So Ordered.

Dated: October 31st, 2016

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

In re: PATRICIA ANN CORBIN, Debtor.	Case No. 16-03151-FPC7 **NOT FOR PUBLICATION** ORDER DENYING DEBTOR'S MOTION FOR RECONSIDERATION

THIS MATTER came before the court on the debtor's correspondence filed on October 24, 2016 (ECF No. 14) ("Motion"), which the court will consider as a motion for reconsideration of the order denying the debtor's request to waive credit counseling (ECF No. 10). After reviewing the files and records,

IT IS ORDERED that debtor's Motion is **DENIED**.[1]

Federal Rule of Civil Procedure 59(e), made applicable to bankruptcy proceedings by FED. R. BANKR. P. 9023, provides a mechanism for a court to alter, amend, or vacate a prior order. *Hamid v. Price Waterhouse*, 51 F.3d 1411, 1415 (9th

[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

Cir. 1994). Although Rule 59(e) permits a court to reconsider and amend a previous order, "the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). There are four basic grounds upon which a Rule 59(e) motion may be granted. First, the movant may demonstrate that the motion is necessary to correct manifest errors of law or fact upon which the judgment is based. Second, the motion may be granted so that the moving party may present newly discovered or previously unavailable evidence. Third, the motion will be granted if necessary to prevent manifest injustice. Fourth, a Rule 59(e) motion may be justified by an intervening change in controlling law. *See McDowell v. Calderon*, 197 F.2d 1253, 1255 (9th Cir. 1999).

In her Motion, debtor failed to establish any of the necessary elements. Debtor did not demonstrate that the court applied the wrong law, that a manifest injustice will result, or present newly discovered or previously unavailable evidence. Indeed, debtor merely repeated similar information that she presented in her initial motion – essentially that the credit counseling is not necessary or beneficial to her because she does not use credit cards. However, the court may not waive the counseling requirement for such a reason.

Section 109(h) requires, as a condition to eligibility for bankruptcy relief, that within 180 days prior to an individual debtor's bankruptcy filing, the debtor receive

(1) a briefing as to available opportunities for credit counseling, and (2) assistance in performing a budget analysis from a nonprofit credit counseling agency, approved ordinarily by the United States Trustee (collectively, "credit counseling"). This threshold requirement for obtaining bankruptcy relief is mandatory and clear (i.e., "an individual may not be a debtor unless . . . .").

However, the Bankruptcy Code provides some limited exceptions from this requirement. The first is a temporary extension. If a debtor faces "exigent circumstances," under § 109(h)(3), the debtor can obtain a postpetition extension of the period to receive credit counseling of up to thirty days, based upon a certification "satisfactory to the court," that the debtor requested, but could not obtain, the required credit counseling services "during the 5-day period beginning on the date on which the debtor made that request." *In re Mendez*, 367 B.R. 109, 114 (B.A.P. 9th Cir. 2007). For "cause" shown, the debtor can obtain up to an additional fifteen days postpetition to receive the required credit counseling. *Id*. The court will not make a determination as to this issue because debtor is not seeking a temporary extension nor has she alleged such facts.

Pursuant to § 109(h)(2)(A) or subsection (h)(4), an individual debtor can be permanently exempted from participation in budget and credit counseling and the filing of a certificate of completion by establishing that (1) the United States Trustee determined that adequate credit counseling services were not available in the

individual's district, (2) the individual is incapacitated or is disabled,[2] or (3) the individual is on active duty in a military combat zone. In this case, debtor does not fall within any of the exceptions. Rather, debtor simply argues that a counseling session would be of little use to her, given the nature of her debts. However, the principal goal of "credit counseling" is to evaluate a potential debtor's financial condition and "require debtors at least to explore the utility of credit counseling as an option before throwing in the towel and seeking a discharge of their debts in bankruptcy." *In re Mendez*, 367 B.R. at 113. Therefore, debtor's argument is unavailing. In § 109(h), Congress did not grant debtors the right to seek, nor the bankruptcy courts the right to grant, an exemption because the mandatory counseling would be of little or no benefit to her.

///END OF MEMORANDUM DECISION///

[2] The notes to § 109(h)(4) further explain that for the purpose of this section, "incapacity means the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities;" "disability means the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in-person, telephone, or Internet briefing" of the required pre-petition credit counseling and/or financial management training course.