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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 GREGORY SHADE,

No. C 08-3471 SI

9 Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

10 v.

11 DANIEL PATRICK GORMAN, *et al.*,

12 Defendants.
13 _____/

14 On December 12, 2008, the Court held a hearing on plaintiff's motion for a preliminary
15 injunction. Plaintiff seeks a preliminary injunction enjoining defendants from exhibiting or offering for
16 distribution a documentary film entitled *American Hero*. To obtain the relief sought, plaintiff must
17 demonstrate "either (1) a combination of probable success on the merits and the possibility of irreparable
18 injury, or (2) that serious questions are raised and the balance of hardships tips sharply in favor of the
19 moving party." *Bank Julius Baer & Co. Ltd. v. WikiLeaks*, 535 F. Supp. 2d 980, 983 (N.D. Cal. 2008).

20 The Court finds that plaintiff is not entitled to a preliminary injunction because there are
21 numerous disputed factual and legal issues going to the merits. The parties dispute, *inter alia*, whether
22 plaintiff's copyright registrations are valid, whether the Congressional documentary that defendant
23 Gorman prepared for plaintiff (and which plaintiff claims is infringed by *American Hero*) was a "work
24 for hire," and whether *American Hero* is a fair use under the copyright laws. In light of these many
25 disputes, plaintiff has not demonstrated probable success on the merits. Even if serious questions are
26 raised, plaintiff has not shown that the balance of hardships tips sharply in his favor. Plaintiff
27 acknowledges that he has no present intention of marketing his work. Although plaintiff is concerned
28 about protecting this own identity and the identities of certain individuals shown in the materials, there

1 is nothing in the record to show that defendant's use¹ of the materials at issue would jeopardize anyone's
2 security.

3 Accordingly, the Court DENIES plaintiff's motion for a preliminary injunction. (Docket No.
4 7). The Court will issue a separate order regarding defendants' motion to dismiss the complaint.

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6 **IT IS SO ORDERED.**

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8 Dated: January 26, 2009



SUSAN ILLSTON
United States District Judge

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27 _____
28 ¹ The Court also notes that according to the parties' papers, there are no scheduled upcoming exhibitions of *American Hero*.