

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANA COPELAND, et al.,)	
)	
Plaintiffs,)	NO. C78-291M
)	
v.)	PRETRIAL ORDER
)	
THE SEATTLE HOUSING AUTHORITY,)	
et al.,)	
)	
Defendants.)	

As the result of a pretrial conference at which plaintiff DIANA COPELAND was represented by BARBARA ISENHOUR and STEVE FREDRICKSON of EVERGREEN LEGAL SERVICES, and defendants SEATTLE HOUSING AUTHORITY and WILLIAM NISHIMURA were represented by RICHARD P. MATTHEWS of LESOURD, PATTEN, FLEMING, HARTUNG & EMORY, and PATRICIA ROBERTS HARRIS and substituted Secretary MOON LANDRIEU was represented by BARBARA GORDON of the UNITED STATES DEPARTMENT OF JUSTICE, the following issues of fact and law were framed and exhibits identified:

I. JURISDICTION

A. This is an action seeking to enforce rights secured by the Housing and Community Development Act of 1974, 42 U.S.C. § 1437, et seq. Jurisdiction is conferred upon this Court by 28 U.S.C. §

1 1331(a). Although jurisdiction is not conferred by 28 U.S.C. §§
2 2201 and 2202, plaintiffs' action for declaratory and injunctive
3 relief is authorized by said statutes.

4 II. ADMITTED FACTS

5 B. The following facts are admitted by the parties.

6 1. Plaintiff DIANA COPELAND ("Copeland" herein) resides
7 in Seattle, Washington.

8 2. Plaintiff Copeland is presently participating in the
9 Section 8 Existing Housing Assistance Payments Program, 42 U.S.C. §
10 1437f (hereinafter sometimes referred to as "§ 8 Housing Program")
11 and participated in its predecessor program, the Section 23 Leased
12 Housing Program, 42 U.S.C. § 1421b (hereinafter sometimes referred
13 to as "§ 23 Housing Program").

14 3. Defendant SEATTLE HOUSING AUTHORITY ("SHA" herein) is
15 a municipal corporation organized under the laws of the State of
16 Washington, RCW 35.82, et seq., and the National Housing Act, 42
17 U.S.C. § 1400, et seq., to provide housing for families with low
18 incomes at a cost they can afford. The SHA administers the Section
19 8 Housing Program within the City of Seattle.

20 4. Defendant WILLIAM NISHIMURA ("Nishimura" herein) is
21 the executive director of the SHA and as such is ultimately
22 responsible for the administration of all of its housing programs.
23 SHA administered a § 23 Housing Program for the period May, 1975
24 through June, 1979. It has administered a Section 8 Program from
25 March 1, 1976 to the present.

26 5. PATRICIA ROBERTS HARRIS ("Harris" herein), originally
27 named as defendant herein, was formerly the secretary of the United
28 State Department of Housing and Urban Development ("HUD" herein) and
29 was responsible for the administration of the housing programs under
30 42 U.S.C. § 1400, et seq., including the Section 8 Existing Housing
31

32 PRETRIAL ORDER - 2

1 Assistance Program, and for the enforcement of all its pertinent
2 statutes and regulations. Moon Landrieu succeeded Harris as
3 secretary of HUD and should be substituted for defendant Harris as a
4 defendant in this action, pursuant to FRCP 17(a) and 25(d)(1).

5 6. Ronald Leinio is the chief of the Assisted Housing
6 Management Branch, Seattle Area Office, Department of Housing and
7 Urban Development. For the period July 1, 1976 through January 1,
8 1980, Haven Walters was the Chief Maintenance Engineer for the
9 Seattle Area office of HUD.

10 7. For the period May, 1975 through June, 1979, Melvin
11 Campbell supervised the administration of the Section 23 Housing
12 Program as manager of SHA's Leased Housing Department. In his
13 capacity as leased housing manager, Mr. Campbell also supervised
14 SHA's Section 8 Program from its inception March 1, 1976 until
15 October 1, 1979 when his position was assumed by Mr. Richard
16 Thomas. Mr. Thomas is the current SHA leased housing supervisor
17 with direct responsibility for the Section 8 program and the utility
18 allowance schedules used by SHA as part of that program. Both Mr.
19 Thomas and Mr. Campbell reported to Mr. L. B. Haas, Assistant
20 Executive Director of SHA.

21 8. As of January 1, 1979, there were 929 families
22 participating in Section 8 Housing Program administered by SHA.
23 That total was composed of 566 families residing in single-family
24 residences, 100 families in duplexes or triplexes, and 263 families
25 in apartments. As of March, 1980 the total number of families
26 participating in SHA's Section 8 Housing Program had grown to 1593.
27 Of this number, 435 families resided in single family residences;
28 229 in duplexes or triplexes, 875 in apartments and there were 54
29 whose category is unknown.
30

31

32

PRETRIAL ORDER - 3

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 9. Copeland resided at 538 26th Avenue South, Seattle,
2 Washington, from May 11, 1975, through November, 1976. She has
3 resided at 2509 South Lane, Seattle, Washington, from November,
4 1976, through the present.

5 10. During the time Copeland has participated in SHA's
6 Section 8 Program and its Section 23 Housing Program, she has been
7 responsible for paying her own natural gas and electric utility
8 bills. During this period she has used only natural gas for heating
9 and hot water heating and has not used oil, bottle gas or electrical
10 service for these purposes.

11 11. Copeland's household, during the period May 11, 1975,
12 to present, has consisted of herself and three minor children; her
13 children are Arnold Lee Copeland, born on March 31, 1967; Ernest
14 Elgin Copeland, born on November 27, 1968; and Alfreada Ann
15 Copeland, born on May 27, 1970.

16 12. During the period May, 1975, to November, 1976,
17 Copeland complained to her landlord on a number of occasions about
18 the size of her gas bills at 538 26th Avenue South, Seattle,
19 Washington. A written complaint regarding the size of her gas bills
20 and the inadequacy of the Section 8 utility allowance schedule was
21 submitted to the HUD on behalf of Copeland on August 27, 1976.
22 Copeland complained to her landlord about the size of her gas bills
23 at 2509 South Lane in Seattle on several occasions in 1978.

24 13. The premises located at 538 26th Avenue South was a
25 detached single-family residence, woodframe construction, consisting
26 of five rooms including two bedrooms; the premises contained an
27 unfinished basement and a finished attic. The ground floor area of
28 the residence was approximately 680 square feet.

29 14. Heat was provided at 538 26th Avenue South by a
30 natural gas forced-air furnace. Hot water was supplied by a natural
31

1 gas hot water heater, the capacity and temperature settings of which
2 are unknown. The cooking facilities were electric.

3 15. During the time that Copeland occupied the premises
4 located at 538 26th Avenue South, Seattle, Washington, she was a
5 participant in the Section 23 Leased Housing Program.

6 16. During the period January 5, 1975, to March 1, 1976,
7 Copeland's gross rent was \$61; her gross rent during that period was
8 based on a monthly income of \$370. From March 1, 1976, to November
9 1, 1976, Copeland's gross rent was \$69; her gross rent was based on
10 a monthly income of \$416. From November 1, 1976, to November 1,
11 1977, Copeland's gross rent was \$77; her gross rent was based on a
12 monthly income of \$385. From November 1, 1977, to November 1, 1978,
13 Copeland's gross rent was \$85; her gross rent was based on a monthly
14 income of \$416. From November 1, 1978, to November 1, 1979,
15 Copeland's gross rent was \$91; her gross rent was based on a monthly
16 income of \$439. From November 1, 1979, to the present, Copeland's
17 gross rent was \$102; her gross rent was based on a monthly income of
18 \$483. Copeland's monthly natural gas utility costs and consumption
19 in therms for the period May, 1975, to present are set forth in
20 Exhibit 51; Copeland's bi-monthly electric utility costs and
21 consumption in Kilowatt hours for the period May, 1975, to the
22 present is set forth in Exhibit 52.

23 17. Copeland's utility allowance during her participation
24 in the Section 23 Leased Housing Program and the Section 8 Existing
25 Housing Program has been as follows: January, 1975, through
26 October, 1976 - \$23; November, 1976, through October, 1977 - \$34;
27 November, 1977, through October, 1978 - \$36, November, 1978 through
28 October, 1979 - \$40; November, 1979 to present - \$38. Based on the
29 most recent utility allowance implemented by SHA on March 1, 1980,
30 Copeland's utility allowance would be increased to \$52 following her
31

32

PRETRIAL ORDER - 5

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3800 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 next annual review which is scheduled for October, 1980.

2 18. The premises located at 2509 South Lane, Seattle,
3 Washington, is a detached single-family residence, woodframe
4 construction, consisting of six rooms including three bedrooms; the
5 premises contain an unfinished basement and a finished attic.

6 19. Heat is provided at 2509 South Lane, Seattle,
7 Washington, by a natural gas forced-air furnace. Hot water is
8 supplied by a natural gas hot water heater. The capacity of the hot
9 water tank is 40 gallons. The cooking facilities are electric.

