

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

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ALCOA USA CORP.,

Plaintiff,

v.

TARSIER LTD., TARSIER SYSTEMS, LTD.,  
ISAAC H. SUTTON and WILLIAM MAY,

Defendants.  
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**CV-2016-0149059**

12/19/2016 12:38:10 PM

SUMMONS & COMPLAINT  
Mary Lou Rupp, St Lawrence County Clerk

**SUMMONS**

Index No.: *149059*

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on Plaintiff(s) attorney(s) within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the state of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint. The basis of the venue designated is CPLR 509.

Dated: Rochester, New York  
December 16, 2016

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*Attorneys for Plaintiff Alcoa USA Corp.*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ST. LAWRENCE

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Plaintiff,	:	<b>COMPLAINT</b>
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v.	:	
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ISAAC H. SUTTON and WILLIAM MAY,	:	
	:	
Defendants.	:	
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Plaintiff Alcoa USA Corp. (“Alcoa”), by and through its undersigned counsel, as its Complaint against defendants Tarsier, Ltd., Tarsier Systems, Ltd. (collectively, “Tarsier”), Isaac H. Sutton and William May (collectively with Tarsier, “Defendants”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action to collect the approximately \$700,000 that Alcoa is owed under a contract which Tarsier acquired in December 2015 from Demansys Energy, Inc. (“Demansys”), its predecessor, together with lost revenues resulting from Tarsier’s breach of that agreement.

2. The contract was the means by which Alcoa — and, as relevant to this Complaint, the Massena West aluminum smelting plant (the “Smelter”)<sup>1</sup> — participated in the Demand Side Ancillary Services Program (the “Program”) developed by the New York Independent Systems Operator (“NYISO”). By participating in the Program, Alcoa received revenues in exchange for committing to quickly reduce the Smelter’s electricity consumption when called upon by the

<sup>1</sup> Effective August 1, 2016, Alcoa Inc. contributed, among other assets, the Smelter and all of Alcoa Inc.’s privileges, rights, interests and claims in and to the Smelter, to Alcoa USA Corp.

NYISO. The energy reduction at the Smelter results in improved grid stability as the NYISO can divert that electricity to other areas of New York State's electric grid.

3. The NYISO paid those revenues to Demansys, a demand response service provider, and Demansys, in turn, was contractually obligated to pass those revenues on to Alcoa according to the revenue allocation percentages set forth in the contract.

4. In December 2015, Tarsier acquired the contract from Demansys, together with substantially all of Demansys' assets. After that transaction closed, Tarsier seamlessly stepped into Demansys' shoes and continued Demansys' business operations, including performing services under the contract and receiving revenues from the NYISO on account of Alcoa's participation in the Program.

5. Tarsier continued to pass those revenues on to Alcoa until March 2016, when Tarsier stopped making payments and, instead, withheld all of the revenues that it received from the NYISO resulting from Alcoa's participation in the Program.

6. Tarsier did not dispute that the revenues belonged to Alcoa, nor did it dispute its contractual obligation to pay those revenues to Alcoa. Rather, Tarsier attempted to leverage the approximately \$700,000 that Alcoa was owed under the contract to escape from that agreement and induce Alcoa to sign a new, four-year contract with revenue allocation terms more favorable to Tarsier.

7. This proposed new contract was a central aspect of Tarsier's business plan. In particular, the new contract, if executed, would give Tarsier credibility in the demand response market which it could then use to market its services to other potential customers and Program participants; would provide Tarsier with an immediate and substantial revenue stream over an extended period of time; and would allow Tarsier to eliminate the approximately \$700,000

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payable to Alcoa for a mere \$250,000, the amount that Tarsier offered to pay Alcoa if it acceded to Tarsier's demands and signed the new contract.

8. Thus, Alcoa was faced with two options. First, Alcoa could terminate the contract for non-performance. This option, however, would require Alcoa to withdraw from the Program, identify an alternative demand response service provider and then re-enroll in the Program with that provider, a process that would take several months and result in lost revenues (directly resulting from the fact that Alcoa would not be participating in the Program during this time) of almost \$900,000.

9. Second, Alcoa could accede to Tarsier's demands and agree to the new contract. While this option would allow Alcoa to remain in the Program uninterrupted, it would also require Alcoa to relinquish almost \$500,000 that it was owed under the existing contract and then be bound to a less favorable, long-term agreement directly with Tarsier, a company that had already proven itself untrustworthy, dishonest and unreliable.

