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10 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
11

12 STATE OF ARIZONA, EX REL.
TERRY GODDARD, ATTORNEY
13 GENERAL,

14 Plaintiffs,

15 v.

16 GANNETT CO., INC.;
17 CITIZEN PUBLISHING COMPANY;
LEE ENTERPRISES,
18 INCORPORATED;
STAR PUBLISHING COMPANY; and
19 TNI PARTNERS,

20 Defendants.

Case No.: _____

**MEMORANDUM SUPPORTING
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

ORAL ARGUMENT REQUESTED

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1 INTRODUCTION

2 Plaintiff brings this motion for a temporary restraining order and preliminary
3 injunction to preserve competition between the *Tucson Citizen* and the *Arizona Daily*
4 *Star* – competition that has benefitted Tucson-area newspaper readers for more than a
5 century by giving them the choice of two high-quality daily local newspapers. The
6 owners of those newspapers plan to eliminate that competition by closing the *Citizen* on
7 May 15, 2009 and sharing the profits generated by the *Star* after it becomes Tucson’s
8 monopoly daily local newspaper. This agreement to stop competing plainly violates the
9 antitrust laws, and it will cause irreparable harm. Unless this Court enters an order
10 preventing the *Citizen* from closing, Tucson-area readers will lose not only one of their
11 daily local newspaper choices, but also the historic quality competition that has spurred
12 the *Star* and *Citizen* to journalistic excellence.

13 Ninth Circuit courts consistently have held that an agreement between two
14 newspaper owners to close one of their newspapers can violate the antitrust laws. *See*
15 *Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1203 (N.D. Cal. 2000); *Hawaii v. Gannett*
16 *Pacific Corp.*, 99 F. Supp. 2d 1241, 1248-52 (D. Haw.), *aff’d*, 203 F.3d 832 (9th Cir.
17 1999) (table). Courts also have recognized that such owners may avoid antitrust scrutiny
18 if they can first show that the newspaper to be closed qualifies as a “failing company.”
19 That defense requires them to prove that (1) the newspaper’s resources are so depleted
20 and its prospects for rehabilitation are so remote that it faces the probability of business
21 failure; and (2) there are no prospective purchasers. *See Reilly*, 107 F. Supp. 2d at 1203.
22 The owners of the *Citizen* and the *Star* cannot make these showings. The newspapers
23 have consistently turned a profit, last year earning \$16.5 million combined. Additionally,
24 another newspaper company has offered to pay \$250,000 for all the assets the *Citizen*’s
25 owner is willing to sell, and that company intends to compete against the *Star* on price as
26 well as quality. The *Citizen*’s owner has rebuffed this bidder, and its readiness to
27 sacrifice cash in hand to prevent anyone else from publishing the *Citizen* confirms that its
28 ultimate goal is to prevent competition and share in the *Star*’s monopoly profits. Rather

1 between the *Citizen* and the *Star* to attract readers through high-quality journalism,
2 competition over advertising and subscription rates has ceased.

3 In 1965, the United States brought an antitrust case challenging the elimination of
4 that price competition and won a judgment, which the Supreme Court affirmed. *See*
5 *Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969). Following that litigation,
6 Congress created a limited antitrust exemption for certain JOA activities if the JOA
7 partners preserve editorial competition between their newspapers. *See* Newspaper
8 Preservation Act, Pub. L. No. 91-353, 84 Stat. 466 (1970) (codified at 15 U.S.C. §§
9 1801-1804 (2008)). This exemption covered TNI as long as the Newspaper Owners
10 continued to publish both the *Citizen* and the *Star* and maintained editorial competition
11 between them.

12 With this exemption, which has allowed the Newspaper Owners to engage in
13 conduct like price fixing that would otherwise violate the antitrust laws, TNI has become
14 very profitable. It made more than \$30 million in profits each year between 2004 and
15 2007. TNI Operating Statement (Ex. D).¹ Even in 2008, TNI's profits from the
16 *Citizen* and the *Star* were \$16.5 million, and its profit margin still exceeded 19%. *Id.*

17 Not content with these profits, Gannett and Lee plan to close the *Citizen* and cease
18 all remaining competition. *See* Schmidt Dep. 59:2-68:10 (Ex. E); Ehrman Dep.
19 105:21-119:22 (Ex. F). Upon learning of their intentions on October 31, 2008, the
20 Department of Justice opened an investigation. In a letter dated January 15, 2009, the
21 Newspaper Owners confirmed that the *Citizen* would close on March 21, 2009, unless
22 Gannett sold its masthead, website, archives, subscriber list, and other mostly intangible
23 assets (collectively, the "*Citizen* assets") in the meantime.² January 15 Letter (Ex. G); *see*
24

25 ¹ Ex. D is a printed portion of a very large electronic spreadsheet that TNI has designated
26 as "TNI-00009259." If it would assist the Court, the State will provide the entire spreadsheet in
27 printed and/or electronic form.