10 20. Copeland has been unemployed for the period May 11,
11 1975, to the present time. Her sole known source of income is a
12 public assistance grant from the State of Washington, Department of
13 Social and Health Services.

14 21. A review of each of SHA's tenant's income and
15 eligibility for determining rental rates for that tenant's continued
16 participation in the Section 8 Housing Program is conducted by SHA
17 annually. Copeland's annual review takes place in October of each
18 year.

19 22. Residential Rates charged by Washington Natural Gas
20 for natural gas service for the period May, 1975 to present are set
21 forth in Exhibit 14.

22 23. The rates charges imposed by the City of Seattle,
23 Department of Lighting, for residential electric utility service for
24 the period May, 1975 to present are set forth in Exhibit 15.

25 24. During the fall of 1978, a survey of actual tenant
26 utility consumption in Section 8 Housing Programs in King, Pierce
27 and Snohomish Counties was being collected by HUD to permit HUD to
28 determine actual use of natural gas and electricity. The results of
29 the study were to be put to several uses. The survey was conducted
30 by Walters, HUD's Seattle Area Office Maintenance Engineer.

31
32

PRETRIAL ORDER - 6

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 25. The utility allowance schedule identified as Exhibit 7
2 was prepared by the SHA and was used for the Section 23 Leased
3 Housing Program between May, 1975 and October 1, 1976.

4 26. The utility allowance schedule identified as Exhibit 8
5 was prepared by the SHA on July 16, 1975 for use in the Section 8
6 Existing Leased Housing Program to be administered by it. It was
7 submitted by SHA to Ron Leinio, Chief of Assisted Housing Management
8 Branch, Seattle Area office, HUD, for approval on July 18, 1975.
9 The schedule was reviewed by Richard Ballinger, Housing Management
10 Officer, Housing Management Division, Seattle Area office, HUD. The
11 schedule was approved by James Brown, Director of Housing
12 Management, Seattle Area office, HUD, on January 28, 1976. This
13 utility allowance schedule was the original schedule used by SHA for
14 its Section 8 Program from its inception on March 1, 1976 until the
15 schedule was changed effective July 1, 1977. The schedule was
16 subsequently also used by the SHA for the Section 23 Leased Housing
17 Program for the period October 1, 1976, to July 1, 1977.

18 27. The Section 23 Housing Program was gradually phased
19 out from March, 1976 through 1979. It was discontinued altogether
20 in June, 1979. The utility allowance schedule used by SHA for both
21 the Section 8 and Section 23 Housing Programs was the same from
22 October 1, 1976 until the Section 23 Program ceased to exist in
23 June, 1979.

24 28. The utility allowance schedule identified as Exhibit 9
25 was prepared by Haven Walters, Maintenance Engineer (hereinafter
26 "Walters"), Assisted Housing Management Branch, Seattle Area office,
27 HUD, on January 28, 1977. The schedule was approved by James Brown,
28 Director of Housing Management, HUD, on May 27, 1977. The schedule
29 was used by the SHA for both the Section 8 Existing Leased Housing
30 Program and the Section 23 Leased Housing Program for the period
31 July 1, 1977, to April 21, 1978.
32

1 29. The utility allowance schedule identified as Exhibit
2 10 consisted of two proposed schedules and was prepared by Walters,
3 Seattle area office Chief Maintenance Engineer for HUD, and bears a
4 final date of August 30, 1977. One proposed schedule, identified as
5 the "regular" schedule, did not reflect the drought surcharge
6 imposed by the City of Seattle, Department of Lighting, for the
7 period June 1, 1977, through November 30, 1977. The other proposed
8 schedule, identified as a "temporary" schedule, was intended to
9 reflect the drought surcharge imposed by the City of Seattle,
10 Department of Lighting. Both the regular and temporary schedules
11 were approved by James Brown, HUD, on January 24, 1978, after the
12 City Light surcharge had ceased to be in effect.

13 30. Notice of the January 24, 1978 recommendation by HUD
14 of both the regular and temporary utility allowance schedules was
15 received by SHA on January 25, 1978. SHA never implemented the
16 temporary utility allowance schedule because the surcharge for which
17 it was designed to provide assistance had been terminated by City
18 Light. The "regular" schedule was used by SHA for both the Section
19 8 and Section 23 Leased Housing Programs for the period April 21,
20 1978 through October, 1978.

21 31. The utility allowance schedule identified as Exhibit
22 11 was prepared by Walters and bears a date of July 7, 1978. The
23 utility allowance schedule was approved by Walters' superior at HUD,
24 Mr. James Brown, in August, 1978. It was transmitted to SHA and
25 recommended for use on October 2, 1978. The schedule was thereafter
26 used by SHA for the period November, 1978 until February 11, 1980.

27 32. In November, 1979, SHA undertook to update and revise
28 the utility allowance schedules then in force. In calculating the
29 new allowances SHA followed the instructions and worksheet supplied
30 by HUD and dated April, 1979 (Ex. 75). By letter dated November 28,
31

32

PRETRIAL ORDER - 8

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 1974 (Ex. 75) SHA submitted to the local HUD office for approval a
2 revised utility allowance schedule, dated November 15, 1979, for use
3 in the Section 8 Program administered by it. Haven Walters of HUD
4 reviewed and approved the SHA revised schedule on November 30,
5 1979. No letter was sent to SHA advising it of HUD's approval until
6 March 11, 1980. SHA was advised orally in January, 1980 that HUD's
7 explicit approval was not needed and that the schedule could be
8 implemented. Thereafter, SHA began using the schedule on March 1,
9 1980.

10 33. The schedules prepared by HUD (Exs. 9, 10 and 11) and
11 the most recent schedule prepared by SHA (Ex. 74) cover three
12 different categories of dwelling units: the first category combines
13 single family detached, duplex and triplex units; the second
14 category combines fourplexes, townhouses, rowhouses, and large one
15 and two-story apartment buildings; the third category combines three
16 or more story apartment buildings and highrise apartment buildings.

17 34. The following documents were referred to by Walters in
18 drafting the utility allowance dated July 7, 1978: Form HUD-52667;
19 S.F. 4500.1 dated 12/72, a Region IX Handbook; Local Housing
20 Authority Management Guide, part 2, Section 9 Controlling Utility
21 Consumptions and Costs, - April, 1963; Monthly Normals of
22 Temperatures Precipitation and Heating and Cooling Degree Days, 1941
23 to 1970, by U.S. Department of Commerce, National Oceanic and
24 Atmospheric Administration, dated August, 1973; Handbook 7420.3.

25 35. At the time the utility allowance schedule dated July,
26 1978 was prepared by Walters no Section 8 or Section 23 leased
27 housing tenants of SHA were contacted by Walters to determine their
28 actual utility bills.

29 36. The principal document relied on by Walters in
30 preparing the utility allowance schedule dated January 28, 1977 was
31 the HUD Form 52667.
32

PRETRIAL ORDER - 9

1 37. Seattle City Light was the only electric utility
2 supplier which was contacted by HUD for the purpose of preparing the
3 January 28, 1977 utility allowance schedule.

4 38. No natural gas utility suppliers were contacted by
5 Walters in preparing the January 28, 1977 utility allowance schedule
6 for natural gas.

7 39. No real estate or property management firms were
8 contacted by Walters to obtain data regarding the January 28, 1977
9 utility consumption and costs.

10 40. Walters used, among other sources, the consumption
11 figures in San Francisco Handbook 4500.1 in preparing the utility
12 allowance schedule. The consumption figures contained in that
13 handbook were upgraded to about 1968 or 1970.

14 41. The Section 23 leased housing program housing stock
15 was substantially similar to the Section 8 program's housing stock.

16 42. No attempt was made by Walters to obtain any public
17 housing authority data on Section 23 leased housing consumption in
18 preparation of the Section 8 existing leased housing program
19 schedule.

20 43. In preparing the January 28, 1977 schedule Walters
21 took average consumption figures provided by the oil companies and
22 Seattle City Light and applied those average figures to a
23 hypothetical 2 and 1/2 bedroom unit. The factors contained in Form
24 HUD 52667, identified as Exhibit 2, ranging from .5 for a 0 bedroom
25 unit to 1.6 for a 5 bedroom unit were then used to determine
26 consumption for various bedroom sizes.

27 44. In setting the January 28, 1977 utility allowance
28 schedule Walters made no assumptions regarding the various
29 appliances which would be used during the day by a low income
30 family, the length of time that lights would be on in the dwelling
31

32

1 unit during the day, the length of time that the TV or stereo would
2 be used or the difference in cooking habits.

3 45. Walters assumed that a person would maintain an
4 interior temperature in their house of 70 degrees on a year round
5 basis during the day.

6 46. Walters determined 50 degrees to be the cold water
7 temperature for Seattle.

8 47. Walters used the formulas identified in Exhibit 13 for
9 the purpose of converting electrical consumption data to natural gas
10 consumption figures.

11 48. No assumptions were made by Walters about the quality
12 of insulation in the average Section 8 existing housing unit.

13 49. No assumption was made by Walters about the degree of
14 insulation or weathertightness of the average Section 8 leased
15 housing unit and no studies were conducted regarding insulation in
16 those units.

