

RELEASE AND SETTLEMENT AGREEMENT

CITY OF

SAN ANTONIO HR

APR26 '18 2:27PM

WHEREAS, Fire Engineer Austin Cain was issued an indefinite suspension on 4/26, 2018, by Fire Chief Charles N. Hood for violations of civil service rules and regulations of the San Antonio Fire Department as stated in the notice of suspension; and

WHEREAS, Fire Engineer Austin Cain has the right to appeal, but has not yet appealed, said suspension to the San Antonio Firefighters and Police Officers Civil Service Commission or a third-party arbitrator; and

WHEREAS, Chief Hood and Fire Engineer Cain have agreed to settle this disciplinary matter;
NOW THEREFORE:

FOR AND IN CONSIDERATION OF THE AGREEMENTS CONTAINED HEREIN:

SECTION 1. Fire Engineer Austin Cain admits that he violated the rules of the Fire Fighters' and Police Officers' Civil Service Commission and of the San Antonio Fire Department set out in the Notice of Proposed Indefinite Suspension issued on 4/26, 2018, and admits to the truth of the facts stated in the factual basis in said notice of indefinite suspension.

SECTION 2. The aforementioned indefinite suspension without pay of Fire Engineer Cain is hereby reduced to a sixty day suspension without pay beginning April 26, 2018.

SECTION 3. Fire Engineer Cain agrees that within fourteen days of the beginning of the aforementioned sixty-day suspension, he will begin an appropriate rehabilitation program, as determined by a drug and/or alcohol abuse evaluation expert. Fire Engineer Cain shall provide verification, authored by the program administrator, of his successful completion of said program to the Fire Chief within fourteen days of completion of the program. The failure of Fire Engineer Cain to begin said program within the required time, to successfully complete said program, or to provide verification of his successful completion of said program to the Fire Chief within the required time shall constitute the resignation of Fire Engineer Cain from the San Antonio Fire Department and employment with the City of San Antonio. The requirements of this section shall be considered satisfied if Fire Engineer Cain has begun an appropriate rehabilitation program, as determined by a drug and/or alcohol abuse evaluation expert, prior to the execution of this agreement, successfully completes said program, and provides verification, authored by the program administrator, of his successful completion of said program to the Fire Chief within fourteen days of the execution of this agreement or of the completion of the program, whichever occurs later.

SECTION 4. Fire Engineer Cain agrees that, following completion of the rehabilitation program provided for in Section 3 of this agreement, he will submit to counseling with a mental health professional, at his own expense, as frequently as deemed necessary by said professional and until such time as that professional agrees that counseling is no longer needed. Said counseling shall begin within thirty days of the execution of this agreement or of the completion of the rehabilitation program, whichever occurs later. Fire Engineer Cain agrees to authorize, in

writing, said professional to report to the Fire Chief whether he has complied with the aforementioned requirements. Fire Engineer Cain shall provide a copy of said authorization to the Fire Chief within forty-five days of the execution of this agreement or of the completion of the rehabilitation program, whichever occurs later. The failure of Fire Engineer Cain to submit to counseling as frequently and for as long as deemed necessary, to begin counseling within the required time, or to provide the aforementioned authorization within the required time shall constitute the resignation of Fire Engineer Cain from the San Antonio Fire Department and employment with the City of San Antonio.

SECTION 5. Fire Engineer Cain agrees that he will be subject to random and unannounced drug and alcohol testing for a period of up to twenty four (24) months following the date he returns to work. Further, any positive test result, as determined by the MRO as delineated in the collective bargaining agreement, will constitute the resignation of Fire Engineer Cain from the San Antonio Fire Department and employment with the City of San Antonio.

SECTION 6. Any arrest in any jurisdiction of Fire Engineer Cain for driving while intoxicated or public intoxication after the execution of this agreement shall constitute the resignation of Fire Engineer Cain from the San Antonio Fire Department and employment with the City of San Antonio.

SECTION 7. In addition to the reporting requirements of Sections 3 and 4 of this agreement, Fire Engineer Cain shall, on the tenth day of each month following the execution of this agreement, notify the Fire Chief, in writing, of the status of his efforts to comply with the requirements of Sections 3 and 4. This requirement shall remain in effect until such time as Fire Engineer Cain has fully complied with the requirements of Sections 3 and 4. Fire Engineer Cain agrees to the imposition of a five-day suspension without pay for any instance in which he fails to comply with this section. Fire Engineer Cain waives his right to appeal the imposition of discipline issued pursuant to this section and agrees that he will not file an appeal of any disciplinary action so taken.

