

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAMOS OIL RECYCLERS, INC., dba  
ENVIRONMENTAL SERVICES,

Plaintiff,

v.

AWIM, INC., JULIE C. NELSON,  
GERRI SHERMAN,

Defendants.

And Related Actions.

2:07-cv-00448-GEB-DAD

ORDER DENYING AWIM'S MOTION  
TO MODIFY THE FINAL PRETRIAL  
ORDER AND FOR JUDGMENT ON THE  
PLEADINGS\*

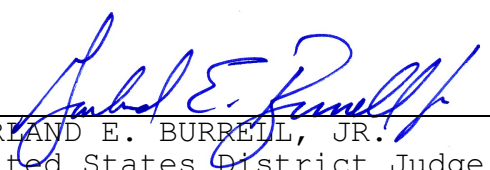
AWIM, Inc.'s (AWIM) motion filed August 31, 2009, to modify the Final Pretrial Order (FPO) so that AWIM could move for judgment on the pleadings fails to show recognition of the law that "[a] pre-trial order . . . supersedes the pleadings . . . and controls the subsequent course of the action." Donovan 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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\* 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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11 GARLAND E. BURRELL, JR.  
12 United States District Judge  
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