BEFORE THE COMMISSIONER OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Matter of:

NAVEX GLOBAL, INC.,

Case No. 59-17

AMENDED FINAL ORDER

Respondent.

FINDINGS OF FACT

1) Complainant Sharae Epperheimer filed a verified complaint with the Bureau of Labor and Industries’ (“BOLI” or “the Agency”) Civil Rights Division on May 12, 2016, alleging that she was the victim of unlawful employment practices.

2) After investigating the complaint, the Agency issued a Notice of Substantial Evidence Determination and Formal Charges, alleging that Respondent NAVEX Global, Inc., engaged in an unlawful employment practice.

3) Respondent filed an answer to the Formal Charges on September 11, 2017, in which it denied that it had unlawfully discriminated against Complainant.

4) A contested case hearing was held on November 14-16, 2017, in the Agency’s W.W. Gregg Hearing Room, located at 800 NE Oregon Street, Portland, Oregon.

5) After the hearing, on April 30, 2018, the Agency issued a Final Order (“the Final Order”), in which it concluded that Respondent had engaged in an unlawful employment practice, and awarded Complainant $148,373.14 in damages.
6) Respondent timely filed a Petition for Judicial Review of the Final Order with the Oregon Court of Appeals.

7) Additionally, on August 24, 2018, Respondent obtained a supersedeas bond ("the Supersedeas Bond"), in order to secure the damages award while judicial review was pending.

8) On February 25, 2019, Respondent filed its opening brief with the Oregon Court of Appeals, asking the court to reverse and remand the Final Order.

9) Following the filing of Respondent’s opening brief, the Agency, Complainant, and Respondent began to discuss a settlement of the case.

10) Consistent with those discussions, and pursuant to ORS 659A.840(1) and ORS 659A.840(2), on 9/30/19, the Agency, Complainant, and Respondent agreed to settle the case and executed a Settlement Agreement ("the Settlement Agreement") resolving all remaining issues on judicial review. The Settlement Agreement is attached to this Amended Final Order as EXHIBIT A.

11) Among other things, the Settlement Agreement provides for the following actions:

a. BOLI shall withdraw and vacate the Final Order, dated April 30, 2018 and issue this Amended Final Order, which (1) describes the procedural history of the judicial review in this case, (2) includes a statement that the parties agreed to settle the case, and (3) attaches a copy of the Settlement Agreement.

b. Within ten (10) days after issuance of this Amended Final Order, Respondent shall deliver to BOLI a certified check payable to Elmer & Burnot PC in trust for Complainant in the amount of $62,500.00.

c. BOLI and Complainant shall fully release Respondent for all claims arising out of or relating to Complainant’s complaint and BOLI’s allegations in this case.
d. BOLI shall release the Supersedeas Bond in this case, dated August 24, 2018.

ORDER

NOW, THEREFORE, as authorized by ORS 659A.840(1), ORS 659A.840(2), and ORS 659A.840(5), the Commissioner of the Bureau of Labor and Industries hereby orders the following, based on the terms of the Settlement Agreement:

A. The Final Order, dated April 30, 2018, as well as all of the Findings of Fact, Conclusions of Law, and opinions contained therein, is withdrawn and vacated.

B. Within ten (10) days after issuance of this Amended Final Order, Respondent shall deliver to the Administrative Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to Elmer & Burnot PC in trust for Complainant Sharae Epperheimer in the amount of $62,500.00.

C. BOLI releases Respondent from all claims and allegations arising out of or relating to Complainant’s complaint in this case.

D. BOLI releases the Supersedeas Bond in this case, dated August 24, 2018.

DATED: September 30, 2019

By: Val Hoyle, Commissioner
Bureau of Labor and Industries
SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into between NAVEX Global, Inc. ("NAVEX"), on the one hand, and Sharae Epperheimer ("Epperheimer") and the Oregon Bureau of Labor and Industries ("BOLI"), on the other hand, all of whom are hereinafter collectively referred to as the "Parties." This Agreement is effective as of the date on which it has been fully executed by all Parties ("Effective Date").