SECTION 8. IT IS FURTHER AGREED AND UNDERSTOOD THAT BY EXECUTION OF THIS AGREEMENT, AND IN CONSIDERATION OF SAID REDUCTION OF DISCIPLINE, FIRE ENGINEER CAIN DOES HEREBY RELINQUISH AND WAIVE ANY RIGHT TO APPEAL SAID SUSPENSION TO THE FIREFIGHTERS' AND POLICE OFFICERS' CIVIL SERVICE COMMISSION, A THIRD-PARTY ARBITRATOR, THE DISTRICT COURT, OR ANY OTHER COURT HAVING COMPETENT JURISDICTION AND THAT THIS AGREEMENT IS INTENDED TO BE A FULL AND FINAL SETTLEMENT OF ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, WHETHER KNOWN OR UNKNOWN, WHETHER ASSERTED OR NOT HAVING YET BEEN ASSERTED, ARISING OUT OF THE AFORESAID SUSPENSION.


SECTION 9. FIRE ENGINEER CAIN, FOR HIMSELF, HIS HEIRS, EXECUTORS, AND ASSIGNS, DOES HEREBY RELEASE, DISCHARGE, AND ACQUIT THE CITY OF SAN ANTONIO, TEXAS, ITS SUCCESSORS, ASSIGNS, OFFICERS, AGENTS,

SERVANTS, AND EMPLOYEES, AND CHARLES N. HOOD, HIS HEIRS, EXECUTORS, ASSIGNS, AGENTS, SERVANTS, AND EMPLOYEES, FROM ANY AND ALL ACTIONS, CAUSES OF ACTION, INCLUDING THOSE ARISING OUT OF CHAPTER 554 OF THE TEXAS GOVERNMENT CODE, CLAIMS, OR DEMANDS FOR DAMAGES, COSTS, EXPENSES, COMPENSATION, OR CONSEQUENTIAL DAMAGES, KNOWN OR UNKNOWN, ASSERTED OR NOT, ARISING OUT OF THE AFORESAID SUSPENSION.

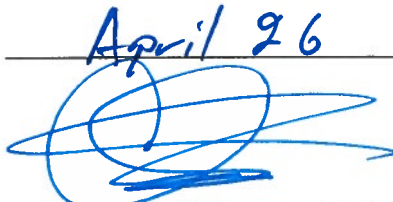
SECTION 10. Should there be any contention, now or in the future, that the terms of this agreement conflict with or are inconsistent with those of the Collective Bargaining Agreement between the City of San Antonio and Local 624 International Association of Fire Fighters, which was executed on June 27, 2011, Fire Engineer Cain agrees that the provisions of this agreement prevail.

SECTION 11. Fire Engineer Cain acknowledges that he has been given an opportunity to review this agreement with the International Association of Fire Fighters, Local 624, and his attorney or other representative. Fire Engineer Cain acknowledges that he has carefully read this Release and Settlement Agreement, he knows and understands the contents of the agreement, and he is satisfied with the contents of the agreement.

EXECUTED IN DUPLICATE ORIGINALS on April 26, 2018.



Austin Cain
Fire Engineer



Charles N. Hood
Fire Chief

NOTICE OF INDEFINITE SUSPENSION WITHOUT PAY

CITY OF

SAN ANTONIO HR

APR26 '18 2:24PM

Fire Engineer Austin Cain
San Antonio Fire Department
315 S. Santa Rosa
San Antonio, Texas 78207

Fire Fighters' and Police Officers' Civil
Service Commission
111 Soledad, Suite 123
San Antonio, Texas 78205

Commissioners and Fire Engineer Austin Cain:

Under and by the virtue of the authority vested in me by Chapter 143, Municipal Civil Service, Subtitle A, Title 5, V.T.C.A. Local Government Code, I do hereby suspend Fire Engineer Austin Cain from the San Antonio Fire Department without pay for an indefinite period, beginning on the 26 day of April, 2018.

Fire Engineer Cain has violated Subsection C of Rule XIII of the City of San Antonio Fire Fighters and Police Officers Civil Service Commission Rules which were adopted on February 23, 1998, by the Fire and Police Civil Service Commission as the Civil Service Rules for the Fire and Police Departments of the City of San Antonio. The particular civil service rules violated by Fire Engineer Cain and which are grounds for suspension are as follows:

Rule XIII, Subsection C(12): Violation of an applicable fire or police department rule, or special order.

The Rules and Regulations of the San Antonio Fire Department which Fire Engineer Cain has violated were those approved by the Firemen's and Policemen's Civil Service Commission on February 10, 2003, to be effective March 7, 2003. The particular rules thereof which Fire Engineer Cain has violated are as follows:

2.02 ABIDE BY LAWS AND DEPARTMENTAL ORDERS:

- A. LAWS: Members shall abide by the laws of the United States and the State of Texas, and ordinances of the City of San Antonio.
- B. ORDERS, RULES, REGULATIONS, DIRECTIVES, POLICIES AND PROCEDURES: Members shall abide by the Rules and Regulations, Departmental roles and responsibilities, administrative orders, directives, policies and procedures of the San Antonio Fire Department.