10. Alcoa elected the first option and terminated the existing contract.

11. Despite Alcoa's repeated demands for payment of the approximately \$700,000 that it is owed, Tarsier has disregarded its contractual payment obligations and has refused to make payment to Alcoa.

12. Alcoa brings this lawsuit to compel Tarsier to pay this amount, and to recover the almost \$900,000 in lost revenues that Alcoa incurred as a direct result of Tarsier's breach of the contract.

### **THE PARTIES**

13. Plaintiff Alcoa USA Corp. is a corporation organized under the laws of the State of Delaware with its principal place of business located in Pittsburgh, Pennsylvania. Plaintiff is

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authorized to conduct business in the State of New York. Effective August 1, 2016, Alcoa Inc., then the parent company of Alcoa USA Corp., contributed, among other assets, the Smelter and all of Alcoa Inc.'s privileges, rights, interests and claims in and to the Smelter, to Alcoa USA Corp.

14. Defendant Tarsier, Ltd. is a corporation organized under the laws of the State of Delaware with its principal place of business located at 475 Park Avenue South, 30th Floor, New York, New York 10016. Tarsier describes itself as an Energy, Big Data and Smart City Solutions Company which plans to manufacture, develop and distribute LED bulbs and fixtures, develop and manage intelligent LED/Smart City products, provide energy audits, re-sell electricity and gas in U.S. deregulated markets, and manage energy demand response and battery storage through proprietary software.

15. Defendant Tarsier Systems, Ltd. is a corporation organized under the laws of the State of New York with its principal place of business located at 475 Park Avenue South, 30th Floor, New York, New York 10016. Tarsier Systems, Ltd. is a wholly-owned subsidiary of Tarsier, Ltd.

16. Defendant Isaac H. Sutton is the Chairman and CEO of Tarsier, Ltd. Upon information and belief, Sutton is a resident of New York, New York.

17. Defendant William May is the President, Innovation of Tarsier, Ltd. Upon information and belief, May is a resident of New York, New York.

### **JURISDICTION AND VENUE**

18. This Court has jurisdiction over Tarsier pursuant to CPLR 301 because Tarsier is doing business in the State of New York and because Tarsier committed the acts complained of herein in the State of New York.

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19. This Court has jurisdiction over Sutton and May pursuant to CPLR 301 because they are residents of the State of New York and because they committed the acts complained of herein in the State of New York.

20. In addition, each Defendant has direct contacts with the State of New York such that the exercise of jurisdiction over each Defendant would not offend traditional notions of due process.

21. Venue is proper in St. Lawrence County pursuant to CPLR 509.

### **FACTUAL BACKGROUND**

#### **A. Alcoa's Participation in the NYISO Program**

22. The NYISO operates competitive wholesale markets and manages the flow of electricity throughout New York. The NYISO developed the Program – through which participants receive revenues in exchange for committing to quickly reduce electricity consumption – to reduce stress on New York's electric grid.

23. Participants must enroll and participate in the Program through a demand response service provider that is registered with the NYISO.

24. Beginning on or about December 30, 2013, Alcoa — and, specifically, the Smelter<sup>2</sup> — participated in the NYISO Program pursuant to a Service Agreement (the “Contract”) with Demansys, a demand response service provider based in Milford, Connecticut.

25. Pursuant to the Contract, Demansys agreed to manage the participation of the Smelter in the Program through its proprietary and patent-pending software platform known as

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<sup>2</sup> The Contract was the means by which both the Massena West Smelter and the Massena East Smelter, an asset owned by Reynolds Metals Company, participated in the Program. The Massena East Smelter was permanently shut down in March 2014, prior to the events giving rise to this complaint.

GRID Daemon. In general terms, the software platform would monitor the Smelter's energy consumption and quickly respond to signals to reduce energy when prompted by the NYISO.

26. Demansys received payments from the NYISO based on Alcoa's participation in the Program. The Contract required Demansys to pass a specific portion of those payments to Alcoa on a monthly basis as follows: (i) Demansys would first reimburse Alcoa for any and all lost production costs associated with Alcoa's participation in the Program; (ii) Demansys would then allocate 30% of any remaining monthly revenues to reimburse the parties for upfront costs relating to Alcoa's participation in the Program (*i.e.*, hardware, software, etc.); and (iii) the parties would share any remaining revenues with 80% of those revenues going to Alcoa and 20% of those revenues going to Demansys.

