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 Apple Inc.

11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

15 NANCY ROMINE MINKLER,  
 16 Individually and on Behalf of All Others  
 Similarly Situated,  
 17  
 Plaintiffs,  
 18  
 v.  
 19 APPLE INC.,  
 20  
 Defendant.

CASE NO. 5:13-cv-05332-EJD  
**DEFENDANT APPLE INC.'S REPLY IN  
 FURTHER SUPPORT OF MOTION TO  
 DISMISS COMPLAINT**  
**(FEDERAL RULES OF CIVIL  
 PROCEDURE RULES 12(B)(6) AND 9(B))**  
**DATE: JULY 18, 2014**  
**TIME: 9:00 A.M.**  
**COURTROOM: 4**

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1 **I. INTRODUCTION**

2 Plaintiff's Opposition [Dkt. No. 30] offers nothing but silence in response to the following  
3 dispositive arguments made by Apple Inc. ("Apple") in its Memorandum of Points and  
4 Authorities in Support of its Motion to Dismiss Plaintiff's Complaint ("MPA") [Dkt. No. 24]:

<b><u>Express and Implied Warranty Claims</u></b>		
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Plaintiff's claim for breach of express warranty fails because the one-year warranty ("Hardware Warranty") that Plaintiff claims was breached does not cover Maps;	MPA p. 9-10
Plaintiff's claim for breach of express warranty fails because the Maps License Agreement that Plaintiff accepted when purchasing her iPhone 5 disclaims any and all warranties, and licenses Maps to Plaintiff "as-is," "as available" and "without warranty of any kind;"	<i>Id.</i> at 9-10	
Plaintiff's claim for breach of express warranty based on purported statements outside the Hardware Warranty fail because the parties agreed in the Maps License Agreement that "no oral or written information or advice given by Apple or an Apple representative shall create a warranty;"	<i>Id.</i> at 11-12	
Plaintiff's claim for breach of implied warranty fails because both the Hardware Warranty and Maps License Agreement conspicuously and specifically disclaim any and all implied warranties, including the implied warranties of merchantability, fitness for a particular purpose and warranties against hidden or latent defects, as permitted under the California Commercial Code;	<i>Id.</i> at 12-13	
Plaintiff's claim for breach of implied warranty fails because Plaintiff's vague and nonspecific problems with Maps do not render the iPhone 5 unusable or unfit for its ordinary purpose; and	<i>Id.</i> at 13-14	

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Plaintiff fails to plead essential facts to support a plausible breach of express or implied warranty claim, including, <i>inter alia</i> , when and where she purchased her iPhone 5, when she discovered the alleged breach, and whether she submitted a warranty claim to Apple during the warranty period.	<i>Id.</i> at 10-11
<b><u>MMWA Claim</u></b>	
Plaintiff’s MMWA claim fails absent a violation of the California Commercial Code, which is lacking here.	<i>Id.</i> at 14
<b><u>Fraud Based Claims</u></b>	
Plaintiff’s CLRA, FAL, UCL and negligent misrepresentation claims (“Fraud-Based Claims”), which are governed by Rule 9(b), fail because Plaintiff fails to present a single oral or written statement by Apple representing that Maps was free of defects and error-free;	<i>Id.</i> at 14-16
Plaintiff’s Fraud-Based Claims fail because Plaintiff fails to plead the circumstances surrounding any oral or written statement by Apple representing that Maps was free of defects and error-free, e.g., where and when any such statement was made ( <i>Id.</i> );	<i>Id.</i>
Plaintiff’s Fraud-Based Claims fail because contrary to Plaintiff’s assertions, Apple specifically represented in the Hardware Warranty and Maps License Agreement that <ul style="list-style-type: none"><li>• Apple does not warrant that Maps will be uninterrupted or error-free,</li><li>• Apple does not guarantee the availability, accuracy, completeness, reliability or timeliness of location data or any other data provided by Maps, and</li><li>• Apple does not guarantee that any defects in Maps will be corrected.</li></ul>	<i>Id.</i> at 14-20

