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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 MODESTO DIVISION  
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8 )  
9 In re ) Case No. 02-92861-A-13G  
10 THOMAS and LINDA O'GRADY, ) Docket Control No. FW-3  
11 Debtors. ) Date: December 27, 2005  
12 ) Time: 2:00 p.m.  
13 )

13 On December 27, 2005 at 2:00 p.m. the court considered the  
14 motion of Thomas and Linda O'Grady, the chapter 13 debtors, for  
15 confirmation of a modified plan over the objection of the chapter  
16 13 trustee, Russell D. Greer. The text of the final ruling  
17 appended to the minutes of the hearing follows. This final  
18 ruling constitutes a "reasoned explanation" for the court's  
19 decision and accordingly is posted to the court's Internet site,  
20 [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable format as required by  
21 the E-Government Act of 2002. The official record of this ruling  
22 remains the ruling appended to the minutes of the hearing.

19 **FINAL RULING**

20 The motion will be denied and the objection will be  
21 sustained.

22 The debtor was employed by Dollar Tree from March 1997 to  
23 May 2000. This entire period came before the filing of the  
24 chapter 13 petition on August 2, 2002. A review of the original  
25 schedules reveals that the debtor did not list a claim or cause  
26 of action against Dollar Tree. Further, at no time during the  
27 case were the schedules amended to list such a claim or cause of  
28 action. Nor has such a claim or cause of action ever been

1 exempted.

2       The failure to amend the schedules is significant given that  
3 the debtor admits receiving notice in October or November 2004 of  
4 a class action against Dollar Tree on behalf of employees who  
5 were not paid overtime. The only excuse offered for the failure  
6 to amend the schedules is that the debtor did not know how much  
7 she might be owed. This is no excuse because the schedules could  
8 have been amended to disclose an unliquidated claim in an unknown  
9 amount.

10       In March 2005, the debtor received notice that the class  
11 action had been settled. The debtor maintains that no notice was  
12 received as to the amount of the settlement she would receive.  
13 The court believes, however, that some notice of likely benefits  
14 from a settlement was given to the debtor. Nonetheless, whatever  
15 the notice was received by the debtor, the debtor failed to amend  
16 the schedules to list the claim and the impending settlement.

17       On June 28, 2005, the debtor asked the court to modify the  
18 plan. A review of the modified plan and the motion to approve  
19 reveals that neither made a disclosure of the settlement. The  
20 modified plan was confirmed on August 17, 2005. Like the  
21 original plan confirmed on February 11, 2003, the modified plan  
22 promised no dividend to holders of unsecured claims.

23       The debtor received \$14,000 on October 19, 2005 from the  
24 settlement. Again, the schedules were not amended to list the  
25 now liquidated claim even though the settlement relates to a  
26 claim based on pre-petition employment.

27       Then, on November 22, 2005, the modification motion now  
28 before the court was filed. For the first time the claim and the

1 settlement are disclosed. However, the debtor still has not  
2 exempted the settlement. The proposed modified plan shares none  
3 of the \$14,000 with creditors. Unsecured creditors are still  
4 receiving 0% and the plan is being reduced from 46 to 39 months.

5 Because the claim and settlement were never included in the  
6 estate for purposes of 11 U.S.C. § 1325(a)(4), they must now be  
7 included. When included, the unsecured creditors are entitled to  
8 receive \$14,000. The failure to pay it violates section  
9 1325(a)(4).

10 Further, the foregoing facts, which demonstrate a  
11 concealment of a significant portion of the debtor's assets,  
12 justify a conclusion that the plan has been proposed in bad  
13 faith. This is particularly so given that the debtor continues  
14 to keep detailed information concerning the settlement from the  
15 trustee. The debtor has also not explained what happened to the  
16 money. The plan does not comply with 11 U.S.C. § 1325(a)(3).

17 In short, the debtor cannot seriously expect the court to  
18 truncate the plan while paying unsecured creditors nothing with  
19 the debtor retaining a concealed, nonexempt asset.