28 ² Gannett later decided to continue publishing the *Citizen* until [May 9], 2009. *See* [Lang
correspondence specifying shut-down date] (Ex. H).

1 also Confidential Mem. 1-2 (Ex. A) (describing the *Citizen* assets). Gannett did not offer
2 to sell its fifty percent interest in TNI or the printing presses and other assets used to
3 produce the *Citizen* and the *Star*. Gannett informed subscribers, advertisers, employees,
4 and other members of the public of the plan to stop publishing the *Citizen* in a January
5 16, 2009 press release. See Press Release (Ex. I). After Gannett ceases publishing the
6 *Citizen*, Gannett and Lee will split equally the profits generated by the only remaining
7 daily local newspaper in Tucson, the *Star*. January 15 Letter (Ex. G).

8 Santa Monica Media Company, LLC (“Santa Monica Media”) – another
9 newspaper company – offered to pay Gannett either \$250,000 immediately or \$400,000
10 over time for the *Citizen* assets. Hadland Decl. ¶¶ 1, 10, 14 (Ex. J). Gannett demanded
11 that Santa Monica Media increase its bid to \$800,000, and it broke off negotiations when
12 Santa Monica Media declined to do so, even though it will receive nothing for the
13 *Citizen* assets if the plan to close the newspaper succeeds. See *id.* ¶ 10. If the *Citizen*
14 stops publication, Santa Monica Media would lose interest in purchasing the *Citizen*
15 assets because relationships with subscribers and advertisers will be disrupted, making it
16 extremely difficult to revive the newspaper. *Id.* ¶ 16. Even after Gannett refused to sell
17 the *Citizen* assets to Santa Monica Media, Lee remained committed to splitting the *Star*’s
18 profits with Gannett.

19 ARGUMENT

20 In the Ninth Circuit, a plaintiff may obtain preliminary injunctive relief by
21 showing either “(1) a likelihood of success on the merits and the possibility of irreparable
22 injury; or (2) sufficiently serious questions going to the merits to make them a fair
23 ground for litigation, and the balance of hardships tips sharply in favor of the party
24 seeking relief.” *Marbled Murrelet v. Babbitt*, 83 F.3d 1068, 1073 (9th Cir. 1996).³

25
26 ³ The analysis for a temporary restraining order is “substantially identical.” See *Stuhlberg*
27 *Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); see also
28 *Magnuson v. Akhter*, No. 08-2246, 2009 WL 185577, at *1 (D. Ariz. Jan. 27, 2009) (Murguia, J.)
 (“Temporary restraining orders are governed by the same standard applicable to preliminary

1 These formulations establish a “continuum” so that “the greater the relative hardship to
2 the moving party, the less probability of success must be shown.” *National Ctr. for*
3 *Immigrants Rights v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984); *see also Immigrant*
4 *Assistance Project v. INS*, 306 F.3d 842, 873 (9th Cir. 2002).

5 Denying an injunction would irreparably harm the public because shuttering the
6 *Citizen*, as Gannett plans to do on **Saturday**, would eliminate one of Tucson’s only two
7 daily local newspapers and the quality competition in which those newspapers currently
8 engage. It would also make the *Citizen* assets less attractive to potential buyers, which
9 diminishes the chances that the newspaper might be resurrected. Defendants cannot
10 show that requiring them to continue publishing the *Citizen*, as they have for many
11 profitable years, would harm them severely enough to tip the balance of hardships in
12 their favor. This Court, therefore, should award preliminary relief even if only fair
13 grounds for litigation exist. *See Topanga Press v. Los Angeles*, 989 F.2d 1524, 1534
14 (9th Cir. 1993) (explaining that, “by definition,” complex constitutional question
15 presented fair grounds for litigation); *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1478 (9th
16 Cir. 1997) (“Complex antitrust cases . . . invariably involve complicated questions . . .
17 .”).