27. The Contract did not provide Demansys with any discretion in allocating monthly revenues nor did it give Demansys the right to retain revenues over and above the percentages specified in the contract.

28. The Contract had an initial three-year term which was to expire in December 2016 and, thereafter, would automatically renew for consecutive one-year periods until terminated.

29. Finally, the Contract provides that its terms "shall be binding upon each Party and their respective successors and permitted assigns and shall inure the benefit of and be enforceable by the other Party, its successors, permitted assigns, and designees."

**B. Demansys Fails to Make Payments to Alcoa**

30. From February 2014 until April 2015, Demansys made monthly payments to Alcoa as required by the Contract.



31. Beginning in May 2015, however, Demansys failed to make the monthly payment that it was required to make to Alcoa under the Contract.

32. While, going forward, Demansys agreed to make payments to Alcoa on a weekly basis, this promise proved inconsistent in practice and Demansys continued to have difficulty making payments to Alcoa.

33. As of December 31, 2015, Alcoa was owed approximately \$600,000 in revenues under the Contract. Demansys did not claim any rights to those revenues, nor did it dispute that the revenues belonged to Alcoa.

**C. Tarsier Acquires the Contract and Demansys' Business Operations And Continues Those Operations Post-Closing**

34. During the fall of 2015, due to the apparent deterioration in Demansys' financial condition, Demansys and Alcoa discussed transitioning the Contract to a more financially stable demand response provider. Alcoa would later learn that this new provider was a company known as Tarsier.

35. In a sale that was completed on December 31, 2015 (the "Closing"), Tarsier acquired the Contract, the GRID Daemon software necessary to perform that contract, and substantially all of Demansys' assets, including, among other things, all of Demansys' inventory, raw materials, work in process, supplies used in operations, finished goods, prepaid expenses, advances and deposits with or paid to third-parties, computer hardware, machinery, equipment, vehicles, fixtures, office furniture, tools, other specified contracts, permits, intellectual property, warranties and guarantees, rights, recoveries, refunds, counterclaims, rights to offset, choses in action and customer goodwill. *See* Asset Purchase Agreement by and between Tarsier Systems,

Ltd. and Demansys Energy, Inc. (the “APA”), a true and correct copy of which (as obtained from [www.sec.gov](http://www.sec.gov)) is attached hereto as Exhibit “A,” at Section 1.1.

36. Moreover, the Amendment to the Asset Purchase Agreement provided that, on the Closing date, Demansys would terminate all of its employees and all of those employees would become employees of Tarsier. *See* Amendment to the Asset Purchase Agreement between Tarsier Systems, Ltd. and Demansys Energy, Inc. (the “Amendment”), a true and correct copy of which is attached hereto as Exhibit “B,” at ¶ 3. Among these employees were William May, Demansys’ CEO, who became the President, Innovation of Tarsier, Ltd. *See* Tarsier Marketing Plan, a true and correct copy of which is attached hereto as Exhibit “C,” at p. 16.

37. Demansys also agreed to execute (and, upon information and belief, did execute) an irrevocable NYISO Form J to direct the NYISO monthly revenues which Demansys received in connection with the Program (including from the Contract), directly to Tarsier and into its accounts. *See* Ex. B, Amendment, at ¶ 2.

38. Tarsier also began providing services under the Contract and managing the Smelter’s participation in the Program through Demansys’ NYISO registration. Tarsier needed to use Demansys’ NYISO registration because, at Closing, Tarsier was not registered with the NYISO and, as Alcoa would later learn, Tarsier’s NYISO registration would not become active until May 1, 2016, at the earliest.<sup>3</sup>

39. Thus, at Closing, Demansys had effectively transferred, or had agreed to transfer, its entire business to Tarsier, including all of the assets — its GRID Daemon software, the

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<sup>3</sup> Alcoa also would later learn that Demansys’ NYISO registration ended on March 31, 2016. Therefore, if Alcoa had not withdrawn the Smelter from the Program on March 14, 2016 (as discussed below), Alcoa would have been unable to participate in the Program – and receive revenues – from March 31, 2016 until Tarsier’s registration became active in May 2016 (or later).

