

MAY 27 2011

In the Third Judicial District Court, Salt Lake County, State of Utah

SALT LAKE COUNTY

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Deputy Clerk

LAUREN ROSENBERG, an individual,

Plaintiff,

vs.

**PATRICK HARWOOD, an individual,
GOOGLE, a corporation, and JOHN
DOES I-X,**

Defendants.

MEMORANDUM DECISION

Case No. 100916536

Hon. Deno G. Himonas

INTRODUCTION

Plaintiff Lauren Rosenberg alleges that Defendant Google negligently provided her with walking directions that directed her to cross State Route 224 (SR 224),¹ a rural highway with heavy traffic and no sidewalks, where she was seriously injured after being struck by an automobile that was negligently driven by Defendant Patrick Harwood. Google now brings this motion to dismiss Rosenberg’s claims against it, on the ground that the Complaint fails to state a cause of action against Google. *See* Utah R. Civ. P. 12(b)(6). For the reasons discussed below, I GRANT the motion to dismiss Rosenberg’s claims against Google.²

ANALYSIS

The Complaint asserts four causes of action against Google: (1) General Negligence, (2) Failure to Warn, (3) Strict Liability–Defective Design, and (4) Strict Liability–Failure to Warn. In her memorandum opposing the motion to dismiss, Rosenberg consented to the dismissal of the third and fourth claims, which are based on a product liability theory. Therefore, my analysis of

¹ The portion of SR 224 where Rosenberg was injured is commonly referred to as Deer Valley Drive.

² Following oral argument, Rosenberg filed a motion to amend the Complaint to assert an additional cause of action against Google for negligent misrepresentation. This Memorandum Decision does not address that motion or the negligent misrepresentation claim because briefing on the motion to amend is not yet complete and the motion has not been submitted for decision.

Google's motion to dismiss is limited to the remaining negligence claims.³

In analyzing a rule 12(b)(6) motion to dismiss, a court's "inquiry is concerned solely with the sufficiency of the pleadings, [and] not the underlying merits of [the] case." *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226 (internal quotation marks omitted) (alterations in original). Thus, in reviewing Google's motion, the Court "accept[s] the factual allegations [in the Complaint] as true and interpret[s] those facts and all inferences drawn from them in the light most favorable to the plaintiff as a non-moving party." *Id.* ¶ 9.

Google contends that the negligence claims should be dismissed for two reasons: First, Google contends, Rosenberg's claims are barred by the federal and state constitutions, *see* U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."); Utah Const. art. I. §§ 1, 15 (providing that "[a]ll men have the inherent and inalienable right to . . . communicate freely their thoughts and opinions" and prohibiting the passage of laws that "abridge or restrain the freedom of speech or of the press"), and second, Google maintains, because it did not owe Rosenberg a duty that would give rise to a negligence claim, *see generally* *Young v. Salt Lake City School Dist.*, 2002 UT 64, ¶ 12, 52 P.3d 1230 ("[T]o prevail upon a negligence claim under Utah law, a plaintiff must establish . . . that the defendant owed him or her a duty of care.").

Although both parties focus on and address the constitutional issues first in their memoranda, the Utah Supreme Court has instructed that "courts should decide cases on nonconstitutional grounds where possible, including common law . . . grounds," and should only "resort to constitutional law" where "the court cannot resolve the issue before it by reference to common law." *West v. Thomson Newspapers*, 872 P.2d 999, 1004 (Utah 1994). The supreme court has further instructed that the question of whether a defendant owes a plaintiff a duty is the first question that should be addressed in a negligence case. *See Yazd v. Woodside Homes Corp.*, 2006 UT 47, ¶ 14, 143 P.3d 283. Accordingly, I begin my analysis with Google's argument that it does not owe Rosenberg a duty. Because I conclude that Google did not owe Rosenberg the duties alleged in the Complaint, I do not address the constitutional issue.

I. Whether Google Owed Rosenberg a Duty

In the negligence context, "[a] duty . . . may be defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another." *AMS Salt Indus., Inc. v. Magnesium Corp. of America*, 942 P.2d 315, 320-21 (Utah 1997) (quoting PROSSER AND KEETON ON THE LAW OF TORTS § 53, at 356 (5th ed. 1984)). "The determination of whether a legal duty exists falls to the court. It is a purely legal question, and since in the absence of a duty a plaintiff will not be entitled to a remedy, it is the first question to be answered." *Yazd*, 2006 UT 47, ¶ 14; *accord* *Ferree v. State*, 784 P.2d 149, 151 (Utah 1989)

³ Although Rosenberg's Complaint does not expressly label the Failure to Warn count as a negligence claim, it is apparent that it is a negligence claim, and Rosenberg classifies it as such in her memorandum opposing the motion to dismiss.

