EXHIBIT 1

CAUSE NO. 2017-19367

BRIE ANA WILLIAMS	§	IN THE DISTRICT COURT OF
	§	
V.	§	
	§	
ALVIN WESLEY PRINE, DAVID L. RAMIREZ, LOS VAQUEROS RIO GRANDE TRAIL RIDE ASSOCIATION, LLC, AND HOUSTON LIVESTOCK SHOW AND RODEO, INC.	§	HARRIS COUNTY, TEXAS
	§	
	§	
	§	
	§	
	§	334TH JUDICIAL DISTRICT

DEFENDANT HOUSTON LIVESTOCK SHOW AND RODEO, INC.'S ORIGINAL COUNTERCLAIM AND THIRD PARTY PETITION FOR DECLARATORY RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, HOUSTON LIVESTOCK SHOW AND RODEO, INC., and files this it Original Counterclaim and Third Party Petition for Declaratory Relief. HLSR would show unto this Honorable Court as follows:

PARTIES

1. Defendant/Counter-Plaintiff/Third Party Plaintiff, Houston Livestock Show and Rodeo, Inc ("HLSR")., is a Texas nonprofit corporation that has answered and appeared herein.

2. Plaintiff and Counter-Defendant Brie Ana Williams ("Williams") is a natural person who has appeared herein and may be served her counsel of record.

3. Third Party Defendant Wayne Dolcefino is President of Dolcefino Communications, LLC, which does business as Dolcefino Consulting ("Dolcefino"). Dolcefino's principal office is believed to be at 3701 Kirby, Suite 560, Houston, Texas 77098. **SERVICE IS REQUESTED AT THIS TIME.**

JURISDICTION AND VENUE

4. This Court has jurisdiction over this dispute under Texas Civil Practice & Remedies Code § 37.004 because there is a controversy between the parties regarding whether Tex. Bus. Orgs. Code § 22.353, the Texas Non-Profit Act, requires HLSR to produce the records requested by Dolcefino, who is acting as the agent investigator for Plaintiff and Counter-Defendants Williams. Venue is proper in Harris County pursuant to § 15.002(a)(1) and (3) of the Texas Civil Practice Remedies Code because a substantial part of the events giving rise to this dispute occurred in Harris County and Because the principle office of Dolcefino is in Harris County.

DISCOVERY

5. Discovery, if necessary, is intended to be conducted under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure. However, because the legal interpretation of the statute may be determinative, discovery may not be necessary.

FACTS

6. Williams' counsel retained Dolcefino as an investigator in this case. *See* Plaintiff's Response to Defendant Houston Livestock Show and Rodeo's Motion for Protective Order, p. 2 (acknowledging that Plaintiff's retained Dolcefino as an "investigative consultant"). On March 23, 2018, Dolcefino sent a "formal request" directly to HLSR (not through its counsel of record) seeking to inspect and obtain copies of records "under the provisions of the Texas Business Code Chapter 22." *See* Defendant HLSR's Motion for Protective Order, Exhibit A. Counsel for HLSR emailed Dolcefino requesting that all contact be made through counsel of record and not directly through contact with the represented client. Dolcefino responded, claiming that due to past contacts with HLSR he contacted her as a courtesy to let her know that "that Dolcefino Consulting has been formally engaged by the Pinkerton law firm to investigate issues relating to the brutal

sexual assault of a young woman by folks associated with Los Vaqueros trail ride." *Id.* at Exhibit B. HLSR's counsel responded, informing Dolcefino that since Dolcefino worked for Plaintiff William and HLSR was represented by counsel, contact should be made through counsel. *Id.* at Exhibit C. Dolcefino refused to communicate through HLSR's counsel and instead threatened to file criminal charges if HLSR fails to comply with his demand for records: "My requests for public records will be directed to the custodian of records since they will be subject to criminal penalties for not responding according to statute." *Id.*

7. The "records" sought by Dolcefino from HLSR in the **March 23, 2018** public records request included the following:

- 1. A searchable ledger detailing any **payments made to any security company** for the period **January 1, 2012** through **December 31, 2013**.
- 2. A searchable ledger detailing any **payments made to any security company** for the period **January 1, 2017** through **the present**.
- 3. PDF copies of documents detailing **any payments made to settle any litigation involving harassment or assault**, redacted to exclude any information made confidential under state law, between **January 1, 2012** through **the present**.

