

JUL 29 2014

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-13-1344-DKiTa
	)	
STEPHEN LAW,	)	Bk. No. 04-10052-TD
	)	
Debtor.	)	
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STEPHEN LAW,	)	
	)	
Appellant,	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
ALFRED H. SIEGEL, Chapter 7	)	
Trustee,	)	
	)	
Appellee.	)	
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Submitted on the Briefs  
on June 26, 2014

Filed - July 29, 2014

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Appearances: Appellant Stephen Law pro se on brief; Steven T. Gubner and Jessica L. Bagdanov of Ezra Brutzkus Gubner LLP on brief for Appellee Alfred H. Siegel, chapter 7 trustee.

Before: DUNN, KIRSCHER and TAYLOR, Bankruptcy Judges.

<sup>1</sup> 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 8013-1.

1 The pro se debtor, Stephen Law ("Debtor"), following a well-  
2 traveled path, comes before us once more, this time appealing the  
3 bankruptcy court's order allowing and authorizing pro rata  
4 payment of the chapter 7 trustee's ("Trustee") professionals'  
5 fees pursuant to the Trustee's amended final report.<sup>2</sup> What the  
6 Debtor really wants is his \$75,000 homestead exemption that the  
7 Supreme Court held could not be surcharged to pay administrative  
8 expenses in bankruptcy consistent with the provisions of the  
9 Bankruptcy Code. As the bankruptcy court advised the Debtor at  
10 the time the matter before us was considered, if the Supreme  
11 Court so held, the issue of the Debtor's entitlement to homestead  
12 exemption funds would be resolved in separate further proceedings  
13 before the bankruptcy court, not in the instant proceeding. For  
14 the reasons set forth below, we AFFIRM.

15  
16 **FACTS**

17 The Debtor filed his chapter 7 bankruptcy petition over ten  
18 years ago, on January 5, 2004. Alfred H. Siegel has been the  
19 Trustee since the inception of the Debtor's bankruptcy case. The  
20 case has had a long and convoluted history that included the  
21 Debtor's numerous appeals of many of the bankruptcy court's  
22 rulings concerning his former residence in Hacienda Heights,  
23 California ("Property").

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<sup>2</sup> Unless otherwise indicated, all chapter and section  
26 references are to the federal Bankruptcy Code, 11 U.S.C.  
27 §§ 101-1532, and all "Rule" references are to the Federal Rules  
28 of Bankruptcy Procedure, Rules 1001-9037. All "Local Rule"  
references are to the Local Bankruptcy Rules of the U.S.  
Bankruptcy Court for the Central District of California.

1 As we noted in one of our prior decisions, "The history [of  
2 this bankruptcy case] reflects that [the Debtor] has opposed the  
3 Trustee's administration of the bankruptcy estate at every step."  
4 Law v. Siegel (In re Law), 2012 WL 603773 at \*1 (9th Cir. BAP  
5 2012) ("In re Law"). This appeal is but another instance of the  
6 Debtor's opposition to the Trustee's administration of the  
7 estate.

8 We have taken many of our facts from our prior disposition  
9 in In re Law. That decision addressed the Debtor's appeal of the  
10 bankruptcy court's previous order ("Original Fee Order")  
11 approving the Trustee Final Report ("Original Final Report") and  
12 allowing and authorizing payment of the fees of the Trustee and  
13 his professionals: his accountants, Grobstein Horwath & Co. LLP  
14 ("Trustee Accountant"), and his attorneys, Ezra Brutzkus  
15 Gubner LLP ("Trustee Attorney").

16 In In re Law, we vacated and remanded the bankruptcy court's  
17 Original Fee Order with respect to the Trustee's fees only. But  
18 we affirmed the bankruptcy court's Original Fee Order with  
19 respect to the fees awarded to the Trustee Attorney and the  
20 Trustee Accountant. We describe our prior disposition in more  
21 detail below, relating only those facts relevant to this appeal.

#### 22 A. Overview of the Debtor's Bankruptcy Case

23 The numerous disputes between the Debtor and the Trustee  
24 have revolved around the Property and the proceeds from its sale.  
25 See id. at \*1. The Debtor scheduled the Property's value at  
26 approximately \$363,000 as of the petition date. He also  
27 scheduled two liens against the Property: a first trust deed lien  
28 in favor of Washington Mutual Bank and a second trust deed lien

1 in favor of Lin's Mortgage & Associates ("Lin Lien"). The Debtor  
2 claimed a \$75,000 homestead exemption in the Property, to which  
3 the Trustee did not object.

4 Based on his exemption claim and the liens against the  
5 Property, the Debtor contended that the Property had no value to  
6 the bankruptcy estate. The bankruptcy court nonetheless ordered  
7 the Debtor to turn over the Property to the Trustee and  
8 authorized the Trustee to sell it. The Trustee ultimately sold  
9 the Property for \$680,000 ("Sale Proceeds").

10 As part of his efforts to sell the Property, the Trustee  
11 initiated an adversary proceeding alleging that the Lin Lien was  
12 fraudulent. After highly contentious and lengthy litigation,  
13 including several appeals, the bankruptcy court determined that  
14 the loan underlying the Lin Lien was "a fiction, meant to  
15 preserve Debtor's equity in his residence beyond what he was  
16 entitled to exempt as a homeowner, and a fraud on his creditors  
17 and the court." In re Law, 401 B.R. 447, 453 (Bankr. C.D. Cal.  
18 2009).<sup>3</sup>

19 The Trustee incurred more than \$500,000 in attorney's fees  
20 to overcome the Debtor's fraud regarding the purported Lin Lien.  
21 To help defray the Trustee's attorney's fees, the bankruptcy  
22 court granted the Trustee's motion to surcharge the entirety of  
23 the Debtor's homestead exemption ("Surcharge Order").  
24

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25  
26 <sup>3</sup> The Supreme Court ultimately determined that the Debtor's  
27 homestead exemption could not be surcharged for his fraud. Law  
28 v. Siegel, 134 S. Ct. 1188 (2014). However, the Supreme Court  
did not disturb the bankruptcy court's fact finding that the Lin  
Lien was fraudulent. Id.

