

NOT FOR PUBLICATION

FILED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

MAR 23 2026

SUSAN M. SPRAY, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

In re:  
MARIA AMPARO AZTIAZARAIN,  
Debtor.

BAP No. EC-25-1107-BLS

Bk. No. 25-21358

MARIA AMPARO AZTIAZARAIN,  
Appellant.

**MEMORANDUM\***

Appeal from the United States Bankruptcy Court  
for the Eastern District of California  
Christopher M. Klein, Bankruptcy Judge, Presiding

Before: BRAND, LAFFERTY, and SPRAKER, Bankruptcy Judges.

**INTRODUCTION**

Appellant Maria Amparo Aztiazarain appeals an order dismissing her chapter 13<sup>1</sup> case for failure to pay a \$34 fee for filing an amended creditor's list. Ms. Aztiazarain did not file a timely response to the order to show cause why her case should not be dismissed for failure to pay the filing fee, she did not appear at the show cause hearing, and she did not pay the filing fee in the time allotted. Seeing no reversible error by the bankruptcy court, we AFFIRM.

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\* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

<sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Local Rule" references are to the Local Rules for the United States Bankruptcy Court for the Eastern District of California.

## FACTS<sup>2</sup>

### A. Chapter 13 filing and dismissal

On March 26, 2025, Ms. Aztiazarain filed a skeletal chapter 13 case along with a creditor "Master Address List" listing three creditors: (1) PHH Mortgage Services ("PHH"); (2) Western Progressive/Altisource ("Western"); and (3) Capital One. She later filed an amended Master Address List deleting creditor Western. According to the clerk's office, the amended Master Address List generated a required filing fee of \$34, which Ms. Aztiazarain did not pay on the day of filing.

On April 28, the clerk's office issued a Notice of Payment Due advising Ms. Aztiazarain that failure to pay the \$34 filing fee for the amended Master Address List within three business days would result in the issuance of an "order to show cause" and a hearing date, and if she did not pay the fee before then, the court could take additional action at the hearing. Ms. Aztiazarain was directed to contact the clerk's office if she disputed the fee.

The next day, Ms. Aztiazarain filed a Notice of Temporary Health-Related Delay and Request to Continue § 341(a) Meeting of Creditors, requesting a 21-30 day continuance for the § 341(a) meeting scheduled for May 1 ("Health Motion"). Ms. Aztiazarain explained that, upon receiving emergency medical treatment on April 19, she was advised by her physician to limit stress or physically demanding activities for two to three weeks. The

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<sup>2</sup> We exercise our discretion to take judicial notice of documents electronically filed in the bankruptcy court, where appropriate. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

court did not rule on the Health Motion.

On May 8, the clerk's office issued an order to show cause ("OSC") why Ms. Aztiazarain's case should not be dismissed for failure to pay the \$34 filing fee for the amended Master Address List. A hearing was set for May 27. Ms. Aztiazarain did not dispute receiving the OSC.

The OSC hearing proceeded on May 27. Ms. Aztiazarain did not pay the filing fee, file a timely response to the OSC, or appear at the hearing. The court asked the trustee's counsel whether Ms. Aztiazarain was otherwise complying with her duties as a chapter 13 debtor. Counsel replied that Ms. Aztiazarain had not made any plan payments since her case had been filed two months before. With that, the court sustained the OSC, dismissed the case, and stated that a dismissal order would follow.

Ms. Aztiazarain then filed a flurry of documents. On May 28, before entry of a dismissal order, she filed an untimely response to the OSC and a motion to waive the \$34 filing fee. Ms. Aztiazarain explained that she filed the amended Master Address List to remove Western because it was an unnecessary third address for creditor PHH. Because the amendment was to change a creditor's address, she argued, it was exempt from the \$34 filing fee authorized under 28 U.S.C. § 1930(b). Ms. Aztiazarain asked the court to waive the erroneously charged fee.

On May 29, the bankruptcy court entered an order denying Ms. Aztiazarain's motion to waive the \$34 filing fee, ruling that her income exceeded the statutory limit for a fee waiver.

