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United States District Court JAN 14 2004 ☆

FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AT SEATTLE
BLENN U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON
DEPUTY

BERTRAM SACKS,

SUMMONS IN A CIVIL CASE

Plaintiff,

CASE NUMBER: **CV04 108 C**

v.

**OFFICE OF FOREIGN ASSETS CONTROL,
UNITED STATES DEPARTMENT OF THE
TREASURY,**

Defendant,

TO: (Name and address of defendant)

Office of Foreign Assets Control
U.S. Department of the Treasury
c/o David Aufhauser, General Counsel
Treasury Annex
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Attn: Licensing Division

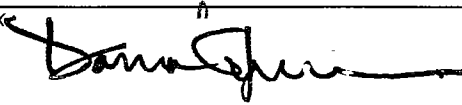
YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Donald B. Scaramastra
GARVEY SCHUBERT BARER
1191 Second Avenue, 18th Floor
Seattle, WA 98101-2939

an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you or the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

BRUCE RIFKIN

CLERK



(BY) DEPUTY CLERK

JAN 14 2004

DATE

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹	DATE	
NAME OF SERVER (PRINT)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____ _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ _____		
<input type="checkbox"/> Returned unexecuted: _____ _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date Signature of Server</p> <p style="text-align: right; margin-right: 100px;">_____ Address of Server</p>		

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1 DONALD B. SCARAMASTRA, WSBA #21416
2 GARY D. SWEARINGEN, WSBA # 24483
3 GARVEY SCHUBERT BARER
4 Eighteenth Floor
1191 Second Avenue
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5 Attorneys for Plaintiff
6 Bertram Sacks

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DEPUTY

7 *Court Use only above this line.*

8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 BERTRAM SACKS,
11 Plaintiff,

12 vs.

13 OFFICE OF FOREIGN ASSETS CONTROL,
14 UNITED STATES DEPARTMENT OF THE
TREASURY,

15 Defendant.

NO. **CV04 108C**
**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

16
17 Plaintiff Bertram Sacks alleges:

18 **I.**
19 **PARTIES**

20 1. Plaintiff Bertram Sacks is a citizen of the State of Washington. He resides in
21 Seattle, Washington, in the Western District of Washington. This case arises from Mr. Sacks's
22 journeys to Iraq. On each trip, Mr. Sacks has brought medicine and medical supplies for use in
23 civilian hospitals there. He has done so to publicize and ameliorate the effect of economic
24 sanctions imposed by the government of the United States. These sanctions have led to
25 widespread suffering and death of Iraqi civilians, especially children.

26 2. Defendant Office of Foreign Assets Control ("OFAC") is an agency of the

COPY

1 government of the United States government. In furtherance of, and as part of, economic
2 sanctions, OFAC has promulgated regulations that prohibit certain transactions in Iraq.
3 Purporting to act under those regulations. OFAC has announced its intention to impose a
4 \$10,000 civil penalty on Mr. Sacks for traveling to Iraq with medical supplies.

5 3. OFAC's fine, and the regulations under which OFAC imposed that fine, violate
6 statutory law, executive orders, international law, and the United States Constitution. Mr.
7 Sacks seeks injunctive relief, and declaratory relief under 28 U.S.C. § 2201, that will stop
8 OFAC's unlawful enforcement of an alleged \$10,000 civil penalty against Mr. Sacks.

9
10 **II.**
JURISDICTION AND VENUE

11 4. This Court has jurisdiction of the subject matter under 28 U.S.C. §1331, as this
12 case arises under the laws of the United States. This Court also has subject matter jurisdiction
13 under 28 U.S.C. § 1337, as this case arises under an Act of Congress regulating commerce.
14 This Court further has subject matter jurisdiction under 28 U.S.C. § 1346(a)(2), as this is an
15 action against the United States for an amount not exceeding \$10,000 and founded upon the
16 Constitution, Acts of Congress, and regulations promulgated by the defendant. This Court
17 further has subject matter of this action, as it has jurisdiction of the underlying claims by OFAC
18 against Mr. Sacks under 28 U.S.C. §§ 1331, 1337, and 2461(a).

19 5. Venue in the Western District of Washington is proper under 28 U.S.C.
20 § 1391(e), as Mr. Sacks resides therein and no real property is involved in this action.

21 **III.**
OPERATIVE FACTS

22 **A. Background.**

23 6. On August 2, 1990, Iraq invaded Kuwait. In response, then-President George
24 H.W. Bush declared a "national emergency" pursuant to Executive Order 12722. That
25 "national emergency" remains in effect to the present day. Executive Order 19890 (July 31,
26 2003). In Executive Order 12722 and in Executive Order 12724 dated a week later, President

1 Bush authorized the imposition of economic sanctions on Iraq.

2 7. Iraq's invasion led to the First Gulf War. A coalition led by the United States
3 defeated Iraq after an extensive bombing campaign.