18 **I. PLAINTIFF IS LIKELY TO PROVE THE NEWSPAPER OWNERS HAVE**
19 **VIOLATED THE ANTITRUST LAWS.**

20 **A. The Newspaper Owners’ Agreement Violates Section One.**

21 As alleged in the complaint, the Newspaper Owners’ agreement to close the
22 *Citizen* and share the profits from the *Star*’s continued operations violates both Section 1
23 of the Sherman Act and Arizona’s Uniform State Antitrust Act. *See* 15 U.S.C. § 1
24 (2008); Ariz. Rev. Stat. Ann. § 44-1402 (2008).⁴ *See* Compl. ¶¶ 15-18. A Section 1

25 _____
26 injunctions.”).

27 ⁴ This Memorandum focuses on federal law because Arizona courts generally interpret
28 the state’s Antitrust Act in harmony with the federal Sherman Act. *See Three Phoenix Co. v.*

1 claim has three elements: (1) the existence of an agreement among separate entities that
2 (2) unreasonably restrains trade and (3) affects interstate or foreign commerce. *See Jack*
3 *Russell Terrier Network v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1033 (9th Cir. 2005).

4 Gannett and Lee are separate entities⁵ that have agreed to close the *Citizen* and
5 share the profits generated by the monopoly *Star*. *See* Compl. ¶¶ 5, 7, 13. Their plan
6 began to take shape during 2008 when they discussed closing the *Citizen* as a way to
7 make more money. *See* Schmidt Dep. 59:2-68:10 (Ex. E); Ehrman Dep. 105:21-119:22
8 (Ex. F). On January 15, 2009, the Newspaper Owners committed in writing to split the
9 *Star*'s profits after the *Citizen* was closed or sold. *See* January 15 Letter (Ex. G). Then
10 Gannett rejected Santa Monica Media's \$250,000 offer for the *Citizen* assets, even
11 though Gannett has no plans to use those assets itself and instead will largely destroy
12 their value by closing the *Citizen*. *See* Hadland Decl. ¶ 10 (Ex. J). It would have been
13 irrational for Gannett to turn down cash in hand for assets that it would otherwise shutter,
14 unless it expected that the *Star* (whose profits it agreed to split with Lee) would be more
15 profitable as a monopoly daily local newspaper than if it faced competition from the
16 *Citizen* in Santa Monica Media's hands. And Lee continued to acquiesce in the plan to
17 split the *Star*'s monopoly profits even after Gannett refused to accept a significant sum
18 for assets that it has no plans to use.

19 _____
20 *Pace Indus.*, 659 P.2d 1258, 1260 (Ariz. 1983) (relying on federal decisions interpreting Section
21 1 of the Sherman Act to construe the state "counterpart," § 44-1402).

22 ⁵ Gannett and Lee are distinct legal entities that are separately incorporated, owned, and
23 operated. Nevertheless, they may contend that, as a matter of law, they should be treated as
24 single entity because some aspects of their Tucson operations have been conducted jointly
25 through TNI. *Cf. Texaco Inc. v. Dagher*, 547 U.S. 1, 6 (2006) (characterizing joint venture's
26 setting of price as conduct "by a single entity . . . and not a pricing agreement between competing
27 entities with respect to their competing products"). But Gannett and Lee – unlike the
28 *Dagher* defendants – have not stopped competing altogether. Indeed, the NPA required that,
despite the JOA, they continue to engage in editorial competition, and they admit that they have
done so. *See infra* page 7; *see also United States v. Daily Gazette Co.*, 567 F. Supp. 2d 859, 868
(S.D.W. Va. 2008) ("The . . . unification of newspaper brands, or elimination of one daily in
favor of the other, appears to present concerns not contemplated by *Dagher*.").

1 As to the second element, courts typically assess a restraint’s unreasonableness by
2 “review[ing] all the facts, including the precise harms alleged to the competitive markets,
3 and the legitimate justifications provided for the challenged practice, and [then]
4 determin[ing] whether the anti-competitive aspects of the challenged practice outweigh
5 its pro-competitive effects.” *Paladin Assocs. v. Montana Power Co.*, 328 F.3d 1145,
6 1156 (9th Cir. 2003). But when “an observer with even a rudimentary understanding of
7 economics could conclude that the arrangements in question have an anti-competitive
8 effect on customers and markets,” a court may determine that the arrangement
9 unreasonably restrains trade after only a “quick look.” *California Dental Ass’n v. FTC*,
10 526 U.S. 756, 770 (1999).⁶

