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

14 PINNACLE SYSTEMS, INC., a Delaware corporation,

15 Plaintiff,

16 v.

17 XOS TECHNOLOGIES, INC., a Florida corporation,
 DAN ATON, a resident of Florida; RANDY ECCKER,
 18 a resident of Nebraska; MICHAEL CHRISTIANSON, a
 resident of Florida; SPENCER MILLER, a resident of
 19 Colorado; STEVE SCHUTT, a resident of Colorado;
 and JEFFREY CARPENTER, a resident of Texas,

20 Defendants.

21 XOS TECHNOLOGIES, INC., a Florida
 Corporation,

22 Defendant/Counter-Plaintiff,

23 v.

24 PINNACLE SYSTEMS, INC., a Delaware corporation,
 25 DAVID GLOVER, JOE WALSH, BOB WHITE,
 BRIAN ZAPACH and BRETT HAMMOND,

26 Counter-Defendants.
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Case # C02 03804 RMW

**XOS TECHNOLOGIES, INC.'S
 REPLY TO PINNACLE'S
 OPPOSITION TO
 DEFENDANTS' [SIC] MOTION
 TO COMPEL DEPOSITIONS**

Date: July 16, 2003
Time: 9:30 a.m.
Judge: Magistrate Judge
Richard Seeborg
Ctrm: 4

1 Defendant XOS TECHNOLOGIES, INC. (hereinafter referred to as "XOS") submits
2 this Reply to PINNACLE SYSTEMS, INC.'s (hereinafter referred to as "Pinnacle") Opposition to
3 Defendants' [sic] Motion to Compel Depositions.

4 **I. BRETT HAMMOND**

5 Pinnacle states in its opposition that it agrees to produce Brett Hammond for
6 deposition and therefore the motion to compel is moot. However, to date, Pinnacle has neither
7 produced Hammond, nor has it provided XOS with a date that it will produce Hammond.

8 As discussed in the Motion to Compel Depositions dated June 9, 2003, in April 2003,
9 XOS' counsel coordinated with Pinnacle's counsel and scheduled Mr. Hammond's deposition and
10 Pinnacle agreed to produce Mr. Hammond in California. Less than three business days prior to the
11 deposition (one day prior to XOS' counsel traveling from Florida to California), Pinnacle
12 unilaterally cancelled the deposition.

13 In an attempt to resolve this matter without the need for the July 16, 2003 hearing,
14 XOS' counsel spoke with Pinnacle's counsel after the June 20, 2003 case management conference
15 with Judge Whyte. At that meeting, Pinnacle's counsel advised that Brett Hammond would be
16 produced and volunteered to produce him the following week while XOS' counsel deposed various
17 Pinnacle employees in Massachusetts. Pinnacle however, did not produce Hammond. Despite
18 Pinnacle's representations that it will produce Hammond, XOS requests a Court order compelling
19 Pinnacle to produce Mr. Hammond, so Pinnacle cannot simply cancel any subsequently scheduled
20 deposition.

21 **II. AJAY CHOPRA**

22 As with Mr. Hammond, Pinnacle unilaterally cancelled the deposition of Ajay Chopra
23 after Pinnacle agreed to produce him for deposition. Pinnacle has now taken the position that it will
24 not produce Chopra at all because he is a "high level executive without first-hand knowledge of the
25 facts at issue in this case." (Pinnacle's Opposition to Motion to Compel Depositions, p. 1). This is
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1 simply untrue. The testimony of David Glover, Pinnacle’s Vice President of Network News and
2 Sports, revealed that Mr. Chopra does have knowledge of the facts relevant to this case.¹

3 David Glover was identified by Pinnacle as its corporate representative in the lawsuit
4 and has filed numerous declarations in this case. The testimony of Mr. Glover, specifically at pages
5 27-30 and 35, establishes that Mr. Glover’s supervisor is Ajay Chopra and Mr. Glover reports to him
6 at regularly scheduled meetings. (A copy of these excerpts are attached to the Declaration of
7 William H. Cantwell, II Filed Under Seal in Support of XOS Technologies, Inc.’s Reply to
8 Pinnacle’s Opposition to Defendants’ [sic] Motion to Compel Depositions). Pinnacle cannot accuse
9 the Defendants of the bad acts set forth in the First Amended Complaint and then refuse to allow
10 Defendants to take the deposition of the Pinnacle employee who is supervising the direction of this
11 lawsuit.

12 Pinnacle represents to this Court that “the parties are in the process of reaching an
13 agreement as to Mr. Chopra.” (Pinnacle’s Opposition to Motion to Compel Depositions, p. 2). This
14 statement is false. XOS fully intends to take the deposition of Chopra, and has never indicated
15 anything to the contrary to Pinnacle. Pinnacle’s attorneys have simply refused to produce him.

16 **III. PINNACLE’S DELAYS HAVE PREJUDICED XOS**

17 As discussed in the Motion to Compel Depositions, these depositions were scheduled
18 back in April 2003. Three business days prior to the June 9 and 10 depositions, Pinnacle unilaterally
19 cancelled them. To date, Pinnacle has provided no date for Brett Hammond’s deposition and has
20 now asserted that despite their previous agreement to produce Ajay Chopra, they will not produce
21 him for deposition. As a result, once again, Pinnacle has stalled XOS’ discovery efforts. These
22 depositions should have been completed a month ago. Unfortunately, XOS has been required to
23 move this Court for the relief of compelling production of witnesses that Pinnacle previously agreed
24 to produce. XOS has been prejudiced and unable to properly develop a defense strategy or conduct
25 discovery.

26
27 ¹Pursuant to the Stipulated Protective Order, excerpts from David Glover’s June 24, 2003 deposition
28 have been filed contemporaneously with this Reply in compliance with Local Rule 79-5.

1 For the reasons stated above, XOS respectfully requests that this Court enter an order
2 compelling Pinnacle to provide the depositions of Ajay Chopra and Brett Hammond, and for such
3 further relief as the Court may deem proper.

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5 DATED: July 7, 2003

O'BRIEN RIEMENSCHNEIDER, P.A.

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7 By S/William H. Cantwell, II
8 William H. Cantwell, II
9 Attorneys for Defendants
XOS, ATON, ECCKER, CHRISTIANSON,
MILLER, & CARPENTER

10 **CERTIFICATE OF SERVICE**

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12 I HEREBY CERTIFY that a true and correct copy of the above and foregoing has
13 been furnished via electronic filing and U.S. Mail to MICHAEL J. BETTINGER, ESQUIRE,
14 Attorney for Plaintiff, Preston Gates Ellis, LLP, 55 Second Street, Suite 1700, San Francisco,
15 California 94105 and to THOMAS R. HOGAN, ESQUIRE, Co-Counsel for Defendants, 333 West
16 Santa Clara Street, Suite 800, California 95113 this 7th day of July, 2003.

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19 S/William H. Cantwell, II
20 William H. Cantwell, II