

Sealed

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FILED

SEP 06 2017

U.S. CLERK'S OFFICE  
INDIANAPOLIS, INDIANA

UNITED STATES OF AMERICA, )  
)  
*Plaintiff,* )  
)  
v. )  
)  
THOMAS J. BUCK, )  
)  
*Defendant.* )

Cause No.

**1:17-cr-0172 TWP-TAB**

**PETITION TO ENTER PLEA OF GUILTY AND PLEA AGREEMENT**

The United States of America, by counsel, Josh J. Minkler, United States Attorney for the Southern District of Indiana, and Cynthia J. Ridgeway and Nicholas J. Linder, Assistant United States Attorneys ("the Government"), and the defendant, THOMAS J. BUCK ("the defendant"), in person and by counsel, Robert Hammerle, hereby inform the Court that a Plea Agreement has been reached in this case pursuant to Federal Rules of Criminal Procedure 11(c)(1)(C) and 11(c)(1)(B). The following are its terms and conditions:

**Part 1: Guilty Plea and Charge**

1. **Plea of Guilty:** The defendant waives the right to indictment by a grand jury and petitions the Court for leave to enter and agrees to enter a plea of guilty to the following offense charged in the Information:

a. Count One, which charges that the defendant committed the offense of Securities Fraud, in violation of Title 18, United States Code, Section(s) 1348.

2. **Potential Maximum Penalties:** The offense is punishable by a maximum sentence of 25 years of imprisonment; a fine of up to \$250,000, or twice the gross gain or gross loss caused by the offense, whichever is greater; and a term of supervised release following any term of imprisonment of up to 5 years.

3. **Elements of the Offense:** To sustain a conviction for the offense to which the defendant is pleading guilty, the Government must prove the following propositions beyond a reasonable doubt:

FIRST: The defendant executed or attempted to execute a scheme or artifice to defraud any person, or to obtain any money or property by means of false or fraudulent pretenses, representations, or promises which were material;

SECOND: The scheme to defraud was in connection with any security of an issuer with a class of securities registered under the Securities Exchange Act; and

THIRD: That the defendant did so knowingly and with intent to defraud.

#### **Part 2: General Provisions**

4. **Rule 11(c)(1)(C):** The Defendant acknowledges that certain provisions of this Plea Agreement are governed by Federal Rule of Criminal Procedure 11(c)(1)(C), and that the provisions set forth in paragraph 13, below, are the appropriate disposition of this cause. The parties understand that the Court must accept or reject those provisions of the Plea Agreement. If the Court rejects either of the provisions in paragraph 13 of the Plea Agreement, then either party may withdraw from this Plea Agreement. The Defendant acknowledges that pursuant to Fed. R. Crim. P. 11(c)(3), (4) and (5), if the Court rejects the Plea Agreement, the Court will advise the Defendant personally in open court that the Court is rejecting the Plea Agreement and the Court will afford both parties the opportunity to then withdraw the Plea Agreement.

5. **18 U.S.C. § 3553(a) and Sentencing Guidelines:** The Defendant agrees and understands that should this Court accept this Plea Agreement, the Court will sentence the defendant subject to the parties' agreement set forth paragraph 13. The Defendant agrees and understands that the Court, in deciding whether to accept or reject the specific provisions set forth in paragraph 13, below, along with the rest of the Plea Agreement, will (A) consider the factors set forth in 18 U.S.C. § 3553(a), and (B) consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G."). The Defendant also agrees and understands that the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature, and that the final determination concerning the applicable advisory guideline calculation, criminal history category, and advisory sentencing guideline range will be made by the Court.

6. **Rule 11(c)(1)(B):** The Defendant acknowledges that all other provisions, including the Court's ultimate determination of the sentence, are governed by Fed. R. Crim. P. 11(c)(1)(B) and that the determination of the Defendant's sentence is within the discretion of the Court. The Defendant understands that, with the exception of the provisions in paragraph 13, if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different advisory sentencing guideline range applies in this case, or decides to impose a sentence outside of the advisory sentencing guideline range for any reason, then the Defendant will not be permitted to withdraw this plea of guilty for that reason and will be bound by this plea of guilty.

