

**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](http://www.otchiru.com) what follows is HIRU statement of defense regarding ex management endeavors and the lawsuit with the bank. HIRU position is outlined in its statement of defense

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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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

11 **IN AND FOR THE COUNTY OF MARICOPA**

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14 AMERICA FIRST CREDIT UNION, a  
15 federally chartered credit union,  
16 Plaintiff;  
17 vs.

) Case No.: CV2023-012400

) **REPLY OF DEFENDANT HIRU**  
) **CORPORATION TO PLAINTIFF'S**  
) **RESPONSE**

17  
18 JOEL NATARIO AND JANE DOE  
19 NATARIO, as husband and wife;  
20 KATHRYN GAVIN AND JOHN DOE  
21 GAVIN, as husband and wife; HIRU  
22 CORPORATION, a Georgia corporation;  
23 AZ CUSTOM BOTTLED WATER LLC, a  
24 Nevada limited liability company;  
25 SALOME WATER AND ICE LLC, a  
26 Nevada limited liability company; ABC  
27 ORGANIZATIONS I-X, John Does 1-3;  
28 and Jane Does 4-6,  
Defendants

Defendant Hiru Corporation, a Georgia corporation ("Hiru"), hereby submits this  
Reply to Plaintiff's Response to Hiru's Opposition to Plaintiff's Motion for Default Judgment

1 and Counter-Motion to Set Aside the Default. As noted by the Court at the January 31, 2024  
2 hearing, the Court is treating Hiru's pleading as a Motion to Set Aside the Default. The Court  
3 permitted Hiru to file a Reply, as Plaintiff's Response was, in effect, an Opposition to Hiru's  
4 Counter-Motion.  
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6           1. **Hiru acted promptly in seeking relief from the entry of default.** Contrary to  
7 Plaintiff's argument in its Response, Hiru acted promptly in acting to lift the default. Hiru's  
8 present management, in fact, only learned of the existence of this lawsuit on January 18,  
9 2024. Hiru located and engaged counsel, which prepared the Opposition and Cross-Motion  
10 on an emergency basis. This was all done within a week. Plaintiff does not dispute that the  
11 First Amended Complaint was served on Gavin at least a week after she resigned as CEO of  
12 Hiru. Gavin had no authority to accept service of that pleading on behalf of Hiru. Hiru  
13 should not be penalized if Gavin did not object to being served, as Gavin was no longer an  
14 officer or director of Hiru at the time of service.  
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17           2. **Hiru's delay in discovering the lawsuit was due to fraud or**  
18 **misrepresentation by the adverse parties Gavin and Natario.** Plaintiff does not dispute  
19 Hiru's allegation that adverse parties, during due diligence, failed to inform Hiru's new  
20 management and controlling shareholder of the existence of this lawsuit, and that they  
21 affirmatively misled them by falsely stating that Hiru did not have a bank account. But for  
22 this conduct by Gavin and Natario, Hiru would have timely discovered this lawsuit and been  
23 able to prepare and file an answer before the default was entered. Hiru asserts that Rule  
24 60(b)(3) provides a sound basis for setting aside the default as it was caused by the fraud or  
25 misrepresentation of Gavin and / or Natario.  
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1           **3. Any neglect by Hiru is excusable.** Hiru also relies on Rule 60 (b)(1) to set  
2 aside the default, which provides grounds for relief based on “mistake, inadvertence, surprise  
3 or excusable neglect.” Plaintiff’s Response argues for many pages that, in effect, it could not  
4 have done a better job in pursuing its goal of obtaining a default judgment. However, in  
5 analyzing whether Rule 60(b)(1) is available to Hiru, the focus is not on what Plaintiff did or  
6 did not do. Rather, the question of relevance is whether any neglect by Hiru that caused the  
7 default is excusable. If the records of the Georgia Secretary of State and the Registered  
8 Agent had been immediately updated upon the October 16, 2023 change in control, Plaintiff  
9 would have served the First Amended Complaint on new management rather than on Gavin.  
10 Also, there is the possibility that the Registered Agent would have sent the First Amended  
11 Complaint to new management rather than prior management. In either case, Hiru’s present  
12 management would have received notice of the lawsuit in October, 2023, and could have filed  
13 an answer prior to default. Hiru asserts that the delay of approximately one month in the  
14 updating of these records, which caused the default by Hiru, was excusable given the  
15 multitude of activities required to implement the change in control of a publicly held and  
16 traded corporation. It should be understandable that there was a lot to do, and not everything  
17 got done right away. Plaintiff provides no reason or evidence that this delay was unusual or  
18 atypical of corporate transactions or is not excusable.

19           **4. Hiru has meritorious defenses.** Plaintiff summarily asserts that Hiru has not  
20 alleged a meritorious defense against “Plaintiff’s straight-forward claims that Hiru  
21 Corporation kited checks with insufficient funds that were wrongfully deposited with Plaintiff  
22 in violation of ... ARS 12-671.” While Hiru recognizes that Plaintiff’s Response was made  
23

1 on an “emergency basis,” Plaintiff should have noticed the meritorious defenses alleged by  
2 Hiru in its Opposition and Cross-Motion.