1 The Debtor appealed the Surcharge Order, and this Panel and  
2 the Ninth Circuit affirmed. In re Law, 2009 WL 7751415 (9th Cir.  
3 BAP 2009), aff'd, 435 F. App'x. 697 (9th Cir. 2011). However, in  
4 Law v. Siegel, 134 S. Ct. 1188, 1198 (2014), the Supreme Court  
5 reversed.

6 The Supreme Court reasoned that, although a bankruptcy court  
7 has statutory and inherent authority to issue any order to carry  
8 out the Bankruptcy Code's provisions and to sanction abusive  
9 litigation practices, it cannot take any action expressly  
10 prohibited by or otherwise in contravention of the provisions of  
11 the Bankruptcy Code. Id. at 1194-97. The Supreme Court found  
12 that the bankruptcy court exceeded its authority in surcharging  
13 the Debtor's homestead exemption because such surcharge  
14 contravened a specific provision of the Bankruptcy Code:  
15 § 522(k).<sup>4</sup> Id. at 1194. It reversed the ruling of the Ninth  
16 Circuit Court of Appeals and remanded the matter for further  
17 proceedings consistent with its opinion. Id. at 1198.

18 On April 23, 2014, the Ninth Circuit entered an order  
19 vacating its ruling. It also reversed this Panel's and the  
20 bankruptcy court's decisions and remanded with instructions to  
21 the bankruptcy court to conduct further proceedings consistent  
22 with the Supreme Court's ruling.

23 B. Trustee's Final Report

24 Meanwhile, on October 20, 2009, the Trustee had filed and  
25 served notice of his intent to file his Final Report and Account,

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26  
27 <sup>4</sup> Section 522(k) provides in relevant part: "Property that  
28 the Debtor exempts under this section is not liable for payment  
of any administrative expense . . . ."

1 advising professionals to file their applications for  
2 compensation ("Fee Applications"). Accordingly, the Trustee  
3 Attorney filed its final fee application ("Final Attorney Fee  
4 Application") (docket no. 379) on November 11, 2009. The Trustee  
5 Accountant filed its first and final fee application ("Accountant  
6 Fee Application") (docket no. 388) on March 22, 2010.

7 Before filing the Final Attorney Fee Application, the  
8 Trustee Attorney had filed its first interim fee application on  
9 March 10, 2008 ("First Attorney Fee Application") (docket no.  
10 247). In its First Attorney Fee Application, the Trustee  
11 Attorney sought \$683,592 in total fees and \$38,532.19 in total  
12 expenses for services rendered from April 21, 2004 through  
13 January 31, 2008.

14 The Debtor opposed the First Attorney Fee Application.  
15 After a hearing on April 3, 2008, the bankruptcy court overruled  
16 the Debtor's opposition and granted the First Attorney Fee  
17 Application. It entered an order on April 22, 2008 ("Interim Fee  
18 Order") (docket no. 261), allowing the Trustee Attorney  
19 \$211,467.81 in interim fees and \$38,532.19 in costs, for a total  
20 of \$250,000. The bankruptcy court also authorized the Trustee to  
21 disburse \$250,000 to the Trustee Attorney from funds on hand at  
22 that time.

23 In the Final Attorney Fee Application, the Trustee Attorney  
24 referenced its prior request for fees and costs. It disclosed  
25 that it had been paid \$211,467.81 in fees and all of its costs  
26 pursuant to the First Attorney Fee Application, leaving a balance  
27 of \$472,124.19 in unpaid interim fees.

28 The Trustee Attorney reported in its Final Attorney Fee

1 Application that it incurred additional fees of \$263,410.50 and  
2 additional expenses of \$15,327.04 since its First Attorney Fee  
3 Application. But, it acknowledged that the bankruptcy estate was  
4 administratively insolvent.

5 The Trustee Attorney therefore sought approval and payment  
6 of its additional expenses of \$15,327.04 and the balance of its  
7 fees from its First Attorney Fee Application only. That is, it  
8 sought final approval of the fees and costs set forth in its  
9 First Attorney Fee Application and its additional costs set forth  
10 in the Final Attorney Fee Application. The Trustee Attorney  
11 requested that the Trustee be authorized to pay its allowed fees  
12 on a pro rata basis from available funds.

13 The Trustee Accountant had made no prior request for fees  
14 and costs. It sought in the Accountant Fee Application a total  
15 of \$8,569 in fees for services rendered from March 16, 2006  
16 through December 7, 2008. The Trustee Accountant did not seek  
17 reimbursement of any costs.

18 The Debtor did not oppose the Final Attorney Fee  
19 Application. However, he opposed the Accountant Fee Application  
20 ("Accountant Fee Opposition") (docket no. 388) on the grounds that  
21 it violated Local Rule 2016(a)(2) because the Trustee Accountant  
22 failed to: 1) set a hearing on the Accountant Fee Application;  
23 2) provide 45 days notice of the date and time of the hearing;  
24 3) include in a notice of hearing the specific language set forth  
25 in Local Rule 2016(a)(2); and 4) serve the United States Trustee,  
26 20 largest unsecured creditors and other parties in interest, as  
27 provided for in Local Rule 2016(a)(2).