4 8. Immediately after the conclusion of the First Gulf War, in March 1991, the
5 United Nations reported on the extensive damage to Iraqi infrastructure caused by the U.S.-led
6 bombing campaign. Then-Secretary-General Javier Perez de Cuellar dispatched a mission
7 headed by Under-Secretary-General Martti Ahtisaari to assess the situation in Iraq. The Under-
8 Secretary-General reported:

9 I and the members of my mission were fully conversant with
10 media reports regarding the situation in Iraq and, of course, with
11 the recent WHO/UNICEF report on water, sanitary, and health
12 conditions in the Greater Baghdad area. It should, however, be
13 said at once that nothing we had seen or read had quite prepared
14 us for the particular form of devastation which has now befallen
15 the country. The recent conflict has wrought near-apocalyptic
16 results upon the economic infrastructure of what had been, until
17 January 1991, a rather highly urbanized and mechanized society.
18 Now, most means of modern life support have been destroyed or
19 rendered tenuous. Iraq has, for some time to come, been
20 relegated to a pre-industrial age, but with all the disabilities of
21 post-industrial dependency on an intensive use of energy and
22 technology.

23 The report recommended an immediate end to the embargo on imports of food and other
24 essential supplies to prevent "imminent catastrophe."

25 **B. OFAC's Regulations in Response to the "National Emergency."**

26 9. In January 1991, OFAC first promulgated regulations to enforce economic
sanctions against the people of Iraq. Those regulations appear at 31 CFR Part 575.

10 10. OFAC purported to act under 50 U.S.C. §§ 1701(a) & 1702. These statutes
11 grant the President certain powers to deal with an "unusual and extraordinary threat" posed by
12 a "national emergency" declared by the President. Among those powers is the power to
13 regulate certain financial transactions. These powers "may only be exercised to deal with an
14 unusual and extraordinary threat with respect to which a national emergency has been declared

1” 50 U.S.C. § 1701(b).

2 11. OFAC’s regulations prohibit the importation of goods into Iraq. The regulations
3 include “donated foodstuffs in humanitarian circumstances, and donated supplies intended
4 strictly for medical purposes” unless those imports are “specifically licensed” by OFAC. 31
5 CFR § 575.205. OFAC’s regulations do not state the criteria by which OFAC grants such
6 licenses. Nor do the regulations impose any deadline on OFAC to grant such licenses. Hence,
7 OFAC has reserved to itself the unrestricted and unfettered power to keep food and medical
8 supplies from reaching people in Iraq who need them.

9 12. OFAC has also prohibited travel to Iraq, including travel for the purpose of
10 bringing food and medical supplies to the Iraqi people. 31 CFR § 575.207 provides in relevant
11 part, and subject to very limited exceptions, that “no U.S. person may engage in any transaction
12 relating to travel by any U.S. citizen or permanent resident alien to Iraq, or to activities by any
13 U.S. citizen or permanent resident alien within Iraq.” OFAC also prohibited “[a]ny transaction
14 by a U.S. person relating to transportation to or from Iraq.” 31 CFR § 575.208.

15 **C. Enter Bert Sacks.**

16 13. Bert Sacks has traveled to Iraq nine times. On each trip, Mr. Sacks has brought
17 medicine and medical supplies and distributed them to civilians, many of them children, in
18 civilian hospitals in Iraq. In 1997, he helped bring roughly \$40,000 worth of medicine into Iraq
19 for the purpose of relieving human suffering. Mr. Sacks also brought medicine and medical
20 supplies to Iraq to publicize the effect of economic sanctions on the people of Iraq, especially
21 children.

22 14. While in Iraq, Mr. Sacks has visited medical clinics and pediatric hospitals. He
23 has seen the children who are dying there. Mr. Sacks has met with other U.S. citizens in Iraq to
24 highlight the effects of U.S. policy there. Probably the best known among them is United
25 States Representative Jim McDermott, who traveled to Iraq in 2002.

26 15. Mr. Sacks’ November 1997 trip to Iraq was covered in the national news media.

