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the Volkswagen Diesel Emissions Environmental Mitigation
Trust for Indian Tribe Beneficiaries

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE: VOLKSWAGEN “CLEAN
DIESEL” MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION**

Relates to:

*[United States v. Volkswagen AG, et al., No.
16-cv-295 (N.D. Cal.)]*

Case No. MDL 2672 CRB (JSC)

**NOTICE OF FILING OF TRUSTEE’S
ACCOUNTING IN ACCORDANCE
WITH SUBPARAGRAPH 5.0.5.3.4 OF
THE VOLKSWAGEN DIESEL
EMISSIONS ENVIRONMENTAL
MITIGATION TRUST FOR INDIAN
TRIBE BENEFICIARIES**

Judge: Hon. Charles R. Breyer

PLEASE TAKE NOTICE THAT Wilmington Trust N.A. as Trustee (the “Trustee”) of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”), and by and through its counsel Reed Smith, respectfully file the attached Notice of Trustee’s Accounting in accordance with subparagraph 5.0.5.3.4 of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries.

Dated: February 28, 2022

Respectfully submitted,

/s/ Michele D. Ross
Michele D. Ross, partner
Reed Smith LLP

CERTIFICATE OF SERVICE

I hereby certify that, on February 28, 2022, I caused to be served true copies of the required Trustee's Accounting in accordance with subparagraph 5.0.5.3.4 of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries by electronic means by filing such documents through the Court's Electronic Case Filing System.

/s/ Michele D. Ross _____
Michele D. Ross
*Attorney for the Trustee of the Volkswagen
Diesel Emissions Environmental Mitigation
Trust for Indian Tribe Beneficiaries*

Notice of Filing of Trustee’s Accounting and Determination of the Tribal Subaccounts Remainder Balance in accordance with subparagraph 5.0.5.3.4 of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries

Wilmington Trust, N.A. as Trustee of the Indian Tribe Trust hereby files the accounting required by subparagraph 5.0.5.3.4 of Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries (the “Indian Tribe Trust”). In accordance with subparagraph 3.3.1.5 of the Indian Tribe Trust, the Trustee has previously filed both Semi-Annual Reports and Audited Financials for each year of its operation as required by the Indian Tribe Trust. In an effort to conserve funds as we near the end of the Trust, the Trustee is providing a brief summary of the key financial points of each year.

Subparagraph 3.3.1.5 of the Indian Tribe Trust requires the Trustee to prepare third-party audited financial reports disclosing and certifying the disposition of all Trust Assets from the Trust Effective Date through the calendar quarter immediately preceding the Financial Reporting Date, specifically including reconciliations of the Trustee’s prior budget projections for Trust Administration Costs to actual performance. All Trust Administration Costs, payments to third party professionals, tax payments and other expenses are fully detailed in each of the Semi Annual Reports and Audited Financial Statements which were filed with the Court. For the full details for each year of operation please see the Semi-Annual and Audited Financial Reports for each year which can be found as filed with the Court at the docket numbers below.

IN RE: VOLKSWAGEN “CLEAN DIESEL” MARKETING, SALES, PRACTICES AND PRODUCTS LIABILITY LITIGATION

REPORTS FOR 2017

For period ending December 31, 2017 – Filed 8/15 /2018 Case 3:15 md-02672 –CRB Document 5196 & Update Filed August 17, 2018 Document 5198

Audited Financial Statements

- Indian Tribe Trust – Audited Financial Statements – 12.31.2017

Semi-Annual Reports

- Indian Tribe Trust Semi Annual Report - period ending 12.31.2017

REPORTS FOR 2018

For period ending June 30, 2018 – Filed 8/15 /2018 Case 3:15 md-02672- CRB Document 5196 & Update Filed August 17, 2018 Document 5198

Reviewed Financial Statements

- Indian Tribe Trust Financial Statements – 6.30.2018

Semi-Annual Reports

- Tribe Trust Semi Annual Report - period ending 6.30.2018

For period ending December 31, 2018 – Filed 2/15/2019 Case 3:15 md-02672 –CRB Document 5896

Audited Financial Statements

- Indian Tribe Trust – Audited Financial Statements – 12.31.2018

Semi-Annual Reports

- Indian Tribe Trust Semi Annual Report - period ending 12.31.2018

REPORTS FOR 2019

For period ending June 30, 2019 – Filed 8/15/2019 Case 3:15 md-02672- CRB Document 6587

Reviewed Financial Statements

- Indian Tribe Trust Financial Statements – 6.30.2019

Semi-Annual Reports

- Tribe Trust Semi Annual Report - period ending 6.30.2019

For period ending December 31, 2019 – Filed 2/18/2020 Case 3:15 md-02672 –CRB Document 7171

Audited Financial Statements

- Indian Tribe Trust – Audited Financial Statements – 12.31.2019

Semi-Annual Reports

- Indian Tribe Trust Semi Annual Report - period ending 12.31.2019

REPORTS FOR 2020

For period ending June 30, 2020 – Filed 8/17/2020 Case 3:15 md-02672- CRB Document 7661