See Exhibit A, attached hereto (emphasis in original).

8. As the email from Dolcefino to HLSR's counsel makes clear, Dolcefino has been retained by Pinkerton for purposes of the instant litigation and, therefore, is acting on behalf of Williams as her agent. *Id.* at Exhibit B. The email acknowledges that he has been "formally engaged by the Pinkerton law firm to investigate issues" relating to relating to Williams' sexual assault. *Id.*

9. As a result of Plaintiff's attempt to use the request for public documents under §22.353 of the Texas Business Organizations Code to circumvent the use of the discovery rules in ongoing litigation, HLSR filed a Motion for Protective Order. *See* Defendant HLSR's Motion for Protective Order. Plaintiff responded to the Motion, essentially arguing that Dolcefino was seeking many documents from the HLSR that were not relevant to this litigation and that his requests were unrelated to this matter. *See* Plaintiff's Response. Plaintiff attached the affidavit of Dolcefino who acknowledged that he had been retained by the Pinkerton Law firm to investigate the incident made the basis of this lawsuit, but his request to review certain financial records was "largely independent of that investigation." *See* Plaintiff's Response, Exhibit A ¶5. Dolcefino claimed that no one at the Pinkerton Law firm "directed [him] to file requests for any of the information [he has] sought and the vast majority of the records [he has] sought have no bearing on their current litigation." *Id*. HLSR believes the requested information outlined above speaks for itself and that Dolcefino's attempt to characterize his involvement as the pursuit of a personal agenda is misleading, disingenuous, and contrary to the facts.

10. A hearing was held on the Motion for Protective Order on June 15, 2018, and on June 18, 2018, this Court signed an order denying the Motion for Protective Order. Since that time, Dolcefino Consulting has sent three additional requests for public records on June 18, and 19. Exhibit C and D, attached here to. In the **June 18, 2018** public records request, Dolcefino seeks:

- 1. Financial records detailing the purchase of all furniture since January 1, 2016.
- 2. Financial records detailing expenditure for travel and entertainment since January 1, 2016.

- 3. Financial records detailing the prizes and awards for Champion livestock at the Rodeo for the last two years, including the payments to the winners, and documents detailing the use of all remaining proceeds.

Exhibit C, attached hereto.

11. In the **June 19, 2018** public records request, Dolcefino seeks:

- 1. Financial records detailing the purchase of any services or materials or anything of value from any Board Members as identified in 990 tax returns since January 1, 2015.

Exhibit D, attached hereto.

12. On June 18, 2018, this Court denied the Motion for Protective Order. On June 20, HLSR General Counsel emailed Dolcefino to inform him that the public records inspection (tentatively scheduled for June 21) was postponed while HLSR considers its legal and appellate options and provided him with three years' worth of HLSR annual reports. Exhibit E, attached hereto. Dolcefino responded with another records request dated June 21, 2018 (Exhibit F, attached hereto). Dolcefino's **June 21, 2018** public record request seeks:

- 1. Salaries and compensation of all current rodeo officers and employees.
- 2. Documents detailing any complaints of sexual harassment or sexual assault from Jan. 1, 2013 to the present.
- 3. Documents detailing all employees terminated from Jan. 1, 2013 to the present.
- 4. Documents detailing all expenditures on travel and entertainment from Jan. 1, 2013 to the present.

Exhibit F, attached hereto.

13. Dolcefino also filed a criminal complaint with the District Attorney along with a demand for the DA to prosecute HLSR pursuant to § 22.354(b) of the Texas Business Organizations Code (Exhibit G, attached hereto), along with a press release (Exhibit H, attached hereto). Dolcefino's actions occurred within three days of this Court's order, despite the fact that (1) HLSR informed Dolcefino that HLSR was pursuing its legal and appellate rights and (2) neither this Court's order of June 18, 2018 denying the Motion for Protective Order, nor § 22.353 providing a right of public record inspection contain any deadline by which compliance is mandated.