7. **Sentencing Court's Discretion Within Statutory Range:** The Defendant agrees and understands that: (A) the Court will use its discretion to fashion a sentence within the statutory range set forth above; (B) the Court will consider the factors set forth in 18 U.S.C. § 3553(a) in determining the appropriate sentence within the statutory range; (C) the Court will also consult

and take into account the United States Sentencing Guidelines (“Sentencing Guidelines” or “U.S.S.G.”) in determining the appropriate sentence within the statutory range(s); (D) the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature; (E) restitution may be imposed; (F) the final determination concerning the applicable advisory guideline calculation, criminal history category, and advisory sentencing guideline range will be made by the Court; and (G) by pleading “Guilty,” the Court may impose the same punishment as if the Defendant had plead “Not Guilty,” had stood trial and been convicted by a jury.

8. **Plea Agreement Based on Information Presently Known:** The Defendant recognizes and understands that this Plea Agreement is based upon the information presently known to the Government. The Government agrees not to bring other federal charges against the Defendant for the conduct described in the Indictment based on information currently known to the United States Attorney for the Southern District of Indiana.

9. **No Protection From Prosecution for Unknown or Subsequent Offenses:** The Defendant acknowledges and agrees that nothing in this agreement shall protect the Defendant in any way from prosecution for any offense not specifically covered by this agreement, or not known to the United States Attorney for the Southern District of Indiana at this time. The Defendant further acknowledges and agrees that nothing in this agreement shall protect the Defendant in any way from prosecution for any offense committed after the date of this agreement.

10. **Defendant’s Rights Under Fed. R. Crim. P. 11(b).** The Defendant understands that the Defendant has the right: (A) to plead not guilty, or having already so pleaded, the right to persist in that plea; (B) to a jury trial; (C) to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings, including appeal; and (D) to confront and cross-examine adverse witnesses, to be protected from compelled self-

incrimination, to testify and present evidence, and to compel the attendance of witnesses. The Defendant also understands that the Constitution guarantees the right to be considered for release until trial<sup>1</sup>; and if found guilty of the charge(s), the right to appeal the conviction on such charge(s) to a higher court. The Defendant understands that if the Court accepts this plea of guilty, the Defendant waives all of these rights. The Defendant understands that the Government has the right, in a prosecution for perjury or false statement, to use against the Defendant any statement that the Defendant gives under oath during the guilty plea colloquy.

### **Part 3: Global Settlement**

11. **U.S. Securities and Exchange Commission Investigation:** The U.S. Securities and Exchange Commission (“SEC”) is investigating THOMAS J. BUCK concerning, in part, the criminal conduct to which the Defendant is pleading guilty. The parties acknowledge that, concurrent with and as part of this Plea Agreement, the Defendant intends to enter a civil settlement with the SEC whereby Defendant BUCK consents to the entry of final Judgment which, among other things:

a. permanently restrains and enjoins Defendant from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 (“Securities Act”); Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”);

b. orders Defendant to pay disgorgement in the amount of \$2,561,236.71 plus prejudgment interest thereon in the amount of \$296,806.31, with Defendant receiving dollar for dollar credit against the disgorgement amount for any amounts Defendant pays in connection with any order of restitution in this criminal matter; and

---

<sup>1</sup>Title 18, U.S.C. §§ 3141-3156, Release and Detention Pending Judicial Proceedings.

c. orders Defendant to pay a civil penalty in the amount of \$2,233,594.12 under Section 20(d)(2)(C) of the Securities Act, Section 21(d)(3)(B)(iii) of the Exchange Act, and Section 209(e)(2)(C) of the Investment Advisers Act.

12. **SEC Parallel Proceeding Stipulation:** The parties acknowledge and agree that in the event the SEC civil settlement and Final Judgment are not fully executed, then either party may withdraw from this Plea Agreement at its own option.

**Part 4: Sentence To Be Imposed**

13. **Agreed Upon Provisions Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):** The parties agree that the following two provisions in this paragraph are the appropriate disposition of this case and are subject to Fed. R. Crim. P. 11(c)(1)(C). No other provisions of this plea agreement shall be subject to Fed. R. Crim. P. 11(c)(1)(C).

a. ***Loss and Restitution Amount.*** The parties agree that the amount of loss and restitution should not exceed \$2 million.

b. ***Fine.*** The parties agree that the Court should not impose a fine in light of the Defendant's intention to enter a civil settlement with the SEC, which encompasses the criminal conduct to which the Defendant is pleading guilty.

14. **Imprisonment:** The parties have not agreed upon a specific sentence. Subject to paragraph 13, the parties reserve the right to present evidence and arguments concerning what they believe to be the appropriate sentence in this matter.