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Plaintiff’s negligent misrepresentation claim is barred by California’s economic loss doctrine.	<i>Id.</i> at 21
<b><u>CLRA Claim</u></b>	
Plaintiff’s CLRA claim fails because the statute covers only goods and services, and does not cover software such as Maps.	<i>Id.</i> at 17-18
<b><u>FAL Claim</u></b>	
Plaintiff’s FAL claim fails because she cites no statements by Apple “in any newspaper or publication, or any advertising device,” as required under the statute.	<i>Id.</i> at 18
<b><u>UCL Claims</u></b>	
Plaintiff’s UCL claim for a fraudulent practice fails because she fails to cite any statement by Apple representing that Maps would protect her personal safety, and the Privacy Policy relied on by Plaintiff makes no such representation;	<i>Id.</i> at 18-19
Plaintiff’s UCL claim for an unfair practice fails because she cannot rewrite the terms of the parties’ contracts, which disclaim any and all warranties regarding Maps; and	<i>Id.</i> at 19-20
Plaintiff’s UCL claim for an unlawful practice fails because she does not plead a violation of any other law.	<i>Id.</i> at 20

The Court may deem Plaintiff’s silence as an “abandonment of those claims.” *Qureshi v. Countrywide Home Loans, Inc.*, No. C 09-4198-SBA, 2010 WL 841669, at \*6 n. 2 (N.D. Cal. Mar. 10, 2010); *see also Newdow v. Congress of the United States of America*, 435 F. Supp. 2d 1066, 1070 n. 5 (E.D. Cal. 2006) (“The court interprets plaintiff’s silence as a non-opposition to defendants’ motions [to dismiss] on these claims.”), *aff’d. sub nom., Newdow v. Lefevre*, 598 F.3d

1 638 (9th Cir. 2010). Plaintiff similarly abandoned her product defect and personal safety  
2 allegations, tacitly conceding that those allegations lack merit.

3 The Court is left to address Plaintiff’s sole remaining theory, *i.e.*, that Apple  
4 misrepresented “the accuracy and improvements of Maps.”<sup>1</sup> As set forth more fully below, her  
5 “accuracy / improvements” theory is without factual and legal support. The only statement made  
6 by Apple containing the word “accuracy” is in the Maps License Agreement, and in that  
7 statement Apple *refuses* to “guarantee[] the availability, accuracy, completeness, reliability or  
8 timeliness of [] location data or any other data provided by any Services.” (*See* Maier Decl., Ex.  
9 2 at ¶ 5(e) [Dkt. No. 26]; RJN [Dkt. No. 25].) As a matter of law, no reasonable consumer could  
10 possibly construe this explicit disclaimer as a guarantee of accuracy. Regarding Apple’s  
11 representation that it is “continuously improving” Maps, Plaintiff fails to cite a single fact  
12 suggesting that Apple did not make any improvements to Maps between the time of the statement  
13 and the time that Plaintiff purchased her iPhone 5. Plaintiff’s attempt to substitute speculation  
14 and conjecture for well-pleaded facts is woefully insufficient under both Rules 8(a) and 9(b).  
15 Moreover, any aspirational statement by Apple that it was “improving” Maps is too vague to be  
16 actionable.

17 It is undisputed that Apple provided Maps to Plaintiff “as-is” and without any warranties,  
18 express or implied. It is also undisputed that, before her purchase, Plaintiff viewed statements by  
19 Apple apologizing to consumers for the shortcomings of Maps and the frustrations they  
20 experienced, and suggesting that consumers download other navigation apps while Apple worked  
21 to improve Maps. Based on these undisputed facts, there is simply no basis for Plaintiff to  
22 believe that Maps would operate consistently and without fail. The Complaint should be  
23 dismissed in its entirety without leave to amend.

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24  
25 <sup>1</sup> *See, e.g.*, Opp. at p. 4 (“Despite the failures of Maps, Apple continued its marketing campaign  
26 which touted the *accuracy* and *improvements* of Maps. The truth is that Maps was horribly *inaccurate* and  
27 *not improving*.”) (emphasis added); *Id.* at p. 8 (“Apple made specific representations that Maps would be  
28 *accurate* and *improve* over time”) (“Apple knew or should have known that Maps would not perform as  
advertised, yet it advertised Maps as an *accurate* and *improving* navigational tool to consumers  
nationwide.”) (emphasis added).

