

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
*Savannah Division***

IN RE:  Michael A. Ard-Kelly  Debtor,	CHAPTER 7 CASE NO. 13-42052
Michael A. Ard-Kelly  Plaintiff,  vs.  US Dept of Education; Sallie Mae;  Defendant(s)	ADVERSARY NO.

**ADVERSARY COMPLAINT**

NOW COME(S) the above named Plaintiff(s) and file(s) this Adversary Complaint as follows:

**I.**

**PARTIES, JURISDICTION AND VENUE**

1.

Plaintiff, Michael A. Ard-Kelly is the debtor herein, and filed for relief under Chapter 7 of the Bankruptcy Code on November 1, 2013.

2.

Defendants are The US Dept of Education; Sallie Mae; ACS; ACS/Student Loan Finance; ACS/ Wash Stu 1<sup>st</sup>/ZION; ECMC; SLFA-WA INC/WRLLC, ZIONS AS ELDT;

American Educational Services, American Educational Services /PHEAA; Sallie Mae Ed Trust; Citibank;

3.

This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §157, 1334 and 11 U.S.C. 523(c)(1).

4.

This Adversary Proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(1)..

5.

This Court is a proper venue pursuant to 28 U.S.C. § 1409(a).

## **II. FACTS**

6.

The Debtor incurred obligations presently owing to Defendants totaling approximately five hundred and eight thousand, five hundred and forty five dollars. (\$508,545.) The obligees of the loans have been the Defendants so named above. At present time it appears Sallie Mae owns a loan for three hundred fifteen thousand, and ninety one dollars (\$315,091); Sallie Mae owns a second loan for one hundred and three thousand and fifty six (\$103,056); and Sallie Mae owns a third loan for ninety thousand, three hundred and sixty one dollars (\$90,361).

7.

Said loans were made for an educational purpose, debtor's obtaining a Master's degree in accupuncture, and the loans fall within the purview of 11 U.S.C. §523(a)(8).

8.

Debtor is reunited with his ex-spouse and he supports her and their two children. He owns and practices in an accupuncture and natural healing clinic.

9.

Debtor was approved for the William D. Ford, Income Contingent Repayment Plan (ICRP) under which a portion of his loans would be satisfied with a required payment of (\$00.00) zero dollars monthly.

10.

A substantial portion of defendant's loans, two hundred and fifty thousand, five hundred and ninety five dollars (\$250,595) do not qualify for inclusion in the ICRP William D./ Ford program.

11.

Excepting Plaintiff's loans from discharge would impose an undue hardship on debtor and his dependants.

### III. CAUSE OF ACTION

12.

Plaintiff's obligations to Defendants meet the undue hardship exception to discharge and are properly determined dischargeable under 11 U.S.C. §523(a)(8)

13.

That upon a discharge order being entered in the underlying chapter 7 case, plaintiff's obligation to defendants will also be discharged as set forth in 11 U.S.C. 524(a) and 11 U.S.C. 727.

14.

That in the event defendant willfully violates the provisions of 11 U.S.C. §362, the plaintiff, if injured, shall be entitled to a judgment against defendant for actual damages, including costs and attorney's fees, and, if appropriate, punitive damages.

IV. PRAYER

WHEREFORE, the debtor prays for the following relief:

An order determining the debt plaintiff owes to defendants herein is dischargeable under 11 U.S.C. §523(a)(8); and are duly discharged by the entry of a discharge order in debtor's underlying chapter 7 case.

For such other and further relief as this Court deems just and proper.

RESPECTFULLY Submitted December 20, 2013.

/s/ John E. Pytte  
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