

HIRU CORPORATION OTC:HIRU
Supplemental filing Statement of Defense
SUPPLEMENTAL OTC MARKETS FILING

West Palm Beach, Florida, February 9, 2024 -- Hiru Corporation www.otchiru.com what follows is HIRU statement of defense & motion to set aside potential judgments against HIRU

These are activities of ex management and endeavors with the bank. HIRU position is outlined in its statement of defense (motion).

The presiding judge ruled in HIRU favor setting aside the judgment ONLY AGAINST HIRU and no other defendants.

Disclaimer Regarding Forward Looking Statements

Certain statements that we make may constitute "forward-looking statements" under the Private Securities Litigation Reform Act of 1995. Forward-looking statements include information concerning future strategic objectives, business prospects, anticipated savings, financial results (including expenses, earnings, liquidity, cash flow and capital expenditures), industry or market conditions, demand for and pricing of our products, acquisitions and divestitures, anticipated results of litigation and regulatory developments or general economic conditions. In addition, words such as "believes," "expects," "anticipates," "intends," "plans," "estimates," "projects," "forecasts," and future or conditional verbs such as "will," "may," "could," "should," and "would," as well as any other statement that necessarily depends on future events, are intended to identify forward-looking statements. Forward-looking statements are not guarantees, and they involve risks, uncertainties and assumptions. Although we make such statements based on assumptions that we believe to be reasonable, there can be no assurance that actual results will not differ materially from those expressed in the forward-looking statements. We caution investors not to rely unduly on any forward-looking statements.

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25 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
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27 **IN AND FOR THE COUNTY OF MARICOPA**
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AMERICA FIRST CREDIT UNION, a
federally chartered credit union,
Plaintiff;
vs.

JOEL NATARIO AND JANE DOE
NATARIO, as husband and wife;
KATHRYN GAVIN AND JOHN DOE
GAVIN, as husband and wife; HIRU
CORPORATION, a Georgia corporation;
AZ CUSTOM BOTTLED WATER LLC, a
Nevada limited liability company;
SALOME WATER AND ICE LLC, a
Nevada limited liability company; ABC
ORGANIZATIONS I-X, John Does 1-3;
and Jane Does 4-6,
Defendants

) Case No.: CV2023-012400
)

) **OPPOSITION OF HIRU**
) **CORPORATION TO PLAINTIFF'S**
) **MOTION FOR DEFAULT**
) **JUDGMENT AND COUNTER-**
) **MOTION TO SET ASIDE THE**
) **DEFAULT**

) **Date of Hearing: January 31, 2024**
) **Time of Hearing: 1:40 PM**
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11 **I. MOTION AND INTRODUCTION**
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14 COMES NOW, Defendant Hiru Corporation, a Georgia corporation (“Hiru”), hereby
15 submits this Opposition to Plaintiff’s Motion for Default Judgment and Counter-Motion to
16 Set Aside the Default. Hiru just learned of this lawsuit on January 18, 2024. Plaintiff has
17 declined to permit Hiru to Answer the First Amended Complaint, requiring the filing of this
18 Opposition and Countermotion. Each and every one of the allegations in Plaintiff’s Amended
19 Complaint are based on the alleged actions of Joel Natario and Kathryn Gavin (collectively,
20 “Natario and Gavin”) during the period of time that they controlled Hiru. Hiru is a public
21 company and, if Plaintiff’s allegations are correct, is a victim of the actions of Natario and
22 Gavin, as it appears that funds were being diverted from a secret Hiru account at Chase to
23 Natario’s personal account at AFCU.
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During October, 2024, Sasa Vasiljevic acquired control of Hiru and new management
was appointed shortly thereafter. During the sale process, Natario and Gavin were asked
whether Hiru had a bank account and were assured that it did not. In addition, neither Gavin
nor Natario revealed the existence of the instant lawsuit. Also, Plaintiff served the First
Amended Complaint on Hiru by personal service on Gavin on October 19, 2023, which was
after she resigned from Hiru on October 16, 2023. It appears that Plaintiff did not personally
serve the First Amended Complaint on Hiru’s registered agent. Had the registered agent been

