

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

MARK DALEY BURDEN	)	
	)	
Debtor.	)	CASE NO. 12-10586-reg
	)	
Mark Daley Burden	)	CHAPTER 7
	)	
Plaintiff,	)	Adv. Proc. No. 12-
	)	
v.	)	
	)	
United States of America Department of	)	
Education; Sallie Mae, Inc. and Texas	)	
Guaranteed Student Loan Corporation,	)	
	)	
Defendants.	)	

**COMPLAINT TO DETERMINE THE DISCHARGEABILITY OF CERTAIN DEBTS**

COMES NOW Mark Daley Burden, Debtor, and Plaintiff, by counsel, and for his causes of action alleges and says as follows:

**I. Jurisdiction**

1. This is a proceeding to determine the dischargeability of certain educational loans made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by governmental unit or nonprofit institution, pursuant to 11 U.S.C. § 523(a)(8).
2. Plaintiff is the Debtor in case no. 12-10586 pending in this Court; this adversary proceeding relates to said *In re Mark Daley Burden*, Case no. 12-10586 pending in the United States Bankruptcy Court for the Northern District of Indiana, Fort Wayne Division.
3. This is a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(I).
4. This Court has jurisdiction to hear and determine these causes of action pursuant to 28 U.S.C. § 1334(b), 28 U.S.C. § 157(b), 28 U.S.C. § 157(1) in connection with L.R. 200.1 of

the Local Rules of the United States District Court for the Northern District of Indiana.

5. Venue of this adversary proceeding is properly brought in this District and Division pursuant to 28 U.S.C. § 1409(a).

## **II. Causes of Action**

6. Mark Daley Burden (“Plaintiff”) is indebted to Sallie Mae, Inc., United States of America Department of Education, and/or Texas Guaranteed Student Loan Corporation, pursuant to certain Stafford Loans made under the Federal Family Education Loan Program (FFELP) Loan numbers 1-01, 1-02, 1-03 and 1-04 identified under account number 9635755781. According to a loan breakdown statement dated February 27, 2012, those loans are in the current principal amounts of \$7,091.60, \$4,888.95, \$1,086.42 and \$1,521.90 respectively; however, with accruing interest and other charges said loan amounts may be greater than the amounts stated on February 27, 2012. This adversary proceeding relates to all amounts owing under any of said loans, regardless of the amounts stated as of February 27, 2012.
7. According to documents supplied by Sallie Mae, Inc., the original lender on each of these loans was the United States of America Department of Education, and the guarantor was Sallie Mae, Inc.
8. Each of these loans is an educational benefit loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, within the meaning of 11 U.S.C. § 523(a)(8).
9. In addition to the above and foregoing loans, Plaintiff is also a borrower obligated to Sallie Mae, Inc. and to Texas Guaranteed Student Loan Corporation pursuant to Loan no. 1-13 and Loan no. 1-14 identified with account no. 9635755781, which said loans are consolidations of previous loans made by Sallie Mae Trust-LSC/FL, and SLM Education Credit Finance

Corp. previously designated as Loans no. 1-10 through 1-12 (said loan numbers having been retired upon consolidation).

10. Loan no. 1-13 is assertedly in the amount of \$11,992.13, and Loan no. 1-14 is assertedly in the amount of \$8,322.70; however, this adversary proceeding applies to all amounts owing under said loans.
11. On information and belief, one or more loans, and loans further redesignated as Loans 1-16, 1-17, 1-18 and 1-19 (all under account number 9635755781) have been sold to the United States of America Department of Education, although said loans are being serviced by Sallie Mae, Inc. Said loans constitute an educational benefit loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, within the meaning of 11 U.S.C. § 523(a)(8).
12. The Plaintiff attended Michiana College (now known as Brown Mackie College) in Fort Wayne, Indiana, and received his associates degree (AS) in Medical Assisting, financed in part by the above-described education loans. He then continued his schooling for Health Care Administration (seeking an associates degree – AS) from said college. The education expense of pursuing said second degree was funded, in part, by the above-education loans.
13. Subsequent to receiving the loans mentioned above, the Plaintiff suffered an onset of Chiari-Arnold Malformation, also known as Chiari I Malformation and, despite two surgeries, is still disabled and cannot find work. Plaintiff has also been diagnosed with arthritis, diabetes, obesity, degenerative disc disease, depression and anxiety, and suffers constant headaches, sharp, stabbing pain in his thighs and wrists, grinding bone-on-bone feeling in his knees, and other symptoms as more specifically set forth in attached Exhibit “A.” Plaintiff is disabled from working, and has been awarded Social Security Disability benefits. Such Social

Security Disability benefits constitute his sole source of income.

14. Plaintiff has followed all physicians' instructions, and has substantially reduced his weight (eliminating obesity as a concurrent cause of any of his symptoms), yet he continues to experience unexpected loss of balance (and falling), and cannot partake of anything other than sedentary activities.
15. The above-described medical conditions became fully disabling after graduating from Brown Mackie College (first degree) and while attending said college in pursuit of his second degree. The worsening medical condition led Plaintiff to undergo his first brain surgery, at which point he decided to discontinue any further education because of his disability.
16. Plaintiff has sought to reduce his expenditures, and has sought and obtained the assistance of relatives. He resides with his grandmother. His grandmother has supplied him with a sub-compact motor vehicle to drive. His grandmother continues to support him for all needs not covered by his Social Security Disability payments.
17. The Plaintiff cannot maintain, based on current income and expenses, a "minimal" standard of living for himself if forced to repay any of these Loans.
18. Because the medical conditions which have caused the disability are permanent, circumstances exist indicating that his state of affairs is likely to persist for a significant portion of the repayment period of the educational loans in question.
19. The Defendants in this case have chosen to capitalize accruing interest, i.e., adding the interest to the various loans as additional principal, from time to time. As a result, the principal amounts owed under each loan have increased and will continue to increase.
20. Prior to the onset of Plaintiff's disability, he made payments on the loans until 2010 consistent with his then ability to pay.

21. Plaintiff has no residual capacity to engage in compensated labor, and must rely on Social Security Disability payments as his sole source of support.
22. To except the education loan debts described in this Complaint from discharge would impose an undue hardship on the Debtor.

WHEREFORE, Plaintiff prays that all obligations of the Debtor to the United States of America Department of Education, Sallie, Mae, Inc. and the Texas Guaranteed Student Loan Corporation be discharged.

Dated this 1st day of June, 2012.

**Shipley & Associates**

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