17 50. The effects of recent voluntary conservation measures
18 on overall average utility consumption were not taken into
19 consideration by Walters in determining utility consumption.

20 51. No survey of the actual utility costs for different
21 size dwelling units on a sample basis was used by Walters in
22 preparing the utility allowance schedules prepared by HUD for use by
23 SHA.

24 52. No special survey was conducted by Walters to
25 determine whether 1100 square feet was an accurate figure for area
26 of an average three bedroom unit. The 1100 square foot figure
27 included all floor area. It would not include basement space unless
28 the basement were finished.

29 53. The heat loss calculations contained in Exhibits 60
30 and 61 were determined by examining dollar consumption figures,
31

32
PRETRIAL ORDER - 11

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 translating that figure into consumption in units of energy, and
2 introducing those consumption figures in units of energy into the
3 formulas identified in Exhibit 13.

4 54. The number of annual degree days used in preparing the
5 schedules was 5200.

6 55. The study prepared by Bill Spears and identified as
7 Exhibit 12 was prepared in June, 1976.

8 56. HUD's responsibility for monitoring the Section 8
9 housing program and Section 23 leased housing program includes
10 reviewing and processing fiscal submissions and leasing reports;
11 conducting management reviews, providing guidance, technical
12 assistance and training and assuring corrective action is taken as
13 necessary.

14 57. It is the responsibility of the Department of Housing
15 and Urban Development to review the utility allowance schedule
16 submitted by the Housing Authority and then on occasion to review
17 the adequacy of these allowances as a general review procedure.

18 58. The Seattle Area Office of HUD does not monitor
19 precisely the amount of the utility allowance for a particular
20 tenant and whether or not the allowance provided is the one most
21 recently approved by the Seattle Area Office.

22 59. The Seattle Housing Authority has not been requested
23 or required by HUD to maintain records on actual utility consumption
24 for their Section 8 existing tenants.

25 60. No rate information or consumption data was supplied
26 by SHA to HUD along with their proposed utility allowance dated July
27 16, 1975.

28 61. SHA is not required by HUD to evaluate the energy
29 efficiency or consumption patterns of dwellings prior to approving
30 them for use in the Section 8 leased housing program nor was it
31

32

PRETRIAL ORDER - 12

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 required to make such evaluations during the administration of its
2 Section 23 program.

3 62. No special attempt has been made by the Seattle Area
4 Office of HUD to determine when schedules are implemented by SHA
5 after approval by HUD of an application for inclusion within its
6 Section 8 Program of additional units.

7 63. It is the policy of SHA to apply utility schedules or
8 revisions of utility schedules to Section 8 existing housing tenants
9 at the time of the regularly scheduled annual review. HUD has not
10 disapproved this policy.

11 64. HUD has the authority to approve certain increases in
12 rents over the existing fair market rent schedules applicable to
13 SHA's Section 8 program when warranted.

14 65. At various times since 1976, the Seattle Housing
15 Authority has requested that utility allowance increases be
16 implemented only at the time of fair market rent increases.

17 66. The average price per 100 gallons for No. 2 fuel oil
18 used for residential oil space heating furnaces in Seattle,
19 Washington, between May, 1975, and June, 1978, was as follows:
20

21

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
22				
23	Jan.	Jan. \$44.93	Jan. \$47.32	Jan. \$50.73
24	Feb.	Feb. 44.64	Feb. 48.21	Feb. 51.00
25	Mar.	Mar. 44.19	Mar. 48.93	Mar. 51.00
26	Apr.	Apr. 44.06	Apr. 49.12	Apr. 51.17
27	May \$40.96	May 44.06	May 49.12	May 51.26
28	June 41.29	June 44.71	June 49.27	June 51.26
29	July 42.05	July 44.78	July 49.39	
30	Aug. 42.12	Aug. 45.07	Aug. 49.39	
31	Sep. 42.43	Sep. 45.33	Sep. 49.64	
32				

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
1				
2	Oct. 43.42	Oct. 46.00	Oct. 49.68	
3	Nov. 44.66	Nov. 46.13	Nov. 50.56	
4	Dec. 44.93	Dec. 46.42	Dec. 50.73	

67. The average price per gallon for No. 2 fuel oil used for residential oil space heating furnaces in Seattle-Everett, Washington, between November, 1978, and February, 1980, was as follows:

	<u>1978</u>	<u>1979</u>	<u>1980</u>
11			
12	January	January \$.538	January \$.985
13	February	February .559	February 1.031
14	March	March .586	March
15	April	April .601	April
16	May	May .646	May
17	June	June .708	June
18	July	July .747	July
19	August	August .808	August
20	September	September .879	September
21	October	October .895	October
22	November \$.516	November .894	November
23	December .526	December .896	December

68. The United States Department of Labor, Bureau of Labor Statistics, did not compute the average price of No. 2 fuel oil used for residential oil space heating furnaces in Seattle or Seattle-Everett, Washington, for the period of July, 1978, through October, 1978.

III. DISPUTED FACTS - PLAINTIFF'S CONTENTIONS

A. The plaintiff contends as follows:

- 1 1. Many families participating in the Section 8 Existing
2 Housing Program are living in housing which is nonaverage in its
3 characteristics and have a family composition which is nonaverage.
- 4 2. Household size and age of family members should be
5 taken into consideration in establishing utility allowances for
6 participants in the Section 8 Existing Housing Program.
- 7 3. The consumption data used by HUD in preparing the
8 Section 8 Existing Housing Program utility allowance schedules was
9 not derived from comparable housing containing comparable households.
- 10 4. A separate utility allowance schedule should be
11 prepared for single family detached residences rather than combining
12 them with duplexes and triplexes.
- 13 5. The average three bedroom single family residence in
14 Seattle, Washington has more than 1100 square feet of living space.
- 15 6. The furnace efficiency factors used by Walters in
16 estimating energy consumption for space heating were too high for
17 natural gas space heating and oil space heating.
- 18 7. The heat loss calculations used by Walters in
19 preparing the Section 8 Existing Housing Program utility allowance
20 schedules reflected by Exs. 9, 10 and 11 are incorrect.
- 21 8. The natural gas space heating, natural gas and
22 electric hot water heating, and the electric cooking and other
23 electric consumption figures used by Walters were lower than average
24 residential usage in the Seattle area.
- 25 9. The premises located at 538 26th Avenue South,
26 Seattle, Washington, occupied by Copeland under the § 23 Housing
27 Program were constructed in 1900. There was no insulation in the
28 floors and walls and it is unknown whether there was any insulation
29 in the attic. The ground floor area of the residence was
30 approximately 680 square feet and the size of the attic living area
31
- 32

PRETRIAL ORDER - 15

1 is presumed to be the same. The thermostat setting at 538 26th
2 Avenue South during Copeland's residency there was kept between 65
3 and 70°. The types and total hours of daily operation of appliances
4 were as follows: Refrigerator - 24 hours; stove - 2 hours; 12"
5 black and white television - 3-4 hours; 1 clock - 24 hours; 1 lamp -
6 5 hours; light fixtures, four rooms - 1-2 hours.

7
8 10. The premises located at 2509 South Lane, Seattle, occupied
9 by Copeland under the Section 8 Housing Program since November 1,
10 1976 were constructed in 1919. There is insulation in the ceiling
11 of the premises but no insulation in the knee walls, side walls,
12 floors or walls. The ground floor area of the residence is
13 approximately 680 feet and the size of the attic living area is the
14 same. The hot water heater is set at a medium setting and the
15 temperature of the hot water is 117° at the tap. The thermostat
16 setting at Copeland's residence at 2509 South Lane, Seattle, is kept
17 between 65 and 70°. The types and total hours of daily operation of
18 appliances are as follows: Refrigerator - 24 hours; stove - 2
19 hours; 12" color television 3-4 hours; 1 lamp - 5 hours; light
20 fixtures, five rooms - 1-2 hours; record player - 1 hour; toaster
21 oven - 20 minutes.

22 11. The utility consumption of Copeland is normal and
23 reasonable for one possessing her family and housing and utility
24 combination characteristics.

25 12. The interrelationship between the rent which Copeland pays
26 her landlord and the amount of her utility allowance was never
27 explained to Copeland.

28 13. The survey of tenant natural gas and electricity
29 consumption in Section 8 Housing Programs in King, Pierce and
30 Snohomish Counties conducted by HUD is reflected in Ex. 17. Ex. 17
31 discloses that many participants in the Section 8 Housing Program in
32

1 those counties have energy consumption which is in excess of the
2 amount then provided in HUD's utility allowance schedule.

3 14. If there is a change in the utility rate it is the SHA's
4 primary responsibility to implement the change.

5 15. SHA has not submitted worksheets, supporting documentation
6 or other justifications for their allowances along with their
7 proposed allowances.

8 16. There is a substantial time lag between the time a utility
9 allowance schedule is prepared by the HUD maintenance engineer and
10 the time that the utility allowance schedule is implemented by SHA.
11 There is a further delay between the time SHA begins implementation
12 of the utility allowance schedule and the time at which the utility
13 allowance schedule is implemented for any particular tenant.

