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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
IN AND FOR THE COUNTY OF SAN DIEGO.

No. 95298

PHILIP HOYLAND,

Plaintiff,

-vs-

BEAM RAYS, Incorporated, a  
corporation,

RAY WILLIAMS,

GEORGE W. EDWARDS,

CHARLES W. WINTER,

RAY REYNOLDS,

C. W. HENSTING, individually  
and as the Board of Directors  
of said Corporation,

Defendants.

\$7. Paid Summons issued

FILED  
JAN 28 1938  
Clerk

COMPLAINT FOR CANCELLATION OF ILLEGAL ACTIONS OF  
DIRECTORS AND FOR REMOVAL OF DIRECTORS AND FOR  
INJUNCTIVE RELIEF AND FOR APPOINTMENT OF A  
RECEIVER IN AID THEREOF

Now comes plaintiff above named and complains of defen-  
dants above named, and each of them, and for cause of action alleges:

I.

That plaintiff is and since August, 1938, has been a stock-  
holder in the defendant corporation, holding in his name on the  
books of the corporation and owning more than ten (10) per cent of  
the number of outstanding shares of stock of the said defendant  
corporation; and that plaintiff brings this action for himself and  
for and on behalf of the said corporation and for and on behalf of  
all of the stockholders thereof in a representative capacity.

II.

That defendant, Beam Rays, Incorporated, is and for more  
than three (3) years past has been a corporation organized and  
under the provisions of the laws of the State of California; and

1 that ever since June, 1937, the location of the principal office for  
 2 the transaction of the business of the corporation has been and is  
 3 at San Diego, California; and that all of the individual directors  
 4 of the said defendant corporation are residents of the County of  
 5 San Diego, State of California; and that Ray Williams is, and has  
 6 been, a director of said defendant corporation ever and continuously  
 7 since May 11, 1938; and that George W. Edwards is, and has been a  
 8 director of said defendant corporation ever and continuously since  
 9 August 12, 1938; and that Charles W. Winter is, and has been a  
 10 director of said defendant corporation ever and continuously since  
 11 May 2, 1938; and that Ray Reynolds is, and has been, a director of  
 12 defendant corporation ever and continuously since November 14, 1938;  
 13 and that C. W. Ernsting is, and has been, a director of the said  
 14 defendant corporation ever and continuously since November 14, 1938;  
 15 and that Ray Williams is the Vice-President of said defendant corpo-  
 16 ration but does not own any stock therein; and that Ray Williams is  
 17 an employee of Charles W. Winter, one of the above-named defendants,  
 18 and that said Winter is a substantial stockholder in the defendant  
 19 corporation; and that George W. Edwards is and ever since December 5,  
 20 1938, has been the Secretary of said defendant corporation; and that  
 21 said Charles W. Winter and the said George W. Edwards have been  
 22 acting as an executive committee of the said Board of directors and  
 23 of the said defendant corporation ever since October 28, 1938, and  
 24 that, during December, 1938, and January, 1939, and at this time there  
 25 are only five persons on the Board of Directors of Beam Rays, In-  
 26 corporated, and that the above-named defendants now constitute all

27 of the Directors of Beam Rays, Incorporated.

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iii.

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That the said defendant corporation was organized by C. H.  
 30 Hutchinson, Benjamin F. Cullen and A. W. Olmstead on or about No-

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1 DIVISION, INC."; and that the corporation operated under such a name  
2 until June 26, 1937; and that thereafter it operated under the name  
3 of "UNITED POLYTECHNICAL INSTITUTE", by amendment to the Articles of  
4 Incorporation, until May, 1938; and that in May, 1938, the name of  
5 the corporation was changed to "BEAM RAYS, Incorporated", and that  
6 from and after May, 1938, the said corporation has conducted its  
7 operations and activities under the name of Beam Rays, Incorporated;

8 That the said defendant corporation has ever been operating  
9 under certain Articles of Incorporation and that such Articles of In-  
10 corporation were duly filed with the Secretary of the State of Cali-  
11 fornia; and, that among other things the Articles of Incorporation  
12 set out the purposes of the corporation and the necessary limitations  
13 thereof; and that said purposes are set out in paragraph second of  
14 the said Articles; and that Section (a) thereof reads as follows;