1 served, it is likely that Hiru's present management would have discovered the existence of
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4 this lawsuit before Hiru was defaulted.
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7 The law of Arizona favors judgments on the merits, and this Opposition / Counter-
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9 Motion has been made within six (6) months of the entry of the default, as specified by ARCP
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11 60(c).
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15 This Opposition and Motion is based on the Declaration of Andrew Lapp (Exhibit
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17 "A"), the following memorandum of points and authorities, the papers and pleadings on file,
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19 and any oral argument entertained by this Court.
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22 DATED this ____ day of January, 2024
23
24

25 BAUMAN LAW FIRM
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By _____
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Attorney for Defendant Hiru Corporation

II. MEMORANDUM OF POINTS AND AUTHORITIES

A. **Facts.** According to the bank statements attached to Plaintiff's First Amended
Complaint (See Exhibits ____ to Plaintiff's First Amended Complaint), dozens of checks
aggregating millions of dollars were repeatedly deposited into the accounts at Plaintiff America First
Credit Union ("AFCU") of co-defendants Joel Natario ("Natario"), AZ Custom Bottled Water LLC
("AZ Custom") and Salome Water and Ice LLC ("Salome"), with the funds immediately being

1 transferred to other accounts, before these checks could possible have cleared. It looks like the funds
2
3 were moved around between these accounts without any real business purpose. Plaintiff only
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5 provided the bank statements for June 2023 as exhibits to the First Amended complaint; it is not clear
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7 at this stage of the litigation how long this course of conduct had been going on. Nor does the First
8
9 Amended Complaint give any explanation why the repeated deposits and immediate transfers prior to
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11 clearing of funds by Natario and Gavin was tolerated by AFCU.
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16 Based on the copies of checks attached to the First Amended Complaint, it appears that a
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18 final batch of checks, aggregating many millions of dollars, were signed by Gavin on June 22,
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20 2023. Some of these, aggregating over \$2.5 million, were written on a Chase account in
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22 Hiru's name. Hiru only discovered the existence of this secret bank account during the past
23
24 week when this lawsuit came to light. Hiru's present management and controlling
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26 shareholder had previously been explicitly and specifically told by Natario and Gavin that
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28 Hiru did not have a bank account, and all of the business expenses were paid from an account
of AZ Custom. (Lapp Declaration paragraph ____).

Plaintiff does not allege that Hiru had an account at AFCU. No allegations are made
of a breach of any deposit agreement by Hiru. This is not a situation where AFCU allowed
Hiru to write checks against an uncollected balance resulting in an overdraft in a Hiru
account. Rather, it is alleged that Gavin wrote checks on the secret Hiru account at Chase,
and then deposited the checks in AFCU accounts of AZ Custom and Salome. Gavin wrote
checks to Natario on AFCU accounts of AZ Custom and Salome. All of these checks appear
to have been written and deposited on the same day, possibly at the same time. AFCU

1 suffered loss by virtue of overdrafts on the Natario account, which remained in overdraft after
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4 AFCU exercised setoff against the deposit (share) accounts of Natario at AFCU
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7 Various demand letters were then sent by AFCU, directly or indirectly, to Natario and
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9 Gavin. When they did not reimburse AFCU to make the credit union whole, this lawsuit was
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11 initiated by Plaintiff. Plaintiff's First Amended Complaint was personally served on Gavin
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13 on October 19, 2023, three days after she resigned from Hiru. (See Exhibits B and C).
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15 Plaintiff does not appear to have attempted personal service of the First Amended Complaint
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17 on Hiru's registered agent in Georgia. While Gavin was no longer an officer or director of
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19 Hiru at the time of service, the change in management was not processed by the Georgia
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21 Secretary of State until November 2023.
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26 On _____, this Court granted Plaintiff's Application for Default against Hiru.
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28 Plaintiff's subsequent Motion for Default Judgment against Hiru is scheduled for hearing
January 31, 2024 at Defendant Hiru Corporation to Plaintiff's case. Hiru's present
management first learned of this lawsuit on January 18, 2024, after the case came to the
attention of a shareholder. (See Lapp Declaration paragraph ____.) Hiru immediately sought
counsel, who called AFCU counsel on the same day. Counsel for AFCU provided copies of
various pleadings the following day (January 19, 2024), and indicated that Plaintiff would
not permit Hiru to simply file an Answer to the Complaint. (See Exhibit "D"). Because of
AFCU's position, Hiru was forced to file this Opposition to Default Judgment and Cross-
Motion to Set Aside Default. Hiru is prepared promptly to answer Plaintiff's Amended
Complaint in the event this Court permits Hiru to answer. (See Exhibit "E" - Proposed
Answer and Cross-Claims of Hiru).