Contract, all of its employees, the use of its NYISO registration and its right to receive NYISO monthly revenues in connection with the Program — that were required to continue Demansys' business.

40. At the same time, Demansys ceased operations, as evidenced by the facts that it is in delinquent status with the Delaware Secretary of State for failure to pay franchise tax and file its 2015 Annual Report, its website has been disabled and its telephone number forwards to the voicemail of an unknown individual. Demansys also is no longer listed as a demand response service provider by the NYISO and, upon information and belief, no longer participates in (or, at a minimum, no longer has the ability to participate in) the NYISO markets.

41. In short, after Closing, Tarsier carried on Demansys' business operations as Demansys' successor.

**D. Tarsier Fails to Honor its Contractual Obligations**

42. After acquiring the Contract in December 2015, Tarsier continued to make weekly payments to Alcoa based on the revenue allocation percentages set forth in the Contract, and as Alcoa and Demansys agreed prior to Closing.

43. In March 2016, however, Tarsier stopped making payments to Alcoa and did so notwithstanding representations by Isaac Sutton (Tarsier's CEO) William May (now an employee of Tarsier) and other Tarsier employees, both via telephone and by email, that payments either would or already had been made.

44. Tarsier also stopped providing Alcoa with the weekly NYISO settlement statements that both Tarsier and Demansys had previously provided to Alcoa and that Alcoa used to determine the total amount of revenues to which they were entitled under the Contract.

Without these statements, which Tarsier has refused to provide, Alcoa was and is only able to estimate the total amount that it is owed under the Contract.

45. As a result of Tarsier's failure to honor its contractual obligations, Alcoa withdrew the Smelter from the Program on March 14, 2016, and notified both Tarsier and the NYISO.

46. Tarsier's deception and breach of its contractual obligations did not stop there.

47. On April 4, 2016, representatives of Alcoa spoke via telephone with Sutton regarding Tarsier's repeated failure to make payments to Alcoa and false representations that payments would or had been made.

48. During the April 4, 2016 telephone call, Sutton did not dispute Tarsier's contractual obligation to pay Alcoa its portion of the NYISO revenues that it had received on account of the Smelter's participation in the Program, nor did he dispute that those revenues belonged to Alcoa.

49. Rather, Sutton admitted that Tarsier was withholding Alcoa's revenues because the Contract was not profitable for Tarsier. Sutton further stated that Tarsier would not pay Alcoa any portion of the amount that it was owed unless and until Alcoa entered into a new, four-year contract, directly with Tarsier, that included revenue allocation terms more favorable to Tarsier than those contained in the Contract.

50. On information and belief, this proposed new contract was a central aspect of Tarsier's business plan. First, the new contract would give Tarsier credibility in the demand response market which Tarsier could then use to market its services to other potential customers or Program participants.

51. Second, the new contract would provide Tarsier with a substantial and long-term revenue stream, generating more than the \$2 million in annual gross revenues that Tarsier represented that Demansys had received under the “unprofitable” Contract. *See* Ex. C, Tarsier Plan, at p. 7.

52. In an attempt to induce Alcoa to sign the new contract, Tarsier (and, in particular, Sutton) promised to pay Alcoa \$250,000 – a fraction of the then over \$700,000 which Alcoa was owed under the Contract – immediately upon signing the new agreement.

53. As a result, Alcoa had two options.

54. First, Alcoa could terminate the Contract for non-performance and identify and re-enroll in the Program with a new service provider. Alcoa (and, upon information and belief, Tarsier) knew that this process could take approximately six months, during which Alcoa would be unable to participate in the Program and, therefore, would not receive any revenues and, instead, stood to lose approximately \$900,000 in revenues that it otherwise would have received.

55. Alternatively, Alcoa could accede to Tarsier’s demands and sign the new contract directly with Tarsier, an option that would have required Alcoa to accept revenue allocation terms less favorable to it than those included in the Contract. By electing this option, Alcoa would only recover a small fraction of the total amount that it was owed under the Contract and effectively be forced to waive the almost \$500,000 balance. Alcoa would also bind itself to working with a company that had already proven itself dishonest and unreliable and which had breached its contractual obligations within months of acquiring the Contract.