15 "SECOND: The purposes for which this corporation  
16 is formed are:

17 (a) To establish and maintain a school or schools  
18 to teach aeronautics and allied subjects; to im-  
19 part to students theoretical and practical knowl-  
20 edge of airship design, construction operation and  
21 maintenance to publish and distribute text books  
22 relating to aeronautics; to publish and distribute  
23 articles and other works of authorities on aero-  
24 dynamics; to conduct lectures;"

25 ~~and~~ ~~the~~ ~~sections~~ follow in said paragraph; and that all of  
26 the corporate activities and the authorized business of said corpo-  
27 ration are necessarily limited to the purposes expressly set out  
28 therein; and, that said paragraph second of the said Articles has  
29 never been amended by the said corporation; and that on June 1,

30 1937, the directors of the defendant corporation declared, ~~consequently~~  
31 as set out in the minutes of a meeting thereof, that

32 "the corporation was organized for the express  
purpose of acquiring the right to use, sell and  
operate the educational course devised by the  
Virginia corporation",

33 relating to an educational course in the general field of aviation  
34 to be taught by the said corporation as the Aero Reserve School-

1 Western Division, Inc; and that the directors composing the full  
2 board of directors at that time were C. R. Hutchinson, Benjamin T.  
3 Cullen and A. W. Olmstead; and that the said Hutchinson, Cullen and  
4 Olmstead were all of the stockholders as well as all of the directors  
5 of the said corporation at that time.

6 IV.

7 That the said defendant corporation has been operating  
8 under certain by-laws; and that from the date of August 19, 1936,  
9 until June 1, 1937, the by-laws provided for directors in Article II,  
10 Section 1, as follows:

11 "SECTION 1. POWERS: Subject to the limitation  
12 of the Articles of Incorporation, of the By-Laws  
13 and of the laws of the State of California, as to  
14 action to be authorized or approved by the share-  
15 holders, all corporate powers shall be exercised  
16 by or under authority of, and the business and af-  
17 fairs of this corporation shall be controlled by,  
18 a board of directors consisting of the number of  
19 persons, not less than three (3), from time to  
20 time, specified by the Articles of Incorporation  
21 or amendments thereto, or fixed or changed by the  
22 shareholders by amendments to these By-laws, if  
23 authorized by the Articles of Incorporation to  
24 do so."

19 and that said Section 1 was amended at a special meeting of stock-  
20 holders held on June 1, 1937, by adding thereto

21 "SECTION 1. A. The business and affairs of  
22 this corporation shall be controlled by a  
23 Board of Directors consisting of nine (9)  
24 members."

24 and that said Section 1 A of Article II has been in effect from  
25 June 1, 1937, to the present day; and, that Article II, Section 8,  
26 of the By-Laws reads as follows:

27 "SECTION 8. QUORUM: A majority of the number  
28 shall be necessary to constitute a quorum for  
29 the transaction of business, and the action of  
30 a majority of the directors present at any meet-  
31 ing at which there is a quorum, when duly assembled,  
32 is valid as a corporate act; provided that a minori-  
33 ty of the directors, in the absence of a quorum, may  
34 adjourn from time to time, but may not transact any

32 and that Article II, Section 8, of the By-Laws has been in effect

1 from about August 19, 1936, continuously to the present date.

2 V.

3 That from the date of the incorporation of defendant corpo-  
4 ration until about December, 1936, C. R. Hutchinson has dominated  
5 and controlled the affairs of the corporation; and that the said  
6 Olmstead has rarely attended any meetings but has signed whatever  
7 documents and minutes were presented to him by the request of said  
8 Hutchinson; and that the said Cullen has acted under the domination  
9 and control of the said Hutchinson in practically all of his activi-  
10 ties as director, or otherwise, in connection with the said defendant  
11 corporation;

