

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
BOWLING GREEN DIVISION**

**ROSS SCHAMBON**

**Plaintiff,**

**v.**

**ORKIN, LLC**

**Defendant.**

\* Case No. 1:16-CV-130-GNS

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\* Judge Stivers

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**DEFENDANT’S UNOPPOSED MOTION TO STAY ACTION AND TO COMPEL  
ARBITRATION**

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Defendant Orkin, LLC (“Orkin”), by and through counsel, hereby moves to stay this action and compel arbitration. Through counsel, Orkin has consulted with Plaintiff Ross Schambon (“Schambon”), who does not oppose this Motion.

The Parties are subject to a valid agreement requiring that they submit any disputes relating to Schambon’s employment with or termination from Orkin to mandatory arbitration.<sup>1</sup> The claim asserted by Schambon in this action is within the scope of this agreement, and therefore should proceed to be heard in and resolved by final and binding arbitration. Orkin acknowledges that it shall be responsible for the arbitration fees, including any arbitration filing fee and fees of the arbitrator.

The Federal Arbitration Act (“FAA”) states that a “written provision” in a contract providing for “settle[ment] by arbitration” of “a controversy...arising out of” that “contract...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The United States Supreme Court

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<sup>1</sup> A true and accurate copy of the arbitration agreement is attached as Exhibit A.

has consistently interpreted the FAA broadly to foreclose attempts by states and litigants to limit arbitration, establishing (in a tetralogy of cases) a strong federal policy in favor of the arbitration of disputes. See *Southland v. Keating*, 465 U.S. 1, 10 (1984); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *American Express Co. v. Italian Colors Rest.*, 570 U.S. \_\_\_\_, 133 S. Ct. 2304 (2013); *Directv, Inc. v. Imburgia*, 577 U.S. \_\_\_\_, 136 S. Ct. 463 (2015).

Likewise, the Commonwealth of Kentucky has a long-standing policy encouraging arbitration. See *Hill v. J.J.B. Hilliard*, 945 S.W.2d 948, 951 (Ky. Ct. App. 1996) (“whenever an arbitration agreement exists, the Federal Arbitration Act establishes that, as a matter of law, ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’”). In keeping with this axiomatic principle, Kentucky courts have upheld and enforced arbitration clauses in employment-related contexts. See *American General Life & Acc. Ins. Co. v. Hall*, 74 S.W.3d 688, 693 (Ky. 2002) (stating that an employee may waive their statutory right to sue an employer for a civil rights violation); *Humana, Inc. v. Blose*, 247 S.W.3d 892, 895 (Ky. 2008) (enforcing employment-related arbitration clause).

Furthermore, the Sixth Circuit has expressly held that claims brought pursuant to USERRA, like the claim Schambon has asserted in this case, are arbitrable. See *Landis v. Pinnacle Eye Care, LLC*, 537 F.3d 559 (6th Cir. 2008).

Accordingly, Orkin respectfully requests that the Court enter an Order staying this action pending completion of binding arbitration between the Parties, in accordance with the terms of the Parties’ agreement, and as provided in Section 3 of the Federal Arbitration Act, 9 U.S.C. §3.

Respectfully submitted,

/s/ Jamie M. Goetz-Anderson

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*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of September, 2016, a copy of the foregoing was electronically filed using the Court's CM/ECF electronic filing system, which will send notice to counsel of record.

/s/ Jamie M. Goetz-Anderson

Jamie M. Goetz-Anderson

# **EXHIBIT A**

**AGREEMENT TO ARBITRATE**

This Agreement is made and entered into by and between Rollins, Inc./Orkin, LLC and all their related companies including any parent, subsidiary or affiliate, or any other person or entity acting as its agent, (herein "Company") and

Ross Schambon  
Name of Employee (please print)

I desire, as does the Company, to resolve any disputes regarding or arising from my employment in an expeditious and economical fashion. I recognize and agree, as does the Company, that arbitration of such disputes through binding arbitration is in the best interest of both parties. Therefore, in consideration of employment and the mutual promises, covenants, and conditions set forth in this Agreement, I agree, as does the Company, to abide by the Company's Dispute Resolution Policy ("DRP") and to arbitrate any dispute, claim, or controversy regarding or arising out of my employment (as defined by the Company's DRP, a copy of which I may request at any time) that may arise between me and the Company, its parent, subsidiaries, affiliates or any other persons or entities acting as its agent. The parties agree that the Company's operations directly affect interstate commerce to the extent that all procedures hereunder contemplated shall be subject to, and governed by, the Federal Arbitration Act (FAA). Unless the parties agree otherwise, the arbitration shall be administered under the applicable rules of the American Arbitration Association ("AAA"). The parties agree that the arbitrator shall follow the substantive law, including the terms and conditions of this Agreement.

I retain the right to file a claim for workers compensation or unemployment insurance benefits, and certain other claims enumerated in the Company's DRP. The Company retains the right to file a lawsuit for purposes of preventing or stopping any unfair or unlawful competition or solicitation of its customers and employees, and/or misappropriation of its trade secrets.

I specifically understand that by agreeing to arbitrate, I waive any right to trial by judge or jury in favor of having such disputes resolved by binding arbitration. I understand that any disputes presented to an arbitrator shall be resolved only in accordance with the applicable federal, state, or local law governing such dispute. The award rendered by the arbitrator shall be final and binding, and judgment may be entered on the award in any court having jurisdiction thereof. I agree that any arbitration proceeding under this Agreement will not be consolidated or joined with any action or legal proceeding under any other agreement or involving any other employees, and will not proceed as a class action, collective action, private attorney general action or similar representative action.

If any provision, or portion thereof, of this Agreement is found to be invalid or unenforceable, it shall not affect the validity or enforceability of any other part of this Agreement. Provided, however, that if the sentence in the foregoing paragraph precluding the arbitrator from conducting an arbitration proceeding as a class, collective, representative or private attorney general action is found to be invalid or unenforceable, then the entirety of this Agreement shall be deemed unenforceable.

I acknowledge that this agreement to arbitrate is not a contract of employment and does not alter my status as an employee at-will (to the extent applicable under state law), and is a free-standing independent contract.

[Signature] 9/14  
Employee's Signature Date

[Signature] 9/14  
Manager's Signature Date

1203459  
Social Security/Address Book #

370  
Branch Number/Department