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9
 10 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 60.00 ACRES OF LAND, MORE OR
 16 LESS, SITUATE IN SAN
 BERNARDION COUNTY, STATE OF
 17 CALIFORNIA; WESTWARD
 ENTERPRISES, A CALIFORNIA
 18 CORPORTATION; DAVID
 RUPPERT; WEST COAST
 19 DEVELOPMENT CO, INC; CLARA
 STAPLES; SAFECO TITLE
 20 INSURANCE; AND SAN
 BERNARDINO COUNTY TAX
 21 COLLECTOR, et al.,

22 Defendants.

No. EDCV 13-1468-GW(OPx)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Trial: May 5, 2015

Time: 9:00 a.m.

The Honorable George H. Wu

23
 24 Trial by narrative statement pursuant to Local Rule 43-1 commenced on May 5,
 25 2015, at 9:00 a.m. Plaintiff United States submitted its Trial Brief and the Declarations
 26 of Robert W. Colangelo and Warren H. Neville, and appeared by Assistant United States
 27 Attorney Jonathan B. Klinck. Third Party Creditor State of California Franchise Tax
 28 Board (“FTB”) filed its Notice of State Tax Lien on March 4, 2015 (Dkt. #27.) No

1 appearance was made by any named defendant. Having reviewed the pleadings and
2 papers filed herein, and argument of counsel having been heard, the Court makes these
3 Findings of Fact and Conclusions of Law pursuant to F.R.Civ. P. 52.

4 **I. FINDINGS OF FACT**

5 **A. THE SUBJECT PROPERTY**

6 1. This is an action by the United States to condemn real property in fee
7 simple. The property is described as follows (“Subject Property”):

8 The Northwest ¼ of the Northwest ½ and the North ½ of the Southwest ¼
9 of the Northwest ¼ of Section 16, Township 13 North, Range 1 East, San
10 Bernardino Meridian, in the County of San Bernardino, State of California,
11 according to the official plat thereof. This Tract 839 is also known as
12 Assessor’s Parcel Number 051-031-18-0000, containing 60.00 acres, more
13 or less.

14 Declaration of Robert W. Colangelo (“Colangelo Decl.”) ¶ 2.

15 **B. PROCEDURAL HISTORY**

16 2. The Taking of the Subject Property by the United States

17 Plaintiff’s agency the Army Corps of Engineers (“COE”) and defendant Westward
18 Enterprises entered into an Accepted Offer whereby Westward Enterprises agreed to sell
19 the Subject Property to the COE for the sum of \$78,000. Declaration of Robert W.
20 Colangelo (“Colangelo Decl.”) ¶ 4, Exhibit A. The COE and defendant Westward
21 Enterprises were unable to complete the transaction because the COE is obliged to obtain
22 an ALTA policy of title insurance when it obtains real property by purchase, and the title
23 insurer would not issue such as policy because Westward Enterprises was a suspended
24 corporation. Colangelo Decl. ¶ 6. This action was filed on August 16, 2014 (Dkt. #1).
25 Notice of Condemnation, including the Declaration of Taking, and the Notice of Deposit
26 of Just Compensation were filed on September 9, 2013 (Dkt. ## 4-6), at which time title
27 in fee simple vested in the United States. 40 U.S.C. § 3114(b). Plaintiff filed its *ex*
28 *parte* application for Order of Delivery of Possession on September 10, 2013 (Dkt. # 7)

1 and the November 27, 2013 Order for Possession (Dkt. #9) was issued. Defendant San
2 Bernardino County Tax Collector filed its Disclaimer on October 2, 2013 (Dkt. # 10).
3 Plaintiff filed its Notice of Filing Waivers of Service of Judicial Process on January 15,
4 2014 (Dkt.# 12). As of the date of trial, no named defendant has made an appearance.

5 **C. Title to the Subject Property Was Held by Westward Enterprises**
6 **Prior to Taking by the United States**

7 3. Before title in fee simple vested in the United States on September 9, 2015,
8 title was held by defendant Westward Enterprises, a California corporation (“Westward
9 Enterprises”). Colangelo Decl. ¶¶ 2 and 5.

10 **D. Westward Enterprises Owed the FTB Taxes Since 1983, and Was a**
11 **Suspended Corporation at the Time Title Vested in the United States**
12 **and at the Time of the Accepted Offer**

13 4. As shown by the records of the California Secretary of State filed in this
14 action, Westward Enterprises failed to pay taxes due to the Franchise Tax Board
15 (“FTB”) since 1983, which amounted to the sum of \$76,492.56, and daily interest in the
16 sum of \$6.29 from February 19, 2015, as of the date the FTB filed its Notice of Lien.
17 Notice of State Tax Lien (Dkt. #27). As of May 5, 2015 trial date, the amount of the tax
18 lien is [75 days x \$6.29 = \$471.75 + \$76,429.56 = \$76,964.31] Seventy-Six Thousand,
19 Nine Hundred Sixty-Four Dollars and Thirty-One Cents (\$76,964.31).

20 **II. CONCLUSIONS OF LAW**

21 **A. JURISDICTION**

22 5. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1358.