15. **Restitution:** The defendant agrees to pay restitution for all losses caused by the defendant's conduct and as ordered by the Court. Subject to paragraph 13, the parties reserve the right to present evidence and argument regarding restitution at sentencing. The defendant agrees that, while the District Court sets the payment schedule, this schedule may be exceeded if and when the defendant's financial circumstances change. In that event, and consistent with its

statutory obligations, the Government may take any and all actions necessary to collect the maximum amount of restitution in the most expeditious manner available.

16. **Placement:** The defendant reserves the right to request that this Court recommend to the Federal Bureau of Prisons that the defendant serve any sentence of imprisonment imposed in this case at a facility identified by the defendant. The defendant acknowledges and understands that any recommendation by the Court is only a recommendation and does not bind the Federal Bureau of Prisons. The government does not object to any such requested recommendation.

17. **Programs and/or Treatment:** The defendant reserves the right to request that this Court recommend to the Federal Bureau of Prisons that the defendant participate in specific programs or receive specific treatment while serving any sentence of imprisonment imposed in this case. The defendant acknowledges and understands that any recommendation by the Court is only a recommendation and does not bind the Federal Bureau of Prisons. The government does not object to any such requested recommendations.

18. **Supervised Release:** Both parties reserve the right to present evidence and arguments concerning whether the Court should impose a term of supervised release to follow any term of imprisonment in this case, the duration of any term of supervised release, and the terms and conditions of the release.

19. **Special Condition of Supervised Release.** To assist the Court, the parties have carefully considered the factors listed in 18 U.S.C. § 3553 and jointly recommend that the Court impose the following condition of supervised release, in addition to any conditions which the Court deems appropriate in this case: “No Contact (direct or indirect) with Merrill Lynch/Bank of America employees, current or former.”

20. **No Appeal of Supervised Release Term and Conditions:** As discussed in greater detail below, the parties' reservation of the rights to present evidence and arguments to the Court concerning the length and conditions of supervised release is not intended to be inconsistent with the Waiver of Appeal specified below, which includes a waiver of the right to appeal to the length and conditions of the period of supervised release.

21. **Mandatory Special Assessment:** The Defendant will pay a total of \$100 on the date of sentencing or as ordered by the Court to the Clerk, United States District Court, which amount represents the mandatory special assessment fee imposed pursuant to 18 U.S.C. § 3013.

22. **Obligation to Pay Financial Component of Sentence:** If the Defendant is unable to pay any financial component of the Defendant's sentence on the date of sentencing, then the Defendant agrees that the payment of the financial component should be a condition of supervised release as well as an ordered payment through the Inmate Financial Responsibility Program of the U.S. Bureau of Prisons. The Defendant would have a continuing obligation to pay the financial component of the sentence. The Defendant further agrees that as of the date of filing this Plea Agreement the Defendant will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines and restitution imposed by the Court and authorizes the Financial Litigation Unit to obtain credit reports relating to the Defendant for use in the collection of any fines and restitution imposed by the Court.

**Part 5: Stipulated Factual Basis for Guilty Plea**

23. The Defendant admits that each and every fact alleged in the Information is true.

24. The parties further stipulate and agree that the United States could prove each and every fact alleged in the Information to a jury beyond a reasonable doubt if the case went to trial.



The parties further stipulate and agree that such facts establish a sufficient factual basis for the Defendant's plea of guilty to the offenses set forth in Paragraph 1, above.

25. The parties acknowledge that such facts are only a summary of the government's evidence. The parties reserve the right to present additional evidence at the time of sentencing, if they so choose. This paragraph is not intended to foreclose the presentation of such additional evidence.

**Part 6: Other Provisions**

26. **Background Information:** The Defendant acknowledges and understands that no limitation shall be placed upon the Court's consideration of information concerning the background, character, and conduct of the Defendant for the purpose of imposing an appropriate sentence. The Defendant acknowledges and understands that the Government is not prohibited from providing information concerning background, character, and conduct of the Defendant for the purpose of recommending or advocating an appropriate guideline calculation and sentence.

27. **Good Behavior Requirement:** The defendant agrees to fully comply with all conditions of release imposed by the Court during all stages of this case. If the defendant fails to fully comply with such conditions, then the Government may withdraw from this Agreement.

28. **Compliance with Federal and State Laws:** The Defendant understands that the obligations of the Government in this Plea Agreement are expressly contingent upon the Defendant abiding by federal and state laws, including all laws, rules, and regulations while detained pending trial or plea and sentencing in this case.

