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20   UNITED STATES DISTRICT COURT

21   NORTHERN DISTRICT OF CALIFORNIA

22   OAKLAND DIVISION

23 ORACLE USA, INC., *et al*.,   No. 07-CV-01658 PJH (EDL)

                                                  DECLARATION OF PAUL PINTO
24   Plaintiffs,   **IN SUPPORT OF PLAINTIFFS'**
         v.   **OPPOSITION TO DEFENDANTS'**
                                                  MOTION TO EXCLUDE
25 SAP AG, *et al*,   **TESTIMONY OF PAUL PINTO**

26   Defendants.
                                                  Date: September 30, 2010
27   Time: 2:30 p.m.
                                                  Place: Courtroom 3
28   Judge: Hon. Phyllis J. Hamilton
   A/73495331.2/2021039-0000324170
                                                  Case No. 07-CV-01658 PJH (EDL)

       DECLARATION OF PAUL PINTO ISO OPPOSITION TO DEFENDANTS' MOTION TO EXCLUDE
                               TESTIMONY OF PAUL PINTO

I, Paul Pinto, declare as follows:

1. I am over the age of 18 and competent to testify to the facts stated in this declaration. I submit this Declaration in support of the Opposition to the Motion filed on August 19, 2010 ("the Motion") by Defendants SAG AG, SAP America, Inc., and TomorrowNow, Inc. ("Defendants") to Exclude Expert Testimony of Paul C. Pinto. I make the following statements based on my personal knowledge and expertise and, if called as a witness, would testify competently to them.

2. I am the co-founder and managing partner of Sylvan VI, Inc., an advisory services firm that provides management consulting services to clients contemplating the selection of a packaged software product or engaging an external service provider to custom develop software.

I. BACKGROUND AND EXPERIENCE

3. Prior to founding Sylvan VI, I served as a Senior Executive with Infor Global Software and Epicor Software, both of which publish software products that directly compete with Oracle and SAP. In these roles, I was responsible for running the Software Product Implementation and Managed Services business lines, which focused on implementing, upgrading, customizing, and supporting a variety of ERP and Financial Management software products.

4. Prior to my employment with Epicor, I served as a Senior Vice President for NIIT Technologies (one of the largest India-based systems integration firms). In this role, I was responsible for the day-to-day operations of the U.S. business entity, along with overseeing the sales, estimating, and product development functions for a number of India-based software development centers.

5. In all, I have over 24 years of experience in the software development field. I have significant experience in developing software development cost estimates, and have personally been involved in over 100 estimating efforts including at least 50 using function point analysis, and at least 50 using COCOMO.

II.   RETENTION AND ASSIGNMENT

6.   The law firm Bingham McCutchen, on behalf of Oracle USA, Inc., Oracle International Corporation, and Siebel Systems Inc. (collectively referred to herein as "Oracle" or "Plaintiffs"), engaged my expert services to estimate the amount Defendants would have spent to independently develop certain of the software products at issue in the case.

III.   COCOMO EQUATIONS

7.   In the Motion, Defendants reference a portion of my deposition in this matter in which Defendants asked about certain equations related to the COCOMO model. These equations underlie the applications that run the COCOMO model, meaning they are not visible to the user. As a result, someone who uses COCOMO in a practical setting does not need to memorize these equations, nor would he or she even see them.

8.   I used these very same equations in the spreadsheet I designed to run the COCOMO model used in my report, however I applied the equations in a practical and usable format, as opposed to the theoretical format in which they reside in academic texts.

IV.   BACKFIRING

9.   Backfiring is an objective method of estimating a software product's functional size, by counting the number of lines of source code and applying a series of conversion tables that have been developed based on data points that were derived from thousands of software development efforts. This allows the user to objectively develop a cost estimate using function point analysis. Numerous organizations publish conversion tables so that estimators can make these estimations.

10.   In this matter, because I had in my possession the actual software at issue, and could therefore count the actual lines of code, backfiring provided an objective, repeatable, and reliable means of estimating the functional size of the software products in question.

11.   The experience, skill and expertise of the estimator determines the accuracy of any estimate of the cost of developing a piece of software. While the Capers Jones article on backfiring (which was produced with my Report as ORCLX-PIN-000019) states that accuracy can be plus or minus 25%, in my experience the backfiring methodology, as I applied it

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here, is much more accurate, and thus has a considerably tighter accuracy range. Further, given the conservative nature of the overall approach I used in this case, the amounts I calculated would, if anything, understate the costs, and so any inherent inaccuracy -- by design -- goes in Defendants favor.

V. THE EXTRAPOLATION TECHNIQUE USED IN MY EXPERT REPORT

12. Due to time restraints, it was not possible to access the source code for J.D. Edwards World and Siebel software, and so alternatives to the full 10-step methodology had to be employed for those two software product families. The extrapolation technique I used to estimate the amount Defendants would have spent to develop the J.D. Edwards World and Siebel software products is a technique that professionals in my field often use, especially where a known, reasonable analog exists. I have personally used this method many times in my career and found it to be accurate and reliable. I, and the companies for which I have worked, have submitted bids relying upon estimates calculated using extrapolation. There are direct business results if the estimates are inaccurate. If the estimate (and thus the bid) is too low, we lose money on the project. Too high, and we fail to win the bid.

13. Extrapolation based upon a table comparison, such as the type I performed in connection with the Siebel software, is a commonly used, accurate and reliable method of estimating the amount it will cost to develop a piece of software.

14. Attached as Exhibit A is a true and correct copy of an article that was presented by Jingzhou Li & Guenther Ruhe on May 20, 2007 at the International Conference on Software Engineering, entitled Decision Support Analysis for Software Effort Estimation by Analogy. A true and correct copy of a similar article by Murali Chemuturi entitled Analogy Based Software Estimation is attached as Exhibit B. This article was produced as ORCLX-PIN-000110 as one of the supporting materials to my November 16, 2009 Report, and is also available at http://www.chemuturi.com/Analogy%20based%20Software%20Estimation.pdf.

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1 I declare under penalty of perjury under the laws of the United States of America

2 that the foregoing is true and correct and that this declaration was executed on September 9th,

3 2010 at Alpharetta, Georgia.

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   Paul C. Pinto

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