(“The issue of whether a duty exists is entirely a question of law to be determined by the court.”). To determine whether a duty exists, courts analyze several factors, including “the legal relationship between the parties, the foreseeability of injury, the likelihood of injury, public policy as to which party can best bear the loss occasioned by the injury, and other general policy considerations.” *Normandeau v. Hanson Equipment, Inc.*, 2009 UT 44, ¶ 19, 215 P.3d 152. The determination that a “duty does or does not exist is an expression of the sum total of those considerations of policy which lead the law to say that the plaintiff is [or is not] entitled to protection.” *Webb v. University of Utah*, 2005 UT 80, ¶ 9, 125 P.3d 906 (internal quotation marks omitted) (alteration in original); *see also Yazd*, 2006 UT 47, ¶ 17 (“Legal duty . . . is the product of policy judgments applied to relationships.”).

Here, the Complaint alleges that Google owed Rosenberg two duties: (1) “to exercise reasonable care in providing reasonably safe directions,” and (2) to warn of dangers that Google either knew or should have known about, such as the facts that SR 224 is “a rural highway with no sidewalks,” and that vehicles “travel[] at a high rate of speed” along the road.⁴ (Compl. 4-6.) Applying the *Normandeau* factors in this case, I conclude that Google did not owe Rosenberg the broad duties alleged in the Complaint.

A. The Legal Relationship Between Google and Rosenberg

With respect to the first *Normandeau* factor, I conclude that it does not require the imposition of a duty. As a preliminary matter, I note that nothing in the Complaint indicates that there was any contractual or fiduciary relationship between Google and Rosenberg that would give rise to any contractual or fiduciary duties on Google’s part. Likewise, the Complaint does not allege that Google “deprived [Rosenberg] of [her] normal opportunities for protection” or that the parties otherwise had a special relationship that would impose on Google a duty to protect Rosenberg from the negligence of a third party like Harwood.⁵ RESTATEMENT (SECOND) OF TORTS § 314A(4) (1965); *see also Yazd*, 2006 UT 47, ¶ 18 (“A person has no legal duty to protect another person from the conduct of a stranger unless the person upon whom a duty is sought to be imposed has a ‘special relationship’ with either the stranger or the potential victim.”); *Webb*, 2005 UT 80, ¶ 15 (“[T]he duty to protect[] arises only where a special

⁴ In articulating that duty, Rosenberg does not discuss how such a duty is impacted where the actual injury is caused by the negligence of a third party, as is the case here, where Rosenberg claims that Harwood was driving negligently.

⁵ Although the Complaint does allege that Google expects users like Rosenberg to “rely on the accuracy of the walking directions” provided (Compl. 5.), that fact is insufficient to establish that the parties had a special relationship that would give rise to a duty. Indeed, establishing a special relationship likely requires a plaintiff in a case such as this to show that the defendant “deprive[d] the [plaintiff] of his normal opportunities for protection,” not just that the defendant expected the plaintiff to rely on their statement. RESTATEMENT (SECOND) OF TORTS § 314A(4). Moreover, it is the *safety* of the directions, not their *accuracy*, that Rosenberg claims was flawed, which makes her reliance on their accuracy irrelevant to the safety issue.

relationship is found to exist.”). Consequently, any duties would have to arise from the relationship created when Google provided the walking directions via its Google Maps service, and Rosenberg used the Google Maps service to obtain the directions.