3.01 CONDUCT AND BEHAVIOR: Members, whether on-duty or off-duty, shall be governed by the ordinary and reasonable rules of good conduct and behavior, and shall not commit any act tending to bring reproach or discredit on themselves or the Department.

4.07 NEGATIVE PUBLIC IMAGE: Members shall not engage in any activity tending to create a negative public perception of the Fire Department.

4.09 USE OF INTOXICANTS:

INTOXICATION: Members shall not at any time be intoxicated while on-duty. No Member shall report for duty exhibiting the odor of intoxicants, or any of the elements, effects, behavior or appearance of intoxication. **Members shall not, under any circumstances, be intoxicated while in public to the extent that may damage the reputation of the Department.**

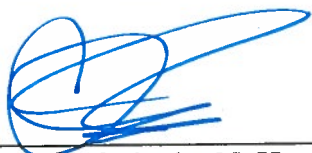
The acts committed by Fire Engineer Cain which violated the aforementioned Civil Service Rules and Fire Department Rules are as follows:

On or about Saturday, November 25, 2017, SAPD received a call from a driver that a Ford F150 at the location of 7790 Mainland Drive had swerved into his lane of traffic. When Police Officer Wycoff arrived at the scene, Fire Engineer Cain was standing in front of his truck, exhibiting signs of being under the influence of alcohol including smelling strongly of an alcoholic odor, watery/bloodshot eyes, slurred speech and had a wet stain on his shorts. His vehicles front and back right tires were blown and shredded, and there was damage to the front driver's side quarter panel. Witnesses at the scene indicated that they had seen Fire Engineer Cain's vehicle swerving and being driven erratically while on flat tires prior to coming to a stop at 7790 Mainland Drive. Fire Engineer Cain refused medical attention, and was issued a citation for public intoxication. While an EMS Lieutenant Grosso was escorting him home, Fire Engineer Cain stated that he intended to shoot himself. Lt. Grosso then stopped his vehicle and told Fire Engineer Cain he could not leave him unsupervised. Subsequently, Fire Engineer Cain got out of the vehicle and attempted to flee. Lt. Grosso proceeded to follow him and contacted a nearby fire unit for assistance. Fire Engineer Cain became further agitated, began raising his voice and yelling obscenities at Lt. Grosso as well as exhibiting signs of physical aggression towards him. Fire Engineer Cain threatened to

punch him. Additionally, he told Lt. Grosso he wanted to let his dog out to kill him. Officer Wycoff, among others, arrived at the scene, ordered him to stop, and arrested him for emergency detention. At that time, Fire Engineer Cain told Officer Wycoff that he had not made any suicidal statements to Lt. Grosso and that Lt. Grosso was at fault. His actions tend to bring reproach upon himself and the San Antonio Fire Department.

Fire Engineer Cain's violation of the cited rules is the basis for these charges and the reason for his indefinite suspension without pay.

An original of this disciplinary suspension order is being filed with the Fire Fighters' and Police Officers' Civil Service Commission.




Fire Chief Charles N. Hood

4/26/18
Date

1049
Time

NOTICE OF RIGHT OF APPEAL

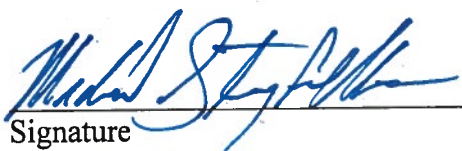
I hereby acknowledge receipt of a copy of the foregoing indefinite suspension without pay and further acknowledge that I have been notified that I have ten days to file a written appeal of this suspension with the Fire Fighters' and Police Officers' Civil Service Commission for hearing before the Commission or an independent third party hearing examiner. I also understand that if I appeal to the hearing examiner, I waive all rights of appeal to a District Court, except as provided by subsection (j) of Section 143.057 of Title 5, V.T.C.A. Local Government Code.



Fire Engineer Austin Cain

4-26-2018 10:49
Date Time

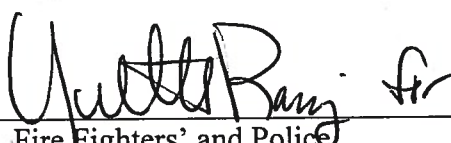
WITNESSED BY:



Signature

4-26-2018 10:49
Date Time

FILED on this the 26th day of April, 2018, with the
Fire Fighters' and Police Officers' Civil Service Commission.



Director, Fire Fighters' and Police
Officers' Civil Service Commission