RECITALS

WHEREAS, Epperheimer was employed by NAVEX from October 5, 2015 to March 30, 2016;

WHEREAS, Epperheimer filed a verified complaint with BOLI’s Civil Rights Division on May 12, 2016, alleging that she was the victim of unlawful employment practices;

WHEREAS, after investigating the complaint, BOLI issued a Notice of Substantial Evidence Determination and Formal Charges, alleging that NAVEX engaged in an unlawful employment practice;

WHEREAS, NAVEX filed an answer to the Formal Charges on September 11, 2017, in which it denied that it had unlawfully discriminated against Epperheimer;

WHEREAS, a contested case hearing was held on November 14-16, 2017, in BOLI’s W.W. Gregg Hearing Room, located at 800 NE Oregon Street, Portland, Oregon;

WHEREAS, after the hearing, on April 30, 2018, the Agency issued a Final Order ("the Final Order"), in which it concluded that NAVEX had engaged in an unlawful employment practice and awarded Epperheimer $148,373.14 in damages;

WHEREAS, NAVEX timely filed a Petition for Judicial Review of the Final Order with the Oregon Court of Appeals;

WHEREAS, on August 24, 2018, NAVEX obtained a supersedeas bond (the "Supersedeas Bond"), to secure the damages award while judicial review was pending;

WHEREAS, there are existing disputes and claims among the parties in the following cases:

the Oregon Court of Appeals case captioned NAVEX Global, Inc. v. Oregon Bureau of Labor & Industries, Case No. A168111, and
the BOLI case captioned In the Matter of NAVEX Global, Inc., BOLI Case No. 59-17, which includes Epperheimer’s allegations that she was subject to unlawful employment practices (collectively, the "Action");

WHEREAS, the Parties desire to settle all claims in the Action; and

NOW, THEREFORE, in consideration of the promises and terms described below, and subject to the various terms set forth herein, the Parties agree as follows.
AGREEMENT

1. **Issuance of Amended Final Order.** Within five (5) days after execution of this Agreement, BOLI shall withdraw and vacate the Final Order in the Action, dated April 30, 2018. BOLI also shall issue the Amended Final Order (the “Amended Final Order”), in the form to Exhibit 1 attached to this Agreement.

2. **Release of the Supersededes Bond.** Within ten (10) days after execution of this Agreement, BOLI shall release the Supersededes Bond, dated August 24, 2018.

3. **Payment.** Within ten (10) days after issuance of the Amended Final Order, NAVEX shall deliver to the Administrative Prosecution Unit of BOLI, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to Elmer & Brunot PC in trust for Epperheimer in the sum of Sixty-Two Thousand Five-Hundred Dollars and No Cents ($62,500.00 USD). Within ten (10) days after receipt of that certified check, BOLI shall deliver the check to Epperheimer’s attorney, Zachary Brunot, 245 Commercial Street SE, Suite 220, Salem, Oregon 97301.

4. **Dismissal of Litigation.** Within ten (10) days after issuance of the Amended Final Order, NAVEX shall withdraw or dismiss with prejudice its petition for judicial review in the Action, which shall be dismissed without an award of costs or fees to any party.

5. **Release of Claims.** In consideration for and as a condition of the terms and covenants set forth herein, BOLI and Epperheimer, for themselves and on behalf of their assigns, officers, directors, managers, and employees, will release and forever discharge NAVEX, its predecessors, successors, assigns, officers, directors, managers, members, owners, agents, shareholders, and employees (collectively, the “NAVEX Released Parties”) in the following manner:

   5.1. Epperheimer, for herself and on behalf of her assigns (collectively, the “Epperheimer Releasing Parties”) will release and forever discharge the NAVEX Released Parties from, and covenant not to sue them for any and all controversies, claims, credit requests, disputes, demands, complaints, charges, grievances, debts, liabilities, obligations, causes of action, violations of BOLI statutes or administrative rules, fires, damages or judgments of any kind or nature whatsoever, whether known or unknown, including those arising out of or related to the Action, that the Epperheimer Releasing Parties now have, had, or hereafter may allege to have had against the NAVEX Released Parties, which occurred or are alleged to have occurred on or before the Effective Date, including any claims arising out of or relating to Epperheimer’s allegations that she was subject to unlawful employment practices.