In support of her claim that a duty exists, Rosenberg correctly states that service providers may be liable if they negligently provide services to their customers.⁶ *See, e.g., Bushnell v. Sillitoe*, 550 P.2d 1284, 1285 (Utah 1976) (“It is clear that in the practice of his profession, a surveyor may be found liable in damages resulting from his mistake or misrepresentation in the survey of realty, where he does not perform his duties with a reasonable degree of care and skill.”). However, “[a] relationship that is highly attenuated is less likely to be accompanied by a duty.” *Yazd*, 2006 UT 47, ¶ 16. For example, where a publisher or other information provider publishes information to the general public, courts have regularly held that they owed no duty to the public at large.⁷ *See, e.g., First Equity Corp. v. Standard & Poor’s Corp.*, 670 F. Supp. 115, 117 (S.D.N.Y. 1987) (declining to impose a duty on a publisher because “the potential number of persons to whom a publication might become available is without limit”). Therefore, the fact that Google provided the same information to Rosenberg that is available to limitless other users of the Google Maps service does not warrant imposing any heightened duty on Google. Indeed, given the attenuated relationship between Google and all the users of the Google Maps service, any duties owed to users like Rosenberg would be minimal. *See Yazd*, 2006 UT 47, ¶ 16.

B. The Foreseeability of Harm

Turning next to the foreseeability of harm, that factor weighs in favor of finding a duty. It is axiomatic that a mere “speculative possibility” that harm or injury might occur “is not enough to create a legal duty.” *Sanders v. Acclaim Entm’t, Inc.*, 188 F. Supp. 2d 1264, 1272 (D. Colo. 2002). Rather, “to meet the test of negligence . . . [the harm or injury must] be reasonably foreseeable, not that the particular accident would occur, but only that there is a likelihood of an occurrence of the same general nature.” *Steffensen v. Smith’s Mgmt. Corp.*, 862 P.2d 1342, 1346

⁶ In opposing the motion to dismiss, Rosenberg seems to suggest that Google provided expert advice regarding the walking directions. *See generally Yazd*, 2006 UT 47, ¶ 16 (noting that a disparity between the parties’ knowledge may support imposing a duty). However, the Complaint does not include any allegation that Google was providing expert advice or that there was a gross disparity between the parties’ knowledge, and even if it did, “[k]nowledge and expertise alone do not establish an independent duty; privity or a direct relationship is also required.” *Davencourt at Pilgrims Landing Homeowners Assoc. v. Davencourt at Pilgrims Landing, LC*, 2009 UT 65, ¶ 33, 221 P.3d 234. Moreover, any disparity in knowledge cuts in favor of Google because Google provided the walking directions from a remote location, while Rosenberg was actually on the scene where she could assess the safety risks before attempting to cross SR 224.

⁷ As discussed in greater detail below, Google is essentially a publisher of information. The information provided via its Google Maps service is published in a form that is provided to, and accessible by, any individual using the Google Maps service.

(Utah 1993) (internal quotation marks omitted). Furthermore, the foreseeability factor “does not relate to the specifics of the alleged tortious conduct but rather to the general relationship between the alleged tortfeasor and the victim. Whether a harm was foreseeable in the context of determining duty depends on the general foreseeability of such harm, not whether the specific mechanism of the harm could be foreseen.” *Normandeau*, 2009 UT 44, ¶ 20 (internal quotation marks omitted).

In this case, Rosenberg claims that her injury was reasonably foreseeable based on the Complaint’s allegations that Google directed her to walk along SR 224, a dangerous road that lacks sidewalks and is frequently used by vehicles traveling at a high rate of speed. Although the Complaint does not specifically state that those vehicles are negligently operated at high speeds, as Rosenberg alleges that Harwood’s vehicle was, such a conclusion could be inferred from the facts alleged in the Complaint. *See generally Oakwood Vill.*, 2004 UT 101, ¶ 9 (stating that in reviewing a motion to dismiss, courts should “accept the factual allegations [in the Complaint] as true and interpret those facts and all inferences drawn from them in the light most favorable to the plaintiff as a non-moving party”). These allegations do not necessarily contemplate the “specific mechanism of the harm” that occurred in Rosenberg’s case, but the allegations are sufficient to establish that it was foreseeable that Rosenberg would be harmed as a result of following walking directions that led her along a dangerous road. *Normandeau*, 2009 UT 44, ¶ 20 (internal quotation marks omitted).

C. The Likelihood of Injury

With respect to the third *Normandeau* factor, I conclude Rosenberg’s injury was not likely to occur, which weighs against finding a duty on Google’s part.