28 The Debtor also challenged the amount of fees incurred by

1 the Trustee Accountant, claiming that its fees were unreasonably  
2 high. He argued that the Trustee Accountant overcharged for  
3 preparing the bankruptcy estate's tax returns. He also contended  
4 that the Trustee Accountant should not have charged so much for  
5 its services, given that it only needed to safeguard the Sale  
6 Proceeds.

7 The Debtor moreover claimed he had never seen any of the  
8 bankruptcy estate's tax returns. He further contended that the  
9 Bankruptcy Code did not require the bankruptcy estate to file any  
10 tax returns.

11 On September 14, 2010, the Trustee filed the Trustee's Final  
12 Report ("Original Final Report") (docket no. 389). As part of his  
13 Original Final Report, the Trustee sought \$25,298.45 in fees  
14 under §§ 326(a) and 330(a) for his services in administering the  
15 Debtor's estate.

16 Concurrently with the Original Final Report, the Trustee  
17 filed the Notice of Trustee's Final Report and Applications for  
18 Compensation and Deadline to Object ("Original Notice") (docket  
19 no. 390). The Trustee served the Original Notice on the Debtor.

20 The Original Notice contained a summary ("Original Summary")  
21 of the Original Final Report and of the fee applications filed by  
22 the Trustee's professionals. The Original Summary disclosed that  
23 the Trustee sought \$25,298.45 in fees but no expenses. The  
24 Original Summary identified the Trustee Attorney and the Trustee  
25 Accountant as the only professionals applying for fees and  
26 expenses.

27 The Debtor opposed the Original Final Report and the Fee  
28 Applications ("First Opposition") (docket no. 392). He argued



1 that the Trustee's fees were unreasonable because the Trustee  
2 appeared in court "two or three times" only. He further claimed  
3 that the Trustee's fees exceeded the statutory maximum allowed  
4 under § 326(a) because, by his reckoning, the Trustee only  
5 collected \$500,000 on the bankruptcy estate's behalf, not  
6 \$1 million plus in gross receipts. The Debtor also alleged that  
7 the Trustee gave inadequate notice of the Original Final Report  
8 and the Fee Applications because the Trustee should have served  
9 the entire Original Final Report and the Fee Applications on all  
10 creditors and interested parties, including himself. However,  
11 the Debtor admitted that he received the Original Notice.

12 The Debtor moreover argued that the bankruptcy court lacked  
13 authority to make any determination on the Original Final Report,  
14 the Accountant Fee Application and the Final Attorney Fee  
15 Application until his appeal of the Surcharge Order was resolved.

16 The Debtor also contested payment of the Trustee's fees and  
17 the Trustee Attorney's fees, arguing that neither he nor the  
18 unsecured creditors obtained any benefit from the bankruptcy  
19 case, though the Trustee and Trustee Attorney did by getting  
20 their fees. He raised no other arguments against the Trustee  
21 Attorney's fees. The Debtor also challenged the Trustee  
22 Accountant's fees, repeating the same arguments he made in his  
23 Accountant Fee Opposition.

24 The bankruptcy court held a hearing on the First Opposition  
25 on November 3, 2010 ("First Opposition Hearing"). It rejected  
26 the Debtor's claims. The bankruptcy court specifically rejected  
27 the Debtor's complaint that he did not receive copies of the  
28 Original Final Report and the Fee Applications. In so ruling, it

1 relied on the Debtor's admission that he had received the  
2 Original Notice. The bankruptcy court further noted that the  
3 Debtor was aware that the Original Final Report and the Fee  
4 Applications were available online or upon request from the  
5 Trustee.

6 The bankruptcy court moreover rejected the Debtor's  
7 contention that it should refrain from ruling on the Original  
8 Final Report and the Fee Applications until all of his appeals  
9 had been fully resolved. It pointed out that it did not need to  
10 wait for all of the Debtor's appeals to run their course because  
11 the Debtor had not obtained any stays pending appeal.

12 The bankruptcy court did not make any express findings  
13 concerning the Trustee's fee request. However, with respect to  
14 the fees requested by the Trustee Attorney, the bankruptcy court  
15 noted that

16 [The Trustee Attorney] filed a complete  
17 application for fees for all the work that had been  
18 done, none of which had been paid for up to that point,  
19 as [the bankruptcy court] recall[ed]. The fees were  
20 quite substantial. They were well over half a million  
21 dollars. There was about a half a million dollars in  
22 the estate at that time, and the decision that I came  
23 to at that time was to allow all the fees because I  
24 found them to be reasonable and appropriate under the  
25 circumstances of this case, and I further allowed that  
26 [the Trustee Attorney] be paid at that time \$250,000.

27 There were other things that happened in that  
28 period about two years ago. All of those things were  
done on an interim basis, and now we're at the final  
stage of this case where the Trustee has determined,  
but it doesn't alter the decision [the bankruptcy  
court] made two years ago that the total fees incurred  
were appropriate on the part of [the Trustee Attorney].

[Moreover], there is no evidence before [the  
bankruptcy court] today to allow [it] to revisit the  
decision [it] made two years ago. So the fees stand as  
approved, and [the Debtor's] objection must be  
overruled for that reason.

Tr. of Nov. 3, 2010 hr'g, 4:24-25, 5:1-21.

1 The bankruptcy court further noted that

2 [i]n the applications that are pending before [it]  
3 today, [the Trustee Attorney had] said that [it] was  
4 not seeking any additional compensation over the  
5 compensation that was allowed to [it] two years ago by  
6 [the bankruptcy court's] order. That's simply a  
7 reflection of the fact that there is no money in this  
8 estate sufficient to cover all the time and expenses  
9 that [the Trustee Attorney's] firm has gone through in  
10 dealing with [the Debtor's] allegations, your claims,  
11 your bankruptcy case.