23 **B. SINCE JURY TRIAL HAS NOT BEEN DEMANDED THE TRIAL**
24 **MAY PROCEED BEFORE THE BENCH WITHOUT A JURY**

25 6. The United States has not demanded jury trial. The FTB, the only other
26 entity to have appeared, has not demanded jury trial. Accordingly, this action may
27 proceed to trial before the bench without a jury. Zahn v. Geren, 697 Fed. Appx. 696,
28 697 (9th Cir. 2007).

1 **C. WESTWARD ENTERPRISES IS A SUSPENDED CALIFORNIA**
2 **CORPORATION**

3 7. F.R.Civ.P. 17(b)(2) establishes that the capacity of a corporate litigant to
4 sue or be sued in a federal case is determined by the state law under which the
5 corporation is organized. Westward Enterprises is a California corporation. Colangelo
6 Decl. ¶ 4. California Revenue and Taxation Code § 23301 suspends the rights and
7 privileges of California corporations which fail to pay FTB taxes and suspended
8 corporations cannot prosecute or defend actions, including federal appeals. Matter of
9 Christian & Porter Aluminum Co., 584 F.2d 326, 331 (9th Cir. 1978). Pursuant to
10 California Revenue Code § 23304.1, any contract entered into by a suspended
11 corporation is voidable.

12 **D. The FTB Notice of Lien is *Prima Facie* Evidence of the FTB Lien, and**
13 **Has Not Been Contested by Any Defendant**

14 8. Pursuant to California Revenue & Taxation Code § 19374, the Certificate of
15 Tax Due and Delinquency, which was attached as Exhibit A to the Notice of State Tax
16 Lien (Dkt. #27), is *prima facie* evidence of the levy of the tax, penalties, and interest, and
17 of FTB’s compliance with the statutes relating to the computation and levy of the tax.
18 The United States does not contest the validity or amount of FTB’s tax lien, nor has any
19 named defendant contested its validity.

20 **E. The Court Has the Authority to Determine the Amount of Just**
21 **Compensation and to Whom That Compensation Is To Be Paid**

22 9. Pursuant to F.R.Civ.P. 71.1 and the Declaration of Taking Act, 40 U.S.C.
23 § 3114, the two issues before the Court are: (1) the amount of just compensation as of
24 the September 9, 2013 date of taking by the United States; and (2) the distribution of the
25 just compensation. The Court has the authority to determine to whom and how much an
26 award in condemnation should be paid and it has authority to “make just and equitable
27 orders in respect of encumbrances, liens, rents, taxes, assessments, insurance and other
28

1 charges. 40 U.S.C. § 3224(d). See also F.R.Civ.P. 71.1(h); United States v. 14.02 Acres
2 of Land More or Less in Fresno County, 547 F.3d 943, 954 (9th Cir. 2008).

3 1. Just Compensation

4 10. Plaintiff has obtained an appraisal report by Warren H. Neville, MAI, which
5 opines that the value of the Subject Property as of the September 9, 2013 date of taking
6 was \$21,600. Declaration of Warren H. Neville ¶ 2, Exhibit A. However, Plaintiff
7 entered into an August 15, 2006 Accepted Offer with Westward Enterprises in the far
8 higher sum of \$78,000. Colangelo Decl. ¶ 4, Exhibit A. The United States is bound by
9 the Accepted Offer, and therefore the just compensation for the Subject Property is
10 \$78,000.

11 2. FTB Lien

12 11. As shown by the records of the California Secretary of State filed in this
13 action, Westward Enterprises failed to pay taxes, penalties and interest due to the
14 Franchise Tax Board (“FTB”) from 1983, which now amounts to the sum of \$76,492.56,
15 and daily interest in the sum of \$6.29 from February 19, 2015, the date the FTB filed its
16 Notice of Lien. Notice of State Tax Lien (Dkt. #27.) Thus, as of May 5, 2015 trial date,
17 the amount of the tax lien will be Seventy-Six Thousand, Nine Hundred Sixty-Four
18 Dollars and Thirty-One Cents (\$76,964.31). Neither the United States nor any defendant
19 has disputed the validity of the lien.

20 3. Distribution of Just Compensation

21 12. Prior to the September 9, 2013 taking by the United States, the Subject
22 Property was owned by Westward Enterprises, a suspended California corporation.
23 Colangelo Decl. ¶ 5.

24 13. After deduction of the \$76,492.56 FTB lien from the deposited estimated
25 compensation of \$78,000, a balance of \$1,507.44 will remain, less \$6.29 daily interest
26 incurred after the May 5, 2015 trial date.

27 14. Westward Enterprises is entitled to recover the balance of any portion of the
28 \$78,000 not paid to FTB, if it can submit proof to the Court that it has been revived as a

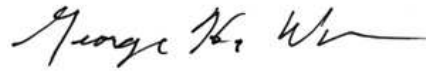
1 corporation in good standing by the California Secretary of State.

2 15. Title to the Subject Property is vested in the United States in fee simple.

3 16. The FTB is entitled to the sum of \$76,964.31, together with daily interest in
4 the sum of \$6.29 after the May 5, 2015 trial date.

5 17. The Clerk shall return to the United States Treasury any part of the \$78,000
6 deposited by the United States which remain uncollected five years after the entry of
7 judgment herein.

8 DATED: May 5, 2015

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GEORGE H. WU, U.S. District Judge

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13
14 Respectfully submitted,

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26
27 */s/ Jonathan B. Klinck*
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