Rosenberg claims that she “has alleged and will prove that th[e] route [at issue] made an accident far more likely.” (Pla.’s Mem. Opp. Def.’s Mot. Dism. 13.) However, Rosenberg points to nothing in the Complaint that alleges that an accident is more likely along the route in question than any other route. Furthermore, as Google points out, it is unlikely that a pedestrian will be injured while crossing a road, as Rosenberg was here, unless the pedestrian breaches their own duty and disregards the risks to cross the road in front of oncoming traffic. *See generally* Utah Code Ann. § 41-6a-1003(1) (2010) (“A pedestrian crossing a roadway at any point other than within a marked crosswalk . . . shall yield the right-of-way to all vehicles on the roadway.”); *Anderson v. Bradley*, 590 P.2d 339, 341 (Utah 1979) (“[P]edestrian[s] have a duty to maintain reasonable, proper and adequate lookout and to recurrently reobserve and reappraise the situation.”). The facts relating to any negligence on Rosenberg’s part are not currently before the Court and are not considered in connection with the motion to dismiss,⁸ but it is clear that Google

⁸ The facts relating to Rosenberg’s alleged negligence and inebriation are not properly considered in the context of a motion to dismiss, and would only be considered in a summary judgment context. *See* Utah R. Civ. P. 12(b) (stating that if “matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary

(continued...)

was not required to anticipate that a user of the Google Maps service would cross the road without looking for cars, *see Webb*, 2005 UT 80, ¶ 27 (holding that it is unreasonable to expect that a “student would understand that his academic success . . . turned on whether they abandoned all internal signals of peril to take a particular potentially hazardous route”) and that, absent negligence on the user’s part, an injury while crossing the road would be unlikely.⁹

D. Policy Considerations

Turning to the final *Normandeau* factor, the policy considerations weigh heavily against a conclusion that Google owed Rosenberg a duty.

Before addressing the specific policy considerations, I first address Google’s contention that it is a “publisher,” albeit an electronic one, entitled to the protections the law affords the same.¹⁰ *See, e.g., Winter v. G.P. Putnam’s Sons* 938 F.2d 1033, 1037 (9th Cir. 1991) (declining to impose a duty on the publisher of a mushroom encyclopedia); *First Equity Corp.* 670 F. Supp. at 117 (declining to impose a duty on a publisher of corporate reports). Rosenberg argues that Google is not a publisher because the Google Maps service “provide[s] one-on-one information about walking routes” that is not “published to the general public.”¹¹ (Pla.’s Mem. Opp. Mot.

⁸ (...continued judgment”).

⁹ Moreover, because there was no special relationship between Google and Rosenberg, Google did not have a particular duty to protect Rosenberg from her own negligence and the negligence of third parties like Harwood. *See Webb*, 2005 UT 80, ¶ 15 (“[T]he duty to protect[] arises only where a special relationship is found to exist.”); *see also Yanase v. Automobile Club of So. Cal.*, 212 Cal. App. 3d 468, 475-77(1989) (declining to impose a duty on the publisher of a travel guide to determine the safety of areas surrounding motels because a duty to protect the plaintiff only arises where the parties are in a special relationship).

¹⁰ Some courts have relied on the First Amendment in reaching that conclusion, holding that an imposition of a duty would violate the First Amendment. *See, e.g., Smith v. Linn*, 563 A.2d 123, 125 (Pa. Super. Ct. 1989). As stated above, I do not reach the constitutional issue here, but the potential First Amendment concerns remain a valid factor to consider in the Court’s analysis of the duty issue. *See generally Winter v. G.P. Putnam’s Sons* 938 F.2d 1033, 1037 (9th Cir. 1991) (“Were we tempted to create this duty, the gentle tug of the First Amendment and the values embodied therein would remind us of the social costs.”); *Brandt v. Weather Channel, Inc.*, 42 F. Supp. 2d 1344, 1346 (S.D. Fl. 1999) (refusing to recognize a duty to provide accurate weather forecasts because doing so would “chill the well established first amendment rights of the broadcasters”).

¹¹ In making that argument, Rosenberg does not dispute that information on the Internet, including information in online databases, is published. *See New York Times v. Tasini*, 533 U.S. (continued...)

Dism. 14.) In support of that argument, Rosenberg cites *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985), for the proposition that the First Amendment protections afforded to publishers are not available where the information is provided to a limited, “specific . . . audience” for commercial purposes, rather than provided to the general public. *Id.* at 762 (permitting recovery for presumed and punitive damages on a defamation claim against a company that provided a credit report that “was made available to only five subscribers who . . . could not disseminate it further,” without “a showing of ‘actual malice’”). However, the Supreme Court’s holding in *Dun & Bradstreet* does not extend as far as Rosenberg asserts. Rather than holding that there are no First Amendment protections available where information is provided to a limited group, the Supreme Court held that the First Amendment did not require “a showing of actual malice” to establish “presumed and punitive damages” where “the defamatory statements do not involve matters of public concern,” and the information was provided for commercial purposes to a limited audience.” *Id.* Regardless, the information Google provides through its Google Maps service is not confined to such a limited audience.¹²

To claim that Google provided the information only to one individual, and therefore is not entitled to the protections afforded publishers, ignores the realities of modern society and technology. As Google notes, the Complaint itself states that the information provided on the Google Maps service “is readily available via the internet,” (Compl. 4.), and any individual who enters the same starting and ending points will obtain the same walking directions that were provided to Rosenberg. While a user of the service is able to customize the results of his or her search, the exact same information provided to Rosenberg is readily available to any individual who uses the same search terms as Rosenberg, and anyone who obtains those directions is free to disseminate the search terms and directions to others. Given these facts, it is difficult to imagine that information could be disseminated more broadly to the public. Therefore, Google is clearly a publisher because it makes all of the information on the Google Maps service available to the public worldwide, and the fact that a user of the Google Maps service obtains customized search

¹¹. (...continued)

483, 498-503 (2001) (comparing news articles available on the Internet with traditional forms of media to illustrate that information on the Internet is considered “published”).

¹². Moreover, several of the policy considerations underlying the Supreme Court’s decision in *Dun & Bradstreet* are not present in this case. In determining that the speech at issue in *Dun & Bradstreet*—credit reports—was entitled to less protection, the Supreme Court reasoned that the information was “more objectively verifiable than speech deserving of greater protection.” *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 762 (1985). Here, it would be an extremely difficult, if not impossible, undertaking for Google Maps to verify the safety of the routes. Furthermore, as the Supreme Court noted in *Dun & Bradstreet*, there is a “strong interest in the free flow of commercial information,” *Id.* (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 764 (1976)); see also *Virginia State Bd.*, 425 U.S. at 765 (“[T]he free flow of commercial information is indispensable.”), which interest is implicated in this case.

results does not remove the protections afforded to any other publisher of information to the public.

Having established that Google is a publisher, it is apparent that the same policy considerations are present here as those in other cases that have rejected imposing a duty on publishers for providing faulty information.¹³ Chief among those considerations is the possibility that a publisher may be subject to liability to an unlimited number of individuals who may read or receive the information. *See, e.g., First Equity Corp.*, 670 F. Supp. at 117 (declining to impose liability on a publisher because of “the spectre of unlimited liability” (internal quotation marks omitted)); *Demuth Dev. Corp. v. Merck & Co.*, 432 F. Supp. 990, 993 (E.D.N.Y. 1977) (stating that imposing a duty would allow unlimited claims, which could be “devastating in number” (internal quotation marks omitted)); *Bailey v. Huggins Diagnostic & Rehab. Ctr., Inc.*, 952 P.2d 768, 773 (Colo. App. 1997) (stating that imposing liability on an author would impermissibly expose authors “to the risk of multiple claims for personal injuries”). Likewise, requiring Google to investigate its routes to ensure that every portion of the walking directions is safe would impose an onerous burden on Google. Indeed, as the United States Supreme Court has recognized, some errors are “inevitable” in the publishing business. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974); *see also First Equity Corp.*, 670 F. Supp. at 117 (“[I]t is simply impossible to attain perfection in the publishing business.”).

Rosenberg suggests that these burdens might be ameliorated if Google simply posted a statement that included a warning of dangers of which Google knows or should know along a potential route. However, for Google to warn users of such dangers, they would still be required to investigate each portion of the walking directions to determine what dangers might lie along a specific route. *Cf. Winter*, 938 F.2d at 1037 (rejecting plaintiff’s argument that a publisher should include a warning that the contexts of a book may not be accurate because doing so “would force the publisher to . . . investigate the accuracy of the text”). Indeed, the duty articulated in the Complaint includes no limits on the potential dangers of which Google would be required to warn against. Thus, under such a broad duty, Google might have to investigate and warn about any foreseeable risks along every route, which might include negligent drivers, drunk drivers, dangerous wildlife, sidewalks or roads in disrepair, lack of lighting, and other risks that may only exist during certain times of day. Such a duty would impose a burden that would clearly be difficult, if not impossible for Google to bear.

