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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 RAMOS OIL RECYCLERS, INC., dba)
11 ENVIRONMENTAL SERVICES,)
12)
13 Plaintiff,) 2:07-cv-00448-GEB-DAD
14)
15 v.)
16 AWIM, INC., JULIE C. NELSON,)
17 GERRI SHERMAN,)
18)
19 Defendants.)
20)
21)
22 And Related Actions.)
23)
24

25 AWIM, Inc.'s (AWIM) motion filed August 31, 2009, to modify
26 the Final Pretrial Order (FPO) so that AWIM could move for judgment on
27 the pleadings fails to show recognition of the law that "[a] pre-trial
28 order . . . supersedes the pleadings . . . and controls the subsequent
 course of the action." Donovan v. Crisostomo, 689 F.2d 869, 875 (9th
 Cir. 1980) (quotations omitted). AWIM failed to make this argument at
 the Final Pretrial Conference and has not shown justification under
 the manifest injustice standard for modification of the FPO so that
 the argument could be considered now. The manifest injustice factor

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28 * This matter is deemed suitable for decision without oral
 argument. E.D. Cal. R. 78-230(h).

1 of "inexcusable neglect" on the part of AWIM weighs heavily against
2 the modification AWIM seeks. See United States v. First Nat'l Bank of
3 Circle, 652 F.2d 882, 887 (9th Cir. 1981) (stating that before the
4 court modifies a pretrial order it should consider "the degree of
5 willfulness, bad faith or inexcusable neglect on the part of the
6 [movant]"). Therefore, the motion is denied.

7 Dated: September 16, 2009

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10 GARLAND E. BURRELL, JR.
United States District Judge

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