1 In response to this particular trip, OFAC sought to punish Mr. Sacks. On December 3, 1998,
2 OFAC sent a written "Prepenalty Notice" to Mr. Sacks and others. A true and correct copy of
3 the Prepenalty Notice is attached hereto as Exhibit 1. In the Prepenalty Notice, OFAC claimed
4 Mr. Sacks had violated its regulations enforcing economic sanctions during his 1997 trip to
5 Iraq. The Prepenalty Notice contained ten "counts," only one of which, Count 6, was directed
6 at Mr. Sacks. Count 6 made the following charge:

7 Between on or about [sic] November 21-30, 1997, Messrs.
8 Handelman, Mullins, Sacks, and Zito, engaged in currency travel-
9 related transactions to/from/within Iraq absent prior license or
10 other authorization from OFAC. These currency transactions
11 included, but are not limited to, the purchase of food, lodging,
12 ground transportation, and incidentals.

13 OFAC proposed a penalty of \$10,000 for Mr. Sacks "for Count 6" and invited written
14 comments within thirty days.

15 16. On December 28, 1998, Mr. Sacks wrote back to OFAC:

16 I appreciate that you must see yourselves as doing your job to
17 uphold US sanctions laws against Iraq, which I have violated.
18 However I want to explain here, as I would to any personal
19 friends of mine, why I have done this

20 You are correct to say in your prepenalty letter (12/3/98) that I
21 brought "medical supplies and toys to Iraq" absent prior OFAC
22 approval. We all recognize, I hope, that the \$40,000 of
23 medicines we brought to Iraq --- despite the lives it saved --- was
24 essentially a symbolic act: it lasted the 22 million people of Iraq
25 about 15 minutes, given their pre-sanctions needs of \$1,000,000
26 of imported medicines per day. Further, we brought nothing
 towards the \$10,000,000 of food imports Iraqis need per day.
 And we brought nothing towards the \$22,000,000,000 of
 essential repairs for the life-supporting infrastructure needed to
 stop the water-borne epidemics in Iraq. These numbers long ago
 convinced me that the human crisis in Iraq cannot be solved by
 humanitarian aid --- but only by an end of economic sanctions.

 The decision to turn to civil disobedience to end sanctions, in
 public defiance of the laws you are entrusted with enforcing, was
 not a natural one for me. I first spent two years of research,
 writing, and contacting people about the situation, but this failed
 to cast any significant public attention on the thousands of Iraqi
 children who were dying every month because of the bombed
 civilian infrastructure (unsafe drinking water) and sanctions (lack

1 of food and medicines). In deciding to publicly violate sanctions,
2 two events and two people played an important role for me.

3 The first is knowing that 150 years ago it was the highest law of
4 the United States of America that runaway slaves from the South
5 were legally "stolen property" of their owners. Anywhere in this
6 country, an American was breaking the law to help such a slave
7 escape via the "underground railroad." The people I greatly
8 admire from this terrible era in our history were not law-abiding
9 citizens, but those who broke the law to help slaves. . . .

10 The second event influencing me is the deaths of millions of
11 innocent civilians during WWII. I visited Auschwitz one year
12 ago, just before my trip to Iraq. At both places over a million
13 innocent civilians have died. I greatly admire the people who
14 took personal risks to help Jews, against prevailing indifference
15 and prejudice. . . .

16 These two events are certainly not identical with events in Iraq,
17 but the example of people motivated by high moral
18 considerations to "break the law" has given me encouragement to
19 do the same. . . .

20 17. After writing this letter, Mr. Sacks continued his work to call attention to the
21 effect of economic sanctions, and the regulations through which OFAC seeks to enforce them,
22 on the people of Iraq. Those sanctions have deprived many Iraqi civilians, especially children,
23 of the food, clean water, and medicine they need to survive.

24 **D. Economic Sanctions Contribute To the Deaths of Thousands of Young Children in**
25 **Iraq Every Month.**

26 18. Economic sanctions have prevented Iraq from rebuilding water treatment plants
destroyed in the First Gulf War. Water treatment facilities were fairly widespread in Iraq until
many were bombed during the First Gulf War, along with virtually all of the country's
electrical-generating plants that powered Iraq's water and sewage treatment facilities. The
resulting lack of potable water has led to the outbreak of severe diarrhea among young children,
which is often fatal in the absence of medical treatment. OFAC regulations, however, have
prevent people like Mr. Sacks from bringing medicine and medical supplies to Iraq. OFAC
regulations also effectively prohibit the importation of the amount of food needed to feed the
children of Iraq.