11 No more than a “quick look” is necessary to see that the Newspaper Owners’
12 agreement to close the *Citizen* and share the resulting profits eliminates the quality
13 competition that has been at the heart of their JOA for decades. Gannett’s predecessor
14 testified that “the Tucson public has benefited [*sic*] in all respects from the joint
15 arrangement between the Citizen and the Star” because, under the JOA, the “two
16 newspapers compete vigorously to provide the highest quality in news coverage,
17 features, and opinion.” *The Failing Newspaper Act: Hearings Before Subcomm. on*
18 *Antitrust and Monopoly of the S. Comm. on the Judiciary*, 90th Cong. 7 (1967)
19 (statement of William A. Small, Jr., then-Owner, *Tucson Daily Citizen*). In earlier
20 litigation involving the Tucson JOA, this Court found that the newspapers “engaged in
21 intense rivalry with each other in the composition of news and editorial material.”
22 *United States v. Citizen Publishing Co.*, 280 F. Supp. 978, 982 (D. Ariz. 1968), *aff’d*,
23 394 U.S. 131 (1969). And today, the Newspaper Owners continue to “compete

24
25 ⁶ Plaintiff needs not establish the boundaries of a relevant market to prevail on a “quick
26 look” theory. See *FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 460 (1986) (“[T]he
27 Commission’s failure to engage in detailed market analysis is not fatal to its finding of a
28 violation of the Rule of Reason.”); *Oltz v. Saint Peter’s Community Hosp.*, 861 F.2d 1440, 1448
(9th Cir. 1988) (“Defining the market is not the aim of antitrust law; it merely aids the search for
competitive injury.”).

1 vigorously” for readers by investing in high-quality reporting. *See* TNI Homepage (Ex.
2 K). As the *Citizen’s* editor recently explained, “what we do makes the Star better, the
3 Star makes us better, and because of that, the community gets better information.”
4 *Tucson Citizen to Close Saturday – After 138 Years*, Editor & Publisher (Mar. 15, 2009)
5 (Ex. L).

6 The Newspaper Owners’ agreement to close the *Citizen* and share the *Star’s*
7 monopoly profits threatens to deprive Tucson-area readers of one of their daily local
8 newspaper choices and eliminate the quality competition between the newspapers. The
9 agreement also will harm advertisers if, after the *Citizen* closes, TNI does not cut its
10 advertising rates to reflect the loss of former *Citizen* readers who do not switch to the
11 *Star*. Because the Newspaper Owners cannot prove that their agreement has any
12 offsetting procompetitive benefits, these anticompetitive effects prove that their
13 agreement unreasonably restrains trade in violation of Section 1.⁷

14 In a nearly identical case (where Gannett was one of the defendants), the Ninth
15 Circuit affirmed entry of a preliminary injunction against implementation of an
16 agreement between the owners of two Hawaii newspapers under which one of them
17 would receive the same profits called for in their JOA even after shutting down its
18 newspaper. *See Hawaii v. Gannett Pacific Corp.*, 99 F. Supp. 2d 1241 (D. Haw.),
19 *aff’d*, 203 F.3d 832 (9th Cir. 1999) (table). The district court recognized that, despite the
20 JOA, the newspapers engaged in “economic competition” and found that their owners’
21 agreement “would deprive newspaper readers of [that] free and open competition in the
22 sale of daily newspapers and their differing editorial and reportorial voices.” *Hawaii*, 99
23 F. Supp. 2d at 1249-50. The court also found that the agreement had “no lawful
24 justification” because it had the “effect of paying [one paper] not to publish for the
25 remaining . . . years, as called for by the JOA.” *Id.* at 1249.

26
27 ⁷ The third element of a Section 1 claim – substantial effect on interstate commerce – is
28 satisfied because the *Citizen* buys and publishes stories from interstate news services and sells
advertising to out-of-state customers. *See* Compl. ¶ 2.

1 In *Glen Holly Entm't v. Tektronix Inc.*, 343 F.3d 1000 (9th Cir. 2003), the Ninth
2 Circuit concluded that a similar agreement to stop competing violated Section 1.
3 Tektronix and Avid manufactured and sold digital film editing equipment until they
4 agreed that Tektronix would stop manufacturing its own equipment and instead sell
5 Avid's equipment exclusively. Plaintiff Digital Images, one of Tektronix's former
6 customers, alleged that the agreement violated Section 1, but the district court dismissed
7 the claim. The Ninth Circuit, however, reinstated the claim because the "Avid/Tektronix
8 agreement detrimentally changed the market make-up and limited consumers' choice to
9 one source of output," *id.* at 1010-11, and "there is *no* pro competitive aspect of the
10 defendants' strategic alliance, none," *id.* at 1013. According to the court, an agreement
11 "leaving only one product, no choices, and no competition in its wake" – that is, an
12 agreement very much like the one at issue in this case – amounts to a "clear[] violation of
13 the Sherman Act." *Id.* at 1013-14.

