

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 09-cv-02914-REB-BNB

IRON WORKERS DISTRICT COUNCIL OF TENNESSEE VALLEY & VICINITY
PENSION PLAN, Derivatively on Behalf of LEVEL 3 COMMUNICATIONS, INC.,

Plaintiff,

v.

JAMES Q. CROWE,
KEVIN J. O'HARA,
SUNIT S. PATEL,
MICHAEL B. YANNEY,
JAMES O. ELLIS JR.,
RICHARD R. JAROS,
ROBERT E. JULIAN,
ARUN NETRAVALI,
JOHN T. REED,
WALTER SCOTT, JR., and
ALBERT C. YATES,

Defendants,

and

LEVEL 3 COMMUNICATIONS, INC., a Delaware corporation,

Nominal Defendant.

ORDER CONCERNING JOINT MOTION FOR VOLUNTARY DISMISSAL

Blackburn, J.

This matter is before the court on the parties' **Unopposed Joint Motion for Voluntary Dismissal Pursuant To Federal Rules of Civil Procedure 23.1(c) and 41(a)** [#59]¹ filed February 2, 2012. The parties seek an order approving the voluntary

¹ “[#59]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

dismissal of this shareholder derivative action. The proposed dismissal would be with prejudice as to the plaintiff and without prejudice as to the nominal defendant, Level 3 Communications, Inc. The parties note that a parallel shareholder derivative action is pending in state court. ***In re Level 3 Communications Inc. Derivative Litigation***, Lead Case No. 2009CV59 (District Court, Broomfield County, Colorado).

FED. R. CIV. P. 23.1(c) provides:

A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

The parties argue that notice of the proposed voluntary dismissal of this case, as required by Rule 23.1(c), is not required in this case. They contend that notice is not required because the proposed dismissal will be without prejudice as to nominal defendant Level 3, and a parallel derivative action is pending in state court. The court agrees that the need for notice in this case is minimal. However, the court cannot ignore the explicit and mandatory notice requirement of Rule 23.1(c). Therefore, the court will require that notice of the proposed voluntary dismissal of this case be posted on the website of the nominal defendant, Level 3 Communications, Inc., before the court determines, as a final matter, whether or not to approve the voluntary dismissal of this case.

THEREFORE, IT IS ORDERED as follows:

1. That the parties' proposed voluntary dismissal of this action is **APPROVED** preliminarily;
2. That on or before February 10, 2012, the plaintiff **SHALL PROVIDE** to all

other parties the text of a Notice to Shareholders describing the proposed voluntary dismissal of this case;

3. That the Notice to Shareholders **SHALL INCLUDE** the following information:

a. A brief description of the claims asserted in the above-captioned shareholder derivative suit;

b. A copy of the parties' **Unopposed Joint Motion for Voluntary Dismissal Pursuant To Federal Rules of Civil Procedure 23.1(c) and 41(a)** [#59] filed February 2, 2012;

c. A copy of this order;

d. A statement that any objection to the voluntary dismissal of this case must be filed with this court on or before March 1, 2012;

e. A statement that any objection filed must be filed in writing, and must include (i) the caption of this case, (ii) the name of the objecting shareholder, and (iii) a statement of the basis for the objection.

4. That on or before February 15, 2012, nominal defendant Level 3

Communications, Inc. **SHALL POST** on its website a copy of the Notice to Shareholders;

5. That a link to the Notice to Shareholders, which link shall be titled "Notice to Shareholders," **SHALL APPEAR** on the opening page of the website of nominal defendant Level 3 Communications, Inc.;

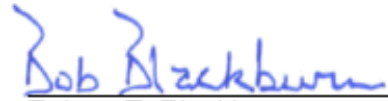
6. That the Notice to Shareholders **SHALL REMAIN** posted on the website of nominal defendant Level 3 Communications, Inc. until March 1, 2012;

7. That on or before March 8, 2012, the plaintiff **SHALL FILE** with the court a brief motion seeking a final order of dismissal in this case;

February 3, 2012 8. In that motion, the plaintiff **SHALL CERTIFY** that the parties have complied with the notice requirements stated in this order.

Dated February 3, 2012, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge