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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

STATE OF ARIZONA, EX REL. TERRY)
GODDARD, ATTORNEY GENERAL,)

Plaintiff,)

vs.)

GANNETT CO., INC.; CITIZEN)
PUBLISHING COMPANY; LEE)
ENTERPRISES INC.; STAR)
PUBLISHING COMPANY; TNI)
PARTNERS,)

Defendants.)

No. 4:09-CV-0281-TUC-RCC

ORDER

Pending before this Court is Plaintiff’s Motion for Temporary Restraining Order. The Court having heard oral arguments and reviewed the briefs filed, the Court now rules. Given both parties are familiar with the facts, the Court will only provide a brief summation of the facts.

Background

The Arizona Attorney General filed a request for a restraining order and preliminary injunction to stop the closing of the *Tucson Citizen*. The *Tucson Citizen* (“Citizen”) is owned by Gannett Co., Inc. (“Gannett”) through the wholly owned subsidiary of Citizen Publishing Company (“CPC”). *The Arizona Daily Star* is owned by Lee Enterprises, Incorporated (“Lee”) through the wholly owned subsidiary Star Publishing Co. (“SPC”).

1 Since 1940 the two newspapers have had a joint operating agreement (“JOA”), under which
2 the news and editorial departments operate separately but all other aspects of the operations are run
3 by a jointly owned agent, TNI Partners (“TNI”). Garnett and Lee each own 50% of TNI. In 1965,
4 the Department of Justice brought an anti-trust case challenging the JOA for the elimination of price
5 competition and won. *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969). Congress then
6 created a limited antitrust exemption for JOA newspapers, if the JOA preserved editorial
7 competition. Newspaper Preservation Act, Pub. L. No. 91-353, 84 Stat. 466 (1970) (codified at 15
8 U.S.C. §§1801-1804 (2008)). This allowed newspaper owners to engage in price fixing and other
9 violations of antitrust law so long as they maintain editorial competition.

10 On May 16, 2009 the *Tucson Citizen* ceased publication as a daily printed newspaper
11 but its editorial voice continues on its Internet site, www.tucsoncitizen.com. The closing of
12 the *Citizen* came after the Justice Department concluded its seven month investigation.
13 During the investigation, Gannet conducted a public shopping of the Citizen assets for sale
14 at the request of the Justice Department. The public shopping of the Citizen assets resulted
15 in a bid from Santa Monica Medica Company, LLC.

16 Law

17 To obtain a temporary restraining order (“TRO”) or preliminary injunction, the
18 moving party must show the (1) likelihood of success on the merits; (2) the likelihood the
19 moving party will suffer irreparable harm in the absence of preliminary relief; (3) the balance
20 of equities tips in moving party’s favor; and (3) the injunction is in the public interest. *Winter*
21 *v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 376 (2008); *Marbled Murrelet v. Babbitt*,
22 83 F.3d 1068, 1073 (9th Cir. 1996).

23 Under the Newspaper Preservation Act, companies under a JOA can avoid anti-trust
24 liability by proving a failing company. *Reilly v. Hearst Corp.*, 107 F.Supp. 2d 1192, 1203
25 (N.D. Cal. 2000). The newspaper owners must establish that “one of the newspapers would
26 be a failing company outside of the JOA, and there are no alternative purchasers willing to
27 operate the newspaper outside of the JOA.” *Id.*

28 Findings and Conclusion

1 The Court finds at this point the plaintiff has failed to show the likelihood of success
2 at trial that the defendant committed an antitrust violation that caused irreparable harm by
3 closing the *Tucson Citizen*. While regrettable that the *Citizen's* illustrious legacy must come
4 to end, it can not be said at this time, the decision to close the *Citizen* involves an anti-trust
5 violation. The Court can not say at this point in time that there is a violation of the
6 Newspaper Preservation Act. While, it is true the closing of the *Citizen* is an irreparable
7 harm, the plaintiff has failed to show the balance of hardships weighs in their favor.
8 Evidence at this time does not show a ready and willing buyer to pay the fair and reasonable
9 liquidation value of the *Tucson Citizen* assets.

10 If the Court were to apply the failing company test, the *Citizen* would qualify.
11 Therefore,

12 **IT IS HEREBY ORDERED**, plaintiff's motion for Temporary Restraining Order and
13 Order for Preliminary Injunction is **denied**. (Doc.# 2).

14 **IT IS FURTHERED ORDERED**, defendants have until June 15, 2009 to file a
15 response to the Complaint.

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17 DATED this 18th day of May, 2009.

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 Raner C. Collins
 United States District Judge