14 17. The Seattle Area Office of HUD has not monitored SHA's
15 procedures and practices to determine if the utility allowance
16 schedule is being given to each family along with their certificate
17 of family participation.

18 18. The SHA has failed to determine at least annually whether
19 there have been substantial changes in utility rates and whether an
20 adjustment is required in the utility allowance by reason of such
21 changes or because of errors in the original determination. The SHA
22 is required to make such a determination by 24 C.F.R. § 882.214.

23 19. The SHA has failed to promptly adjust its utility
24 allowances in response to substantial increases in utility rates.
25 Adjustments were required by 24 C.F.R. § 882.214.

26 20. S.F. 4500.1, dated 12/72, a Region IX Handbook; Local
27 Housing Authority Management Guide, Part 2, Section 9, Controlling
28 Utility Consumptions and Costs, April, 1963; and HUD Handbook
29 7420.7, Public Housing Agency Administrative Practices Handbook for
30 the Section 8 Existing Housing Program, dated 11/79, require the
31

32

PRETRIAL ORDER - 17

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 collection and use of energy consumption data of federal housing
2 program participants to verify the adequacy of utility allowance
3 schedules.

4 21. No Section 8 or Section 23 Housing Program tenants were
5 contacted to determine their actual utility consumption and costs
6 prior to preparation of the utility allowance schedules identified
7 as Exhibits 8, 9, and 10.

8 22. The utility allowance schedules are to be implemented by
9 the Seattle Housing Authority as soon as practicable after they are
10 received.

11 23. A reasonable amount of time for implementation by SHA of a
12 utility allowance schedule after approval by HUD of an application
13 would be one month or so after notice of approval of the
14 application.

15 24. If HUD were to approve a revised utility allowance schedule
16 other than in conjunction with an application for an allocation, one
17 month is a reasonable period of time for the Seattle Housing
18 Authority to implement the revised utility allowance schedule.

19
20
21 IV. DISPUTED FACTS - DEFENDANTS' CONTENTIONS

22 A. The defendants together contend as follows:

23 1. A defective furnace at her residence at 538 26th
24 Avenue South accounted for Diana J. Copeland's excessive natural gas
25 bills during her occupancy there.

26 2. During 1976, Copeland also made a number of complaints
27 to Steve Dahlquist, an employee of the SHA, regarding the size of
28 her gas bills. SHA followed up on those complaints received by it
29 by deducting the cost to it of repairing the gas furnace from the
30 monthly payments made by SHA to the landlord and by assisting
31 Copeland in transferring from the premises to other housing at the

32

PRETRIAL ORDER - 18

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 earliest possible date. This transfer was effected November 1,
2 1976. Because of the defective furnace, SHA transferred Diana J.
3 Copeland to her present residence at 2509 South Lane. Diana J.
4 Copeland's gas consumption at 2509 South Lane has been much lower
5 than her gas consumption at 538 26th Avenue South.

6 3. Since Ms. Copeland has resided at 2509 South Lane she
7 has not complained to the Seattle Housing Authority about her
8 utility bills.

9 4. For the one year period from November, 1977 to
10 November, 1978, Diana J. Copeland's monthly electric utility usage
11 was less than \$10 a month. The applicable electric utility
12 allowance for the one year period from November, 1977 to November,
13 1978 was \$13.00 a month.

14 5. Ms. Copeland has had no dispute or quarrel with the
15 reasonableness of the electric utility allowance applicable to her
16 while she has resided at 2509 South Lane.

17 6. Copeland believes that the insulation at her residence
18 at 2509 South Lane, Seattle, is fair and adequate.

19 7. Before November, 1976, Copeland was well aware of the
20 relationship between her rent and the utility allowance she
21 received. Furthermore, at the time she agreed to lease the premises
22 and before beginning her occupancy Copeland received an explanation
23 from SHA of her rights, including the effect on her and her rent of
24 the utility allowance schedule.

25 8. Copeland's premises at 2509 South Lane, Seattle, were
26 inspected by an SHA employee before she occupied it. The employee
27 prepared a detailed inspection report on the premises which Copeland
28 read and signed. Copeland also inspected the premises, including
29 its heating and utility services, before agreeing to lease the
30 premises.

31
32
PRETRIAL ORDER - 19

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 9. HUD Form 52667, discourages the use of energy
2 consumption data for above average or below average income families,
3 thereby preventing the use of consumption data gained from surveys
4 of Section 8 or Section 23 tenants as a basis for the computation of
5 utility allowances.

6 10. For all utility allowance schedules which are the
7 subjects of this litigation (i.e., all those exclusive of Ex. 74),
8 actual data on the average cost of utilities and services paid by
9 occupants of similar size and type housing in the Seattle area was
10 not available at the time of their preparation. No such data was in
11 fact available until 1979.

12 11. The Seattle Area office of HUD has done an annual
13 audit and review of SHA's Section 8 Housing Program. These audits
14 have included a review of SHA's practices and procedures with
15 respect to SHA's dissemination of utility allowance information to
16 tenants. In the process of the audit, HUD inquires of SHA
17 specifically what information it provides to tenants at the time of
18 its tenant orientation and certification for participation in the
19 Section 8 program. In each audit conducted, SHA has disclosed to
20 HUD the utility allowance information it has provided to tenants.

21 12. Except for the initial utility allowance schedule the
22 Seattle Area Office of HUD was not required to approve SHA's
23 adjustments of its allowances for utilities and other services. The
24 area office, however, requires SHA to provide HUD with a copy of
25 SHA's most recent adjusted schedules so that the area office can
26 review and monitor these allowances primarily to determine the
27 consistency of the amounts allowed by SHA with other local housing
28 authorities having approximately equal utility costs. The local
29 office of HUD also requires a copy of proposed adjusted schedules in
30 order to determine their overall reasonableness. (HUD Handbook
31 #7420.7. Revised November 1979 at p. 11-6.)
32

PRETRIAL ORDER - 20

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 13. In conducting the review required by the Section 8
2 Housing Assistance Payments Program Existing Housing Processing
3 Handbook, 7420.3, Revision 2, monitoring the allowance for utility
4 services had not been an area of special interest because allowances
5 submitted by the SHA are reviewed so frequently that it has not been
6 necessary.

7 14. The utility allowance schedules are to be implemented
8 by the Seattle Housing Authority as soon as practicable after they
9 are received; as to specific tenants, this means that the utility
10 allowances should be put in place in the course of the annual
11 review, which is the time when the tenant's income and eligibility
12 for subsidized housing is recertified and adjustments are made in
13 the family contribution based on any changes in the tenant's income
14 or allowance. No special attempt has been made by the Seattle Area
15 Office of HUD to determine when schedules are implemented by SHA
16 after approval by HUD of an application for inclusion with its
17 Section 8 Program of additional units.

18 15. A reasonable amount of time for implementation by SHA
19 of a utility allowance schedule after approval by HUD of an
20 application would be one month or so after notice of approval of the
21 application. That means that as to specific tenants, the allowances
22 should be put in place during the course of the annual reviews
23 immediately following such notice.

24 16. If HUD were to approve a revised utility allowance
25 schedule other than in conjunction with an application for an
26 allocation, one month is a reasonable period of time for the Seattle
27 Housing Authority to implement the revised utility allowance
28 schedule. That means that as to specific tenants, implementation at
29 the time of their annual review would be initiated one month after
30 HUD approval.

31
32

PRETRIAL ORDER - 21

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 B. Defendant SHA contends as follows:

2 1. For the period March, 1976, through July, 1978, the
3 number of tenant complaints to SHA concerning the utility allowance
4 schedule under the Section 8 program was limited to the complaints
5 by the original named plaintiffs. SHA cannot recall the existence
6 of other tenant complaints and a review of SHA files in August,
7 1978, showed no other complaints. During the annual review each
8 Section 8 tenant is asked to state any problems or concerns about
9 the program. The utility allowance schedule has not been an item of
10 concern by tenants. Section 8 residents are also advised to contact
11 SHA if they have any problems with their unit or with their
12 payments. Despite this advice, utility complaints or payment
13 difficulties are not characteristic.

14 2. There is no way for SHA to determine whether a tenant
15 is paying more than 25 percent of his gross family income for rent
16 and utilities except by conducting an interview of each individual
17 tenant and requiring the tenant to bring in his or her records of
18 all utility payments for an entire year. The fact that a tenant
19 might have paid more than 25 percent of his or her income in one
20 month or part of the year would not reflect a violation of the Brook
21 Amendment because utility charges during the colder months of the
22 year are greater than those incurred during the spring and summer.
23 In reviewing the adequacy of the utility allowance for any
24 particular tenant or any particular type of utility service, SHA
25 must annualize the allowance and not look exclusively at charges
26 incurred during periods where there is greater consumption of
27 utilities.