12 VI.

13 That on June 1, 1937, the stockholders of the corporation  
14 adopted the above-mentioned amendment to the by-laws, increasing  
15 the number of directors from three to nine; and that on the same day,  
16 after the said meeting of stockholders, the then directors, Hutchin-  
17 son, Cullen and Olmstead, met and adopted certain important resolu-  
18 tions hereinafter set forth in full, and that, after the adoption of  
19 the said resolutions, they then elected certain additional directors;  
20 and that all of the matters done, or attempted to be done, by them at  
21 the said meeting or the Board of Directors on June 1, 1937, were and  
22 ever have been illegal and void in law, inasmuch as no proper quorum  
23 of the Board of Directors was then present, and inasmuch as the  
24 authority of the directors, at that time, was confined legally to the  
25 election of sufficient directors to constitute a quorum of the entire  
26 board of directors;

27 And that the said important resolutions then adopted, or  
28 purported to be adopted, by the said directors read as follows in  
29 the minutes of the said meeting:

30 "Upon motion duly made and seconded the following  
31 resolution was adopted unopposed:

32 RESOLVED: That the offer of Benjamin T. Cullen to transfer and assign to this corpora-  
tion all of his right, title and interest in and to

1 times under the domination and control of C. R. Hutchinson, and  
2 about August, 1938, received from C. R. Hutchinson, for services,  
3 certain rights in stock of said defendant corporation;

4 That, thereafter, on June 7, 1937, an application was  
5 filed with the said Commissioner of Corporations to permit the iss-  
6 ance of such stock and that on June 8, 1937, a permit was so issued  
7 by the said Commissioner; and that the directors were advised by  
8 Attorney A. G. Fickelsen, of Los Angeles, that such permit had been  
9 issued; and that, by June 25, 1937, the entire stock of the organi-  
10 zation has been officially issued on the permit from the Corporation  
11 Commissioner in the following names, Benjamin Cullen, Two Thousand  
12 Fifty-one (2,051) shares; A. W. Olmstead, Six Hundred One (601)  
13 shares; C. R. Hutchinson, Twenty-three Hundred Forty-eight (2,348)  
14 shares, and the minutes of the meeting of the board of directors  
15 of June 25, 1937, set forth:

16 "And, that excepting one (1) share each to  
17 the above, this stock is subject to the follow-  
18 ing provisions of the above-mentioned permits.

19 (a) That none of the shares authorized by  
20 paragraph one hereof shall be sold or issued  
21 unless and until the applicant shall have  
22 selected an escrow holder, and said escrow  
23 holder shall have been first approved, in  
24 writing, by the Commissioner of Corporations;  
25 that, when so used, all certificates evidencing  
26 any of said shares shall be forthwith deposited  
27 with said escrow holder to be held as an escrow,  
28 pending the further written order of the said com-  
29 missioner; that the receipt of said escrow holder  
30 of said certificates shall be filed with said  
31 Commissioner; and that the owner, or persons,  
32 entitled to said shares shall not consummate a  
33 sale or transfer of said shares, or any interest  
34 therein, until the written consent of said com-  
35 missioner shall have been obtained so to do".

36 The said minutes further set forth:

37 "That all of the terms and conditions of the  
38 permit have been complied with";

39 and the said minutes are signed by Benjamin F. Levenson, President,  
40 and C. R. Hutchinson, J. W. G. Kitchen, A. W. Olmstead and  
41 Beth Willman; and that the escrow agent approved by the Commissioner

1 of Corporations was Attorney A. G. Ficksaen.

