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## *California District Court Affirms Anti-Moonlighting Agreements Apply to Independent Contractors*

By [Jennifer S. Baldocchi](#), [Jeffrey D. Wohl](#), [Emily J. Stover](#) & Joseph P. Marcus

A federal district court recently ruled that employers may restrict both employees and independent contractors from working for or promoting a competitor during the course of their employment or business relationship. In *Youngevity Int'l, Corp. v. Smith*, 2021 U.S. Dist. LEXIS 53456 (S.D. Cal. Feb. 3, 2021), the court held that restrictions during either employment or an independent-contractor relationship do not violate California Business and Professions Code section 16600. This is a timely decision in light of [recent Washington, D.C. legislation](#) prohibiting employers from restricting their current employees from working for a competitor.

### **Background**

The *Youngevity* decision arose out of a dispute between a multi-level marketing company, Youngevity, and several of the independent contractors it used to distribute its products. Youngevity required all of its distributors—including independent contractors—to enter into a “cross-recruiting” provision, under which they could not “sell, recruit, propose, or in any other way induce or attempt to induce any other Distributor to purchase any product or service, or to participate in any other income opportunity, investment, venture, or commit any other activity deemed, at the full discretion of the Company, as cross-recruiting.”

Despite the provision, several of its executive level distributors—the defendants—began selling and promoting competing products to other Youngevity distributors. In response, Youngevity canceled the defendants’ distribution rights, withheld their commissions, and brought suit. Defendants brought counterclaims alleging Youngevity’s “Cross-Recruiting” provision was invalid under section 16600. Both parties moved for summary judgment.

### **Holding**

The court granted Youngevity’s motion for summary judgment on all claims, finding sufficient evidence that defendants breached their contractual obligations.

The court held that the cross-recruiting provision did not restrict a distributor’s ability to pursue business opportunities outside Youngevity, and was thus not prohibited under section 16600: “Youngevity’s Policies and Procedures and/or Distributor Agreement do not preclude Youngevity distributors, including the Distributor Counterclaim Plaintiffs, from becoming ... distributors” for a competitor. Nor did the cross-

recruiting provision restrict independent contractors from “discussing those companies with individuals they personally enrolled in Youngevity.” In light of this, the court found “the Cross-Recruiting Provision [was] a restraint on promotion, not participation, and § 16600 [was] inapplicable.”

The court also noted that, even if the provision was a traditional non-compete, section 16600 still would not apply. The court reasoned that the provision did not restrict *former* Youngevity distributors—only *current* distributors—and section 16600 only “targets restrictions on post-employment activity.”

Finally, the court rejected the argument that independent contractors “did not owe the duty of loyalty that ... underlies § 16600.” Citing other California federal precedent, the court found that this was a “distinction without a difference,” and there was “no reason why the ... interpretation of section 16600 would apply differently to employees versus independent contractors.”

### Going Forward

Although not binding precedent, *Youngevity* provides helpful guidance regarding the scope of permissible restrictions on independent contractors. Going forward, companies should work with qualified counsel to ensure that (1) any restrictive covenants are properly drafted and narrowly tailored; and (2) any independent contractor is appropriately used and classified, including under [AB 5](#).



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

#### Los Angeles

Jennifer S. Baldocchi  
1.213.683.6133  
[jenniferbaldocchi@paulhastings.com](mailto:jenniferbaldocchi@paulhastings.com)

Joseph P. Marcus  
1.213.683.6171  
[josephmarcus@paulhastings.com](mailto:josephmarcus@paulhastings.com)

#### San Francisco

Jeffrey D. Wohl  
1.415.856.7255  
[jeffwohl@paulhastings.com](mailto:jeffwohl@paulhastings.com)

Emily J. Stover  
1.415.856.7002  
[emilystover@paulhastings.com](mailto:emilystover@paulhastings.com)

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