28 3. When a tenant's application for participation in SHA's
29 Section 8 housing program is approved, it is SHA's confirmed
30 practice to request the tenant to come in for a Section 8 housing
31

32

PRETRIAL ORDER - 22

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3800 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 program orientation. Prior to the time the tenant actually moves
2 into any housing under the Section 8 program, the tenant must
3 participate in the SHA orientation. The purpose of SHA's
4 orientation is to advise the tenant of the nature of the Section 8
5 housing program and the tenant's responsibilities thereunder. As
6 part of the orientation, SHA includes an explanation of the utility
7 allowance and what it means to those tenants who pay for their own
8 utilities directly. After the SHA orientation, the tenant is
9 personally interviewed by an SHA employee whose job experience
10 requires familiarity with this Section 8 housing program, including
11 the utility allowances. At this time the tenant is given a copy and
12 an explanation of the utility allowance schedule. After the
13 personal interview and program explanation, the tenant is issued a
14 certificate of participation in the Section 8 housing program. No
15 certificate for a new tenant is issued until after the orientation,
16 interview and explanation. Part of the orientation and interview
17 includes a description of the utility allowance schedule and how it
18 affects the tenant. Only after this certificate is issued by SHA is
19 the tenant authorized to seek housing under the Section 8 program.
20

21 4. While HUD is not required under its regulations to
22 approve SHA adjustments in the utility allowance, the local office
23 of HUD has insisted that allowances be submitted to it for approval
24 (Ex. 79--11/27/79, Leinio/Nishimura letter). In addition, HUD's
25 approval of utility allowance schedules has been part of the
26 approval process by HUD of all nine applications by SHA relating to
27 administration of a Section 8 Program and its conversion of units in
28 the Section 23 program to the Section 8 program.

29 5. Because eligibility and right to payment under the
30 Energy Crisis Assistance Program of 1980 is based in large part upon
31 the income of a family, substantially all of the tenants
32

1 participating in SHA's Section 8 housing program who paid for their
2 own utilities were eligible for substantial cash payments to defray
3 the increased cost of utility bills for utility increases during the
4 winter, 1979-1980. Furthermore, all participants in Washington
5 State's public assistance program received automatic disbursements
6 from the Washington State DSHS. As a participant in public
7 assistance, Copeland received a check for \$199 from DSHS in
8 February, 1980, to compensate her for her increased utility bills
9 this past winter.

10 6. There would be a substantial administrative burden
11 placed upon SHA to immediately implement the utility allowance
12 schedule changes. Because 1600 families participate in the Section
13 8 program and because each tenant file would have to be pulled to
14 calculate and apply a utility allowance increase, the ability of SHA
15 to abide by other Section 8 program requirements would be
16 substantially impaired.

17 7. Under the Section 23 program the Housing Authority
18 contracted with the owner of a property and then acted as landlord
19 to the tenant, a low-income person or family. SHA would select the
20 tenant, collect the rent from the tenant and had the ability to take
21 care of maintenance problems that the owner would not take care of.
22 The Section 8 program is different from the Section 23 program in
23 that the Housing Authority is not acting as landlord to its tenant,
24 but as a subsidizing agent. Under the Section 8 program the
25 low-income resident is holding a certificate for participation in
26 the Section 8 program, is responsible for finding the unit and
27 negotiating a rental agreement with the landlord-owner. Once the
28 low-income tenant finds a unit, the Housing Authority makes an
29 inspection to determine whether the unit is eligible for a subsidy;
30 thereafter, SHA enters into a contract with the owner to pay a
31
32

PRETRIAL ORDER - 24

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3000 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 subsidy (i.e. a portion of the tenant's rent) on behalf of the
2 resident.

3 8. The SHA's determination as to the amount of rent
4 subsidy a tenant is entitled to is based upon the tenant family's
5 gross income after deducting certain items. Expenditures of the
6 tenant for utilities are not a deductible item; however, where
7 tenants have brought in their utility bills during the process of
8 their annual review of income, SHA has counseled tenants on
9 conservation methods and consumption tips.

10 9. SHA's first application for a Section 8 existing
11 housing allocation was made prior to January 1, 1976. This
12 application included a utility allowance schedule prepared by SHA
13 based upon a study in which information was gathered from utility
14 companies by the SHA staff. HUD accepted the utility allowance
15 prepared by SHA and SHA's application for a Section 8 allocation was
16 approved in approximately February, 1976 for initiation March 1,
17 1976. Subsequent to February, 1976, SHA sought to determine whether
18 the schedule approved by HUD provided a sufficient allowance for
19 Section 8 tenants by calling some of the utility companies and
20 making inquiries of tenants. The result of SHA's survey was that it
21 prepared another utility allowance schedule showing an increase in
22 the allowances reflected in the initial Section 8 utility allowances
23 (Ex. 8.) principally, by increasing the allowance for oil for
24 heating. The new utility allowance schedule prepared by SHA was
25 submitted to HUD with SHA's next application for a Section 8
26 existing housing allocation. The utility allowance prepared by SHA
27 based upon its surveys was not approved by HUD; instead, HUD
28 generated from within its own staff a new utility allowance schedule
29 which was ultimately sent to SHA and bore a date of January 28, 1977
30 (Ex. 9).
31

32

PRETRIAL ORDER - 25

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 9. After the utility allowance schedule prepared by SHA
2 was disapproved and replaced by a HUD prepared schedule, SHA
3 thereafter relied upon the schedules prepared by HUD's staff
4 (Walters) until November, 1979. SHA did not want to have their
5 applications for Section 8 allocations held up by HUD because SHA
6 did not use a utility allowance schedule recommended by HUD. SHA
7 did not attempt to override HUD's recommendations regarding utility
8 allowance schedules because the approval of SHA's applications for
9 Section 8 housing allocations were tied to any approval of a utility
10 allowance schedule. Practice from January, 1977 when SHA filed an
11 application with HUD for additional Section 8 allocations was to
12 submit with its application the utility allowance schedule supplied
13 to it by HUD.

14 10. During the period that City Light imposed a surcharge
15 for electricity service, SHA submitted a request to HUD to use a
16 previous utility allowance schedule that contained allowances for
17 electricity that were higher than the allowances for electrical uses
18 in the utility allowance schedule provided to SHA by HUD. SHA used
19 the higher utility allowance until the drought surcharge assessed by
20 City Light was terminated, at which point SHA began using the HUD
21 approved utility allowance schedule (Ex. 10).

22 11. SHA has requested of HUD any changes in utility
23 allowance schedules be implemented at the same time as changes in
24 the fair market rent schedules approved by HUD. Where the time for
25 implementation of a utility allowance schedule is different than the
26 date for implementation of fair market rent increases, SHA faces a
27 potential conflict with owners who are entitled to a specific dollar
28 amount based upon the fair market rents. To avoid such conflicts
29 and potential violations of agreements between SHA and owners with
30 units in Section 8 housing, SHA has in some instances waited for
31

32

PRETRIAL ORDER - 26

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 increases in the fair market rents before increasing utility
2 allowances. On those occasions where SHA has delayed increasing the
3 utility allowances to coincide with an increase in fair market
4 rents, the delay has been relatively brief -- i.e. a few months at
5 most.

6 12. From March 1, 1976 until December 1, 1976, there were
7 three changes by HUD in the fair market rent guidelines applicable
8 to the Section 8 housing program. Since December, 1976, there have
9 been four additional increases in the fair market rents by HUD --
10 one in August, 1978; one in July, 1979, retroactive to March 29,
11 1979; one in October, 1979, effective November, 1979; and the latest
12 one adopted March 26, 1980, effective April 26, 1980. The
13 difference between the fair market rent set in August, 1978 and the
14 fair market rent effective April, 1980 for Copeland's three bedroom
15 unit is substantial -- \$397.00 versus \$304.00 for a total increase
16 of 30.6% in a little over 18 months.

17 13. In October, 1976, SHA began using the utility
18 allowance schedule then in force for the Section 8 program for its
19 Section 23 program. On that occasion, SHA converted its usage of
20 the Section 8 schedule in all units then participating in the
21 Section 23 program. At that time approximately 1,000 to 1,200 units
22 were involved in the Section 23 program for which a change in the
23 utility schedule was implemented on October 1, 1976. In order for
24 SHA to implement the Section 8 utility allowance for all 1,000 to
25 1,200 houses at that time, it took the entire SHA staff working in
26 leased housing management several months to implement. During this
27 time the staff worked Saturdays and Sundays and approximately
28 fourteen (14) hours a day to make this across the board
29 implementation. During this period other leased housing management
30 programs in both the Section 23 and Section 8 programs were largely
31

32

PRETRIAL ORDER - 27

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3900 SEATTLE FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 ignored. As a result of this experience, SHA does not believe it is
2 practical to implement a utility allowance schedule on an
3 across-the-board basis for its Section 8 tenants where a utility
4 allowance schedule is revised -- especially since the Section 8
5 program now involves approximately 1,600 units. The reason an
6 across-the-board implementation places such a strain upon SHA staff
7 is because implementation of any revision in a schedule must be on a
8 case by case basis in which each tenant's folder is specifically
9 reviewed for a number of items.