2 VII.

3 That, thereafter, while the said C. R. Hutchinson dominated  
4 the control of the affairs of the said defendant corporation, parti-  
5 cularly through his domination and control of directors, Cullen,  
6 Olmstead and Willman, the said defendant corporation abandoned the  
7 said express purpose of selling or operating the education course in  
8 aviation devised by the said Virginia Corporation and transferred  
9 and assigned whatever rights the said defendant corporation had in  
10 the Cullen agreement hereinabove referred to to another corporation,  
11 which plaintiff alleges, upon information and belief, is a corpora-  
12 tion incorporated in the State of Nevada; and that the said defendant  
13 corporation received nothing for the said sale or assignment to the  
14 said foreign corporation and that the said defendant corporation,  
15 from and after the early part of 1938, did nothing whatsoever in  
16 reference to any aviation course or in reference to any activities  
17 arising out of the said Cullen agreements or any rights acquired  
18 thereby; and that at no time did defendant corporation receive any-  
19 thing of value in consideration of the transfer and assignment of the  
20 said Cullen agreements, or rights in the said Virginia course in  
21 aviation; and that C. R. Hutchinson did receive certain considera-  
22 tions from the said Nevada Corporation, and that Charles W. Winter  
23 and Edith Henderson did receive certain stock interests in the said  
24 Nevada Corporation through the said Hutchinson, but that at no time  
25 did the said defendant corporation ever receive any consideration or  
26 benefit from Hutchinson or from the said Nevada Corporation in con-  
27 sideration of the said Cullen agreements; and that at no time did the then holders of all the stock of  
28 defendant corporation, namely Hutchinson, Cullen and Olmstead, or the  
29 known holders thereof, and knowing all of these facts, return to de-  
30 consideration of the said Cullen agreements.

VIII.

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That, thereafter, early in May, 1938, the said defendant corporation, still being under the domination and control of the said C. R. Hutchinson, took steps to engage in the business of manufacturing and distributing certain machines developed and owned by Doctor Royal Raymond Rife, and by Philip Hoyland, plaintiff herein, in which the said C. R. Hutchinson had also acquired a one-third interest; and that at the said time and at all other times, until about the end of December, 1938, the said Hoyland, Plaintiff herein, and the said Dr. Rife did not know of any of the said limitations of the said Articles of Incorporation and the action of the Board of Directors on the "express purpose" of the corporation and did not know of any of the manipulations or illegal or improper activities of Hutchinson, as set forth at any place in this complaint; and that from the said date to this date the activities of the said defendant corporation have been confined to matters connected with the manufacture and distribution of the said machines embodying the research discoveries of said Rife and Hoyland; and that all of such activities and operations of said defendant corporation are contrary to and beyond the provisions of the Articles of Incorporation, paragraph second as hereinabove set forth and as expressly interpreted by the board of directors of the defendant corporation on June 1, 1937, and are therefore void and illegal.

IX.

That, at about the same time, the said C. R. Hutchinson entered into certain negotiations with Ray Reynolds, defendant herein, and with George W. Edwards, W. Ernsting and Viola Ernsting, the father and sister respectively of defendant Ernsting; and the said negotiations constituted and culminated in and are described as a sale in a notice sent by Ray Reynolds to C. R. Hutchinson on December 21, 1938, of which notice is attached hereto and made a part hereof as "Exhibit A";



1 and that similar notices were mailed to C. R. Hutchinson at the same  
2 time by George Edwards, covering the amount of Five Hundred Dollars  
3 (\$500.00), by Viola Ernsting, covering the amount of Five Hundred  
4 Dollars (\$500.00) and by C. W. Ernsting, covering the amount of Two  
5 Thousand Dollars (\$2,000.00); and that the said transactions were the  
6 consummation of a sale in shares of stock of defendant corporation,  
7 or an interest therein, (and completely illegal and void and contrary  
8 to the express terms of the permit theretofore issued by the Com-  
9 missioner of Corporations of the State of California; and that all of  
10 said terms were at all times known to C. R. Hutchinson, as above set  
11 forth in the minutes of the meeting signed by the said C. R.  
12 Hutchinson; and that the said C. R. Hutchinson did in May, 1938, take  
13 Five Hundred Dollars (\$500.00) from the said Ray Reynolds, and Five  
14 Hundred Dollars (\$500.00) from the said George Edwards, and Five  
15 Hundred Dollars (\$500.00) from the said Viola Ernsting and Two  
16 Thousand Dollars (\$2,000.00) from the said C. W. Ernsting, in ac-  
17 cordance with such negotiations; and that at least Five Hundred Dol-  
18 lars (\$500.00) of the said funds were retained by the said C. R.  
19 Hutchinson and were not turned over to the defendant corporation;  
20 and that at the time of the transactions and at the time that C. R.  
21 Hutchinson accepted money from the said persons, he told them that they  
22 were to receive stock therefor; and that the check given by Ray  
23 Reynolds shows that it was paid to C. R. Hutchinson for stock; and  
24 that George W. Edwards received a receipt from the said C. R. Hutchin-  
25 son reciting that the money was paid for stock, but that, at a later  
26 date, between May, 1938, and August, 1938, the said Hutchinson took  
27 back from the said ~~George W. Edwards~~ ~~Viola Ernsting~~ ~~C. W. Ernsting~~ receipt and advised the  
28 said Ray Reynolds, George Edwards, Viola Ernsting and C. W. Ernsting  
29 that he would change over the transaction into some other form; and  
30 that during said interval meetings of the board of directors were  
31 held on May 25, 1938, and on June 15, 1938, ~~and on August 15, 1938, and~~  
~~September 15, 1938, and that said Hutchinson was present at all of~~

1 said meetings and that, at such meetings, nothing was done in  
2 reference to the accounts with the said Ray Reynolds, George Edwards,  
3 Viola Ernsting and C. W. Ernsting; but that, for the first time, on  
4 August 12, 1938, reference was made to these transactions at a  
5 meeting of the Board of Directors and in the minutes of the corpora-  
6 tion; and that, at the said meeting of August 12, 1938, the said C.  
7 R. Hutchinson came to the Board of Directors with certain prepared  
8 resolutions and with his Attorney, A. G. Fickeisen; and there and  
9 then certain matters were taken up between directors in terms as set  
10 out in the minutes of the meeting as follows:

11 "Upon motion duly made by Director Cullen,  
12 seconded by Director Willman and unanimously  
13 carried, the following resolution was adopted:

14 RESOLVED: That as evidence of an indebted-  
15 ness of \$500.00 owing from C. R. Hutchinson  
16 to the corporation, that the corporation accept  
17 from C. R. Hutchinson his negotiable promissory  
18 note of even date herewith for \$500.00, payable  
19 on or before December 10, 1938, with interest at  
20 the rate of six (6) per cent per annum, to be  
21 secured by an assignment of one-half of the  
22 fourth payment owing to said C. R. Hutchinson  
23 from the British group, under the contract made  
24 by said English group and this corporation dated  
25 June 4th, 1938, subject to the condition that,  
26 if said payment is not so made in an amount suf-  
27 ficient to pay said note and the interest accruing  
28 thereon; that the corporation be authorized to re-  
29 tain any or all royalties to which said C. R.  
30 Hutchinson may be entitled from this corporation  
31 to cover any deficit":

32 and further,

33 "Upon motion duly made by Director Cullen,  
34 seconded by Director Van Wert, and unanimously  
35 carried, the following resolution was adopted:

36 RESOLVED: That to evidence indebtedness  
37 owing for advances heretofore made to this corpo-  
38 ration in the aggregate amount of \$3,500.00, the  
39 negotiable promissory notes of this corporation  
40 be issued and ~~the following to wit:~~ To  
41 Ray Reynolds, \$500.00; to Viola Ernsting, \$500.00;  
42 to Christian W. Ernsting, \$2,000.00; and to George  
43 Edwards \$500.00, all to be dated as of the date of  
44 this meeting, to be payable on or before one year  
45 thereafter, with interest at the rate of six (6)  
46 per cent per annum.

47 ~~Resolved:~~ That the President and  
48 Vice-President and the Secretary, ~~Directors~~

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1 Secretary, be and they are hereby authorized  
2 in the name of this corporation and in its be-  
3 half to execute said notes and to deliver the  
4 same to the payees thereof as recited in this  
5 resolution".