12 . . .  
13 So there really is nothing more in this estate for  
14 the Trustee to administer, and his election to treat  
15 this case as fully administered would seem to be  
16 correct and appropriate. Nobody's going to make any  
17 money on this case, certainly not [the Trustee  
18 Attorney]. [The Trustee Attorney] has done this out of  
19 a sense of loyalty to [its client, i.e., the Trustee],  
20 out of [its] professional obligations to the  
21 [bankruptcy court], and [it is] - whatever money [the  
22 Trustee Attorney] receive[s] in this case would seem to  
23 be grossly inadequate for all the work that [the  
24 Trustee Attorney has] gone through.

25 Tr. of Nov. 3, 2010 hr'g, 13:13-25, 14:1-13.

26 Accordingly, the bankruptcy court overruled the Debtor's  
27 First Opposition and approved the Original Final Report and  
28 granted the Fee Applications. It entered an order ("Original Fee  
Order") (docket no. 393) on November 19, 2010, allowing the fees  
of the Trustee and his professionals.

The Original Fee Order allowed fees and expenses in amounts  
greater than those set forth in the Original Notice, as 1) the  
Original Notice only referenced those amounts that the Trustee  
anticipated actually distributing to the professionals, and  
2) the bankruptcy estate had insufficient funds to pay any more  
to the professionals beyond the amounts noticed.

Specifically, with respect to the Trustee Attorney's fees,  
the bankruptcy court allowed a total of \$683,592 in fees and  
\$68,623.47 in expenses. The Trustee Attorney had been paid

1 \$211,467.81 in fees to date, leaving a \$472,124.19 balance.

2 On June 30, 2011, the Trustee filed his final account and  
3 distribution report ("Final Account") (docket no. 404), which  
4 showed that the Trustee Attorney received a total of \$317,959.56  
5 in fees (\$106,491.75 plus \$211,467.81 previously paid on account  
6 of the First Attorney Fee Application) and \$38,532.19 in expense  
7 reimbursements. The amounts generally were consistent with those  
8 set forth in the Original Notice. In re Law, 2012 WL 603773 at  
9 \*3 n.6. The Final Account further showed that the Trustee was  
10 entitled to receive a total of \$54,394.92 in fees only. (The  
11 Trustee did not seek reimbursement of any expenses.)

12 C. Appeal of the Original Fee Order

13 Several months before the Trustee filed the Final Account,  
14 the Debtor appealed the Original Fee Order, challenging the  
15 Trustee's fees on the ground of reasonableness under § 330(a).

16 On appeal, we determined that the Trustee did not bear his  
17 burden of establishing that his requested fees were reasonable  
18 under § 330(a) because he failed to submit a fee application  
19 complying with the requirements of Local Rule 2016. Local  
20 Rule 2016 required the Trustee to file an application setting  
21 forth a detailed statement of the services rendered, time  
22 expended and expenses incurred and the amounts requested.

23 We pointed out that the Trustee merely provided in the  
24 Original Final Report a narrative summary of the entire case  
25 history. We determined that the Trustee's narrative summary  
26 neither identified his services nor gave any indication of the  
27 amount of time he spent undertaking those services. We thus  
28 concluded that the Trustee's Original Final Report was

1 insufficient to satisfy Local Rule 2016.

2 We noted that the bankruptcy court made no findings as to  
3 the reasonableness of the Trustee's requested fees. We moreover  
4 determined that the record was insufficient for us to state that  
5 it afforded us "with a complete understanding of the basis for  
6 the [bankruptcy] court's ruling on the Trustee's fee request."  
7 In re Law, 2012 WL 603773 at \*8. We therefore concluded that the  
8 bankruptcy court erred in allowing the Trustee's fees.<sup>5</sup>

9 The Debtor also contested the Trustee Attorney's fees. He  
10 argued that, at the First Opposition Hearing, the Trustee  
11 Attorney made false statements regarding the amount of fees  
12 allowed on account of its First Attorney Fee Application. He  
13 contended that, because it made these false statements, the  
14 Trustee Attorney's fees should not have been allowed.

15 Reviewing the record, we determined that "it [was] far from  
16 clear that there was anything false or misleading about the  
17 [Trustee Attorney's] statements . . . made at the [First  
18 Opposition Hearing]." In re Law, 2012 WL 603773 at \*8. It was  
19 the bankruptcy court that recollected that the Trustee Attorney  
20 sought more than half a million dollars in fees in its First  
21 Attorney Fee Application. We noted that the bankruptcy court  
22 also stated that it allowed the fees because it "found them to be  
23

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24 <sup>5</sup> The Debtor also raised the argument that the bankruptcy  
25 court erred in approving the Final Report and granting the fee  
26 applications before all of his pending appeals had been resolved.  
27 We determined that we could give the Debtor no meaningful relief  
28 given that his position on appeal "hinge[d] on his prevailing in  
two prior appeals that the Court of Appeals [had] decided against  
him." In re Law, 2012 WL 603773 at \*8.

1 reasonable and appropriate," though it authorized the Trustee to  
2 pay the Trustee Attorney only \$250,000 in fees and expenses due  
3 to the amount available in the bankruptcy estate.

4 We construed the Debtor's argument as a challenge to the  
5 bankruptcy court's recollection. But we concluded that, even if  
6 we agreed with the Debtor that the bankruptcy court's  
7 recollection was erroneous, the Debtor simply "pointed us to what  
8 is, at most, harmless error." Id. We noted that, without  
9 relying on its prior ruling on the First Attorney Fee  
10 Application, the bankruptcy court found reasonable the total  
11 amount of fees to be paid to the Trustee Attorney for the  
12 services it rendered throughout the entire bankruptcy case. Id.

13 We moreover pointed out that the Debtor did not argue on  
14 appeal that the bankruptcy court erred when it determined the  
15 fees of the Trustee Attorney were reasonable. We thus concluded  
16 that the Debtor waived that argument.

