

Notice to Stockholders of Voluntary Dismissal

On December 11, 2009, plaintiff Iron Workers District Council of Tennessee Valley & Vicinity Pension Plan filed a shareholder derivative action on behalf of Level 3 Communications, Inc. ("Level 3"), styled *Iron Workers District Council of Tennessee Valley & Vicinity Pension Plan v. Crowe, et al.*, No. 09-CV-02914-REB-BNB (the "Federal Derivative Action") against members of Level 3's Board of Directors and certain current and former executive officers ("Individual Defendants"). Plaintiff asserted claims on behalf of nominal defendant Level 3 against the Individual Defendants for breach of fiduciary duty, insider selling, waste, and unjust enrichment. Plaintiff alleged that the Individual Defendants made misrepresentations and breached fiduciary duties in connection with Level 3's efforts to integrate corporate acquisitions from 2006 and 2007.

Plaintiff Iron Workers has sought leave to voluntarily dismiss the Federal Derivative Action. On February 2, 2012, the parties filed an Unopposed Joint Motion for Voluntary Dismissal Pursuant to Federal Rules of Civil Procedure 23.1(c) and 41(a), a copy of which is published herewith as Exhibit A. The dismissal sought would be with prejudice as to Plaintiff Iron Workers only, and would have no effect on a similar derivative action pending in Colorado state court captioned, *In re Level 3 Communications, Inc. Derivative Litigation*, Lead Case No. 2009CV59 (District Court, Broomfield County). This voluntary dismissal also does not affect the securities class action filed in the United States District Court for the District of Colorado — *In re Level 3 Communications, Inc. Securities Litigation*, Case No. 09-cv-00215-PAB-CBS. The District Court dismissed the securities class action with prejudice on December 10, 2010. That decision was affirmed by the United States Court of Appeals for the Tenth Circuit in Appellate Case No. 11-1029 on February 6, 2012.

On February 3, 2012, Judge Robert E. Blackburn of the United States District Court for Colorado preliminarily approved the dismissal and ordered the parties to post notice of the proposed voluntary dismissal of the Federal Derivative Action on Level 3 Communications Inc.'s website on or before February 15, 2012 through March 1, 2012. The Order Concerning Joint Motion for Voluntary Dismissal entered on February 3, 2012, is published herewith as Exhibit B.

Pursuant to the Court's Order, Level 3 shareholders are hereby advised:

Level 3 shareholders may object to the proposed voluntary dismissal. Any shareholder who wishes to object must file their objection with the United States District Court for Colorado, Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, CO 80294, not later than March 1, 2012. Any objection to the dismissal must be filed in writing, and must include: (i) the caption of the Federal Derivative Action; (ii) the name of the objecting shareholder; and (iii) a statement of the basis for the objection.

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action 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.

**UNOPPOSED JOINT MOTION FOR VOLUNTARY DISMISSAL PURSUANT TO
FEDERAL RULES OF CIVIL PROCEDURE 23.1(c) AND 41(a)**

Pursuant to Rules 23.1(c) and 41(a) of the Federal Rules of Civil Procedure, the parties, by and through their respective counsel, respectfully request that the Court enter an Order granting Plaintiff's request to voluntarily dismiss this action with prejudice as to Plaintiff and without prejudice as to Nominal Defendant Level 3 Communications, Inc. ("Level 3"). In support of this joint motion, the parties state as follows:

WHEREAS, Plaintiff filed its Verified Amended Shareholder Derivative Complaint

on November 4, 2011;

WHEREAS, the individual defendants and nominal defendant (“Defendants”), filed motions to dismiss this action on December 5, 2011 [##50, 51], Plaintiff opposed those motions on January 13, 2012 [##57, 58], and Defendants’ reply briefs are due on February 10, 2012;

WHEREAS, Defendants have not filed an answer or a motion for summary judgment in this action;

WHEREAS, Plaintiff seeks to voluntarily dismiss this action with prejudice as to itself and without prejudice as to nominal defendant, Level 3;

WHEREAS, Defendants have not paid Plaintiff or Plaintiffs’ counsel any consideration for this voluntary dismissal;

WHEREAS, counsel for the parties have conferred and agree that each party shall bear its own costs; and

WHEREAS, the parties respectfully submit that notice of the dismissal pursuant to Rule 23.1(c) is not required, as any dismissal will be without prejudice as to nominal defendant Level 3 and there is already pending in Colorado state court a parallel derivative action, *In re Level 3 Communications, Inc. Derivative Litigation*, Lead Case No. 2009CV59 (District Court, Broomfield County), brought on behalf of Level 3;

WHEREFORE, the parties respectfully request that the Court enter an Order dismissing this case with prejudice as to Plaintiff Iron Workers District Council of Tennessee Valley & Vicinity Pension Plan and without prejudice as to nominal defendant Level 3. The parties further request that the Order set forth that each side

shall bear its own costs and that no notice pursuant to Rule 23.1 is required.

Dated: February 2, 2012

/s/ Brian J. Robbins

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Dated: February 2, 2012

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Attorneys for the Individual
Defendants and Nominal Defendant
Level 3 Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

Julia M. Williams

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and I hereby certify that I have mailed or served the document or paper to the following non-CM/ECF participants by U.S. Mail:

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Exhibit B

**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