6 And that, at the same meeting, upon another motion by Cullen,  
7 seconded by Willman, the directors further adopted a resolution  
8 stating that the corporation was indebted to United Aero Schools,  
9 Inc., in the sum of Fifteen Hundred Dollars (\$1,500.00) and that the  
10 indebtedness had not been settled; and that the indebtedness should  
11 be set forth on the books of account and that payments should be  
12 made thereon from time to time;

13 And that the minutes of the said meeting were signed by  
14 Beth Willman, Secretary, and attested by C. R. Hutchinson, Van Wart,  
15 Williams and Olmstead;

16 And further, that plaintiff has been informed and believes  
17 and therefore alleges that the said promissory notes to George Ed-  
18 wards, Viola Ernsting, C. W. Ernsting and Ray Reynolds were drawn  
19 and delivered as so authorized, but that the note to be signed by C.  
20 P. Hutchinson was not delivered to the corporation in accordance with  
21 the aforesaid resolution but that a note was drawn and delivered by  
22 the said Hutchinson to the corporation differing in terms from the  
23 note therein set forth.

24 And plaintiff alleges that the minutes of the said meeting  
25 of August 12, 1938, set out false and illegal and void transactions  
26 and do not truly or honestly reflect the facts thereof and that this  
27 was known to C. R. Hutchinson and other directors at the said time;

28 and that the notes there authorized to be issued by the corporation  
29 were issued without force and effect of any lawful kind;

30 And plaintiff further alleges that the resolution regarding  
31 the indebtedness owing to the United Aero Schools, Inc., did not  
32 cover a proper or true indebtedness, and that the resolution in  
33 reference thereto was improper and that the account there attempted  
34 to be set forth was improper, illegal, void and of no effect.

2.

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2 That, thereafter, there was a special meeting of stock-  
3 holders of Beam Rays, Incorporated, held at Fresno, California, at  
4 11:30 A. M. on Sunday, August 26, 1938, (the proceedings of which are  
5 set out in the minute book of the Corporation, on pages marked at the  
6 bottom 112, 111 and, then at the top, page 109, 110, 105, the signa-  
7 tures being found on page 105;) and that the said minutes are signed  
8 by Beth Willman, Secretary, and attested by B. T. Cullen, Vice-  
9 President, and B. T. Cullen, C. R. Hutchinson, A. W. Olmstead, as  
10 the stockholders; and, that plaintiff is advised and is informed and  
11 believes, and therefore alleges, that the said minutes were prepared  
12 by Attorney A. G. Fickelsen for and at the request of C. R. Hutchin-  
13 son; and alleges that they do not state or reflect the actual facts  
14 of several matters covered therein, particularly referring to the  
15 Hutchinson note and the transactions with George W. Edwards, Ray  
16 Reynolds, Viola Ernsting and C. W. Ernsting; and that said minutes  
17 constitute an improper attempt to give legality of form and content  
18 to the stock transactions in which C. R. Hutchinson had been engaged  
19 contrary to the terms of the permit theretofore granted by the Com-  
20 missioner of Corporations of California, and contrary to the laws of  
21 the State of California in reference to the issuance and sale of  
22 corporate stock; and that, among other things, the said minutes  
23 attempt to ratify the authority of Hutchinson to engage in the finan-  
24 cial transactions with the said Ray Reynolds, George W. Edwards,  
25 Viola Ernsting and C. W. Ernsting and attempt to set the said trans-  
26 actions on foot, in violation of the provisions of the Act of August  
27 1938, under which C. R. Hutchinson, as the general manager, was  
28 authorized to make certain loans in the name of the defendant corpo-  
29 ration, the funds to be deposited in the bank designated by the  
30 directors; and, among other things, the said minutes state  
31 "That pursuant to the authority vested in  
32 C. R. Hutchinson, as general manager of the

1 corporation, he did thereafter negotiate and ob-  
2 tain a loan of Five Hundred Dollars (\$500.00)  
3 from Ray Reynolds, Five Hundred Dollars (\$500.00)  
4 from Viola Ernsting, Two Thousand Dollars  
5 (\$2,000.00) from Christian W. Ernsting, and Five  
6 Hundred Dollars (\$500.00) from George Edwards,  
7 all of whom are residents of the City of San Diego,  
8 State of California."

