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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERTO VERA JIMENEZ,)	Civil No. 04cv1833-L(PCL)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	EX PARTE APPLICATION
v.)	
)	
R. SAMBRANO, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

On February 18, 2010 Plaintiff filed an *Ex Parte* Application for Review of Bill of Costs by Court. A hearing on Defendants' Bill of Costs is currently set before the Clerk of Court for February 23, 2010. For the reasons which follow, Plaintiff's *Ex Parte* Application is **DENIED**.

Plaintiff requests a court review of Defendants' Bill of Costs. Federal Rule of Civil Procedure 54(d)(1) provides for taxing of costs by the clerk, and gives the party dissatisfied with the clerk's action the opportunity to file a motion for review by court. In this case, a hearing before the clerk is scheduled for February 23, 2010; therefore, no clerk action has yet issued. Although Plaintiff may be correct in his argument that Defendants should not recover costs, he has not cited any legal authority for the proposition that Defendants' Bill of Costs must forego clerk's action and be considered by the court in the first instance. While *The Association of Mexican-American Educators v. State of California*, relied upon by Plaintiff, holds that the district court has discretion not to award costs, it does not address the procedural issue raised

1 here – whether or under what circumstances the clerk’s action can be avoided altogether. 231
2 F.3d 572, 579, 591-93 (9th Cir. 2000) (*en banc*). Accordingly, the *Ex Parte* Application is
3 **DENIED.**

4 **IT IS SO ORDERED.**

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6 DATED: February 22, 2010

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9 M. James Lorenz
10 United States District Court Judge
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