**D. Alcoa Terminates the Contract**

56. Alcoa rejected Tarsier’s advances and refused to enter into the proposed new contract.

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57. After the April 4, 2016 telephone call, Alcoa would later learn that Tarsier put the Smelter back into the Program on, at least, March 26, 27 and April 9, 2016 without Alcoa's knowledge or consent.

58. On information and belief, Tarsier received revenues from the NYISO for the Massena West Smelter's participation in the Program on those dates and did not remit any portion back to Alcoa.

59. Thus, on May 4, 2016, Alcoa terminated the Contract for non-performance and provided notice of the termination to Tarsier, Demansys and the NYISO.

60. Alcoa also demanded payment from Tarsier and Demansys of all amounts then outstanding under the Contract. Tarsier has ignored Alcoa's demand for payment.

61. In September 2016, six months after Alcoa withdrew from the Program due to Tarsier's breach of its obligations under the Contract, Alcoa re-entered the Program with an alternative service provider.

62. During this six month period, Alcoa lost revenues of approximately \$900,000 that it would have been entitled to receive on account of its participation in the Program and would have received had Tarsier honored its obligations under the Contract.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract Against Tarsier Ltd. and Tarsier Systems, Ltd.)**

63. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

64. The Contract provides that it "shall be binding upon each Party and their respective successors and permitted assigns and shall inure the benefit of and be enforceable by the other Party, its successors, permitted assigns, and designees."

65. Demansys assigned the Contract to Tarsier at Closing and, therefore, the Contract is binding on Tarsier as Demansys' successor and/or assign.

66. Tarsier, as assignee of Demansys, failed and refused to remit the amounts due to Alcoa under the Contract, thereby breaching the Contract.

67. Tarsier has no right to retain these amounts, as the Contract does not provide Tarsier with any discretion in allocating monthly revenues nor does it permit Tarsier to retain revenues over and above the percentages specified in the contract.

68. Alcoa has completely performed under the Contract.

69. Tarsier's breach of the Contract has caused Alcoa to suffer damages in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent); and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.

**SECOND CAUSE OF ACTION**  
**(Successor Liability Against Tarsier Ltd. and Tarsier Systems, Ltd.)**

70. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

71. Upon information and belief, Tarsier impliedly assumed Demansys' obligation to pay Alcoa the amount due under the Contract.

72. Alternatively, or in addition, Tarsier is the successor of Demansys under the mere continuation or *de facto* merger doctrines.

73. As a result of the acquisition, Tarsier acquired substantially all of Demansys' assets, including the Contract, the GRID Daemon software, inventory, raw materials, work in process, supplies used in operations, finished goods, prepaid expenses, advances and deposits with or paid to third-parties, computer hardware, machinery, equipment, vehicles, fixtures, office furniture, tools, other specified contracts, permits, intellectual property, warranties and guarantees, rights, recoveries, refunds, counterclaims, rights to offset, choses in action and customer goodwill.

74. Moreover, the Amendment to the Asset Purchase Agreement provided that, on the Closing date, Demansys would terminate all of its employees and all of those employees would become employees of Tarsier.

75. Demansys also agreed to execute (and, upon information and belief, did execute) an irrevocable NYISO Form J to direct the NYISO monthly revenues which Demansys received in connection with, *inter alia*, the Contract, directly to Tarsier and its accounts.

76. After the Closing, Demansys stopped participating in the Program and ceased operations, while Tarsier carried on Demansys' business operations and participated in the Program as Demansys' successor. Specifically, after the Closing, Tarsier provided services under the Contract and managed the Smelter's participation in the Program through Demansys' NYISO registration. At the time of Closing, Tarsier was not registered with the NYISO and, as Alcoa would later learn, Tarsier's NYISO registration would not become active until May 1, 2016, at the earliest.



77. Tarsier is liable in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent); and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.

### **THIRD CAUSE OF ACTION**

#### **(Quantum Meruit/Unjust Enrichment Against Tarsier Ltd. and Tarsier Systems, Ltd.)**

78. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

79. Alcoa conferred benefits on Tarsier on account of the Smelter's participation in the Program.

80. Tarsier accepted and retained those benefits, namely revenues which Tarsier received from the NYISO on account of the Smelter's participation in the Program.

81. Tarsier also touted the Contract in marketing materials which it used to attract customers and investors.

82. Notwithstanding its acceptance of the benefits that Alcoa conferred upon it, Tarsier has not paid Alcoa for those benefits. It would be inequitable for Tarsier to retain those benefits without paying value to Alcoa.