When these burdens are weighed against other factors, such as the high social utility of Google’s information services and the accompanying First Amendment values, *see Virginia State*

¹³ Rosenberg also argues that Google is not only a publisher, but an author, who might enjoy less protection than a publisher because they created the information. However, many of the same policy considerations present in imposing liability on publishers would also be present if liability were imposed on authors, and relying on similar grounds, courts have declined to impose liability on authors as well. *See, e.g., Bailey v. Huggins Diagnostic & Rehab. Ctr., Inc.*, 952 P.2d 768, 773 (Colo. App. 1997).

Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 765 (1976) (“[T]he free flow of commercial information is indispensable.”); *Winter*, 938 F.2d at 1035 (“We place a high priority on the unfettered exchange of ideas.”); *Cardozo v. True*, 342 So. 2d 1053, 1058 (Fl. Ct. App. 1977) (“[I]deas hold a privileged position in our society.”), and the slim likelihood of injury, “courts have placed more value on the societal benefits of information availability than on the rights of private persons who claim to have been harmed,” *Pittman v. Dow Jones & Co.*, 662 F. Supp. 921, 922 (E.D. La. 1987). I agree that such is the case here, where Google’s activities have a high social value and the burdens associated with imposing the broad duties suggested by Rosenberg would be heavy, while the actual likelihood of injury is relatively low. Therefore, under this “basic ‘Hand Formula’ negligence analysis,” *Raab v. Utah Railway Co.*, 2009 UT 61, ¶ 50, 221 P.3d 219, I conclude that policy considerations weigh strongly against imposing the duties articulated in the Complaint.

Such a conclusion does not conflict with the notion that, as Rosenberg states, “the public policy behind tort law is to hold tortfeasors accountable for harms occasioned by their fault,” and that “between an innocent party and a negligent tortfeasor, public policy requires that any loss should be born by the tortfeasor.” *Normandeau v. Hanson Equip., Inc. (Normandeau II)*, 2010 UT App 121, ¶ 4, 233 P.3d 546, 548 (mem.). To impose the broad duties that Rosenberg suggests would not necessarily serve that end. To the contrary, as discussed above, Utah law already imposes certain duties on pedestrians, including to “yield the right-of-way to all vehicles” when “crossing a roadway at any point other than within a marked crosswalk,” Utah Code Ann. § 41-6a-1003(1) (2010), and to “maintain reasonable, proper and adequate lookout[,] and . . . recurrently reobserve and reappraise the situation,” *Anderson*, 590 P.2d at 341. To impose the duties suggested by Rosenberg would reduce, if not eliminate, the duties already imposed on pedestrians. Thus, while imposing a duty on Google would make Google responsible for its own negligent actions, it would serve to diminish the responsibility that pedestrians have for their own safety, which does not serve the goal of making individuals accountable for their own errors.

CONCLUSION

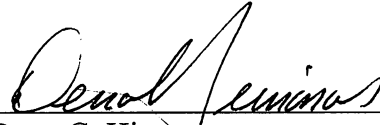
As discussed in this Memorandum Decision, three of the four *Normandeau* factors weigh against imposing the duties on Google that Rosenberg articulated in the Complaint. Although some harm may have been foreseeable, the actual likelihood of injury was relatively low, the relationship between Google was somewhat attenuated and there was no special, fiduciary, or contractual relationship between the parties that would give rise to a duty of protection. Finally, and perhaps most significantly, policy considerations weigh strongly against imposing the suggested duties on Google because the heavy burdens associated with such a duty, along with the high value of Google’s services, significantly outweigh the minimal likelihood of injury. Therefore, on balance, I conclude that the *Normandeau* factors weigh in favor of a conclusion that Google does not owe Rosenberg the duties specified in the Complaint.¹⁴ Accordingly,

¹⁴ In reaching that conclusion, I express no opinion regarding whether Google owed
(continued...)

Google's motion to dismiss is GRANTED in its entirety.

DATED this 27 day of May, 2011

THIRD DISTRICT COURT



Deno G. Himonas
District Court Judge

¹⁴. (...continued)

Rosenberg any duties whatsoever. I simply conclude that Google does not owe Rosenberg the duties alleged in the Complaint.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 100916536 by the method and on the date specified.

MAIL: CRAIG A BUSCHMANN 299 S MAIN ST STE 1800 SALT LAKE CITY, UT
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Date: May 27, 2011

Kristene Laterza

Deputy Court Clerk