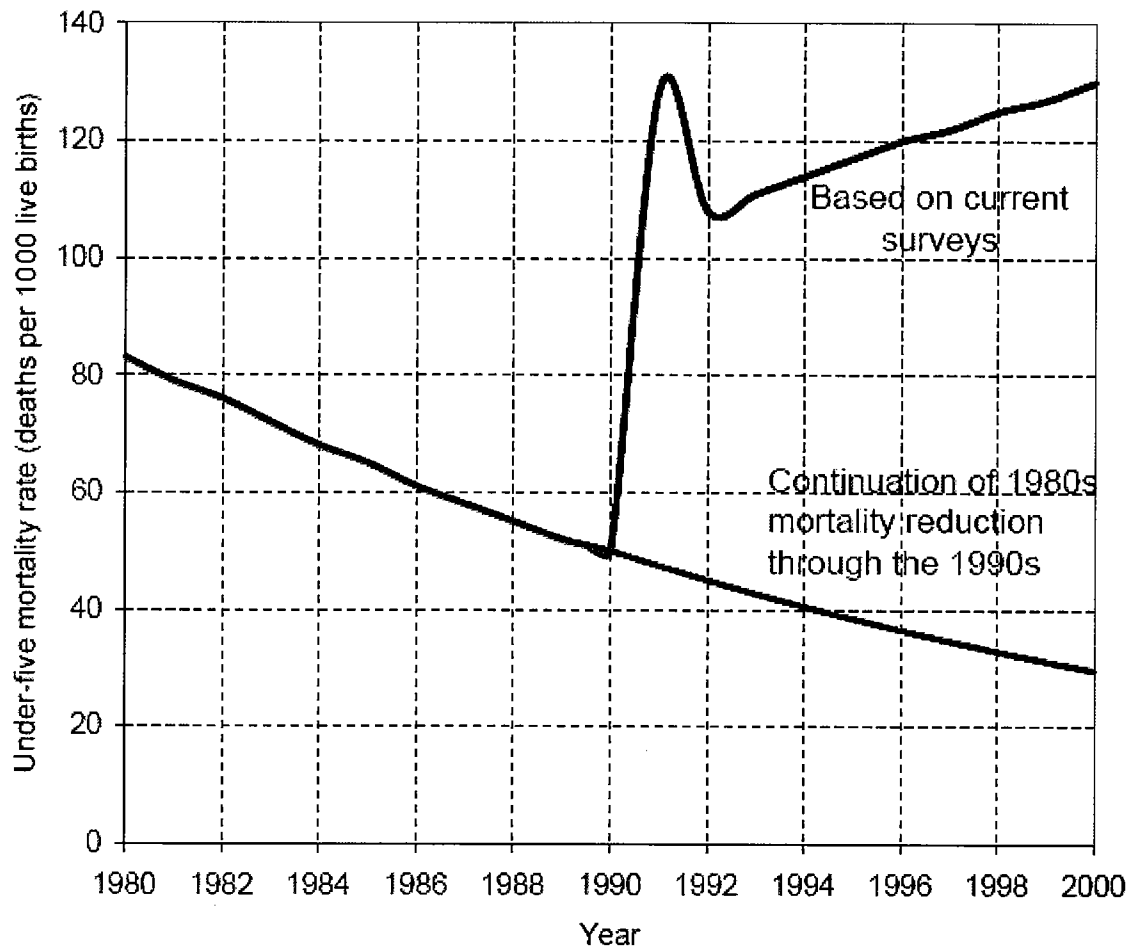
1 19. Each month, economic sanctions have helped cause the deaths of three to six
2 thousand children in Iraq under five years of age. In 1992, the New England Journal of
3 Medicine put the figure at 5,862 deaths per month for the first eight months of 1991 alone.
4 (This does not include adults who have died in Iraq as a consequence of economic sanctions.)

5 20. In 2000, UNICEF issued a report entitled "UNICEF in Iraq." The report
6 warned: "Mounting evidence shows that the sanctions are having a devastating humanitarian
7 impact on Iraq." It quoted a 1997 report by the UN Human Rights Committee, which stated:
8 "the effect of sanctions and blockades has been to cause suffering and death in Iraq, especially
9 to children."

10 21. According to former UNICEF Director Carol Bellamy, sanctions imposed by the
11 United States through the UN Security Council have reversed a decades-long decline in infant
12 mortality in Iraq. Ms. Bellamy cites UNICEF reports that between 1991 and 1998, this reversal
13 contributed to the deaths of half a million children under the age of five. One such UNICEF
14 report appears at <http://www.unicef.org/reseval/pdfs/irqu5est.pdf>. It contains graphs such as
15 the following, which depict the upsurge in child mortality in Iraq after 1990, the year economic
16 sanctions were first imposed:

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Chart 2: Iraq - under-five mortality rate disparities



The chart shows the large disparity between the mortality rates based on recent surveys and what would have been the situation if the mortality trend in the 1980s had been continued through the 1990s.

22. In 2003 UNICEF published another report, entitled "The Situation of Children in Iraq." See http://www.unicef.org/publications/pub_children_of_iraq_en.pdf. That report