1 **II. ARGUMENT**

2 Apple’s reply addresses the four arguments made by Plaintiff in opposition to Apple’s  
3 motion to dismiss. In Part (IV)(A) of her Opposition, Plaintiff asserts that Apple’s purported  
4 representations regarding Maps could deceive a reasonable consumer. (*See Opp.* at p. 8-9.) In  
5 Part (IV)(B), Plaintiff asserts that she stated a claim for “fraudulent” and “unfair” practices under  
6 the UCL. (*See Id.* at p. 9-10.) In Part (IV)(3) (sic), Plaintiff asserts that she properly alleged a  
7 breach of express warranty. (*See Id.* at p. 11.) Finally, in Part (IV)(B), Plaintiff asserts that she  
8 satisfied the California Commercial Code’s pre-suit notice requirement for breach of express  
9 warranty claims. (*See Id.* at p. 10-11.) As set forth below, none of these arguments spare her  
10 Complaint from dismissal.

11 **A. Plaintiff Fails To Satisfy The “Reasonable Consumer” Standard.**

12 In support of her Fraud-Based Claims, Plaintiff contends that Apple misled consumers  
13 into believing that Maps “would be accurate and improve over time.” (*Id.* at p. 8.) Plaintiff,  
14 however, fails to cite a single statement attributed to Apple that advertised the performance of  
15 Maps. The only statement made by Apple containing the word “accuracy” is in the Maps License  
16 Agreement, whereby Apple expressly refuses to guarantee the “accuracy” of Maps:

17 Neither Apple nor any of its content providers guarantees the availability,  
18 accuracy, completeness, reliability, or timeliness of stock information,  
19 location data or any other data displayed by any Services.... Location data  
20 provided by any Services, including the Apple Maps service, is provided  
21 for basic navigational and/or planning purposes only and is not intended to  
be relied upon in situations where precise location information is needed  
or where erroneous, inaccurate, time-delayed or incomplete location data  
may lead to death, personal injury, property or environmental damage.

22 (*See Maier Decl.*, Ex. 2 at ¶ 5(e); RJN.) As a matter of law, no reasonable consumer could  
23 construe this explicit disclaimer as a guarantee of accuracy.

24 Plaintiff suggests to the Court that whether a statement is likely to deceive a reasonable  
25 consumer is a question of fact that is inappropriate to decide at the pleading stage. The Ninth  
26 Circuit disagrees:

1 Of course, it is possible that some consumers might hazard such an  
2 assumption. But “[a] representation does not become ‘false and deceptive’  
3 merely because it will be unreasonably misunderstood by an insignificant  
4 and unrepresentative segment of the class of persons to whom the  
5 representation is addressed.” We therefore hold that Best Buy’s advertising  
6 was not likely to deceive a reasonable consumer; the district court’s  
7 dismissal...was proper.

8 *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1162 (9th Cir. 2012) (internal citation omitted);  
9 *see also Stuart v. Cadbury Adams USA, LLC*, 458 Fed. Appx. 689, 691 (9th Cir. 2011) (“[o]nly an  
10 unreasonable consumer would be confused or deceived by Cadbury’s failure to clarify that  
11 Trident White gum works only if consumers continue to brush and floss regularly”); *Garcia v.*  
12 *Sony Computer Entm’t Am., LLC*, 859 F. Supp. 2d 1056, 1064 (N.D. Cal. 2012). (“Contrary to  
13 plaintiff’s suggestion, the logos simply do not rise to the level of an express, affirmative  
14 representation to that effect. Garcia cannot maintain, without more, that reasonable consumers are  
15 likely to adopt his specific, and fairly extreme, understanding of the logos.”) Contrary to  
16 Plaintiff’s suggestion, the Court may dismiss a complaint where, as here, it is unlikely that a  
17 reasonable consumer would have been deceived by the alleged representations.

18 In support of her theory that Apple touted the “improvements” of Maps, Plaintiff cites two  
19 statements made in September 2012 by Apple representatives. On September 20, 2012, Trudy  
20 Muller, an Apple spokeswoman, stated that “we are continuously improving [Maps]” in response  
21 to widely-publicized criticism of the navigational software. (Compl. ¶ 4.) That same month,  
22 Apple’s CEO published an apology letter to its consumers for their frustrations with Maps. The  
23 September 28, 2012 letter, quoted in full at paragraph 33 of the Complaint, states as follows:

24 To our customers,

25 At Apple, we strive to make world-class products that deliver the best  
26 experience possible to our customers. With the launch of our new Maps  
27 last week, we fell short on this commitment. We are extremely sorry for  
28 the frustration this has caused our customers and we are doing everything  
we can to make Maps better.

