

**WASHINGTON LEGAL FOUNDATION**  
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November 25, 2016

Chief Justice Tani Cantil-Sakauye and Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102

Re: *Jibe Audio LLC, et al. v. Beats Electronics, LLC, et al.*  
California Supreme Court Case No. S238096  
Amicus Curiae Letter in Support of Petition for Review  
(Cal. Rules of Court, Rule 8.500(g))

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.500(g), *amicus curiae* Washington Legal Foundation (WLF) submits this letter in support of Beats Electronics, LLC's Petition for Review in *Jibe Audio, LLC v. Beats Electronics, LLC*, Case No. S238096. The Court of Appeal's decision in this case exemplifies the confusion that Courts of Appeal have encountered in applying this Court's opinion in *Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 29 Cal.2d 33. This confusion has undermined the predictability of contracts in California, and has destabilized business relations in the State. This Court should grant review and clarify *Pacific Gas's* conception of the parol evidence rule.

WLF is a public-interest law firm and policy center with supporters in all 50 States, including many in California. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law. To that end, WLF has appeared frequently in this Court in cases relevant to its free-enterprise mission. *See, e.g., Bristol-Myers Squibb Co. v. Superior Court* (2016) 1 Cal.5th 783; *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747.

It is well established that extrinsic evidence may not be introduced to vary the meaning of a binding, integrated contract. (*See, e.g.,* Restatement (Second) of Contracts § 213; Cal. Civ. Code § 1639.) The purpose of this rule is "to give certainty to a transaction that has been reduced to writing by protecting the parties against the doubtful veracity and uncertain memory of interested witnesses," and "to ensure the stability, predictability, and enforceability of finalized written instruments." (Williston on Contracts § 33:1 (quotation marks omitted).) This rule is of profound importance to businesses engaging in commercial transactions. These sophisticated parties carefully negotiate their contracts with the assistance of counsel, and their written agreements therefore reflect a carefully considered and deliberate choice—including, in the case of an integrated writing, a choice to limit the evidence that a court may consider in interpreting a contract to the writing itself.

In *Pacific Gas*, however, this Court held that a court must give “at least a preliminary consideration of all credible evidence offered to prove the intention of the parties,” regardless whether the contract is ambiguous. (69 Cal.2d at pp. 39-40.) In doing so, the Court turned the parol evidence rule on its head, requiring consideration of extrinsic evidence no matter how clear an integrated writing might be. The Courts of Appeal have struggled to reconcile this rule with the fundamental precept that a court must give effect to the contracting parties’ intentions, including their intention to preclude consideration of extrinsic evidence.

Some courts, for example, have placed primacy on party intent, declining to consider extrinsic evidence that “contradict[ed]” an integrated contract on the ground that such evidence cannot be used “to show intention independent of an unambiguous written instrument.” (*Wagner v. Columbia Pictures Industries, Inc.* (2007) 146 Cal.App.4th 586, 592; *see also Machado v. Southern Pacific Transp. Co.* (1991) 233 Cal.App.3d 347, 352 & fn.3 [“The cardinal requirement in the construction [of a contract] is that the intention of the parties as gathered from the four corners of the instrument must govern.”].) Other courts, however, have subordinated party intent to a rigid conception of *Pacific Gas*, finding it “reversible error for a trial court to refuse to consider ... extrinsic evidence on the basis of the trial court’s own conclusion that the language of the contract appears to be clear and unambiguous on its face.” (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.) This confusion in the lower courts has compounded the uncertainty created by *Pacific Gas*’s liberal approach to the consideration of extrinsic evidence, and has resulted in the mass exodus of business from California.

This case presents an excellent vehicle for addressing the confusion among the Courts of Appeal. In particular, the question presented regarding how *Pacific Gas* should be interpreted is outcome-determinative, and there are few if any factual disputes that could interfere with the Court’s ability to determine the disputed issues of law.

In light of the instability that *Pacific Gas* has created and the deleterious effect it has had on California’s economy, WLF respectfully requests that the Court grant the Petition for Review.

Respectfully submitted,

/s/ Richard A. Samp  
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Mark S. Chenoweth  
Washington Legal Foundation

## CERTIFICATE OF SERVICE

I, Richard A. Samp, hereby certify as follows:

I am employed in Washington, District of Columbia. I am over the age of eighteen years and am not a party to this action. My business address is Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, DC 20036. On November 28, 2016, I served a copy of the following document:

**AMICUS LETTER SUPPORTING BEATS ELECTRONICS, LLC's PETITION  
FOR REVIEW IN *JIBE AUDIO LLC, et al. v. BEATS ELECTRONICS, LLC, et al.***

on the interested parties in this action, by:

x **Service by Mail:** placing true and correct copy thereof in an envelope addressed to the attorney(s) of record, addressed as follows:

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I certify under penalty of perjury under the laws of the District of Columbia that the  
above is true and correct.

/s/ Richard A. Samp  
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