9 And that the minutes further refer to the action of the  
10 Board of Directors taken at the meeting of August 12, 1938, and  
11 ratify, confirm and approve said action; and, that the minutes further  
12 contain a ratification of the resolution of the meeting of August 12,  
13 1938, in reference to the Hutchinson note; and that the minutes  
14 further set forth that, at the request of A. W. Olmstead, the Secretary  
15 read the minutes of the meeting held on

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|----|--------------------|-------------------|
| 16 | October 5, 1936,   | February 7, 1938, |
| 17 | November 2, 1936,  | March 7, 1938,    |
| 18 | June 1, 1937,      | April 4, 1938,    |
| 19 | June 25, 1937,     | May 2, 1938,      |
| 20 | June 26, 1937,     | May 11, 1938,     |
| 21 | August 13, 1937,   | May 25, 1938,     |
| 22 | September 6, 1937, | June 15, 1938,    |
| 23 | October 4, 1937,   | July 5, 1938,     |
| 24 | November 1, 1937,  | July 12, 1938,    |
| 25 | December 6, 1937,  | August 12, 1938   |
| 26 | January 3, 1938,   |                   |
| 27 | January 14, 1938   |                   |

28 and that the stockholders then ratified everything that had been  
29 done at the said meetings; and that the minutes of the meeting of  
30 stockholders of January 1938, was also read and approved; and plain-  
31 tiff alleges that the statements in the said minutes are false and  
32 do not represent the occurrences of the meetings of the stockholders;  
33 and that the minutes in themselves falsely state the transaction  
34 between C. R. Hutchinson on the one hand, and George W. Edwards, Ray  
35 Reynolds, Viola Ernsting and C. W. Ernsting on the other, and that  
36 the minutes likewise falsely state the transaction between C. R.  
37 Hutchinson and the corporation culminating in C. R. Hutchinson's note  
38 to the defendant corporation; and plaintiff alleges that the trans-  
39 actions between C. R. Hutchinson and the aforesaid Ray Reynolds,  
40 George W. Edwards, Viola Ernsting and C. W. Ernsting were never

1 initiated as loans under the said resolution of May 2, 1938, or  
 2 otherwise, and that part of the money therefrom was not deposited in  
 3 the account of the corporation but was taken over and used by the  
 4 said C. R. Hutchinson personally and that such funds were then  
 5 represented by the amount covered in the said note of C. R. Hutchin-  
 6 son to the said corporation, and that the matters set out in the  
 7 minutes, both the minutes of August 12, 1938, and August 28th, 1938,  
 8 constitute an attempt to make a legal and valid transaction out of  
 9 what was a series of illegal, invalid and void transactions between  
 10 C. R. Hutchinson on the one hand, and the defendant corporation and  
 11 Ray Reynolds, George W. Edwards, Viola Ernsting and C. W. Ernsting,  
 12 on the other hand. )

XI.

14 That, at the same meeting of stockholders on August 28,  
 15 1938, the minutes show that certain other business was done as  
 16 follows:

"Upon motion duly made and seconded, the following resolution was adopted unanimously:

WHEREAS, all of the shares of the capital stock of this corporation are held by three stockholders, all of whom are present at this meeting; and,

WHEREAS, all of the certificates evidencing said shares, excepting three qualifying shares held by said three parties, are now being held as an escrow by A. G. Fickeisen, of Los Angeles, California, pursuant to the provisions of a supplemental permit issued by the Corporation Commissioner on the 6th day of June, 1937; and,

WHEREAS, in payment for valuable services heretofore rendered to this corporation by certain persons, and in payment for certain services rendered by certain persons to this corporation, the three stockholders of this corporation have expressed a willingness to transfer without consideration to them certain shares of the capital stock held by them respectively, subject to the consent and approval of the Commissioner of Corporations, said transfers to be made as follows:

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Proposed Transfers

Owners	Transferees	Shares Transferred	Retain	
Benjamin T. Cullen	Royal Raymond Rife	450		
	Philip Hoyland	140		
A. W. Olmstead	Edith Henderson	480	600	
	W. H. Van Wart	380		
	Charles W. Winter	53		
C. R. Hutchinson	Beth Willman	447	100	
	C. W. Ernsting	250		
	George W. Edwards	50		
	Ray Reynolds	50		
	Royal Raymond Rife	200		
	Philip Hoyland	610		
	R. C. Bertheau	100		
	Beth Willman	300		
	W. V. Blewett	300		
	W. H. Van Wart	20		
	Edith Henderson	20		
	Charles W. Winter	447		
			<u>4,297</u>	<u>700</u>