We launched Maps initially with the first version of iOS. As time  
progressed, we wanted to provide our customers with even better Maps  
including features such as turn-by-turn directions, voice integration,  
Flyover and vector-based maps. In order to do this, we had to create a new  
version of Maps from the ground up.

1 There are already more than 100 million iOS devices using the new Apple  
2 Maps, with more and more joining us every day. In just over a week, iOS  
3 users with the new Maps have already searched for nearly half a billion  
4 locations. The more our customers use our Maps the better it will get and  
5 we greatly appreciate all of the feedback we have received from you.

6 While we're improving Maps, you can try alternatives by downloading  
7 map apps from the App Store like Bing, MapQuest and Waze, or use  
8 Google or Nokia maps by going to their websites and creating an icon on  
9 your home screen to their web app.

10 Everything we do at Apple is aimed at making our products the best in the  
11 world. We know that you expect that from us, and we will keep working  
12 nonstop until Maps lives up to the same incredibly high standard.

13 Tim Cook  
14 Apple's CEO

15 (*Id.* ¶ 33.) Plaintiff asserts that these statements are fraudulent because she believes that Apple  
16 did not make any improvements to Maps after September 2012, but fails to plead any  
17 particularized facts supporting her belief. For example, Plaintiff does not allege that the widely-  
18 publicized “screw-ups” and “fails” that preceded these statements were not remedied in  
19 subsequent versions of Maps. Nor does she present any specific facts to suggest that the version  
20 of Maps on her iPhone 5 is exactly the same as the version of Maps that existed in September  
21 2012. Instead of presenting particularized facts, as Rule 9(b) requires, Plaintiff offers rank  
22 speculation and conjecture, which does not even satisfy the more liberal pleading standards of  
23 Rule 8(a). *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007) (factual allegations  
24 “must be enough to raise a right to relief above the speculative level” such that the claim “is  
25 plausible on its face”). Plaintiff has failed to present any facts to plausibly suggest that Apple did  
26 not make any improvements to Maps.

27 Moreover, the aspirational statements made by Apple's representatives regarding efforts  
28 to “improve” Maps are simply too vague to be actionable. *In re American Apparel, Inc.*  
29 *Shareholder Litigation*, 855 F. Supp. 2d 1043, 1072-1073 (C.D. Cal. 2012) (defendants' repeated  
30 assertions that they were making efforts to improve financial systems and internal controls were  
31 “couched in aspirational terms,” and “were simply too vague to be actionable”); *In re West Seal,*  
32 *Inc., Sec. Litig.*, 518 F. Supp. 2d 1148, 1168 (C.D. Cal. 2007) (citing “continuing improvements”

1 as an example of non-actionable “run-of-the-mill corporate optimism”); *In re Cornerstone*  
2 *Propane Partners, L.P.*, 355 F. Supp.2d 1069, 1087 (N.D. Cal. 2005) (holding that the term  
3 “continuing improvements” was non-actionable because it constituted “vague, unspecific  
4 assertions of corporate optimism”); *see also In re iPhone 4S Consumer Litig.*, No. C 12-1127-  
5 CW, 2014 WL 589388 (N.D. Cal. Feb. 14, 2014) (rejecting several statements by Apple as non-  
6 actionable puffery). Thus, the Court should deem any statements by Apple that it was working to  
7 “improve” Maps as run-of-the-mill statements of corporate optimism that are non-actionable as a  
8 matter of law.