**Part 7: Sentencing Guideline Stipulations**

29. **Guideline Computations:** Pursuant to Section 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties but are only a recommendation to the Court and that the Court will determine the advisory sentencing guidelines applicable in this case. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court. The 2016 version of the Sentencing Guidelines has been used by the parties to make the stipulations set forth below.

30. **Base Offense Level:** The parties stipulate that the Base Offense Level for the offense to which the Defendant is pleading guilty is 7, pursuant to U.S.S.G. § 2B1.1(a)(1).

31. **Specific Offense Characteristic – Loss:** There is no agreement as to loss. The parties will address this issue at sentencing. The government will argue that a reasonable estimate of the loss equaled \$2 million, and therefore 16 levels are added, pursuant to U.S.S.G. § 2B1.1(b)(1)(I). The Defendant will argue that the offense caused no loss, and therefore no levels are added.

32. **Specific Offense Characteristic – Victims:** The parties stipulate that the Defendant's criminal conduct involved 10 or more victims, and therefore 2 levels are added pursuant to U.S.S.G. § 2B1.1(b)(2)(A)(i).

33. **Specific Offense Characteristic – Sophisticated Means:** There is no agreement as to whether the Defendant's criminal conduct involved sophisticated means pursuant to U.S.S.G. § 2B1.1(b)(10)(C). The parties will address this issue at sentencing.

34. **Specific Offense Characteristic – Investment Advisor:** The parties stipulate that the Defendant's criminal conduct involved a violation of securities law and, at the time of

the offense, the defendant was an investment adviser or a person associated with an investment adviser, and therefore 4 levels are added pursuant to U.S.S.G. § 2B1.1(b)(19)(A)(iii).

35. **Acceptance of Responsibility:** To date, the defendant has demonstrated a recognition and affirmative acceptance of personal responsibility for the defendant's criminal conduct. Based upon the defendant's willingness to accept a Plea Agreement and enter a plea of guilty to the criminal conduct noted in this agreement, the Government agrees that the defendant should receive a two (2) level reduction *provided* the defendant satisfies the criteria set forth in Guideline § 3E1.1(a) up to and including the time of sentencing. The defendant timely notified the Government of defendant's intention to enter a plea of guilty, thereby permitting the Government and the Court to allocate their resources efficiently. After the Defendant enters a plea of guilty, the government intends to file a motion pursuant to U.S.S.G. § 3E1.1(b) requesting that the Court decrease the offense level by one (1) additional level. The parties reserve the right to present evidence and arguments concerning the defendant's acceptance of responsibility at the time of sentencing.

**Part 8: Waiver of Right to Appeal**

36. **Direct Appeal:** The Defendant understands that the Defendant has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right, and in exchange for the concessions made by the Government in this Plea Agreement, the Defendant agrees that in the event the Court accepts this Plea Agreement and sentences the Defendant **within or below the advisory guidelines range as calculated by the Court**, regardless of the defendant's criminal history category, then the defendant expressly waives the defendant's right to appeal the conviction and sentence imposed in this case on any ground, including the right to appeal conferred by 18 U.S.C. § 3742. This

waiver of appeal specifically includes all provisions of the guilty plea and sentence imposed, including the length and conditions supervised release, and the amount of any restitution or fine.

37. **Collateral Attack:** Additionally, in the event the Court accepts this Plea Agreement and sentences the Defendant consistent with its terms, the Defendant expressly agrees not to contest, or seek to modify, the Defendant's conviction or sentence or the manner in which either was determined in any proceeding, including but not limited to, an action brought under 18 U.S.C. § 3582 or 28 U.S.C. § 2255. As concerns this Section 3582 waiver, should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the Defendant's offense(s) and explicitly make such an amendment retroactive, the government agrees that it will not assert this waiver as a bar to the Defendant filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if the Defendant files such a motion, the government reserves the right to oppose the motion on any other grounds, and reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion. As concerns the Section 2255 waiver, the waiver does not encompass claims, either on direct or collateral review, that the Defendant received ineffective assistance of counsel.

38. **No Appeal of Supervised Release Term and Conditions:** The parties' reservation of the rights to present evidence and arguments in this Court concerning the length and conditions of supervised release is not intended to be inconsistent with the Waiver of Appeal specified above, which includes a waiver of the right to appeal to the length and conditions of the period of supervised release.

**Part 9: Presentence Investigation Report**

39. The Defendant requests and consents to the commencement of a presentence investigation by probation officers of the United States District Court for purposes of preparing a Presentence Investigation Report at this time and prior to the entry of a formal plea of guilty.