10 V. ISSUES OF LAW

11 A. The following are issues of law to be determined by the
12 court:

13 1. Does plaintiff have standing to challenge those
14 portions of the Section 8 and Section 23 utility allowance schedules
15 which do not pertain to her? In particular, can this Court grant
16 plaintiff declaratory relief with respect to portions of the utility
17 allowance schedule which do not apply and have not been applied to
18 her?

19 2. Is the plaintiff entitled to a refund from the
20 defendants for all utility expenses paid by the plaintiff in excess
21 of the amounts set forth in the applicable utility allowance
22 schedules? Does the collateral source doctrine apply to plaintiff
23 with respect to utility assistance payments received by her in
24 February, 1980?

25 3. Are the past and present energy and dollar allowances
26 used by SHA for tenant purchased utilities unreasonable in amount
27 and therefore not in accordance with the requirements of 42 U.S.C.
28 § 1437a and 42 U.S.C. § 1437f(c)(3) and the regulations promulgated
29 thereunder?
30

31
32

PRETRIAL ORDER - 28

1 4. Is the plaintiff entitled to declaratory and
2 injunctive relief that requires the defendants to immediately
3 increase the energy and dollar allowances available to her for
4 payment of her actual utility expenses?

5 5. Is the plaintiff entitled to declaratory and
6 injunctive relief that requires the defendants to periodically
7 adjust the dollar allowances for utilities to reflect any future
8 changes in the utility rates charged to participants in the Section
9 8 existing housing program? Where charges for utilities (such as
10 oil) are increasing weekly, how often should defendants be required
11 to adjust the dollar allowances for such utilities?

12 6. Are the utility allowances up to and including the
13 January 28, 1977 allowance, i.e., the one in effect when plaintiff's
14 suit was brought, reasonable under the circumstances existing at
15 that time and not arbitrary and capricious?

16 7. If the utility allowances promulgated by defendant SHA
17 and approved by defendant HUD result in some Section 8 tenants
18 paying during any annual period for rental and utilities for their
19 dwelling unit in excess of 1/4 of their annual family income as
20 defined by HUD regulations is there a per se violation of either the
21 Brooke Amendment, 42 U.S.C. § 1437 a or analogous statutes?

22 8. Inasmuch as 42 U.S.C. § 1437a, 24 C.F.R. § 882 et
23 seg., HUD Handbook 7420.3 and 7420.7, and Form HUD - 52667 require
24 that utility allowances be set at reasonable levels that will allow
25 the majority of families in existing Section 8 housing to pay for
26 their rent and utilities and other services without paying more than
27 their Gross Family Contribution, have the defendants failed to
28 comply with said statutes and regulations by failing to set utility
29 allowances at a level that will allow the majority of families in
30 existing Section 8 housing to pay for their rent and utilities and
31

1 other services without paying more than their Gross Family
2 Contribution?

3 9. Does the term "majority of families" as used in said
4 regulations and HUD pronouncements mean 75% of the families
5 participating on the Section 8 program? That is, are the defendants
6 required to establish utility allowances at a level which will allow
7 75% of the families participating in the Section 8 Existing Housing
8 Program to purchase on an annual basis their own utilities without
9 exceeding the level of expenditure set forth in the applicable
10 utility allowance schedule?

11 10. Have the defendants failed to comply with 42 U.S.C. §
12 1437a and 24 C.F.R. § 882 et seq. by failing to promptly make
13 adjustments in utility allowances after changes in applicable
14 utility rates?

15 11. Is the defendant SHA required to implement revised or
16 adjusted utility allowance schedules for all families participating
17 in the Section 8 Existing Housing Program immediately after approval
18 of the revised or adjusted schedules without regard to the date of
19 the families' annual review and without regard to the administrative
20 practicality.

21 12. Is the defendant secretary of HUD required to increase
22 Fair Market Rent limitations in the event an increase in the utility
23 allowance schedule results in a decrease in the amount of payments
24 received by an owner-landlord from SHA? That is, to avoid
25 penalizing or discouraging owners with units in the SHA Section 8
26 program, should HUD be required automatically to increase its
27 existing fair market rent limitations when there is an increase in
28 the utility allowance schedule?

29 13. Were the defenants required to adjust utility
30 allowance schedules and implement them immediately for all families
31

32

PRETRIAL ORDER - 30

LESOURD, PATTEN, FLEMING, HARTUNG & EMC
ATTORNEYS AT LAW
3000 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 participating in the Section 8 existing housing program to reflect
2 the drought surcharge imposed by the City of Seattle, Department of
3 Lighting during the six month period June 1, 1977 through November
4 30, 1977?

5 14. Were the defendants required to adjust the utility
6 allowance schedule and immediately implement the adjusted schedule
7 for all families participating in the Section 8 existing housing
8 program to reflect the 10% seasonal factor charge for energy use
9 during the period December through March of each season imposed by
10 the City of Seattle, Department of Lighting commencing on April 29,
11 1977? If so, did they fail to do so?

12 15. Is jurisdiction to adjudicate plaintiff's claims also
13 conferred upon the court by 28 U.S.C. § 1337 and 28 U.S.C. § 1361?

14 VI. EXPERT WITNESSES

15 The names and addresses of the expert witnesses to be used by
16 each party at the trial and the issue upon each will testify is:

17 A. On behalf of plaintiff:

18	19	20	21	22	23	24	25	26	27	28
	<u>NAME:</u>								<u>TESTIMONY:</u>	
		1. Jeffrey Morris							Deficiencies in the methods used to	
		c/o MPR							determine levels of consumption which	
		P. O. Box 362							formed the basis for the Section 8	
		Vashon, WA 98070							Existing Housing Allowances for tenant	
									furnished utilities and other services	
									dated 7-7-78.	
		2. L. Charles Miller							Deficiencies in the Section 8 Existing	
		1409 37th Avenue							Housing Allowances for tenant furnished	
		Seattle, WA 98122							utilities and other services dated	
									7-7-78.	
		3. Craig McDonald							Efficiency of operation of gas heat	
		Mathematical Sciences							forced air furnaces and oil heat forced	
		N.W., Inc.							air furnaces employed for residential	
		P. O. Box 1887							space heating.	
		Bellevue, WA 98009								

29 B. On behalf of defendant:

30	1. Richard Ulf	Reasonableness of methodology used to
31	c/o HUD	calculate utility allowances.
32	Washington, D.C.	

PRETRIAL ORDER - 31

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3800 SEATTLE FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

1 Defendants object to testimony from Mr. Morris and Mr. Miller,
2 experts identified by plaintiff, to the extent they may attempt to
3 state opinions on matters which (as of March 10, 1980) they had not
4 studied or for which they had no factual foundation. Their
5 testimony should be limited to only those utilities and only those
6 portions of the July 7, 1978 Utility Allowance Schedule of which
7 they testified during their depositions that they had formed an
8 opinion.

9 Plaintiff objects to any testimony offered by Richard Ulf, c/o
10 HUD, Washington, D.C., on the grounds that he was not identified by
11 the defendants as an expert they intended to call until April 4,
12 1980, and plaintiff has not had an opportunity to take his
13 deposition or inquire as to the facts and opinions to which he is
14 expected to testify.

15
16 VIII. OTHER WITNESSES

17 The names and addresses of witnesses, other than experts, to be
18 used by each party at the time of trial and the general nature of
19 the testimony of each are:
20

21 A. On behalf of plaintiff:

22	<u>NAME:</u>	<u>TESTIMONY:</u>
23	1. Diana J. Copeland 24 2509 South Lane Street 25 Seattle, WA	Will testify regarding her participation in the Section 23 and Section 8 Leased Housing Programs and her family char- acteristics, housing characteristics, utility consumption characteristics, utility expenditures, and income during the time of her participation.
26	2. Haven Walters 27 Department of Housing and Urban Development 28 Arcade Plaza Building Seattle, WA	Will testify regarding the preparation, review, and approval of utility allowance schedules for the Section 23 and Section 8 Leased Housing Programs.
29	3. Melvin Campbell 30 Seattle Housing Authority 31 120 Sixth Avenue North 32 Seattle, WA	Will testify regarding the Seattle Housing Authority's administration of the Section 23 and Section 8 Existing Leased Housing Programs including the preparation, review, and implementation of utility allowance schedules for those programs.

- 1 4. Ron Leinio
2 Department of Housing
3 and Urban Development
4 Arcade Plaza Building
5 Seattle, WA
6
7
8 Will testify regarding preparation,
9 review, and implementation of utility
10 allowance schedules for the Section 23
11 and Section 8 Existing Leased Housing
12 Programs including the implementation
13 of any revisions or adjustments in
14 those schedules.
- 5 5. Rud Okeson
6 Seattle City Light
7 1015 3rd Avenue
8 Seattle, WA
9
10 Will testify regarding the preparation
11 of the "Residential Customer Character-
12 istic Survey," August, 1979 Rates and
13 Consumer Research, Seattle City Light.
- 8 6. Ed Holt
9 Seattle Energy Office
10 Arctic Building
11 Seattle, WA
12
13 Will testify regarding the preparation
14 of "Energy Data Base," Work in Progress
15 Report No. 1, January, 1980.
- 10 7. Vern Urlocker
11 Seattle City Light
12 1015 3rd Avenue
13 Seattle, WA
14
15 Will testify regarding Seattle City
16 Light electric utility rates and rate
17 increases for residential customers
18 between May, 1975 and the time of trial.
- 13 8. Robert G. Meredith
14 Washington Natural
15 Gas Company
16 815 Mercer
17 Seattle, WA
18
19 Will testify regarding Washington
20 Natural Gas Company rates and rate
21 increases for residential natural gas
22 customers from May, 1975 to the time of
23 trial.