9 Finally, Plaintiff’s criticisms of the “accuracy and improvements of Maps” are too  
10 ambiguous for Apple to defend. She alleges that “Maps was unable to consistently perform as  
11 shown and represented,” without specifying a level of “consistency” or level of “accuracy” and  
12 “improvements” that she expected. (*See Opp.* at pp. 9-10.) Chief Judge Wilken of this Court  
13 recently ***dismissed without leave to amend*** a similar claim against Apple regarding the Siri  
14 function on the iPhone 4S. In *In re iPhone 4S*, the plaintiffs alleged that Apple misrepresented  
15 that Siri would perform “on a consistent basis” in understanding user questions. *In re iPhone 4S*,  
16 2014 WL 589388 at \*6. The Court recognized that the alleged representation was “unacceptably  
17 ambiguous” and too vague to be actionable: “Plaintiffs do not elaborate on the meaning of the  
18 term ‘on a consistent basis’ anywhere in their complaint or their argument. Apple and the Court  
19 are left to guess whether Plaintiffs expected Siri to operate without fail, or more often than not, or  
20 at any other level below perfection.” *Id.*

21 The same rationale applies here. Plaintiff does not elaborate on the level of accuracy or  
22 improvements that she expected from Maps. Plaintiff, like the plaintiffs in *In re iPhone 4*, simply  
23 alleges that “Maps was unable to consistently perform as shown and represented,” without  
24 specifying a level of “consistency,” leaving Apple and the Court to guess whether Plaintiff  
25 expected Maps to operate without fail, or more often than not, or at any other level below  
26 perfection. (*See Opp.* at pp. 9-10.) Thus, as Judge Wilken recognized:

1 The Court cannot determine whether Plaintiff[] [has] properly plead that a  
2 misrepresentation occurred, including the questions of whether Plaintiff[]  
3 [was] justified in inferring such a standard from the advertisements,  
4 whether a reasonable consumer would perceive the same standard, and  
5 whether [Maps] failed to meet such a standard, and how Apple would be  
6 shown to have known [Maps] did not meet the expected standard.  
7 Including this information is necessary to give Apple notice of what level  
8 of performance it must defend, framing the dispute for summary judgment  
9 and trial.

10 *In re iPhone 4S*, 2014 WL 589388 at \*6. Absent such well-pleaded allegations, Plaintiff fails to  
11 state a claim, and her Complaint must be dismissed without leave to amend.

12 **B. The Complaint Fails To Plead A UCL Violation.**

13 In Part (IV)(B) of her Opposition, Plaintiff contends that her Complaint establishes  
14 fraudulent and unfair practices under the UCL. She first contends that the Complaint states a  
15 fraudulent practice under the UCL by alleging “the specific content of Apple’s *advertisements*  
16 and *promotional demonstrations* regarding Maps functionality and capabilities.” (Opp. at p. 9  
17 (emphasis added).) According to Plaintiff, the Complaint further alleges “that Maps was unable  
18 to consistently perform as shown and represented in these *advertisements* and *promotions*.” (*Id.*  
19 at p. 9-10 (emphasis added).) Nowhere in the Complaint, however, does Plaintiff cite a single  
20 “advertisement” or “promotional demonstration” regarding Maps.<sup>2</sup> Plaintiff should not be  
21 allowed to defend the veracity of her UCL fraud claim by resorting to vague and generalized  
22 references to phantom advertisements and promotions that are not specifically referenced or  
23 quoted anywhere in her pleading. *See In re iPhone 4S*, 2014 WL 589388 at \* 5 (“Apple would be  
24 hard-pressed to defend against an allegation that the overall impact of these commercials and  
25 advertisements misled Plaintiffs. That does not meet the level of specificity required by Rule

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26 <sup>2</sup> Plaintiff also contends in her Opposition that “[t]hrough numerous press releases, press  
27 conferences, website representations and direct email solicitations, Apple solicited consumers to purchase  
28 its devices by representing that the Maps feature was an innovative, accurate and versatile navigational  
29 tool.” (Opp. at p. 4.) The Complaint, however, fails to quote a single press release, press conference,  
30 website representation or direct email solicitation, let alone one that describes Maps as “innovative,”  
31 “accurate,” or “versatile.” Without specifics, including who made the statement, what the statement said,  
32 and where and when the statement was made, it is impossible for Apple to properly defend such  
33 allegations.

1 9(b).”). Indeed, the term “promotional demonstration” is not even used in her Complaint. Apple  
2 should not be forced to defend a moving target.