14. On June 25, 2018, Dolcefino Consulting sent yet another records request, this time seeking:

- 1. Copies of documents detailing the Houston Livestock Show and Rodeo's general ledger for the last three fiscal years.
- 2. Any documents detailing purchases of currently held real estate.
- 3. Copy of the Houston Livestock Show and Rodeo's operating agreement with Reliant/NRG Stadium.

Exhibit I.

15. On June 27, 2018 Dolcefino sent another email demand to HLSR, stating that HLSR

> is in violation of Chapter 22 of the business organization code. You have refused to provide records requested. Dolcefino Consulting will give you until 5:00 PM to provide the various documents requested, or we will file additional requests for criminal investigation and grand jury action.

Exhibit J. At the time of the filing of Defendant's Motion for Leave to File Third Party Petition, HLSR is processing the general ledger of HLS&R and will provide Dolcefino with the right to a public inspection of HLSR's general ledger for the last three fiscal years. *See* Exhibit J. The

general ledger will be redacted to exclude the amounts of the fees paid to the performers, which are confidential, business proprietary information, and trade secrets of HLSR.

REQUEST FOR DECLARATORY RELIEF

16. This action is brought under Texas Civil Practice & Remedies Code Chapter 37, known as the "Uniform Declaratory Judgment Act." In particular, § 37.004 provides that "[a] person . . . whose rights, status or other legal relations are affected by a statute . . . may have determined any question or construction or validity under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code § 37.004(a).

17. HLSR denies that it is required to produce most, if not all, of the records sought by Dolcefino because § 22.353 only contemplates that a nonprofit corporation will maintain its corporate records, books, and reports for three years, thus the only records subject to inspection are those within the last three years. *See* Tex. Bus. Orgs. Code § 22.353 (a) & (b). Additionally, the statute only allows inspection of the nonprofits "records, books, and reports." The Texas Supreme Court held this means financial records. *See In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381 (Tex. 1998); *see also Gaughan v. National Cutting Horse Ass'n*, 351 S.W.3d 408, 415 (Tex. App.—Fort Worth 2011, pet. denied) (recognizing that § 22.353 only allows the public *limited* access to financial records). Financial records is not defined in the statute, but the Texas Supreme Court in *Bay Area* recognized that this means a record showing income and expenditures, nothing else. It does not include records of any supporting documentation like contracts or sources of income or documents "detailing" the income or expenditure. *See In re Bay Area*, 982 S.W.2d at 381("The phrase 'financial records' does not include the names of contributors or members."); *Gaughan*, 351 S.W.3d at 416 (contracts with vendors, sponsors or employees are not financial documents that the general public would be able

to inspect). Section 22.353 (a) also only requires a nonprofit to make financial records available (assuming a proper request) "for inspection and copying at the corporations registered or principal office during regular business hours." It does not require a nonprofit to produce a "searchable ledger." Furthermore, it is clear that records containing information subject to privilege, confidentiality, or a right of privacy are not subject to disclosure under § 22.353. *See Gaughan*, 351 S.W.3d 411 (any right of public inspect of books and records "does not trump privileges or other rights to confidentiality provided by Texas law."); *see also Huie v. DeShazo*, 922 S.W.2d 920, 924 (Tex. 1996) ("[T]o the extent that the court [of appeals] held that the owners' statutory right of inspection somehow trumped the privilege for confidential attorney-client communications, we disapprove of its holding."); *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-02 (1984) (holding Freedom of Information Act does not trump civil discovery privileges).

