IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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KAY and DAVID SIEVERDING,
EDWARD SIEVERDING and
THOMAS SIEVERDING,

ORDER

Plaintiffs,

02-C-395-C

v.

CITY OF STEAMBOAT et al.,

Defendants.

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Presently before the court is plaintiffs' motion for reconsideration. In an order dated September 9, 2002, I dismissed plaintiffs' complaint and first amended complaint without prejudice because they were excessively prolix and confusing in violation of Fed. R. Civ. P. 8. Plaintiffs were warned that they risked a dismissal with prejudice if they persisted in filing shotgun-style pleadings. Plaintiffs proceeded to do exactly that, resulting in an order dated October 17, 2002, in which I dismissed plaintiff's second amended complaint with prejudice. An amended judgment was entered on October 22, 2002. Plaintiffs state now that they seek reconsideration of the court's October 17 order pursuant to Fed. R. Civ. P. 60(a), but they likely mean Rule 60(b) because they argue that the court's "dismissal of our case with prejudice was a total *surprise* to us." (emphasis in original); See Fed. R. Civ. P. 60(b)(1) (court may relieve party from final judgment for "mistake, inadvertence, surprise, or excusable neglect"). However, because their reconsideration motion was filed on the tenth day (not counting weekends) following the entry of the

amended judgment in this case and because they are arguing that this court's decision to dismiss the case with prejudice is legally flawed, I construe it as a timely filed motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e). See Helm v. Resolution Trust Corp., 43 F.3d 1163, 1166 (7th Cir. 1995).

In short, plaintiffs argue that their second amended complaint was not really a complaint, but rather a draft pleading that they submitted to the court seeking feedback. They note that the document the court construed as a second amended complaint was not signed. Plaintiffs' arguments are wholly unpersuasive. Plaintiffs were warned explicitly that they faced dismissal of their case with prejudice if they continued to file excessively long and confusing pleadings. In response to that warning, plaintiffs submitted a pleading that was materially indistinguishable from their previously dismissed complaints. In the wake of the court's September 9, 2002 order, plaintiffs cannot seriously contend that they believed it appropriate to submit yet another massive complaint so the court, functioning in the role of editor, could trim it for them until the requirements of the federal rules were satisfied. The fact that plaintiffs failed to sign the second amended complaint does not help their cause. Rather, it is simply an additional reason why that pleading was deficient.

Plaintiffs have asked the court to return exhibits they submitted along with their first amended complaint. However, the court cannot return to plaintiffs any documents that make up the record in this case until the time for filing a notice of appeal has expired without plaintiffs exercising that right. If plaintiffs take an appeal, the exhibits will become part of the record on appeal. If plaintiffs decide not to appeal, they may renew their request for the return of their exhibits.

A timely filed Rule 59 motion extends the time for filing a notice of appeal, if an appeal is to be

taken, to thirty days from the date of the entry of the order disposing of the motion. See Fed. R. App. P. 4(a)(4)(A)(iv). Therefore, plaintiffs have thirty days from the date of entry of this order in which to file a notice of appeal.

IT IS ORDERED that plaintiffs' motion pursuant to Fed. R. Civ. P. 59(e) to alter or amend the judgment in this case is DENIED.

Entered this 7th day of November, 2002.

BY THE COURT:

BARBARA B. CRABB
District Judge