17 In the end, we vacated and remanded that part of the  
18 Original Fee Order allowing the Trustee's fees but affirmed the  
19 remainder of the Original Fee Order ("Remand Order").

20 The Debtor appealed the Remand Order to the Ninth Circuit  
21 Court of Appeals ("Remand Appeal"). It dismissed the Debtor's  
22 Remand Appeal for lack of jurisdiction, as the Remand Order was  
23 not final or appealable.

24 D. Trustee's Amended Final Report

25 In response to the Remand Order, the Trustee filed an  
26 amended Trustee's Final Report ("Amended Final Report") (docket  
27 no. 416) on June 10, 2013. He filed the Amended Final Report  
28 because he had additional funds to distribute once he decided to

1 forgo seeking an award of fees for himself. Tr. of July 18, 2013  
2 hr'g, 4:17-21.

3 The Trustee also filed the Notice of Amended Trustee's Final  
4 Report and Applications for Compensation and Deadline to Object  
5 ("Amended Notice") (docket no. 417). He served the Amended Notice  
6 on the Debtor (docket no. 418).

7 The Amended Notice contained a summary ("Amended Summary")  
8 showing receipts of \$981,643.19 and approved disbursements of  
9 \$956,380.97, which left a balance of \$25,262.22. The Amended  
10 Notice did not include a fee request from the Trustee. The  
11 Amended Notice indicated that a total of \$25,262.22 was available  
12 to pay chapter 7 administrative expenses.

13 The Trustee Accountant sought a total of \$8,569 in fees and  
14 disclosed that it already had received an interim payment of  
15 \$3,985.70. The Trustee proposed that the Trustee Accountant be  
16 paid \$312.75. The Trustee Attorney sought a total of \$683,592 in  
17 fees and disclosed that it already had received interim payments  
18 totaling \$317,959.56. The Trustee proposed that the Trustee  
19 Attorney be paid \$24,949.47.

20 The Debtor did not file a written opposition to the Amended  
21 Final Report. Instead, he appeared at the July 18, 2013 hearing  
22 on the Amended Final Report.

23 At the hearing, the Debtor referenced Local Rule 2016(a)(2),  
24 which he construed as requiring the Trustee to schedule a hearing  
25 on fee applications "at least within 120 days apart." Tr. of  
26 July 18, 2013 hr'g, 3:18. He argued that the Trustee violated  
27 Local Rule 2016(a)(2) by setting the hearing only 35 days out  
28 from the date on which he served the Amended Notice. He also

1 alleged that the Trustee Attorney had failed to serve its fee  
2 application on him. The Debtor urged the bankruptcy court to  
3 "deny" the Amended Final Report until the Supreme Court issued a  
4 final ruling regarding the Surcharge Order.

5 At the hearing, the bankruptcy court pointed out that,  
6 contrary to the Debtor's assertion, the Amended Final Report had  
7 been timely served on the Debtor. Tr. of July 18, 2013 hr'g,  
8 11:20-22. It further pointed out that the Debtor failed to  
9 submit a timely opposition pursuant to local bankruptcy court  
10 procedures. Tr. of July 18, 2013 hr'g, 6:20-21, 11:23-24.

11 The bankruptcy court acknowledged that if the Debtor  
12 prevailed before the Supreme Court, he would be entitled to more  
13 than \$25,000. Tr. of July 18, 2013 hr'g, 6:8-10. It also  
14 acknowledged that parties who had received distributions of  
15 bankruptcy estate funds might have to disgorge funds. Tr. of  
16 July 18, 2013 hr'g, 6:12-14. It noted that if the Debtor  
17 prevailed before the Supreme Court, the bankruptcy court itself  
18 would address the issue of disgorgement. Tr. of July 18, 2013  
19 hr'g, 6:8-12. However, the bankruptcy court stressed that the  
20 Debtor did not obtain a stay barring the Trustee's proposed  
21 distribution of the remaining funds to the Trustee Attorney to  
22 pay its already approved fees. Tr. of July 18, 2013 hr'g,  
23 6:17-19, 12:2. Because the Debtor did not obtain a stay, there  
24 was "nothing to establish that [the Debtor was] entitled to  
25 anything." Tr. of July 18, 2013 hr'g, 6:15-16.

26 The bankruptcy court therefore approved the Amended Final  
27 Report. It entered its order on the Amended Final Report  
28 ("Amended Fee Order") on August 15, 2013.



1 The Debtor timely appealed.

2  
3 **JURISDICTION**

4 The bankruptcy court had jurisdiction under 28 U.S.C.  
5 §§ 1334 and 157. We have jurisdiction under 28 U.S.C. § 158.

6  
7 **ISSUES**

8 (1) Does the Debtor have standing to challenge the Trustee  
9 Attorney's fees at the end of an insolvent chapter 7 case?

10 (2) Did the bankruptcy court abuse its discretion in  
11 approving the Amended Final Report?

12  
13 **STANDARDS OF REVIEW**

14 We are required sua sponte to examine jurisdictional issues,  
15 including standing. Bernhardt v. Cnty. of Los Angeles, 279 F.3d  
16 862, 868 (9th Cir. 2002) (“[F]ederal courts are required sua  
17 sponte to examine jurisdictional issues such as standing.”)  
18 (quoting B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264  
19 (9th Cir. 1999)). “Standing is an issue of law which we review  
20 de novo.” Palmdale Hills Prop., LLC v. Lehman Commercial Paper,  
21 Inc. (In re Palmdale Hills Prop., LLC), 654 F.3d 868, 872 (9th  
22 Cir. 2011).

23 We will not disturb a bankruptcy court's award of attorneys'  
24 fees on appeal “absent an abuse of discretion or an erroneous  
25 application of the law.” In re Nucorp Energy, Inc., 764 F.2d  
26 655, 657 (9th Cir. 1985). We apply a two-part test to determine  
27 objectively whether the bankruptcy court abused its discretion.  
28 United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir.

1 2009) (en banc). First, we “determine de novo whether the  
2 bankruptcy court identified the correct legal rule to apply to  
3 the relief requested.” Id. Second, we examine the bankruptcy  
4 court’s factual findings under the clearly erroneous standard.  
5 Id. at 1252 & n.20. A bankruptcy court abuses its discretion if  
6 it applied the wrong legal standard or its factual findings were  
7 illogical, implausible or without support in the record.  
8 Trafficschool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th  
9 Cir. 2011).

10 We do not disturb a bankruptcy court’s factual findings made  
11 in the course of awarding fees unless they are clearly erroneous.  
12 See Friedman Enters. v. B.U.M. Int’l, Inc. (In re B.U.M. Int’l,  
13 Inc.), 229 F.3d 824, 830 (9th Cir. 2000). Factual findings are  
14 clearly erroneous if they are “illogical, implausible or without  
15 support in the record.” Retz v. Samson (In re Retz), 606 F.3d  
16 1189, 1196 (9th Cir. 2010) (citing Hinkson, 585 F.3d at 1261-62 &  
17 n.21).

18 We may affirm on any basis supported by the record. Shanks  
19 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

## 21 **DISCUSSION**

### 22 A. Standing

23 As mentioned earlier, we must address the issue of the  
24 Debtor’s standing to appeal, even though neither the Debtor nor  
25 Trustee has raised it. See Bernhardt, 279 F.3d at 868. To have  
26 standing to appeal, the Debtor must be a “person aggrieved” by  
27 the order appealed. Id. at 874. A “person aggrieved” is one who  
28 is “directly and adversely affected pecuniarily by an order of

1 the bankruptcy court.” Fondiller v. Robertson (In re Fondiller),  
2 707 F.2d 441, 442 (9th Cir. 1983). “[A] hopelessly insolvent  
3 Debtor does not have standing to appeal orders affecting the size  
4 of the estate” because such orders “would not diminish the  
5 Debtor’s property, increase his burdens, or detrimentally affect  
6 his rights.” Id.

7 “Accordingly, “[u]nless the estate is solvent and the excess  
8 will eventually go to the Debtor, or unless the matter involves  
9 rights unique to the Debtor, the Debtor is not a party aggrieved  
10 by orders affecting the administration of the bankruptcy  
11 estate.”” C.W. Mining Co. v. Aquila, Inc. (In re C.W. Mining  
12 Co.), 636 F.3d 1257, 1260 (10th Cir. 2011) (quoting In re Weston,  
13 18 F.3d 860, 863-64 (10th Cir. 1994)). In other words, a Debtor  
14 ordinarily “cannot challenge a bankruptcy court’s order unless  
15 there is likely to be a surplus after bankruptcy.” Duckor  
16 Spralding & Metzger v. Baum Trust (In re P.R.T.C., Inc.),  
17 177 F.3d 774, 778 n.2 (9th Cir. 1999) (citing Fondiller, 707 F.2d  
18 at 442)).

19 In this instance, now that the Supreme Court has issued a  
20 ruling in the Debtor’s favor on the Surcharge Order, we cannot  
21 conclude that the Debtor has no standing to contest further  
22 administration of his bankruptcy estate. He does have a  
23 financial stake in the administration of his estate until his  
24 allowed \$75,000 homestead exemption claim is paid even though his  
25 bankruptcy estate clearly is insolvent. Accordingly, we conclude  
26 that the Debtor has standing in this appeal.

27 B. Approval of the Amended Final Report

28 The Debtor advances various arguments challenging the

1 Amended Fee Order. But the essence of the Debtor's arguments is  
2 this: He is seeking payment of his homestead exemption now that  
3 the Supreme Court has ruled that it cannot be surcharged. We  
4 address each of the Debtor's arguments, but ultimately determine  
5 that this appeal is not the appropriate vehicle to pursue his  
6 right to payment.

7 1. Compliance with Service Requirements

8 The Debtor repeats here an argument he made in his appeal of  
9 the Original Fee Order: the Trustee Attorney failed to serve him  
10 with the Final Attorney Fee Application as required under Local  
11 Rule 2016-1(a) (2). However, he misreads the Local Rule.

12 Local Rule 2016-1(a) (2) does not apply to final fee  
13 applications but to interim fee applications only.<sup>6</sup> Local Rule

14 \_\_\_\_\_  
15 <sup>6</sup> Local Rule 2016 provides in relevant part:

16 (a) Interim Fee Applications.

17 . . .

18 (2) Notice of Interim Fee Application and Hearing.

19 (A) In all cases where the employment of more than one  
20 professional person has been authorized by the court, a  
21 professional person who files an application for  
22 interim fees must give other professional persons  
employed in the case not less than 45 days notice of  
the date and time of the hearing. The notice of the  
hearing must further state:

23 "Other professional persons retained pursuant to  
24 court approval may also seek approval of interim  
25 fees at this hearing, provided that they file and  
26 serve their applications in a timely manner.  
27 Unless otherwise ordered by the court, hearings on  
interim fee applications will not be scheduled  
less than 120 days apart."

28 continue...

1 2016-1(c) actually pertains to final fee applications. But it  
2 does not say what the Debtor claims it does.

3 Local Rule 2016-1(c) provides, in relevant part:

4 c) Final Fee Application.

5 (1) Who Must File. The trustee, if any, and each  
6 professional person employed in the case must file  
a final fee application.

7 (2) Contents. An application for allowance and  
8 payment of final fees and expenses must contain  
the information required of an interim fee  
application under LBR 2016-1(a) (1).