18. The cases interpreting § 22.353 have interpreted the statute narrowly. *Texas Appellate Practice & Educ. Res. Ctr. v. Patterson*, 902 S.W.2d 686, 689 (Tex. App.—Austin 1995, writ denied) (the "purpose, legislative history, and circumstances under which S.B. 857 was enacted reveal that the statute was narrowly drawn to remedy a specific problem: lack of accountability."); *see also In re Bay Area*, 982 S.W.2d at 381 (acknowledging that "the seemingly broad scope of the statute's language is not matched by the legislative intent behind the statute."). HLSR asks the Court to narrowly interpret § 22.353 in accordance with its legislative intent, which is "ensuring the accountability of nonprofit corporations for expenditures of contributions." *Bay Area*, 928 S.W.2d at 381 n.10. The statute was not intended to be use a sword in litigation (threatening criminal prosecution under Tex. Bus. Orgs. Code § 22.353 for failure to comply), nor

to allow the "public" unlimited, unfettered access to every piece of paper held by a nonprofit corporation.

19. Section 22.353 does not require a nonprofit corporation to disclose information that is confidential, business proprietary information, and/or trade secret. Although not expressly found in the public requests for information statutes, Texas has held that rights of inspection of books and records do not trump rights of privilege. *See Huie v. DeShazo*, 922 S.W.2d 920, 924 (Tex. 1996) ("[T]o the extent that the court [of appeals] held that the owners' statutory right of inspection somehow trumped the privilege for confidential attorney-client communications, we disapprove of its holding."); *see also United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-02 (1984) (holding Freedom of Information Act does not trump civil discovery privileges); *Gaughan*, 351 S.W.3d 411 (any right of public inspect of books and records "does not trump privileges or other rights to confidentiality provided by Texas law.").

20. HLSR requests a declaration from this Court that HLSR is not required to make records available for public inspection as set forth below:

(a) HLSR seeks a declaration with regard to Dolcefino's March 23, 2018 public record request that:

- HLSR is not required to allow public inspection of any financial records older than three years under § 22.353;
- HLSR is not required to allow public inspection of any "searchable ledgers" under § 22.353;
- HLSR is not required to allow public inspection of any settlement agreements under § 22.353 because Settlement Agreements are not financial records under the statute;

- Because the March 23, 2018 public record request in its entirety exceeds the scope of § 22.353, HLSR is not required to comply with that request to make the requested records available for inspection.

(b) HLSR seeks a declaration with regard to Dolcefino's June 18, and 19 2018 public record requests that:

- HLSR is not required to provide any records "detailing" purchases or expenditures or provide underlying documentation regarding those amounts under § 22.353, but is only required to allow public inspection of corporate book/ledger entries showing the purchases or expenditures requested, which HLSR will provide (subject to redactions of fees paid to performers).

(c) HLSR seeks a declaration with regard to Dolcefino's June 21, 2018 public record requests that:

- HLSR is not required to allow public inspection of any financial records older than three years under § 22.353;
- HLSR is not required to allow public inspection of salaries and compensation of all current rodeo officers and employees as that request does not seek financial records (i.e., corporate books, records, or reports) and implicates privacy, confidentiality, and privilege issues;
- HLSR is not required to allow public inspection of documents detailing complaints of sexual harassment or sexual assault as that request does not seek financial records (i.e., corporate books, records, or reports) and implicates privacy, confidentiality, and privilege issues;

- HLSR is not required to allow public inspection of documents detailing all employees terminated from Jan. 1, 2013 to the present as that request does not seek financial records (i.e., corporate books, records, or reports) and implicates privacy, confidentiality, and privilege issues;
- Because the June 21, 2018 public record request in its entirety exceeds the scope of § 22.353, HLSR is not required to comply with that request to make the requested records available for inspection.

(d) HLSR seeks a declaration with regard to Dolcefino's June 2, 2018 public record requests that:

- HLSR is not required to allow public inspection of documents detailing purchases of currently held real estate.
- HLSR is not required to allow public inspection of a copy of the HLRS's operating agreement with Reliant/NRG Stadium.

21. HLSR also requests a declaration that HLSR is not required to allow Dolcefino to inspect its records under § 22.353 because Dolcefino was not acting a member of the public in requesting the inspection of HLSR's records, but as an agent of Plaintiff and Counter-Defendant Williams in this lawsuit, and that records sought from HLSR should be sought under the discovery rules in the ongoing litigation because the statute was not intended to be used as a vehicle to obtain documents when there is ongoing pending litigation.

