# EXHIBIT D

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 2                    UNITED STATES DISTRICT COURT

 3                 NORTHERN DISTRICT OF CALIFORNIA

 4           BEFORE THE HONORABLE ELIZABETH D. LAPORTE

 5   ORACLE USA, INC., et al.           )
                                        )
 6                  Plaintiffs,         )
                                        )
 7             vs.                      )NO. C 07-1658 PJH (EDL)
                                        )
 8                                      )
     SAP AG, et al.,                    )
 9                                      )SAN FRANCISCO, CALIFORNIA
                 Defendants.            )Tuesday, August 18, 2009
10                                      )10:49 a.m.
     _____ )
11
                         TRANSCRIPT OF PROCEEDINGS
12                         (HEARING ON MOTIONS)

13   APPEARANCES:

14   For Plaintiffs:
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17                       and  GEOFFREY M. HOWARD, ESQ.
                         and  NITIN JINDAL, ESQ.
18                       and  ZACHARY J. ALINDER, ESQ.

19   For Defendants:
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                         BY:  JASON McDONELL, ESQ.
22                       and  ELAINE WALLACE, ESQ.
                         and  PATRICK R. DELAHUNTY, ESQ.
23                            LAURIE PAIGE BURNS, Paralegal

24   Reported by:    MARGARET "MARGO" GURULE, CSR #12976
                      PRO TEM COURT REPORTER, USDC
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TEXT REMOVED - NOT RELEVANT TO MOTION

18       **THE COURT:** Let me say one thing. I don't think you

19 were very specific. You've said you're not going to quantify

20 certain things. I found it very vague to follow exactly what

21 you were and weren't. And when you say you're not going to

22 quantify, does that mean you're going to seek a sum for good

23 will, but you're not going to base it on a quantified damages

24 study, or does it mean you're not seeking any damages for that?

25 So I found that not very clear.

TEXT REMOVED - NOT RELEVANT TO MOTION

18          **THE COURT:**  So going back to -- would you clarify

19   exactly what Oracle is or is not going to do --

20          **MS. HOUSE:**  Okay.

21          **THE COURT:**  -- that's stated I thought in a way that

22   I couldn't really understand it in the briefs as to what it is

23   quantifying and what it isn't and what damages it is seeking

24   and what it isn't?

11          **THE COURT:**  Okay.  And what aren't you quantifying?

12          **MS. HOUSE:**  The testimony that you talked about from

13   Mr. Ellison, anything on goodwill, the notion that there are a

14   host of unnamed potential customers out there who we weren't

15   able to reach or who were sort of kept at bay by virtue of the

16   actions of SAP and TomorrowNow.  That's what he was talking

17   about "the tip of the iceberg."

18          While Mr. Ellison testified to it and obviously

19   strongly believes it, it is a very difficult thing to quantify.

20          **THE COURT:**  So you're not quantifying, but are you

21   seeking damages at this time?

22          **MS. HOUSE:**  No, no.

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1              CERTIFICATE OF REPORTER

2         I, the undersigned, hereby certify that the foregoing

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4   reporter, and were thereafter transcribed under my direction

5   into typewriting; that the foregoing is a full, complete and

6   true record of said proceedings.

7         I further certify that I am not of counsel or

8   attorney for either or any of the parties in the foregoing

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10  outcome of the cause named in said caption.

11        The fee charged and the page format for the

12  transcript conform to the regulations of the judicial

13  conference.

14        Furthermore, I certify the invoice does not contain

15  charges for the court reporter's certification page.

16        IN WITNESS WHEREOF, I have hereunto set my hand this

17  20th day of August 2009.

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19                      _____

20                      MARGARET "MARGO" GURULE, CSR

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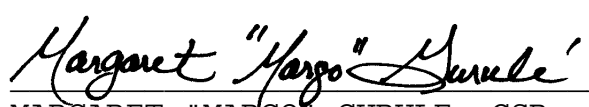
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