16 B. On behalf of defendants:

- 17
18 1. Patricia Wright
19 105 25th Avenue
20 Seattle, WA
21
22 Will testify as an adverse witness
23 regarding the nature and extent of her
24 usage of utilities as an SHA tenant.
- 20 2. Richard Thomas
21 120 6th Avenue N.
22 Seattle, WA 98109
23
24 Will testify regarding SHA Section 8
25 Program and procedures, practices and
26 policies and the November 15, 1979
27 utility allowance schedule.
- 22 3. L. B. Haas
23 120 6th Avenue N.
24 Seattle, WA 98109
25
26 Will testify regarding SHA Section 8
27 and Section 23 Programs and procedures,
28 practices and policies as well as
29 communications with HUD regarding said
30 programs from 1975-1980.
- 25 4. Ron Oldham
26 120 6th Avenue N.
27 Seattle, WA 98109
28
29 Will testify regarding his
30 participation and role in SHA programs
31 and policy determinations respecting
32 Section 8 and utility allowance
implementation.
- 28 5. Robin Grieve Jenkinson
29 7043 18th N.W.
30 Seattle, WA
31
32 Will testify regarding her activities
duties as a member of the SHA staff for
the period March, 1976 - November, 1978.

1 C. Parties' Objections to nonexpert witnesses:

2 1. Plaintiff's Objections:

3 Plaintiff objects to any testimony offered by Patricia
4 Wright on the grounds that it is irrelevant and/or should be
5 excluded by considerations of undue delay and waste of time.
6 FRE 401, 402, and 403.

7 Plaintiff objects to any testimony offered by Richard
8 Thomas, L. R. Haas, and Ron Oldham on the grounds that they were not
9 identified by defendants as persons who were responsible for or
10 familiar with the schedule of utility allowances for Section 23 and
11 Section 8 tenants until April 4, 1980, and plaintiff has not had an
12 opportunity to take their depositions. Their testimony is
13 irrelevant or is subject to exclusion by considerations of undue
14 delay, waste of time, or needless presentation of cumulative
15 evidence. FRE 401, 402, 403.

16 2. Defendants' Objections:

17 Defendants object to any testimony offered by Mr.
18 Urlocker and Mr. Meredith. The testimony of both Mr. Urlocker and
19 Mr. Meredith is cumulative and unnecessary--the parties have agreed
20 upon the authenticity of the rates charged by City Light and
21 Washington Natural Gas (Exs. 14, 15) FRE 401, 402, 403.

22 Defendants further object to any testimony offered by
23 Mr. Okeson and Mr. Holt because they were not identified by
24 plaintiff as expert witnesses as required by F.R.C.P. 26(b)(4).
25 The purpose for their testimony is expert in nature--they will be
26 testifying about utility studies and the conclusions therein based
27 upon those studies. If the only purpose for these witnesses'
28 testimony is to authenticate Exhibits 23 and 72, their testimony is
29 cumulative and unnecessary. (FRE 401, 402, 403.)
30
31
32

VIII. EXHIBITS

1
2 The exhibits listed below may be received into evidence except
3 for those to which objections are noted:

4 A. Plaintiff's Exhibits:

- 5 1. SAO letter of 10/12/76 to SHA
6 2. Form HUD-52667
7 3. S.F. 4500.1 dated 12/72
8 4. Local Housing Authority Management Guide, Part II,
9 Sec. 9.
10 5. Monthly Normals of Temperature Precipitation and
11 Heating and Cooling Degree Days, 1941-1970 by U.S.
12 Department of Commerce.
13 6. Section 8 Housing Assistance Payments Program Existing
14 Housing Processing Handbook (7420.3 Rev. 2).
15 7. Section 23 Leased Housing Program Utility Allowance
16 Schedule effective to October 1, 1976.
17 8. First Approved utility allowance schedule (Form HUD
18 52667), July 16, 1975.
19 9. Second Approved utility allowance schedule (Form HUD
20 52667), January 28, 1977.
21 10. Third Approved utility allowance schedule (Form HUD
22 52667), August 30, 1977. (Includes Regular and
23 Temporary Schedule)
24 11. Fourth Approved utility allowance schedule (Form HUD
25 52667), July 7, 1978.
26 12. Memorandum Re Heating Cost Schedule from Harold S.
27 Wicklund dated 6/15/76.
28 13. Equations for Computing Monthly Heating Consumption.
29 (SHA OBJECTS.)
30 14. Rate Schedules from Washington Natural Gas Company,
31 1975 to present.
32 15. Rate Schedules from the City of Seattle, Department of
Lighting, 1975 to present.
16. King County Housing Authority Study on Energy
Consumption.
17. HUD Section 8 Existing Housing Utility Allowance
Survey including list of utility companies surveyed;
guide to categories used to compile the data; table of
number of units surveyed, by location and category;
correspondence and data received from Washington

- 1 Natural Gas Company; correspondence and data received
- 2 from Seattle City Light; correspondence and data
- 3 received from Puget Power; letter to Tacoma City Light.
- 4
- 5 18. Seattle Housing Authority Report on Family
- 6 Characteristics Computer Printout 9/30/78.
- 7
- 8 19. Seattle Housing Authority Report: LHM 410 Computer
- 9 Printout 9/30/78.
- 10
- 11 20. Seattle Housing Authority Leased Housing Unit Analysis
- 12 - Computer Printout of January, 1979.
- 13
- 14 21. Residential Consumption of Electricity in Portland,
- 15 Oregon and Lifeline Electric Rates, Paglin and
- 16 Burgess April 23, 1976.
- 17
- 18 22. Residential Customer Characteristics, Seattle City
- 19 Light, ch2m hill.
- 20
- 21 23. Residential Customer Characteristics Survey, August,
- 22 1979, Rates and Consumer Research, Seattle City Light.
- 23
- 24 24. Survey of Residential Utility Costs 1975-1977
- 25 Septmeber, 1977, Federal Energy Administration, Office
- 26 of Consumer Affairs/Special Impact.
- 27
- 28 *25. Leinio/Frederickson letter January 9, 1979. (SHA
- 29 OBJECTS.)
- 30
- 31 26. Notes on HUD Meeting 10/7/76.
- 32
- 27 27. Campbell/Leinio letter 10/7/76.
- 28
- 29 28. Leinio/Campbell letter 10/12/76.
- 30
- 31 29. Nishimura/Leinio letter 4/27/77.
- 32
- 27 30. Leinio/Nishimura letter 5/20/77.
- 28
- 29 31. Engle/Nishimura letter 6/16/77.
- 30
- 31 32. Nishimura/Engle letter 6/24/77.
- 32
- 27 33. Engle/Nishimura letter 7/22/77.
- 28
- 29 34. Notification of Approval of Conversion to Section 8
- 30 Existing Housing, January 13, 1978.
- 31
- 32 35. Bradley/Nishimura letter 1/24/78 with attachments.
- 27
- 28 36. Seattle Housing Authority Tenant File for Diana
- 29 Copeland.
- 30
- 31 37. Amended Notification of Approval of Final Proposal,
- 32 May 8, 1978.
- 27
- 28 *38. Nishimura/Wester letter, 4/26/78. (SHA OBJECTS.)
- 29
- 30
- 31
- 32

- 1 *39. Campbell/Rules Docket Clerk letter, 8/4/77. (SHA
OBJECTS.)
- 2
- 3 *40. Bradley/Nishimura letter 5/8/78. (SHA OBJECTS.)
- 4 41. Memo Providing Third Approved Utility Schedule.
- 5 42. Nishimura/Leinio letter, 4/26/77.
- 6 *43. Nishimura/Leinio letter, 4/25/77. (SHA OBJECTS.)
- 7 44. Campbell/Ballinger letter, 9/24/76.
- 8 45. Campbell/Moger letter, 5/17/78.
- 9 *46. Leinio/Nishimura letter, 6/26/78. (SHA OBJECTS.)
- 10 *47. Stowell/Nishimura letter, 8/7/78. (SHA OBJECTS.)
- 11 *48. Campbell/Leinio letter, 9/18/78. (SHA OBJECTS.)
- 12 *49. Leinio/Nishimura letter, 10/2/78. (SHA OBJECTS.)
- 13 50. Haas/Campbell Memorandum, 8/4/77.
- 14 51. Diana Copeland billing records, Washington Natural Gas
Company.
- 15 52. Diana Copeland billing records, City of Seattle,
Department of Lighting.
- 16
- 17 53. Moger/Isenhour letter, 9/15/76.
- 18 54. Isenhour/Moger letter, August 26, 1976.
- 19 55. Administrative Complaint against the Seattle Housing
Authority, August 27, 1976.
- 20
- 21 56. SAO HPMB Memorandum re Section 8 Existing Utility
Allowances dated 2/18/77.
- 22 *57. Frederickson/Campbell letter, 6/4/76. (SHA OBJECTS.)
- 23 *58. Matthews/Frederickson letter, 6/8/76. (SHA OBJECTS.)
- 24 *59. Affidavit of Robin Grieve dated August 21, 1978;
Exhibits A - E. (SHA OBJECTS.)
- 25
- 26 60. Haven Walters' Utility Consumption Worksheets dated
1/28/77.
- 27 61. Haven Walters' Utility Consumption Worksheets dated
7/7/78.
- 28
- 29 *62. Lyall/Regional Economist Memorandum, 1/11/78. (SHA
OBJECTS.)
- 30 63. Bradley/Nishimura letter, 10/23/75 (Attachments).
- 31 64. Bradley/Nishimura letter, 5/27/77 (Attachments).
- 32