83. As a result of Tarsier's conduct, Alcoa has suffered monetary damages in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; and (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent).

**FOURTH CAUSE OF ACTION**  
**(Fraudulent Misrepresentation Against Tarsier Ltd.,  
Tarsier Systems, Ltd., Sutton and May)**

84. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

85. As detailed above, following the Closing, Tarsier, through Sutton, May and other employees, made numerous representations to Alcoa both that Alcoa would be paid the amounts due under the Contract and/or that payments to Alcoa had already been wired.

86. These representations were false and those who made the representations knew that they were false.

87. Tarsier, Sutton, May and others made the representations intending to induce Alcoa to rely on Tarsier's fraudulent assurances that it would honor its contractual obligations, induce Alcoa to continue the Contract and induce Alcoa to keep the Smelter in the Program, thereby creating revenues which Tarsier has wrongfully retained in violation of its contractual obligations.

88. Alcoa justifiably and reasonably relied on these representations and did not terminate the Contract until May 4, 2016.

89. As a result of this conduct, Alcoa has suffered monetary damages in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent); and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.

#### **FIFTH CAUSE OF ACTION**

#### **(Money Had and Received Against Tarsier Ltd. and Tarsier Systems, Ltd.)**

90. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

91. By participating in the Program, Alcoa received revenues in exchange for committing to quickly reduce the Smelter's electricity consumption when called upon by the NYISO. The energy reduction at the Smelter results in improved grid stability as the NYISO can divert that electricity to other areas of New York State's electric grid.

92. The NYISO paid these revenues to Tarsier and Tarsier, in turn, was contractually obligated to remit them to Alcoa in accordance with the revenue allocation percentages set forth in the Contract.

93. While Tarsier received revenues from the NYISO based on Alcoa's participation in the Program, Tarsier failed to remit them to Alcoa and, instead, accepted and retained those revenues for its own financial benefit.

94. These revenues belong to Alcoa and Tarsier has no right to retain them.

95. It would be inequitable for Tarsier to retain the revenues which belong to Alcoa.

96. As a result of this conduct, Alcoa has suffered monetary damages in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent); and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.

#### **SIXTH CAUSE OF ACTION**

#### **(Conversion Against Tarsier Ltd. and Tarsier Systems, Ltd.)**

97. Alcoa repeats and realleges each and every allegation contained in the foregoing paragraphs above as if fully set forth herein.

98. By participating in the Program, Alcoa received revenues in exchange for committing to quickly reduce the Smelter's electricity consumption when called upon by the NYISO. The energy reduction at the Smelter results in improved grid stability as the NYISO can divert that electricity to other areas of New York State's electric grid.

99. The NYISO paid these revenues to Tarsier and Tarsier, in turn, was contractually obligated to remit them to Alcoa in accordance with the revenue allocation percentages set forth in the Contract.

100. While Tarsier received revenues from the NYISO based on Alcoa's participation in the Program, Tarsier failed to remit them to Alcoa and, instead, accepted and retained those revenues to its own financial benefit.

101. These revenues belong to Alcoa and Tarsier has no right to retain them.

102. It would be inequitable for Tarsier to retain the revenues which belong to Alcoa.

103. As a result of this conduct, Alcoa has suffered monetary damages in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent); and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Alcoa USA Corp. demands judgment against Defendants as follows:

- a. Monetary damages against Defendants in the amount of, at least, (i) \$689,346.80 in delinquent revenue due Alcoa through March 11, 2016; (ii) delinquent revenue due Alcoa for the NYISO revenue period March 12-18, 2016; (iii) additional NYISO revenue collected by Tarsier after Alcoa's withdrawal from the Program on March 14, 2016 (including for, among any others, March 26, 27 and April 9, 2016, dates on which Tarsier put the Smelter back into the Program, without Alcoa's knowledge or consent) and (iv) approximately \$900,000 in lost revenues associated with Alcoa's withdrawal from the Program as a result of Tarsier's non-performance and Alcoa's inability to participate in the Program while Alcoa identified and re-enrolled with an alternative service provider.;

- b. Attorneys' fees, costs, and disbursements;
- c. Pre-judgment and post-judgment interest; and
- d. Such other and further relief as the Court deems just and proper.



Dated: Rochester, New York  
December 16, 2016

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