Reviewed Financial Statements

- Indian Tribe Trust Financial Statements – 6.30.2020

Semi-Annual Reports

- Tribe Trust Semi Annual Report - period ending 6.30.2020

For period ending December 31, 2020 – Filed 2/15/2021 Case 3:15 md-02672 –CRB Document 7822 and Update Filed 7/28/21 Document 7882

Audited Financial Statements

- Indian Tribe Trust – Audited Financial Statements – 12.31.2020

Semi-Annual Reports

- Indian Tribe Trust Semi Annual Report - period ending 12.31.2020

REPORTS FOR 2021

For period ending June 30, 2021 – Filed 8/16/2021 Case 3:15 md-02672- CRB Document 7885

Reviewed Financial Statements

- Indian Tribe Trust Financial Statements – 6.30.2021
- Semi-Annual Reports
- Tribe Trust Semi Annual Report - period ending 6.30.2021

For period ending December 31, 2021 – Filed 2/15/2022 Case 3;15 md-02672 –CRB Document 7935

Audited Financial Statements

- Indian Tribe Trust – Audited Financial Statements – 12.31.2021
- Semi-Annual Reports
- Indian Tribe Trust Semi Annual Report - period ending 12.31.2021

In accordance with subparagraph 3.1.2.6 and 3.3.1.8 of the Indian Tribe Trust, the Trustee has also posted these financial reports on the website for the Indian Tribe Trust (www.vwenvironmentalmitigationtrust.com/tribe-trust) under the heading “Semi-Annual Reporting Package.”

The summary of the Funding Cycles and Trustee’s Accounting required by subparagraph 5.0.5.3.4 “an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs for the Tribal Allocation Subaccount. The difference between these two amounts shall be referred to as the “Tribal Subaccounts Remainder Balance.” is attached hereto as Exhibit A.

By: Wilmington Trust, N.A. as Trustee of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries

Exhibit A

Accounting Summary of Funding Cycles; the Trustee’s Accounting and Determination of the Tribal Subaccount Remainder Balance Required by Subparagraph 5.0.5.34 of the Volkswagen Diesel Emissions Environmental Mitigation Trust for Indian Tribe Beneficiaries

As a result of the settlements in the United States District Court, Northern District of California (the “Court”), the Defendants were required to establish the **Environmental Mitigation Trust for Indian Tribe Beneficiaries** (the “Indian Tribe Trust”) and to make deposits in the amounts of \$2.7 billion and \$225 million to be used to fund environmental mitigation action (EMA) projects that reduce emissions of nitrogen oxides (“NOx”) and to pay for Trust Administration Costs all in accordance with the terms of the Indian Tribe Trust. On March 15, 2017, the Court appointed Wilmington Trust, N.A. (“WTNA”) as the Trustee for the Indian Tribe Trust (the “Trustee”) and on October 2, 2017, the Indian Tribe Trust was established.

Receipt of Funding

In 2017, the Indian Tribe Trust Account received from the Defendants (either directly or via the Court Registry) funding totaling \$41,416,357.24 (principal: \$41,304,529.48 plus interest: \$111,827.76) which the Trustee allocated to the appropriate Beneficiary and Trust Administration Cost Subaccounts consistent with the average allocation rates set forth in Appendix D-1B.

By the end of 2018, the Trustee received from the Settling Defendants a deposit of approximately \$18 million, which represented the Indian Tribe Trust’s portion of the environmental mitigation trust funds required by the settlements, meaning that the Indian Tribe Trust was considered fully funded. In accordance with the Indian Tribe Trust agreement, the Trustee allocated these funds to the Tribal Allocation Subaccount and the Administration Cost Subaccount consistent with the weighted average rate set forth in Appendix D-1B.

Below are the ending balances as of December 31 each year for the four Subaccounts created under the Indian Tribe Trust:

	2017	2018	2019	2020	2021
Tribal Allocation Subaccount Balance as of 12/31	\$36,121,926	\$52,424,472	\$33,415,011	\$18,344,048	\$5,316,604
Technical Assistance Provider Subaccount Balance as of 12/31	\$1,333,702	\$2,181,676	\$1,850,100	\$1,602,485	\$1,308,054
Tribal Administration Cost Subaccount Balance as of 12/31	\$3,034,583	\$3,608,163	\$3,279,590	\$3,003,697	\$2,781,255
Tribal Advisory Council Subaccount Balance as of 12/31	\$30,054	\$30,442	\$30,656	\$30,795	\$30,796

SHORT SUMMARY OF FUNDING CYCLES***FIRST FUNDING CYCLE***

Number of New Designated Beneficiary Tribes: 29
 Total Designated Beneficiary Tribes: 29

Amount Available to Participating Designated Beneficiaries	No. of Participating Designated Beneficiaries receiving an Allocation from Amount Available	No. of Participating Designated Beneficiaries submitting approved Appendix D-4s for EMAs	Total Amount of Trust Funds Approved and Disbursed
\$ 6,020,321	26	25	\$ 5,744,835