14 **B. The Newspaper Owners Cannot Establish a Failing Company Defense.**

15 The Newspaper Owners cannot excuse their anticompetitive agreement on the
16 ground that the *Citizen* is a failing firm. One court has recognized that, when two
17 newspaper owners in a JOA agree to close one of the papers, they may avoid antitrust
18 liability by proving a "failing company" defense. *See Reilly v. Hearst Corp.*, 107 F.
19 Supp. 2d 1192, 1203 (N.D. Cal. 2000). But to avail themselves of this defense, the
20 Newspaper Owners must establish that "(1) one of the newspapers would be a failing
21 company if operated outside the JOA; and (2) there are no alternative purchasers willing
22 to operate the newspaper outside the JOA." *Id.* At all times, "[t]he burden of proving
23 that the conditions of the failing company doctrine have been satisfied is on those who
24 seek refuge under it." *Citizen Publishing Co. v. United States*, 394 U.S. 131, 138-39
25 (1969).

26 The Supreme Court has explained that the first element of the failing company
27 defense requires proof that the supposedly failing firm's "resources . . . were so depleted
28 and the prospect of rehabilitation so remote that it faced the grave probability of a

1 business failure.” *Id.* at 137 (internal quotation marks omitted); *see also Reilly*, 107 F.
2 Supp. 2d at 1203 (characterizing this standard as the “proper framework for analysis” of
3 failing company defense in newspaper JOA context). To satisfy this demanding test, the
4 Newspaper Owners would have to show that the “prospects of reorganiz[ing]” the
5 *Citizen* through bankruptcy are “dim or nonexistent.” *Citizen Publishing* 394 U.S. at
6 138. Here, they have offered no evidence to support a claim that the *Citizen* could not
7 emerge from bankruptcy and operate successfully. To the contrary, the Newspaper
8 Owners assert that a reorganized *Citizen* would be profitable. *See infra* note 7.

9 Additionally, the Newspaper Owners cannot prove the second element of the
10 failing company defense because there are companies willing to purchase the *Citizen*
11 assets and operate the *Citizen* outside TNI. For instance, Santa Monica Media bid
12 \$250,000, and it intends to compete with the *Star* based on price as well as quality.
13 Hadland Decl. ¶¶ 10-11 (Ex. J). The presence of potential buyers shows that the *Citizen*
14 is “presumably economically viable” and confirms that a “sale will be preferable to its
15 closure because a competitor will be preserved rather than eliminated.” *Reilly*, 107 F.
16 Supp. 2d at 1205; *see also Citizen Publishing*, 394 U.S. at 138 (“[I]f another person or
17 group could be interested, a unit in the competitive system would be preserved and not
18 lost to monopoly power.”).

19 The Newspaper Owners likely will argue that they are still entitled to a failing
20 company defense because Santa Monica Media’s \$250,000 offer is unreasonably low.
21 But Gannett plans to close the *Citizen* and receive nothing for the *Citizen* assets, which
22 will rapidly lose their value after the newspaper closes. This plan demonstrates that the
23 *Citizen* assets have little value to Gannett. Indeed, when a similar package of assets was
24 sold in Hawaii, the buyer paid only \$10,000 for them. *See Asset Purchase Agreement* §
25 1.4 (Ex. M). And another potential buyer was willing to purchase the *Citizen* assets for
26 \$300,000 payable over time, an amount roughly equivalent to Santa Monica Media’s
27 offer to pay \$250,000 immediately. *See Hamila Decl.* ¶ 5 (Ex. N). In the face of this
28 real-world evidence that Santa Monica Media’s offer was not unreasonably low, the