9 . . .

10  
11  
12 <sup>6</sup>...continue

13 (B) Applicant must serve not less than 21 days notice  
14 of the hearing on the Debtor or Debtor in possession,  
15 the trustee (if any), the creditors' committee or the  
16 20 largest unsecured creditors if no committee has been  
appointed, any other committee appointed in the case,  
17 counsel for any of the foregoing, the United States  
trustee, and any other party in interest entitled to  
18 notice under FRBP 2002. The notice must identify the  
professional person requesting fees, the period covered  
19 by the interim application, the specific amounts  
requested for fees and reimbursement of expenses, the  
20 date, time and place of the hearing, and the deadline  
for filing and serving a written opposition.

21 (C) In addition to the notice, a copy of the  
22 application, together with all supporting documents,  
must be served on the Debtor or the Debtor in  
23 possession, the trustee (if any), any committee  
appointed in the case, counsel for any of the  
24 foregoing, and the United States trustee. A copy of  
the complete application must also be promptly  
25 furnished upon specific request to any other party in  
interest.

26 (3) Objections. Any opposition or other responsive document  
27 by the United States trustee or any other party in interest  
must be served and filed at least 14 days prior to the  
28 hearing in the form required by LBR 9013-1(f).

1           (4) When Filed; Notice Required in Chapter 7  
2           Cases.

3           (A) A chapter 7 trustee must give at least 30  
4           days written notice of intent to file a final  
5           report and account to the attorney for the  
6           Debtor, the trustee's attorney and  
7           accountant, if any, and any other entity  
8           entitled to claim payment payable as an  
9           administrative expense of the estate.

10          (B) A professional person seeking compensation  
11          must file and serve an application for allowance  
12          and payment of final fees and expenses on the  
13          trustee within 21 days of the date of the mailing  
14          of the trustee's notice. The failure to timely  
15          file an application may be deemed a waiver of  
16          compensation.

17          (C) All final fee applications by professional  
18          persons must be set for hearing with the chapter 7  
19          trustee's final application for allowance and  
20          payment of fees and expenses. Notice of a final  
21          fee application must be given by the chapter 7  
22          trustee as part of the notice of the hearing on  
23          the trustee's request for compensation. A  
24          separate notice by the applicant is not required.

25          (5) Objections. Any opposition or other  
26          responsive document by the United States trustee  
27          or other party in interest must be served and  
28          filed at least 14 days prior to the hearing in the  
            form required by LBR 9013-1(f).

            Nothing in the language of Local Rule 2016-1(c) required the  
Trustee Attorney to serve the Debtor with a copy of the Final  
Attorney Fee Application. As we noted in our prior disposition  
concerning the Original Fee Order, we were "not aware of any rule  
requiring the trustee or his professionals to serve their full  
final fee applications on the Debtor in a chapter 7 case."

In re Law, 2012 WL 603773 at \*5. Based on our review of the  
Local Rules, the Debtor's argument is without merit.

2. Compliance with Prior Panel Orders<sup>7</sup>

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<sup>7</sup> The Debtor challenges the Trustee's fees again in this  
appeal. He argues that the Trustee failed to meet the  
requirements we set forth in our prior disposition. He further  
continue...

1 The Debtor references two of our prior dispositions, one  
2 issued on December 29, 2006, in Lin v. Siegel (In re Law), 2006  
3 WL 6810960 (9th Cir. BAP 2006) (BAP No. 06-1180) ("Lin"), and the  
4 other issued on October 5, 2007, in Law v. Siegel (In re Law),  
5 2007 WL 7545164 (9th Cir. BAP 2007) (BAP No. CC-07-1127) ("Law I").  
6 He claims that in both of these dispositions, we reversed the  
7 Surcharge Order. The Debtor contends that paying the Trustee  
8 Attorney its fees before his homestead exemption, which has  
9 "priority" over the Trustee Attorney's fees, would contravene  
10 these prior dispositions.

11 The Debtor is correct that in both dispositions, we reversed  
12 bankruptcy court rulings with respect to the surcharge of his  
13 homestead exemption. In Lin, we determined that no extraordinary  
14 circumstances were shown to justify an equitable surcharge of the  
15 Debtor's entire homestead exemption, as required under then-  
16 current Ninth Circuit case law. Lin, 2006 WL 6810960 at \*8.  
17 However, we also stated in Lin that "[w]e express no opinion  
18 whether specific instances of mischief by the [Debtor] in the  
19 past might support further monetary sanctions in the future,  
20 including a surcharge against his exemption." Id. at \*8  
21 (emphasis added).

22 In Law I, we dealt with the Debtor's motion for an order  
23

24 

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<sup>7</sup>...continue

25 contends that the Trustee failed to follow the requirements under  
26 § 330(a) and Local Rule 2016-1. The Debtor then accuses the  
27 Trustee and the Trustee Attorney of "conspiring" together to take  
28 bankruptcy estate funds. However, we conclude the Debtor's  
challenge to the Trustee's fees is moot, as the Trustee has  
decided to forgo fees as indicated in the Amended Final Report.

1 directing the Trustee to pay him his claimed homestead exemption  
2 (“Homestead Payment Motion”). The bankruptcy court had denied  
3 the Homestead Payment Motion because it concluded that a pending  
4 appeal of the Surcharge Order before the Ninth Circuit divested  
5 it of jurisdiction. Law I, 2007 WL 7545164 at \*3. We determined  
6 that because the Trustee failed to challenge the validity of the  
7 Debtor’s claimed homestead exemption, the Debtor’s right to the  
8 homestead exemption became final. Id. at \*4. Because the  
9 Debtor’s claimed homestead exemption was final, we concluded that  
10 the bankruptcy court had authority to act on the Homestead  
11 Payment Motion and to issue an appropriate order, notwithstanding  
12 the appeal of the Surcharge Order. Id. We therefore reversed  
13 and remanded to the bankruptcy court for further proceedings and  
14 to issue an appropriate order under the circumstances of the  
15 case. Id. But we further noted that “the trustee may renew his  
16 motion to surcharge the [Debtor’s] claimed homestead exemption,  
17 as long as appropriate factual and legal bases exist to justify  
18 such a surcharge . . . .” Id.