SECOND FUNDING CYCLE

Number of New Designated Beneficiary Tribes: 41
 Total Designated Beneficiary Tribes: 70

Amount Available to Participating Designated Beneficiaries	No. of Participating Designated Beneficiaries receiving an Allocation from Amount Available	No. of Participating Designated Beneficiaries submitting approved Appendix D-4s for EMAs	Total Amount of Trust Funds Approved and Disbursed
\$ 15,468,050	49	45	\$ 14,042,990

THIRD FUNDING CYCLE

Number of New Designated Beneficiary Tribes: 24
 Total Designated Beneficiary Tribes: 94

Amount Available to Participating Designated Beneficiaries	No. of Participating Designated Beneficiaries receiving an Allocation from Amount Available	No. of Participating Designated Beneficiaries submitting approved Appendix D-4s for EMAs	Total Amount of Trust Funds Approved and Disbursed
\$ 16,523,180	58	50	\$ 15,097,571

FOURTH FUNDING CYCLE

Number of New Designated Beneficiary Tribes: 25
 Total Designated Beneficiary Tribes: 119

Amount Available to Participating Designated Beneficiaries	No. of Participating Designated Beneficiaries receiving an Allocation from Amount Available	No. of Participating Designated Beneficiaries submitting approved Appendix D-4s for EMAs	Total Amount of Trust Funds Approved and Disbursed
\$ 18,163,395	75	63	\$ 16,120,881

TRIBAL SUBACCOUNTS REMAINING BALANCE

In accordance with subparagraph 5.0.5.3.4 titled “*Trustee’s Accounting*”, the Trustee is required to file an accounting of all Trust Assets and determine the Tribal Subaccounts Remainder Balance” through the fourth funding cycle. That section provides as follows:

“By February 28, 2022, the Trustee shall file with the Court, deliver to the United States, by and through EPA, and to each Indian Tribe previously designated a Beneficiary hereunder, and publish on its public-facing website, an accounting of all Trust Assets in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount that have not by that date been expended on or obligated to approved Eligible Mitigation Actions or prior Trust Administration Costs, together with an estimate of funding reasonably needed to cover the remaining Trust Administration Costs for the Tribal Allocation Subaccount. The difference between these two amounts shall be referred to as the “Tribal Subaccounts Remainder Balance.” After determining the Tribal Subaccounts Remainder Balance, the Trustee shall meet and confer with the United States. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance contains sufficient funds for a fifth funding cycle, the Trustee, by March 30, 2022, shall publish on its public-facing website and provide a notice to each Beneficiary via Intralinks that it will conduct a fifth funding cycle pursuant to subparagraph 5.0.5.3.5. If the United States and the Trustee determine that the Tribal Subaccounts Remainder Balance appears to be insufficient to warrant a fifth funding cycle, the United States will seek an Order from the Court for further relief, which may include the authority for the Trustee to terminate the Indian Tribe Trust in accordance with the requirements of Paragraph 6.8.”

As of the January 31, 2022, the balances¹ in the Tribal Allocation Subaccount and Tribal Administration Cost Subaccount are as follows:

Tribal Allocation Subaccount		\$3,878,758.89
Tribal Administration Costs Subaccount		<u>\$2,777,309.16</u>
Subtotal of current balances of both accounts		\$6,656,069.05
Minus the following amounts:		
Funds obligated ² to approved Eligible Mitigation Actions	-	<u>(\$1,827,721.00)</u>
Estimate of funding reasonably needed to cover Trust Administration Costs through Termination of the Indian Tribe Trust through 2024	-	<u>(\$1,554,004.00)</u>
Subtotal of amounts to be deducted ³	-	<u>(\$3,381,725.00)</u>
Equals the Tribal Subaccounts Remainder Balance		\$3,274,343.05

¹ Subaccount balances verified on latest available internal Trustee subaccount statements.

² Total of delayed Tribe disbursements to occur between January 31, 2022 and February 28, 2022.

³ This amount includes, among other things, an estimate for Trust Administration Costs necessary to conduct a fifth funding cycle.

There may be additional amounts remaining in the remaining in the Technical Assistance Provider Subaccount, the Tribal Advisor Subaccount and the Tribal Tax Subaccount, that if they are not needed in connection with the remaining administration activities under the Indian Tribe Trust or in connection with the expenses related to the Termination of the Indian Tribe Trust which will be subject to disposition pursuant to subparagraph 5.4.5 of the Indian Tribe Trust.

As of January 31, 2022, the balances⁴ in those subaccounts are:

Technical Assistance Provider Sub Account	\$1,249,005.78
Tribal Advisor Sub Account	\$ 30,097.87
<u>Tribal Tax SubAccount</u>	<u>\$ 797,039.86</u>
Other accounts subtotal	\$2,076,143.51

⁴ Subaccount balances verified on latest available internal Trustee subaccount statements.