40. The Defendant further requests and consents to the review of the Defendant's Presentence Investigation Report by a Judge, Defendant's counsel, the Defendant, and the government at any time, including prior to entry of a formal plea of guilty.

**Part 10: Statement of the Defendant**

41. By signing this document, the Defendant acknowledges the following:

a. I have received a copy of the Information and have read and discussed it with my attorney. I believe and feel that I understand every accusation made against me in this case. I wish the Court to omit and consider as waived by me all readings of the Information in open Court, and all further proceedings including my arraignment.

b. I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the Information, and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed, counseled and advised me as to the nature and cause of every accusation against me and as to any possible defenses I might have in this case.

c. I have read the entire Plea Agreement and discussed it with my attorney.

d. I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

e. Except for the provisions of the Plea Agreement, no officer or agent of any branch of government (federal, state or local), nor any other person, has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I

would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "Guilty." I hope to receive probation, but am prepared to accept any punishment permitted by law which the Court may see fit to impose. However, I respectfully request that the Court consider in mitigation of punishment at the time of sentencing the fact that by voluntarily pleading "Guilty" I have saved the Government and the Court the expense and inconvenience of a trial. I understand that before it imposes sentence, the Court will address me personally and ask me if I wish to make a statement on my behalf and to present any information in mitigation of punishment.

f. I am fully satisfied with my attorney's representation during all phases of this case. My attorney has done all that anyone could do to counsel and assist me and that I fully understand the proceedings in this case against me.

g. I make no claim of innocence, and I am freely and voluntarily pleading guilty in this case.

h. I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime(s) to which I am entering my plea.

i. I understand that if convicted, a Defendant who is not a United States Citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

j. My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within fourteen (14) days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and

file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

k. My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within fourteen (14) days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

l. My attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate-judge, or probation office, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two level increase in the offense level.

**Part 11: Certificate of Counsel**

42. By signing this document, the Defendant's attorney and counselor certifies as follows:

a. I have read and fully explained to the Defendant all the accusations against the Defendant which are set forth in the Information in this case;

b. To the best of my knowledge and belief each statement set forth in the foregoing petition to enter plea of guilty and plea agreement is in all respects accurate and true;

c. The plea of "Guilty" as offered by the Defendant in the foregoing petition to enter plea of guilty and plea agreement accords with my understanding of the facts as related to me by the Defendant and is consistent with my advice to the Defendant;

d. In my opinion, the Defendant's waiver of all reading of the Information in open court, and in all further proceedings, including arraignment as provided in Rule 10, Fed.R.Crim.P., is voluntarily and understandingly made; and I recommend to the Court that the waiver be accepted by the Court;

e. In my opinion, the plea of "Guilty" as offered by the Defendant in the foregoing petition to enter plea of guilty and plea agreement is voluntarily and understandingly made and I recommend to the Court that the plea of "Guilty" be now accepted and entered on behalf of the Defendant as requested in the foregoing petition to enter plea of guilty and plea agreement.



**FINAL PROVISION**

43. **Complete Agreement:** The Defendant acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth or explicitly referenced in this document, to induce the Defendant to plead guilty. This document is the complete and only Plea Agreement between the Defendant and the United States Attorney for the Southern District of Indiana and is binding only on the parties to the plea agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

Respectfully submitted,

JOSH J. MINKLER  
United States Attorney

8/30/17  
DATE


8/30/17  
DATE

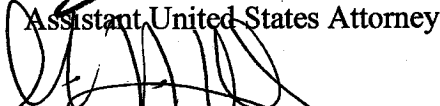
8-30-17  
DATE

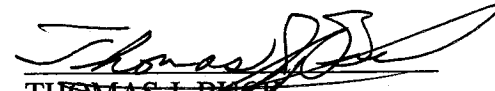
8/30/17  
DATE

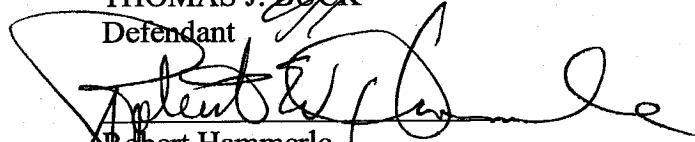
8/30/17  
DATE

  
Cynthia J. Ridgeway  
Assistant United States Attorney

  
Nicholas J. Linder  
Assistant United States Attorney

  
Winfield D. Ong  
Chief, Criminal Division

  
THOMAS J. BUCK  
Defendant

  
Robert Hammerle  
Attorney for the Defendant