   5.2. BOLI, for itself and on behalf of its assigns, officers, directors, managers, and employees (collectively, the “BOLI Releasing Parties”) will release and forever discharge the NAVEX Released Parties from, and covenant not to sue them for any and all controversies, claims, credit requests, disputes, demands, complaints, charges, grievances, debts, liabilities, obligations, causes of action, violations of
BOLI statutes or administrative rules, fines, damages or judgments of any kind or nature whatsoever, whether known or unknown, arising out of or relating to the Action.

6. **Disclaimer of Liability.** This Agreement shall not be construed or considered as an admission of any liability, fault, or responsibility by any Party. Liability of any Party is hereby expressly denied.

7. **Integration.** This Agreement constitutes the final written expression of the understanding between the Parties regarding the subject of this Agreement, and represents the complete statement of all the promises, representations, and covenants made by and between the Parties in connection therewith. Each of the Parties to this Agreement represents that they (a) have reviewed this Agreement with legal counsel, (b) voluntarily enter into this Agreement with the consent and advice of legal counsel, (c) have not relied upon any representations by any of the other Parties or their counsel regarding the subject matter of this Agreement except those specifically enumerated herein, and (d) understand that this Agreement supersedes all prior contemporaneous agreements, representations, discussions, and understandings of the Parties and their representatives on the subject matter of this Agreement.

8. **Authority.** Each Party to this Agreement represents and warrants that such Party has the full power and authority to execute, deliver, and perform this Agreement and has duly authorized the execution, delivery, and performance of this Agreement.

9. **Construction.** This Agreement shall be construed as if it were jointly prepared by the Parties. Any uncertainty or ambiguity contained herein shall not be construed against any one of the Parties.

10. **Severability.** If any portion or portions of this Agreement are found to be unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain enforceable and shall be construed as if such invalid portion or portions had not been included.

11. **Materiality of All Conditions and Obligations.** The Parties understand and acknowledge that all of the conditions and obligations in this Agreement are material and that the nonoccurrence or breach of any such condition or obligation by any Party shall result in the non-breaching Party being entitled to assert any and all rights it may have in law or in equity under this Agreement.

12. **Further Assurances.** Each Party agrees to execute any further and additional documents, instruments, and writings as may be necessary, proper, required, desirable or convenient for the purpose of fully effectuating, evidencing, or perfecting the terms and provisions of this Agreement.

13. **Waiver.** No provision of this Agreement shall be deemed to have been waived unless such waiver is in writing and signed by the waiving party. Failure by any of the Parties hereto to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy upon breach thereof, shall not constitute a waiver of any rights in connection with a breach of such provision or any other provision. A waiver of one provision of this
Agreement shall not be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly agreed to in writing.

14. Amendments. This Agreement may not be amended, modified or supplemented except by written agreement signed by all Parties.

15. Attorney Fees. The Parties agree that, upon satisfaction of this Agreement, none of the Parties shall seek fees or costs of any kind, including attorney fees, from another Party in connection with the Action. In the event that any Party to this Agreement institutes a suit or action to enforce or declare their rights under this Agreement, the prevailing party shall be entitled to recover all of its reasonable costs, expenses, and attorney's fees in the trial court, and upon any appeal therefrom, including, but not limited to, deposition costs, court reporters, investigators, expert witness fees and expenses, and all other costs, expenses, and fees reasonably incurred.

16. Governing Law. This Agreement shall be construed in accordance to the laws of the State of Oregon. The Parties further agree that jurisdiction for any suit or action to enforce or declare rights under this Agreement shall be in the Circuit Court in Multnomah County, Oregon.

17. Counterparts. This Agreement may be signed in any number of counterparts, including counterparts exchanged by email or facsimile, all of which when taken together shall constitute one agreement binding on the parties hereeto, notwithstanding that all such signatories are not signatories to the same counterpart.

IT IS SO AGREED.

OREGON BUREAU OF LABOR AND INDUSTRIES

[Signature]

Title: Chief Prosecutor

Date: 9/30/19

NAVEX GLOBAL, INC.

Title: __________________________

Date: __________________________

SHARAE EPPERHEIMER

[Signature]

Date: 9/30/19
Agreement shall not be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly agreed to in writing.

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IT IS SO AGREED.

OREGON BUREAU OF LABOR AND INDUSTRIES

Title: ______________________________
Date: ______________________________

NAVEX GLOBAL, INC.

Title: General Counsel
Date: 9/27/19

SHARAE EPPERHEIMER

Date: ______________________________