On May 30, Ms. Aztiazarain sought reconsideration ("May 30 Motion to Reconsider") of the May 29 order denying the fee waiver, arguing that the bankruptcy court applied an incorrect standard of law. Ms. Aztiazarain argued that she was not seeking waiver of the \$34 filing fee based on her income, but rather because the fee was erroneously charged. The court did not rule on the May 30 Motion to Reconsider.

On June 2, the bankruptcy court entered an order consistent with its May 27 oral ruling sustaining the OSC and dismissing Ms. Aztiazarain's chapter 13 case for failure to pay the \$34 filing fee ("Dismissal Order"). The court did not cite what authority it relied upon to dismiss the case.

#### **B. Filings after the Dismissal Order**

The day after entry of the Dismissal Order, Ms. Aztiazarain re-filed her May 30 Motion to Reconsider combined with a Motion for Emergency Reinstatement of her chapter 13 case (together, the "Post-Dismissal Motions"). She again argued that the court erred in denying the fee waiver based on her income rather than whether it was correctly charged, and further argued that the court had erred by not considering her May 30 Motion to Reconsider before entering the Dismissal Order. Ms. Aztiazarain asked the court to reconsider the fee waiver request and to vacate the Dismissal Order and reinstate her case to avoid the loss of her home to a foreclosure sale scheduled for June 17.

The bankruptcy court entered (1) an order setting a hearing for the Post-Dismissal Motions, and (2) an order to show cause why the case should not

continue to be dismissed or converted to chapter 7 ("Second OSC"). In the Second OSC, the court considered Ms. Aztiazarain's argument about the \$34 filing fee and tentatively found that it was not an erroneous charge and that she did not qualify for a waiver. Ms. Aztiazarain had not removed a duplicate address for creditor PHH as she contended; rather, she had removed Western, a completely different creditor.

Meanwhile, Ms. Aztiazarain sent a letter to the clerk of court requesting that the clerk withdraw the erroneously charged filing fee. Ms. Aztiazarain asserted that she removed Western in the amended Master Address List because it was an agent for PHH, not a separate creditor, and that no filing fee should have been charged for changing a creditor's address, which is an exception under the court's fee schedule when filing an amended Master Address List.

At the combined hearing for the Post-Dismissal Motions and the Second OSC, Ms. Aztiazarain announced that she had withdrawn her Post-Dismissal Motions and had filed an appeal of the Dismissal Order.

## JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.<sup>3</sup>

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<sup>3</sup> Ms. Aztiazarain filed another chapter 13 case the day she filed her notice of appeal of the Dismissal Order. (Bk. No. 25-22880). However, that case was dismissed in September 2025. Hence, this appeal is not moot because the Panel could still grant effective relief by reversing the Dismissal Order and reinstating the first chapter 13 case. *See Pilate v. Burrell (In re Burrell)*, 415 F.3d 994, 998 (9th Cir. 2005) (test for mootness is whether the appellate court can still grant effective relief if it decides the merits in the appellant's favor).

## ISSUE

Did the bankruptcy court abuse its discretion in dismissing Ms. Aztiazarain's chapter 13 case for failure to pay a filing fee?

## STANDARD OF REVIEW

We review the bankruptcy court's dismissal of a chapter 13 case under any of the enumerated paragraphs of § 1307(c) for an abuse of discretion. *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 914 (9th Cir. BAP 2011). A bankruptcy court abuses its discretion if it applies an incorrect legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

## DISCUSSION

### A. Governing law

Section 1307(c) provides that, "on request of a party in interest or the United States trustee and after notice and a hearing, the court may" dismiss a case under chapter 13 or convert the case to one under chapter 7, "whichever is in the best interests of creditors and the estate, for cause, including . . . nonpayment of any fees . . . required under chapter 123 of title 28 . . . ." § 1307(c)(2).<sup>4</sup> This includes the filing fee for commencement of a chapter 13

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<sup>4</sup> Ms. Aztiazarain does not raise the issue, but the bankruptcy court has the power to dismiss a chapter 13 case sua sponte. *Tennant v. Rojas (In re Tennant)*, 318 B.R. 860, 869 (9th Cir. BAP 2004) (holding that the bankruptcy court may sua sponte dismiss a chapter 13 case under §§ 1307 and 105(a)).

case under 28 U.S.C. § 1930(a)(1)(B), as well as other fees set forth in the Bankruptcy Court Miscellaneous Fee Schedule prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b).

