EXHIBIT D

Expert Rebuttal Report Of David P. Garmus

I. Introduction And Summary Of Opinions

As fully documented in this report, I am a universally recognized expert in Function Point Analysis (FPA) and software measurement. Having reviewed the document entitled "Expert Report of Paul C. Pinto" (Pinto Report), I refute any contention that Mr. Pinto applied any recognized form or version of FPA in his report. There is nothing in the Pinto Report that indicated to me that Mr. Pinto understood how Function Points are to be determined, or how they are to be utilized. Mr. Pinto's "Estimating Approach" and his "Ten-Step Analysis To Determine The Cost Of Development Using Function Point Analysis" did not analyze anything using FPA. That "Approach" and that "Analysis" are not recognized steps in any FPA. Consequently, any Function Point value that he achieved through his "Ten-Step Analysis" is totally contrived and without any cognizable basis. The Function Point values he reported are completely fabricated, and his analysis and process would not be recognized by any expert in the field as being a legitimate means of valuing or assessing anything using FPA.

In the Pinto Report, Mr. Pinto purported to estimate "what it would have cost [the Defendants] to independently develop certain software applications."[1] If – for the sake of argument – the Defendants actually were to independently develop all four of the Oracle suites of products recited in the Pinto Report to support TomorrowNow's (TN) customers (as proposed by Mr. Pinto), the newly developed software essentially would have to be an exact replica of the four, recited Oracle suites of products (especially for the purpose of providing most tax updates, bug fixes, etc.). The probability that a software-development project as proposed by Mr. Pinto would result in the creation of four exact replicas of the four Oracle suites of products is essentially zero (i.e., it is essentially impossible). In my opinion, determining the cost for independently developing the four underlying application suites is not appropriate for the case in question.

Further, in my expert opinion, Mr. Pinto should not have attempted to place a value on entire suites of products as TN utilized only a limited percentage of the applications contained in those suites of products.

Mr. Pinto's derivation of productive hours of effort and his estimated development cost are erroneous and baseless, as documented in this report.

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[1] See Pinto Report, page 1.

users of the PeopleSoft, JD Edwards, and Siebel software do not utilize much of the functionality included in their applications.

H. There Was No Need To Translate Vast Quantities of Documentation

In my opinion, if TN were to create any documentation at all, it by and large only would have need for the README Files, CD-ROM Information, Operator Guides, and Maintenance Guides. Accordingly, at most, some – but certainly not all – of the documents referenced by Mr. Pinto might have needed to be translated, so Mr. Pinto's estimates requiring translation of extensive libraries of documentation are significantly overstated. However, Mr. Pinto suggests that every document – irrespective of its use or relevance to the particular applications supported by TN – should be translated into 21 languages. For the vast portion of the documentation, there was no need for translation from English, since TN's personnel presumably all spoke and worked in the English language, and their clients presumably were English speaking, at least with respect to technical matters.

VI. MY RESULTS

A. My Summary Of Analysis

In this report, I have demonstrated that Mr. Pinto did not apply any recognized form or version of FPA in his report. I have documented the IFPUG methodology for sizing in Function Points, and I have shown that Mr. Pinto's "Estimating Approach" and his "Ten-Step Analysis To Determine The Cost Of Development Using Function Point Analysis" did not analyze anything using FPA. The Function Point value he achieved through his Ten-Step Analysis is inconsistent with the IFPUG methodology or any approved sizing methodology. These results are completely fabricated and without substance. In addition to being derived by means of his unrecognized, unorthodox and repudiated approach (and thus suspect), they also seem to me to unsubstantiatable and vastly inflated.

Further, in my expert opinion, he should not have attempted to place a value on entire suites of products as TN utilized only a limited percentage of the applications contained in those suites of products.

Moreover, if – for the sake of argument – the Defendants actually were to independently develop all four of the Oracle software application suites recited in the Pinto Report, then, in order for the newly developed software to be completely useful to TN to support its customers, the newly developed software essentially would have to be an exact replica of the four, recited Oracle application suites (especially for the purpose of providing most tax updates, bug fixes, etc.). The probability that the Defendants (or anyone) could create four exact replicas of the four Oracle application suites from scratch is essentially zero (i.e., it is essentially impossible). Accordingly, in my opinion, determining the cost for independently developing the four underlying application suites is not appropriate for the case in question.

OPTION TO REVISE AND SIGNATURE

I reserve the right to modify and/or supplement this report and/or the opinions set forth herein if subsequent rulings are made by the Court and/or additional evidence becomes available.

I, David P. Garmus, having conducted the aforementioned analysis and having authored this report, confirm that the opinions contained herein represent a fair and unbiased analysis of the facts presented to me.

Date: March 26, 2010

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David P. Garmus