3       **A. AFCU appears to have been guilty of comparative or contributory**  
4 **negligence.** In its Opposition and Cross-Motion, Hiru demonstrated that, throughout the  
5 month of June 2023, millions of dollars of checks went through the three AFCU accounts of  
6 Natario and Salome. This happened on each and every banking day during June until, as it  
7 were, the “music stopped” on June 22, 2023. Depending on the results of further discovery,  
8 Hiru believes it has a meritorious defense of contributory or comparative negligence based on  
9 Plaintiff’s acquiescence in this highly unusual pattern of behavior involving the three AFCU  
10 accounts. In its Response, Plaintiff provides no justification for allowing the apparent check  
11 kiting to continue for at least the first three weeks of June, 2023, or why Plaintiff ignored the  
12 obvious red flags until the whole scheme came crashing down on June 22, 2023.

13       **B. Hiru may not have made, drawn, uttered or delivered the alleged “bad**  
14 **checks.” The checks may have been forged.** As pointed out in the Opposition and Cross-  
15 Motion, Hiru did not obtain any funds of Plaintiff as a result of the checks in question.  
16 Plaintiff’s entire case against Hiru is based on ARS 12-671, which provides a penalty of  
17 double the amount of the bad check where a person, with intent to defraud, makes, draws,  
18 utters or delivers a bad check. While Hiru did not discover this fact prior to preparation of  
19 the Opposition and Cross-Motion, it now appears that the alleged “bad checks” written on the  
20 alleged Chase Bank account of Hiru were not signed by Hiru. Specifically, the signatures on  
21 the alleged “bad checks” included as Exhibit 21 to Plaintiff’s First Amended Complaint  
22 visibly do not resemble the signature of Kathryn Gavin on the account agreement attached as

1 Exhibit 4 to the First Amended Complaint. (For convenience of reference and comparison,  
2 the alleged “bad checks” are attached as Exhibit “1” to this Reply and the page of the AFCU  
3 account agreement bearing the signature of Kathryn Gavin is attached as Exhibit “2.”) It does  
4 not take a handwriting expert to tell that these signatures do not match. Gavin was the sole  
5 director and officer of Hiru in June, 2023 (see Exhibit 2 to Plaintiff’s First Amended  
6 Complaint). If the checks were not signed by Gavin as the sole officer and director of Hiru,  
7 the checks were likely uttered by a different person. One of the most common examples of  
8 uttering a forged instrument is signing another person’s name on a document such as a check.  
9 In this case, liability under ARS 12-671 would be limited to the person(s) who signed and  
10 deposited the check, not Hiru. Put simply, Hiru could not have had the requisite intent to  
11 defraud if another person forged the alleged “bad checks.”  
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15         **5. Plaintiff does not dispute the settled Arizona legal principle favoring**  
16 **judgments on the merits not on procedural grounds.** Hiru believes that it is entitled to  
17 relief under Rule 55(c) and 60(b). Hiru also believes that the Arizona preference for  
18 judgments on the merits rather than procedural technicalities is particularly apt in this case.  
19 See *Ruiz v. Lopez*, 235 P. 3d 444 at 447 (Ariz. Ct. App. 2010) and cases cited therein.  
20 Plaintiff alleges a multimillion dollar check kiting scheme. Hiru’s only connection to the  
21 alleged scheme is that a bank account in Hiru’s name was used to write a few of the many  
22 alleged “bad checks.” Hiru’s present management has no access to this bank account, of  
23 which it was previously unaware. A third-party subpoena may be necessary for Hiru to  
24 obtain the records for this account from Chase Bank. Discovery will also be necessary for  
25 Hiru to obtain records of the relevant AFCU accounts to determine how long the alleged  
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1 check kiting scheme was in operation. Depositions of the AFCU branch manager, risk  
2 management organization, and perhaps others will be necessary to understand why the  
3 scheme flourished for so long at AFCU. Just from the documents attached to the First  
4 Amended Complaint, it appears that the scheme was in operation for at least three weeks and  
5 the checks written on the Huru account at Chase Bank were not signed by Gavin, the only  
6 person who was a Huru director or officer in June, 2023. Plaintiff had Gavin's signature on  
7 file, but appears not to have checked it as Plaintiff permitted the checks to be deposited.  
8 Based on this information, it is possible that AFCU should have discovered this at some point  
9 during the period of at least three weeks during which the check kiting scheme allegedly  
10 operated. It is readily apparent that the legislative purpose of ARS 12-671 is to deter the  
11 writing of bad checks, not to punish victims of check forgery such as Hiro appears to be.  
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15 Based on the foregoing, the Company respectfully requests that the Court deny the  
16 Motion for Default Judgment, Attorney's Fees and Costs and grant Huru's Counter - Motion  
17 to Set Aside the Default, and for such other and further relief as to this Court may seem just  
18 and proper.  
19

20 Respectfully Submitted by:

21 Dated: February \_\_, 2024  
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23 BAUMAN LAW FIRM

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Attorney for Defendant Hiru Corporation



**CERTIFICATE OF SERVICE**

On February \_\_\_, 2024 I mailed from Las Vegas, Nevada, the REPLY OF DEFENDANT HIRU CORP. TO RESPONSE OF PLAINTIFF in this action by First Class mail to the following party(ies) at the following address(es):

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**SUBMITTED** this \_\_\_ day of February, 2024

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**Exhibit “2”**  
**Copy of Gavin Signature on America First Credit Union account agreement from**  
**Exhibit 4 to Plaintiff’s Amended Complaint**