PRETRIAL ORDER - 37

LESOURD, PATTEN, FLEMING, HARTUNG & EMORY
ATTORNEYS AT LAW
3800 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154
624-1040

- 1 65. Bradley/Nishimura letter, 1/24/78 (Attachments).
2 66. Moger/Nishimura letter, 9/22/77.
3 67. Bradley/Nishimura letter, 3/31/78 (Attachments).
4 *68. Stowell/Nishimura letter, 8/7/78 (Attachments). (SHA
5 OBJECTS.)
6 *69. Brown/Bradley Memorandum, August 18, 1975. (SHA
7 OBJECTS.)
8 70. Handwritten heating oil calculation dated February 1,
9 1977.
10 71. Public Housing Agency Administrative Practices
11 Handbook For The Section 8 Existing Housing Program
12 Dated 11/79, HUD Handbook 7420.7.
13 72. Energy Data Base, Work in Progress Report No. 1,
14 January, 1980, Seattle Energy Office.
15 73. U.S. Department of Labor Bureau of Labor Statistics
16 Average No. 2 Fuel Oil Prices, May, 1975 to present.
17 74. Haas/Leinio letter 11/28/79 Re: New proposed utility
18 allowance schedules with attached schedules dated
19 11/15/79.
20 75. April 11, 1979 Leinio/Nishimura Letter with
21 Instructions for Section 8 Existing Housing Allowances
22 - "Worksheets" with effective date April 11, 1979.
23 76. January 25, 1980 letter - memo to all local housing
24 authorities from Leinio
25 77. Evaluation of the Seattle City Light Neighborhood
26 Energy Conservation Program, Olson and Cluett,
27 Battelle Memorial Institute.
28 78. Seattle City Light Customer Energy Usage Summary,
29 1975, 1976, 1977, 1978, 1979.
30 B. SHA Exhibits:
31 79. 11/27/79 Leinio/Nishimura letter.
32 80. 3/11/80 Leinio/Nishimura letter.
81. 2/11/80 SHA Leased Housing Memo to SHA Area
Administrators and Section 8 Staff with attached
utility allowance schedule.
82. Excerpt from Federal Register Vol 45, No. 60 -
Wednesday, March 26, 1980. 24 C.F.R. Parts 803, 888.
83. Excerpt from Federal Register Vol. 44, No. 247 -
Friday, December 21, 1979. 24 C.F.R. Parts 803, 888.

- 1 84. Excerpt from Federal Register Vol. 44, No. 199 -
Friday, October 12, 1979. 24 C.F.R. Parts 803, 888.
- 2
- 3 85. Excerpt from Federal Register Vol. 44, No. 145 -
Thursday, July 26, 1979. 24 C.F.R. Parts 803, 882,
4 888.
- 5 86. 7/21/76 Isenhour/Campbell letter.
- 6 87. 7/22/76 Campbell/Isenhour letter.
- 7 88. Jeffrey Morris critique of Haven Walters' Section 8
utility allowances.
- 8 89. 6/14/79 Nishimura Stowell letter with attachments.
- 9
- 10 C. Statement of SHA objections to Exhibits.
- 11 1. SHA objects to the admissibility of any document or
12 evidence with respect to actions or conduct of the parties after the
13 date plaintiff's suit was filed--i.e. May 8, 1978. The basis for
14 SHA's objection is that such documents, actions and conduct are not
15 relevant and therefore not admissible under Federal Rules of
16 Evidence 401 and 402. Furthermore, many of the exhibits bearing
17 dates after May, 1978 constitute or entail subsequent remedial
18 measures by the parties or offers of compromise. They are therefore
19 inadmissible under Federal Rules of Evidence 407 and 408. Many of
20 the documents falling within this general category to which SHA
21 objects will confuse the issue of whether or not at the time suit
22 was initiated the utility allowance schedules used by defendants for
23 the Section 8 program administered by SHA were reasonable and
24 adequate. Acts by the defendants after that date with respect to
25 the utility allowance schedules can only serve to distract the
26 Court's consideration from and potentially mislead the court in its
27 determination of the central issue posed by plaintiff's complaint -
28 i.e. the reasonableness and adequacy of the utility allowance
29 schedule in force at the time the complaint was issued. Unless
30
31
32

1 specifically noted otherwise the objections set forth are noted by
2 SHA to Exhibits in Part VIII of this Pretrial Order fall within the
3 general objection noted in this paragraph. Without waiving this
4 objection, SHA has a number of documents, many of which relate to
5 actions after the filing of plaintiff's complaint. SHA does not
6 waive its objections to the relevancy and inadmissibility of any
7 documents or evidence relating to the post filing; instead, by
8 offering these exhibits without waiving its objection to their
9 admissibility, SHA seeks to protect its interest should the Court
10 consider any post filing period documents relevant for any reason,
11 however limited.

12 2. The general objections to exhibits by SHA apply to the
13 following numbered exhibits: 20, 22, 23, 24, 25, 46, 47, 48, 62,
14 72, 73, and 74 through 86.

15 3. Objections to other documents:

16 a. Exhibit 12 -- objection on the basis of FRE 701,
17 802, and 901.

18 b. Exhibit 13 -- barred by FRE 703, 704 and 705 as
19 well as 901.

20 c. Exhibit 25 -- document is inadmissible as
21 irrelevant. (Note: SHA has not seen this document and is unaware
22 of its contents; in any event, an exchange between a representative
23 of one of the defendants and the attorneys for the plaintiff without
24 the approval of the attorneys for defendant is of questionable
25 value.)

26 d. Exhibit 38 -- document is irrelevant in that it
27 bears upon a matter which is not reasonably related to the subject
28 matter of this litigation.

29 e. Exhibit 39 -- also irrelevant; is not related to
30 the subject matter of this litigation - i.e. the utility allowance
31 schedules of HUD and SHA.

32

- 1 f. Exhibit 40 -- same objection as to Exhibits 38
2 and 39.
3 g. Exhibit 41 -- barred by FRE 901.
4 h. Exhibits 42 and 43 -- barred by FRE 401, 402 and
5 403. Use of these documents is waste of time and they constitute
6 drafts of a letter, the final product of which is reflected by
7 Exhibit 29.
8 i. Exhibits 57 and 58 -- are irrelevant in that they
9 relate to Brenda Liggot who is no longer a party to this action.
10 The exchange of correspondence does not bear upon claims made by the
11 plaintiff Copeland and is therefore irrelevant and inadmissible
12 under FRE 401, 402 and 403.
13 j. Exhibit 59 -- barred by FRE 401 and 403. The
14 affidavit is already a pleading in this matter and it is
15 inappropriate for use as an exhibit. Attachments to that affidavit
16 are already identified as Exhibits 7-11 to which defendants have no
17 objection.
18 k. Exhibit 62 -- barred by FRE 401, 402 and 403.
19 The subject matter of this memorandum has nothing to do with utility
20 allowance schedules and can only lead to confusion and waste of
21 judicial time.
22 D. Statement of Plaintiff's Objections to Exhibits:
23 1. Exhibits 79, 80, 81 barred by FRE 401, 402, 403.
24 2. Exhibits 82, 83, 84, 85, barred by FRE 401, 402, 403.
25 3. Exhibit 88 barred by privilege, work product, FRE 403,
26 612, 613, and 802.
27 4. Exhibit 89 barred by FRE 401, 402, 403.
28
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signatures of their counsel hereon, and their counsel hereon, and this order is hereby entered, as a result of which the pleadings are hereby supplemented, and this pretrial order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this ____ day of April, 1980.

WALTER T. McGOVERN
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

LESOURD, PATTEN, FLEMING,
HARTUNG & EMORY
Attorneys for Defendants
SHA and William Nishimura

EVERGREEN LEGAL SERVICES
Attorneys for Plaintiff
Diana Copeland

Richard P. Matthews
Richard P. Matthews

Steve Fredrickson
Steve Fredrickson

UNITED STATES DEPARTMENT OF JUSTICE
Attorney for Patricia Roberts Harris
and Moon Landreiu

Barbara Gordon by Richard P. Matthews
Barbara Gordon