In particular, item 4 of the Bankruptcy Court Miscellaneous Fee Schedule mandates the payment of a filing fee of \$34 "[f]or filing an amendment to the debtor's schedules of creditors, lists of creditors, or mailing list[.]" See U.S. Courts, *Bankruptcy Court Miscellaneous Fee Schedule* (effective Dec. 1, 2023), <https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule>. One relevant exception to this mandatory fee is when "the amendment is to change the address of a creditor or an attorney for a creditor listed on the schedules[.]" *Id.* (see also <https://www.caeb.uscourts.gov/documents/forms/edc/EDC.002-033.pdf>).

Thus, unless Ms. Aztiazarain could establish that the amendment was to change the address of a creditor or an attorney for a creditor listed on the schedules, and not to delete a creditor, she was required to pay \$34 for filing the amended Master Address List.

**B. The bankruptcy court did not abuse its discretion in dismissing Ms. Aztiazarain's case for failure to pay the filing fee.**

**1. Failure to pay the filing fee constituted "cause" to dismiss the case under § 1307(c)(2).**

The plain language of § 1307(c)(2) provides that failure to pay the filing fee constitutes cause for dismissal. Ms. Aztiazarain had ample opportunities to address this issue before the bankruptcy court entered the Dismissal Order. She did not pay the filing fee, file a timely response to the OSC, or appear at

the May 27 OSC hearing. Given this, the bankruptcy court did not abuse its discretion in dismissing the case at the OSC hearing. On this record, it was permitted to dismiss the case for nonpayment of the \$34 filing fee under § 1307(c)(2). See *In re Brooks*, BAP No. NC-23-1173-FSG, 2024 WL 1554334, at \*5 (9th Cir. BAP Apr. 10, 2024) (holding that debtor's failure to pay former \$32 filing fee for an amended creditor list permitted the bankruptcy court to dismiss her chapter 7 case under § 707(a), which contains language similar to § 1307(c)(2) for dismissal due to nonpayment of fees under 28 U.S.C. § 1930).

Ms. Aztiazarain raises a host of unpersuasive arguments why the bankruptcy court erred in dismissing her case. First, she argues that the court's failure to rule on the Health Motion before dismissal denied her any opportunity to participate in the dismissal proceeding and violated her due process rights. The Health Motion, filed on April 29, sought only a continuance of the § 341(a) meeting of creditors, not a continuance of all proceedings as she now contends. It was not properly noticed or set for hearing as required by Local Rule 9014-1. Ms. Aztiazarain does not explain how the court's failure to rule on the Health Motion to continue the May 1 § 341(a) meeting resulted in her inability to participate in the dismissal proceeding, particularly the OSC hearing held nearly a month later on May 27. Ms. Aztiazarain's flurry of filings beginning on May 28 demonstrates that she was likely able to attend the May 27 hearing, or at least able to request a continuance of that hearing if needed.

Ms. Aztiazarain also contends that the bankruptcy court's failure to rule

on several other "emergency motions" before and after the dismissal deprived her of procedural safeguards and rendered the process unfair. Specifically, she points to the combined OSC response and motion for fee waiver filed on May 28, the May 30 Motion to Reconsider the fee waiver order, the Post-Dismissal Motions, and the June 4 letter to the clerk of court. Her argument lacks merit. The court was not required to consider Ms. Aztiazarain's untimely response to the OSC, and it did rule on the fee waiver motion. As for the May 30 Motion to Reconsider, Ms. Aztiazarain did not properly notice or set it for hearing as required by Local Rule 9014-1. Finally, Ms. Aztiazarain withdrew the Post-Dismissal Motions before the court could rule on them, and her June 4 letter sought untimely relief from the clerk of court, not the bankruptcy judge.

Next, Ms. Aztiazarain argues that the bankruptcy court's finding that a creditor was removed from the amended Master Address List, and hence the \$34 filing fee was correctly charged, was clearly erroneous. The court did not make that tentative finding until the Second OSC, which was issued after entry of the Dismissal Order and withdrawn when Ms. Aztiazarain withdrew her Post-Dismissal Motions. But even if the court had made this finding to support the dismissal, such finding would not have been illogical, implausible, or without support in the record.