19 The Debtor seems to believe that these two prior  
20 dispositions directed the Trustee to pay him the homestead  
21 exemption. But we gave no such directive in our dispositions.  
22 We reversed the bankruptcy court’s first ruling in Lin on the  
23 ground that surcharging the Debtor’s entire homestead exemption  
24 was unwarranted under Ninth Circuit authority at that time. We  
25 reversed and remanded the bankruptcy court’s ruling in Law I on  
26 the ground that the bankruptcy court had jurisdiction to make a  
27 determination as to whether the Trustee should pay the Debtor his  
28 homestead exemption. Neither Lin nor Law I required payment of



1 the Debtor's homestead exemption to him.

2 The landscape of homestead exemption law has changed since  
3 we issued Law and Lin; of course, we now recognize that the  
4 Supreme Court has overruled prior Ninth Circuit and BAP  
5 precedent. Still, the Debtor's reading of Law and Lin is  
6 incorrect.

7 3. Debtor's Homestead Exemption

8 The Debtor echoes the Supreme Court's reasoning by arguing  
9 that his homestead exemption should not be surcharged to pay the  
10 Trustee Attorney's fees. He demands that, in light of the  
11 Supreme Court's ruling, the Trustee Attorney should disgorge its  
12 fees to pay his homestead exemption.

13 Reviewing the bankruptcy case docket, we have discovered  
14 that no arrangements have been made subsequent to the Supreme  
15 Court's decision, to pay the Debtor his homestead exemption. See  
16 O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d  
17 955, 957-58 (9th Cir. 1988) (taking judicial notice of underlying  
18 bankruptcy records); Atwood v. Chase Manhattan Mortg. Co.  
19 (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003) (citing  
20 E.R. Fegert, Inc., 887 F.2d at 957-58, for this same point). We  
21 note that, in the past, the Debtor unsuccessfully has sought  
22 payment of his homestead exemption three times; on February 5,  
23 2007, October 11, 2007, and April 10, 2008, the Debtor filed  
24 motions for orders requiring the Trustee to pay the Debtor his  
25 homestead exemption, which were denied by the bankruptcy court.  
26 See docket nos. 193, 204, 225, 239, 259, 325 and 338.

27 We do not question that the Debtor is entitled to homestead  
28 exemption funds. Under California law, once a Debtor is allowed

1 his claimed homestead exemption, a property right to \$75,000 of  
2 the proceeds of the sale of his home reverts in the Debtor and is  
3 no longer part of the bankruptcy estate. Schwaber v. Reed  
4 (In re Reed), 940 F.2d 1317, 1321 (9th Cir. 1991) (citing Cal.  
5 Civ. Proc. Code §§ 704.720 and 704.730). As we reasoned in  
6 Law I, an unopposed homestead exemption claim is analogous to a  
7 judgment. Law I, 2007 WL 7545164 at \*3. "In the absence of an  
8 order granting an extension of time, once the period to object to  
9 a claimed exemption expires, a party-in-interest is time-barred  
10 from challenging the validity of the exemption claim, and the  
11 property claimed as exempt is exempt." Id. "Similar to an  
12 unstayed judgment, an unopposed homestead exemption claim stands  
13 final." Id. As we noted in Law I, the Debtor's homestead  
14 exemption is final because no party in interest challenged its  
15 validity.

16 But the Debtor cannot use this appeal of the Amended Fee  
17 Order to obtain payment on his homestead exemption claim. The  
18 issue before us involves only a determination as to whether the  
19 bankruptcy court erred in approving the Amended Final Report.

20 Among the criteria the bankruptcy court must consider in  
21 determining the amount of reasonable compensation to be awarded a  
22 trustee's attorney, see § 330(a)(3)(A)-(E), it must look to  
23 whether the services were necessary to the administration of or  
24 beneficial toward the completion of a bankruptcy case. See Stasz  
25 v. Gonzalez (In re Stasz), 2011 WL 6934442 at \*4 (9th Cir. BAP  
26 2011). The trustee bears the burden of establishing entitlement  
27 to fees requested from the estate. Id.

28 The Debtor did not oppose the Final Attorney Fee

1 Application. He also did not oppose timely the Amended Final  
2 Report. The Debtor further did not submit any evidence showing  
3 that the services of the Trustee Attorney did not benefit the  
4 estate or were unnecessary to its administration. (In fact,  
5 through numerous actions over a lengthy period of time, the  
6 Debtor hindered the administration of the estate, generating much  
7 work for the Trustee Attorney.) Based on the record before us,  
8 we cannot conclude that the bankruptcy court abused its  
9 discretion in approving the Amended Final Report.

10 We point out that the bankruptcy court acknowledged that if  
11 the Debtor prevailed before the Supreme Court, he would be  
12 entitled to more than \$25,000 (i.e., his claimed homestead  
13 exemption). It further acknowledged that it may need to order  
14 parties who received distributions of bankruptcy estate funds to  
15 disgorge them to cover the Debtor's homestead exemption. The  
16 Debtor therefore must return to the bankruptcy court and seek  
17 relief there in further proceedings, as contemplated by the  
18 Supreme Court. This appeal is not the appropriate vehicle for  
19 such relief.

20  
21 **CONCLUSION**

22 Based on the foregoing, we AFFIRM.  
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28