3 Regarding the UCL’s unfairness prong, Plaintiff recites the standards for an unfair policy  
4 under California law, but fails to explain to the Court why her pleading satisfies these standards.  
5 Nor can she provide a sufficient explanation. It is undisputed that Plaintiff accepted the terms of  
6 the Maps License Agreement, which disclaimed any and all representations and warranties  
7 regarding the functionality of Maps and provided the software “as-is.” There is nothing “unfair”  
8 about these terms, and the Plaintiff cannot ask the Court to invoke the UCL to rewrite them. *See,*  
9 *e.g., Walker v. Countrywide Home Loans, Inc.*, 98 Cal. App. 4th 1158, 1176-1177 (2002) (“The  
10 ‘unfairness’ element of the unfair competition law does not give the courts a general license to  
11 review the fairness of contracts.”) (internal citations and quotations omitted). Her UCL claims  
12 fail as a matter of law.

13 **C. Apple’s Statements Do Not Create An Express Warranty.**

14 As set forth above, Plaintiff concedes that she has no claim for breach of express or  
15 implied warranty under both the Hardware Warranty and Software License Agreement, and it is  
16 undisputed that the terms are valid and enforceable. Attempting to create a separate express  
17 warranty where none exists, Plaintiff asserts that she saw and relied on purported “advertisements  
18 and promotions” that warranted the accuracy and improvements of Maps. Plaintiff’s breach of  
19 express warranty claim in Count I, however, does not allege that Plaintiff saw any  
20 “advertisements or promotions” regarding Maps. Instead, Count I alleges that she saw two  
21 statements by Apple representatives. The first statement was made by Scott Forstall at the World  
22 Wide Developers Conference in June of 2012 “touting the new iOS 6 as a ‘major initiative,’” and  
23 the second statement was made by Apple’s CEO in a September 28, 2012 letter to its customers  
24 “providing ‘persistent encouragement’ by Apple to stick with its products because ‘the more our  
25 customers use our Maps the better it will get.’” (Compl., Count I (Breach of Express Warranty) at  
26 ¶ 61; *see also* Compl. at ¶¶ 16, 33.) These two statements, which are neither advertisements or  
27 promotions, are non-actionable in warranty for two independent reasons.

1 First, the Hardware Warranty clearly and conspicuously states that it is the exclusive  
2 express warranty, and disclaims all other express warranties. (*See* Maier Decl., Ex. 1 (a-b); RJN  
3 (“...THIS WARRANTY AND THE REMEDIES SET FORTH ARE EXCLUSIVE AND IN  
4 LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL,  
5 WRITTEN, STATUTORY, EXPRESS OR IMPLIED.”).) In addition, the Maps License  
6 Agreement clearly and conspicuously states that Maps is provided “as is,” “as available,” and  
7 “without warranty of any kind.” (*Id.*, Ex. 2 at ¶ 7.3.) (“TO THE MAXIMUM EXTENT  
8 PERMITTED BY APPLICABLE LAW, THE iOS SOFTWARE AND SERVICES ARE  
9 PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT  
10 WARRANTY OF ANY KIND, AND APPLE ... HEREBY DISCLAIM[S] ALL WARRANTIES  
11 AND CONDITIONS WITH RESPECT TO THE iOS SOFTWARE AND SERVICES, EITHER  
12 EXPRESS, IMPLIED OR STATUTORY ...” .) By agreeing to its terms, Plaintiff further  
13 acknowledged that “NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY  
14 APPLE OR AN APPLE AUTHORIZED REPRESENTATIVE SHALL CREATE A  
15 WARRANTY.” (*Id.* at ¶ 7.6.) Thus, the Hardware Warranty and Software License Agreements  
16 govern Plaintiff’s claim and warrant the dismissal of Count I.

17 Second, neither of these statements satisfies the common law elements of an express  
18 warranty. Under California law a breach of express warranty claim requires that the plaintiff  
19 identify a “specific and unequivocal written statement” about the product that constitutes an  
20 “explicit guarantee[.]” *Manely v. Gen. Motors Corp.*, 108 F.3d 1176, 1181 (9th Cir. 1997).  
21 Neither statement constitutes an “explicit guarantee” regarding Maps. The first statement merely  
22 describes iOS 6 – not Maps – as a “major initiative,” and the second statement, using Plaintiff’s  
23 own words, was “encouragement” to purchase Apple products. Simply put, these statements do  
24 not “guarantee” anything. For any and all of these reasons, Plaintiff’s express warranty claims  
25 fail as a matter of law.