1 Pending discovery, Hiru believes it has meritorious defenses, most notably,
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4 contributory or comparative negligence on the part of AFCU in permitting what appears to be
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7 a blatant check kiting scheme to flourish for the entire month of June, 2023 and possibly for
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10 much longer.

11 **B. LEGAL ARGUMENT**

12 The Court may set aside a final order or judgment pursuant to ARCP 60(b) for the following
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15 reasons:
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18 **b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion
19 and just terms, the court may relieve a party or its legal representative from a final
20 judgment, order, or proceeding for the following reasons:
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22 (1) mistake, inadvertence, surprise, or excusable neglect;
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24 (2) newly discovered evidence that, with reasonable diligence, could not have been
25 discovered in time to move for a new trial under Rule 59(b)(1);
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27 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other
28 misconduct of an opposing party;

(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason justifying relief.

(c) Timing and Effect of the Motion.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3), no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2).

As previously set forth, Plaintiff's First Amended Complaint was personally served on a former officer and director after she resigned from Hiru. Upon Gavin's resignation, any corporate authority to accept service of process immediately terminated. While Plaintiff may have served Hiru's registered agent with the original filing package, the record does not

1 reflect any effort on the part of AFCU to personally serve the First Amended Complaint on
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4 Hiru's registered agent.
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7 There may have been a reasonable period of delay between the October 16, 2023
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9 change in control of Hiru and the updating of the records of the Georgia Secretary of State.
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11 It is possible that there was a similar delay in notifying the registered agent of the change in
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13 control. However, this was done within a month, which is not an unreasonable period of
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15 time to implement the change in control of a company. At most, this would constitute
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17 excusable neglect on the part of Hiru's present management, which is covered by Rule 60
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19 (b)(2).
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25 More importantly, Hiru did not timely the answer the First Amended Complaint as a
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27 direct result of misrepresentation by adverse parties, e.g. Natario and Gavin. Had they not
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lied when asked whether Hiru had any bank accounts, or had they informed Hiru's new
management of this lawsuit, Hiru could have timely filed an answer. It is particularly
egregious that Natario himself answered the Complaint on October 6, 2023, but did not
mention the lawsuit to Hiru's present management during due diligence, which was ongoing
at the same time. Rule 60(b) permits relief based on misrepresentation by an adverse party.
Natario and Gavin are opposing parties to Hiru (See Cross-Claims included in Exhibit E).

III. CONCLUSION

Based on the foregoing, the Company respectfully requests that the Court deny the
Motion for Default Judgment and grant Hiru's Counter - Motion to Set Aside the Default,
and for such other and further relief as to this Court may seem just and proper.

Respectfully Submitted by: _____

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3 Dated: January __, 2024
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5 BAUMAN LAW FIRM
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10 By _____
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21 Attorney for Defendant Hiru Corporation
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EXHIBIT “A”
Declaration of Andrew Lapp

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EXHIBIT “B”
Hiru Board Resolution dated October 16, 2023

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EXHIBIT “C”
Gavin Resignation Letter dated October 16, 2023

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EXHIBIT “D”
Folks email to Bauman dated January 19, 2024

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EXHIBIT “E”
PROPOSED FORM OF ANSWER AND CROSS-CLAIMS OF DEFENDANT HIRU
CORPORATION