Dated: March 04, 2015
The following is SO ORDERED:

Paulette J. Delk
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

Charles Reid Veitenheimer — 13-32792 PJD

Chapter 13

MEMORANDUM OPINION ON DEBTOR'S OBJECTION TO CLAIM NUMBER 1 OF SANTANDER CONSUMER USA INC.

The court conducted a hearing on the Debtor's Objection to Claim number 1 of Santander Consumer USA Inc. on January 20, 2015. The court has jurisdiction pursuant to 28 U.S.C. § 1334(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The court has reviewed the statements of counsel from the hearing and the case record as a whole. This Memorandum Opinion shall serve as the court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

FINDINGS OF FACT

The parties stipulated to a number of facts that are summarized as follows. Prior to filing for bankruptcy relief, the debtor in this case, Charles Reid Veitenheimer ("Debtor"), financed the purchase of a 2011 Scion XB by signing a Retail Installment Contract which was assigned to Santander Consumer USA Inc. ("Santander"). Debtor filed this Chapter 13 case on November 22, 2013, about 941 days after the execution of the contract. Santander timely filed a proof of claim. The court confirmed the Chapter 13 plan on March 7, 2014; the plan provided that Santander's claim was a secured claim with collateral valued at $17,605.02. The collateral was involved in an accident, was declared a total loss, and insurance proceeds of $12,889.16 are to be paid to Santander for the totaled collateral.

Debtor filed his Objection to the Claim of Santander in which he sought to reduce the claim amount by the amount of the insurance proceeds to be received by Santander, and to reclassify Santander's claim as unsecured. Santander objected to the reclassification of its claim from secured to unsecured, based on the analysis and holdings of *Chrysler Financial Corp. v. Nolan (In re Nolan),* 232 F.3d 528 (6th Cir. 2000) and *Adkins v. DaimlerChrysler Services North America, L.L.C. (In re Adkins),* 425 F.3d 296 (6th Cir. 2005)

CONCLUSIONS OF LAW

The issue before the court is whether the Sixth Circuit cases of *In re Nolan*, and *In re Adkins*, prohibit a debtor from reclassifying a claim from secured to unsecured when the collateral securing the debt is accidentally destroyed and the claimant receives insurance proceeds that do not satisfy the secured claim in full.

In *Nolan,* the Sixth Circuit held "...that a debtor cannot modify a plan under section 1329(a) by: 1) surrendering the collateral to a creditor; 2) having the creditor sell the collateral and apply the proceeds toward the claim; and 3) having any deficiency classified as an unsecured claim." 232 F.3d at 535. In reaching this decision, the *Nolan* court carefully analyzed several Bankruptcy Code provisions that apply to Chapter 13 cases in which the debtor seeks to reclassify a previously allowed secured claim: 1329(a), 1325(a)(5)(B), and 1327(a). These provisions apply equally in the context of a Chapter 13 case in which the debtor seeks to reclassify a previously allowed secured claim due to accidental destruction of the collateral securing the claim. The distinction between surrender of the collateral by the debtor and the accidental destruction of the collateral is one without a difference. Although they are conceptually distinct, the difference is of no practical importance in the context of claim reclassification. The Sixth Circuit in *Nolan* determined that §1325(a)(5)(B) "mandates that a secured claim is fixed in amount and status and must be paid in full once it has been allowed." *Id*. at 533. The *Nolan* court also determined that § 1329(a) permits the debtor to alter only the amount or timing of a **payment**, but not the **claim** itself. *Id*. at 535 (emphasis added). The *Nolan* decision likewise placed great emphasis on § 1327(a) which provides that the terms of a confirmed plan are binding on the debtor and creditors. The court there determined that to permit reclassification after the plan was confirmed would undermine § 1327(a) by shifting the burden of depreciation to a secured creditor, which is not a result desired by Congress. *Id.* at 533. The *Nolan* court also pointed out that to construe § 1329(a) as permitting post confirmation modification of the status of claims would create an imbalance in the Code. To do so would permit the debtor, trustee, and unsecured creditors to shift the risk of depreciation on to secured creditors, but would not permit secured creditors to take advantage of appreciation in the collateral post confirmation through a

