oct. 7, 2015). Just like *Baltierra*, the factual allegations for Plaintiffs’ FDCPA and MRCPA claims are the same, which involves claims that Defendants’ debt collection lawsuits against Plaintiffs and Plaintiff class contained fraudulent, misleading and deceptive pleadings, affidavits, and other statements. In light of *Baltierra* alone, this court should exercise supplemental jurisdiction over Plaintiffs’ MRCPA claims.

1. **RCPA applies to RVO and Roosen**

For the above reasons under the explanation under the FDCPA context, the RCPA also applies to attorneys such as RVO and Mr. Roosen. Indeed, the *Misleh* case that Defendants rely upon in their Brief to state that Defendants are not a collection agency under the MOC, confirms that RVO “fits squarely within the definition of a regulated person under the MCPA.” The statute states that a “regulated person” (including both RVO and Richard Roosen) “shall not commit 1 or more of the following acts: (a) Communicating with a debtor in a misleading or deceptive manner, such as using the stationary of an attorney . . . unless the regulated person is an attorney.” M.C.L. § 445.252(a). The RCPA also more generally prohibits “[m]aking an inaccurate, misleading, untrue, or deceptive statement or claim in a communication to collect a debt.” M.C.L. § 445.252(e).

1. **The Rausch Defendants are regulated by the MOC in this case**

The Michigan Occupational Code regulates collection practices that includes a lengthy definition of “collection agency” at MCL 339.901(b). The definition starts with the following sentence:

(b) “Collection agency” means a person that is directly engaged in collecting or attempting to collect a claim owed or due or asserted to be owed or due another…

The definition of Collection agency does not include a person whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency such as, but not limited to, the following:

\* \* \*

(xi) An attorney handling claims and collections on behalf of clients ***and*** in the attorney's own name. (emphasis added).

In this case, the RVO Defendants are collecting a debt on behalf of Cavalry but not on behalf of themselves and in their own name. In fact, as a debt collector or collection agency, RVO never collects debts on their own behalf. So, under the statute, they are a collection agency and regulated here. Defendants quote *Misleh v Timothy E. Baxter & Assoc.*, 786 F. Supp. 2d 1330, 1337 (E.D. Mich 2011), for the belief that a person is either a collection agency or a regulated person under the RCPA and MOC, but not both. *Misleh* was a case brought under *only* the FDCPA and RCPA. The Court was expanding the RCPA for the Plaintiff argument that the law firm was regulated person under the RCPA. Judge Rosen held that those excluded by the MOC, are included in the RCPA, “…with Mich. Comp. Laws § 445.251(g) (defining “regulated person” to include the persons excluded under the Occupational Code — namely, those “whose collection activities are confined and are directly related to the operation of a business other than that of a collection agency”). “Thus, the courts have recognized that a person or entity engaged in debt collection activities is either a “collection agency” under the Occupational Code or a “regulated person” under the MCPA, but not both.”

The Plain reading of the MOC, is quite clear and RVO is not collecting for themselves or in their own name. Further, even though they are not licensed with the State of Michigan, the MOC does require Defendant be subject to the “other requirements that regulate collection practices” under MCL 339.904(2) was outlined in Plaintiffs complaint.

Recently, the Michigan legislature changed that section MCL 339.915a that RVO is accused of violating here. Prior to the change (effective March 13, 2018), Michigan collection agencies were prohibited from employing in house attorneys as RVO does, such as Defendant Richard Roosen.

**The amendments to the Statute Plaintiffs allege RVO violated are in italics:**

Sec. 915a.

(1) A licensee shall not commit any of the following acts:

(a) Listing the name of an attorney in a written or oral communication, collection letter, or publication in an attempt to collect a debt on behalf of a person other than the licensee or an affiliate of the licensee. ***This subdivision does not apply if the attorney is an employee of the licensee and is engaged in collecting claims owned by the licensee or an affiliate of the licensee***.

(b) Furnishing legal advice, or otherwise engaging in the practice of law, or representing that the person is competent to do so, or to institute a legal action on behalf of another person. ***This subdivision does not apply to an attorney who is an employee of the licensee and is furnishing legal advice to or representing the interests of the licensee or an affiliate of the licensee***. However, an attorney who is an employee of a licensee may not institute a legal action to collect a claim unless the claim is owned by the licensee or an affiliate of the licensee.

(c) Sharing quarters or office space with a lender or with a practicing attorney who is not an employee of the licensee. ***This subdivision does not prohibit a licensee from occupying a separate space in the same building in which a practicing attorney has office space or sharing a common waiting area with a practicing attorney***.

(d) ***Employing or retaining an attorney to collect a claim, unless the claim is owned by the licensee or an affiliate of the licensee***. However, a licensee may exercise authority on behalf of a creditor to retain an attorney if the creditor has specifically authorized the collection agency in writing to do so and the licensee's course of conduct is at all times consistent with a true relationship of attorney and client between the attorney and the creditor. After referral to an attorney, the creditor is the client of the attorney, and the licensee shall not represent the client in court. The licensee may act as an agent of the creditor in dealing with the attorney only if the creditor has specifically authorized the licensee to do so in writing.

If the legislature felt Judge Rosen’s interpretation of “collection agencies” required they make a change to the attorney exclusion language of the MOC, this would have been the time for the new definition. Even Judge Rosen in *Misleh at Page 15* wrote, “To be sure, this statutory intent would be more clear if the word “and” were replaced with “or” in the above-quoted clause, and the Court is reluctant to rewrite the statute based solely upon its belief as to what the Michigan Legislature likely intended.”

Given Michigan Legislature’s refusal to change the language in this amendment at the perfect time and opportunity, the plain meaning of their previous mandate should survive. Simply put and before or after March 13, 2018, RVO does not meet the two-prong requirement that they be both handling claims and collections on behalf of clients (Cavalry) and in the attorney's own name (RVO) to be excluded under section (xi). Indeed, with the changes to the statute, (*This subdivision does not apply if the attorney is an employee of the licensee and is engaged in collecting claims owned by the licensee or an affiliate of the licensee*), RVO would be excluded as a collection agency under section (xi) if the collection agency owns the debt or is an affiliate of a licensee that does. Here, it does not.

**V. CONCLUSION**

 Considering the above arguments set forth by Plaintiffs, this Court should deny Defendants’ Motion for Judgment on the Pleadings because there are sufficient factual allegations to support Plaintiffs’ claims against under the FDCPA, MRCPA, and MOC.