22. HLSR also seeks a declaration that § 22.354 (a) of the Texas Business Organizations Code, which provides that "[a]corporation commits an offense if the corporation fails to… make the record or report available to the public in the manner required by Section 22.353," means that producing the audited financials (i.e., a report) satisfies the statute because of

the statute " says make the record or report available to the public or the organization is making the report available.

23. HLSR seeks a declaration that allowing public inspection of its general ledger for the last three fiscal years fulfills HLSR's legal obligation under Tex. Bus. Orgs. Code § 22.353 and § 22.354.

24. HLSR seeks a declaration that HLSR is entitled to redact information in its general ledger prior to public inspection that is confidential, business proprietary, and trade secret, and that the fees paid to performers at the rodeo constitutes confidential, business proprietary, and trade secret information not subject to public disclosure requests.

25. HLSR also seeks a declaration that HLSR cannot be liable under Tex. Orgs. Code § 22.354 for failing to make a record or report available to the public if HLSR has made both its general ledger for the last three fiscal years and audited financial reports for the last three years available to the public.

CONDITIONS PRECEDENT

21. All conditions precedent to HLSR's claim for relief have been performed or have occurred.

ATTORNEYS' FEES

22. HLSR has retained the firms of Mehaffy Weber and Vinson & Elkins to represent it in this action and has agreed to pay the firms reasonable and necessary attorneys' fees. HLSR is entitled to recover costs and reasonable and necessary attorneys' fees that are equitable and just under § 37.009 of the Texas Civil Practice & Remedies Code because this is a suit for declaratory relief.

PRAYER

WHEREFORE, HOUSTON LIVESTOCK SHOW AND RODEO, INC., requests that Williams and Dolcefino be cited to appear and answer herein, and that on final trial hereof, HLSR have the following relief:

1. Judgment declaring that:

(a) HLSR is not required to allow public inspection of any financial records older than three years, any "searchable ledgers, or any settlement agreements. Accordingly, Dolcefino's March 23, 2018 public record request in its entirety exceeds the scope of § 22.353, and HLSR is not required to comply with that request and make the requested records available for inspection.

(b) HLSR is not required to provide any records "detailing" purchases or expenditures or provide underlying documentation regarding those amounts under § 22.353, but is only required to allow public inspection of corporate book/ledger entries showing the purchases or expenditures requested in the June 18, 2018 and June 19, 2018 public record requests.

(c) HLSR is not required to allow public inspection of any financial records older than three years, and is not required to allow public inspection of any documents that are not corporate books, records or reports, such as salaries and compensation of all current rodeo officers and employees, documents detailing complaints of sexual harassment or sexual assault, or documents detailing all employees terminated. Accordingly, Dolcefino's June 21, 2018 public record request in its entirety exceeds the scope of § 22.353, and HLSR is not required to comply with that request and make the requested records available for inspection.

(d) HLSR is not required to allow public inspection of any documents that are not corporate books, records or reports, such as documents detailing purchase of currently held real estate or a copy of the operating agreement with Reliant/NRG Stadium. Accordingly, HLSR is not required to allow public inspection of those documents as requested in the June 25, 2018 public records request.

(e) Dolcefino was not acting a member of the public in requesting the inspection of HLSR's records, but as an agent of Plaintiff and Counter-Defendant Williams in this lawsuit, and records sought from HLSR should be sought under the discovery rules in the ongoing litigation, not under § 22.353.

(f) By allowing public inspection of its general ledger for the last three fiscal years and/or its audited financial statements for the last three years fulfills HLSR's legal obligation under Tex. Bus. Orgs. Code § 22.353 and cannot be liable under TEx. Bus. Orgs. Code § 22.354.

2. Reasonable and necessary attorneys' fees;

3. Costs of suit;

4. Such other and further relief to which HLSR may be justly entitled, special and general, at law and in equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been electronically transmitted to the Clerk of the Court on this the 28th day of June, 2018, and served on the following:

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