modification, since § 1329(a) does not permit secured creditors to seek post confirmation modification of the plan. Id. at 533-34. Debtor, in the case before the court, seeks to alter the status of an allowed claim, seeks to pay an allowed secured claim a reduced amount, and seeks to alter the terms of a confirmed plan in a manner not provided for under §§ 1325(a), 1329(a) or 1327(a), as construed by the Sixth Circuit in *Nolan*.

During the hearing on Debtor's Objection to Claim, the trustee argued that *Nolan* should not apply in this case, because the destruction of the collateral was an unanticipated loss not due to bad faith. In *Nolan*, the creditor argued that § 1329 "does not allow a debtor to reclassify a secured claim as an unsecured debt absent a good faith showing of "unanticipated substantial change in circumstances." *Id*. at 530. The *Nolan* court does not reach that conclusion in its ruling. At no point in its opinion does the court provide that an exception exists for the destruction of collateral due to an unanticipated change in circumstances. Although such an exception may appear reasonable, neither the plain language of the Code nor the Sixth Circuit's interpretation of the Code provides such an exception.

After *Nolan*, the Sixth Circuit decided another case, *In re Adkins*, 425 F.3d 296, in which a party sought to reclassify a secured claim as unsecured after the repossession of the collateral by the creditor resulted in a deficiency. The majority in *Adkins* ruled that the *Nolan* decision foreclosed the reclassification of a deficiency in the voluntary context, and based on the same statutory analysis, it ruled that *Nolan* foreclosed the reclassification of a deficiency in the involuntary context as well. *Id.* at 305. The *Adkins* court considered facts involving the secured creditor's repossession of collateral following financial default by the debtor post-confirmation. The Sixth Circuit in *Adkins* was not persuaded that the creditor's repossession of the collateral presented a materially different

situation from the debtor's surrender of the collateral to merit a different analysis. *Id.* at 303. The dissenting opinion in *Adkins* placed great emphasis on § 506 and its language that a claim is secured "to the extent of the value of such creditor's interest in the estate's interest in such property...." 425 F.3d at 308 (Moore, J., dissenting) (quoting 11 U.S.C. § 506(a)(1)). Because of the importance that the dissent placed on § 506, it would not have treated the claim as secured. Rather, it would have remanded the case to the bankruptcy court to reconsider the claim under § 502(j), under which the dissent determined the claim may be "treated as an unsecured claim if the request is in good faith and leads to an equitable result." *Id*. at 308 (citation omitted).

At the hearing on his Objection to the Claim, Debtor argued that Santander's secured claim should be reconsidered under § 502(j), which provides that "[a] claim that has been allowed or disallowed may be reconsidered for cause...." The majority in *Adkins* concluded that "...the literal language of section 502(j) addresses only the 'allowance' or 'disallowance' of claims, not the reclassification of an already-allowed claim." *Id*. at 304 (majority opinion) (citation omitted). It held that § 502(j) is not applicable in a case in which an allowed claim is sought to be reclassified. *Id*. at 305. The dissenting opinion in *Adkins* expressed a different view of § 502(j). *Id*. at 306-08 (dissenting opinion). At some point, the *Adkins* dissenting viewpoint may become the majority view, but until that time, this court is bound by *Adkins*, and holds that Santander's allowed secured claim may not be reconsidered under § 502(j).

Based on the Sixth Circuit's analysis in *Nolan* and *Adkins*, this court concludes that it has no other option but to rule that the post-confirmation modification sought by Debtor is prohibited. Debtor cited opinions from other circuits, but this court is bound to follow the decisions rendered by the Sixth Circuit where that court has ruled on the issue currently before this court. Debtor's

Objection is overruled.

A separate order consistent with this opinion will be entered by the court.