When the bankruptcy court dismissed the case on May 27, nothing in the record indicated that Ms. Aztiazarain disputed the filing fee. On its face, the amended Master Address List deleted the name and address for what

appeared to be creditor Western. Only after the dismissal was announced on May 27 did Ms. Aztiazarain claim that the \$34 filing fee was erroneously charged. And her story for why the Master Address List was amended changed. First, it was amended to delete a duplicative third address for creditor PHH, but Ms. Aztiazarain offered no evidence that Western was in any way related to PHH. Then she contended, without proof, that Western was the agent for PHH, and so deleting Western's information was not deleting a separate creditor. Now she contends for the first time on appeal that Western was the foreclosing attorney for PHH, and so the amendment was done to remove the duplicative attorney name and address for PHH. Whether Western was actually a creditor, the agent of a creditor, or the foreclosing attorney for a creditor, Ms. Aztiazarain failed to respond to the OSC and failed to submit any admissible evidence to support her argument.

Ms. Aztiazarain next argues that she lacked a clear opportunity to pay the \$34 filing fee before the court dismissed the case. We disagree. When Ms. Aztiazarain failed to respond to the April 28 Notice of Payment Due by paying the filing fee within three business days, the clerk's office issued the OSC on May 8 warning her to pay or risk dismissal of her case. The OSC hearing was set for May 27. Thus, Ms. Aztiazarain had just under one month to pay the filing fee once she was notified of it, she had just under three weeks to respond to the OSC to dispute it, and she had the opportunity to appear at the OSC hearing to dispute it. She did none of these things. Although she filed a fee waiver, she did not do so until two days after the court had announced it

was dismissing her case. Under these facts, Ms. Aztiazarain was provided with adequate notice and an opportunity to cure the deficiency before dismissal. *See In re Tennant*, 318 B.R. at 870-71 (stating that due process typically requires notice and an opportunity to be heard before dismissal).

Lastly, Ms. Aztiazarain makes various arguments about what she contends are docketing and record irregularities in the bankruptcy court that require our review. But these alleged irregularities had no bearing on why her case was dismissed, and Ms. Aztiazarain fails to show how they constitute reversible error with respect to the Dismissal Order.

**2. Dismissal as opposed to conversion was supported by the record.**

The record demonstrates that "cause" existed under § 1307(c)(2) for Ms. Aztiazarain's failure to pay the \$34 filing fee. Once the bankruptcy court has determined that "cause" exists under § 1307(c), it must then choose "between conversion and dismissal based on the best interests of the creditors and the estate." *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. BAP 2006) (citation modified). The bankruptcy court did not explicitly make this determination, but the record supports its implicit ruling that dismissal was in the best interest of creditors.

Per her schedules, Ms. Aztiazarain had only one definite asset of any significance – her home – valued at \$755,000. It was subject to a lien by PHH for \$217,000. The 2025 homestead exemption for Sacramento County was \$540,000. *See* Cal. Civ. Code P. § 704.730. Thus, the equity in the home appeared to be fully exempt. Ms. Aztiazarain listed only one unsecured

creditor, Capital One, with a claim for \$400. It appears that the only reason Ms. Aztiazarain filed for bankruptcy was to stop the foreclosure sale. The arrears for the mortgage loan were about \$21,500, which Ms. Aztiazarain proposed to pay over 60 months at 0% interest. She proposed to pay nothing to Capital One. Before her case was dismissed, two additional unsecured creditors filed claims totaling about \$3,700. At the time Ms. Aztiazarain's case was dismissed, she had not made any plan payments. It clearly was in PHH's best interest to have the case dismissed so that it could pursue its state law remedies and not be delayed any longer by the automatic stay, and the same is true for Capital One and the other two unsecured creditors, assuming their claims are valid. Allowing the case to continue in chapter 7 only served to prejudice what few creditors Ms. Aztiazarain had. Therefore, it was not an abuse of discretion to dismiss the case.

## CONCLUSION

For the reasons set forth above, we AFFIRM.<sup>5</sup>

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<sup>5</sup> We do not consider Ms. Aztiazarain's untimely supplemental brief filed the day of oral argument on January 22, 2026. Per our December 10, 2025 order, her supplemental brief was due no later than December 24, 2025.