1 Newspaper Owners cannot carry their burden of establishing a failing company defense.⁸

2 **II. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST FAVOR**
3 **GRANTING THE INJUNCTIVE RELIEF REQUESTED.**

4 Unless this Court stops the impending closure of the *Citizen*, the people of Tucson
5 will suffer irreparable harm. The *Citizen* will be lost. Its roughly 20,000 daily readers
6 will be deprived of access to their preferred editorial voice. *See Hawaii*, 99 F. Supp. 2d
7 at 1253 (finding that “no monetary amount will be able to compensate for the loss of [an]
8 editorial and reportorial voice”). And Tucson residents will lose the benefits of quality
9 competition between the *Citizen* and the *Star*. *See California v. American Stores Co.*,
10 872 F.2d 837, 844 (9th Cir. 1989) (recognizing that a “lessening of competition” is
11 “precisely the kind of irreparable injury that injunctive relief . . . was intended to
12 prevent”), *rev’d on other grounds*, 495 U.S. 271 (1990).

13 Without an injunction, it will be virtually impossible to resurrect the *Citizen* and
14 restore it to its present level should Plaintiffs prevail after a trial on the merits. By that
15 time, relationships with subscribers, employees, advertisers, distributors, and suppliers
16 will be irreparably severed. *See Hadland Decl.* ¶ 15 (Ex. J); *see also Hawaii*, 99 F. Supp.
17 2d at 1254 (“[T]he economic demise of [a newspaper] will impair the ability of this
18 Court to provide the relief requested . . . and will result in the silencing of competing
19 news and editorial voices.”); *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1165
20 (9th Cir. 1984) (approving injunction when “a denial of a preliminary injunction would
21 preclude effective relief”).

22 In contrast, the Newspaper Owners will not be harmed significantly if they are
23 required to keep operating the *Citizen*. The latest figures they have supplied show that,

24
25 ⁸ The Newspaper Owners assert that the *Citizen* assets are really worth \$762,000, but their
26 valuation methodology contains many serious errors, including a fatally flawed assumption – that
27 the *Citizen* will continue to operate. Gannett itself has no plans to publish the *Citizen* after
28 *Saturday*; it plans simply to close the newspaper and let the value of the *Citizen* assets dissipate.
And Gannett refuses to sell the *Citizen* assets to potential buyers who would operate the
newspaper.

1 even in recession year 2008, TNI made a profit of \$16.5 million. TNI Operating
2 Statement (Ex. D). There is thus good reason to think that TNI will continue to make
3 money, even if required to continue publishing the *Citizen* pending a trial on the merits.
4 *See Hawaii*, 99 F. Supp. 2d at 1254 (concluding that hardship to defendants of operating
5 newspaper “pales” in comparison to harm to public from closure when newspaper
6 owners “presented no evidence that they are not profitable overall”); *see also American*
7 *Stores*, 872 F.2d at 844 (explaining that court “need not address [defendant’s] arguments
8 concerning the balance of hardships” when a plaintiff’s “showing of likelihood of
9 success on the merits and possibility of irreparable harm satisfies the prerequisites for
10 granting a preliminary injunction”).

11 An injunction preventing the *Citizen* from shutting down would advance the
12 public interest. The Attorney General represents the public interest in antitrust litigation.
13 *See United States v. Borden Co.*, 347 U.S. 514, 518 (1954); *see also California v.*
14 *American Stores Co.*, 495 U.S. 271, 295 (1990) (“In a Government case the proof of the
15 violation of law may itself establish sufficient public injury to warrant relief.”); *Murcott*
16 *v. Best Western Int’l, Inc.*, 9 P.3d 1088, 1096 (Ariz. Ct. App. 2000) (recognizing “the
17 underlying purpose [of Arizona’s Uniform State Antitrust Act] is to establish a ‘public
18 policy of first magnitude’ in furthering a competitive economy”). In this case, keeping
19 the *Citizen* alive preserves readers’ access to an additional editorial viewpoint, and “there
20 is a strong public interest in maintaining a newspaper press editorially and reportorially
21 independent and competitive.” *Hawaii*, 99 F. Supp. 2d at 1254; *see also Regents of*
22 *Univ. of California v. American Broadcasting Cos.*, 747 F.2d 511, 521 (9th Cir. 1984)
23 (“[T]he public interest is served by preserving the competitive influence of consumer
24 preference . . .”). Indeed, even the Newspaper Owners have recognized that
25 “maintaining the separate identities, individuality and editorial and news freedom and
26 integrity” of the *Citizen* and the *Star* serves “public interests.” Joint Operating
27 Agreement 2 (Ex. B).

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CONCLUSION

For all these reasons, this Court should enjoin Defendants from closing or otherwise harming the *Citizen*.

Dated: May 15, 2009

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