AND, WHEREAS, such transfers will be advantageous to this corporation;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors be authorized, directed and instructed to express the consent of this corporation to such transfers in such manner and form as may be required by the commissioner of corporations";

and plaintiff alleges that said resolution falsely sets out the facts in connection with said stock, and that, as a matter of fact, there was consideration for the transfer of a stock interest to George W. Edwards, Ray Reynolds, Viola Ernsting and C. W. Ernsting; and there were no services rendered or to be rendered by several of the other persons contained in the said list, particularly the Edith Henderson, C. W. Winter, and W. H. Van Wart, but that the stock rights, which they were to receive therefrom were given to them by ~~virtue of their former investments of money, in varying sums, with~~ C. R. Hutchinson for the use of the earlier activities of this corporation, or of other corporations engaged in the business as teaching the aviation course above referred to.

III.

That, at a later date, an application was made to the

1 Corporation Commissioner in the terms of the said resolution adopted  
2 at the meeting of the stockholders on August 28, 1938; and that stock  
3 transfers were made accordingly; and plaintiff alleges that all of  
4 the said stock transfers, and all of the said transactions in the  
5 said stock were and have been from the inception, illegal and void  
6 for all of the reasons hereinabove set forth; and that after plain-  
7 tiff was advised of the impropriety thereof in December, 1938, he  
8 took such steps as seemed proper to him to have the corporation  
9 correct the said situation by proper legal action.

10

XIII.

11 That the said notes were issued and delivered by the corpo-  
12 ration to the said Ray Reynolds, George W. Edwards, Viola Ernsting  
13 and C. W. Ernsting; (and that all of the said notes are void and  
14 illegal and are based on void and illegal transactions) and that a  
15 note was issued and delivered to the corporation by the said C. R.  
16 Hutchinson, but that the said note does not conform with the terms  
17 of the note as set out in the resolution of the board of directors  
18 dated August 12, 1938; (and that the said transactions referred to in  
19 said minutes and evidenced by all of the said notes are not frankly  
20 or clearly set out in the corporate records.)

21

XIV.

22 That, at the said meeting of stockholders on August 28,  
23 1938, there was also presented a financial statement which is attached  
24 to the said minutes and is made a part thereof; and plaintiff alleges  
25 that the financial statement does not truthfully or actually portray  
26 the financial condition of the defendant corporation, but that the  
27 ~~statement~~ ~~and~~ ~~was~~ ~~false~~ ~~in~~ ~~many~~ ~~important~~ ~~particulars~~; for ex-  
28 ample, in setting up a liability to United Aero ~~Corporation~~, ~~which~~  
29 liability was false and not existent; and, likewise, in setting up as  
30 an asset certain rights in British contracts, which rights were not  
31 ~~then~~ ~~and~~ ~~not~~ ~~now~~ ~~an~~ ~~asset~~ ~~to~~ ~~the~~ ~~corporation~~; and in setting up  
32 as an asset in excess of Fifty-one Thousand Dollars (\$51,000.00), the



1 value of certain rights and agreements, which was originally set up  
2 for the Cullen agreements hereinabove referred to, later transferred  
3 and assigned by this corporation, without consideration to it.

4 XV.

5 That the said C. R. Hutchinson continued to dominate the  
6 affairs of the corporation, to the harm and disadvantage of the de-  
7 fendant corporation; and that on October 3, 1938, the said C. R.  
8 Hutchinson presented to the Board of Directors a proposal in refer-  
9 ence to a machine to be delivered to a certain Dr. Yale, as evidenced  
10 by the minutes of the meeting of October 3, 1938, as follows:

11 "The following terms and conditions were then  
12 listed by Director Hutchinson and were found agree-  
13 able to the Board of Directors: (1) 20% of the  
14 gross, each Monday for preceding week, of all busi-  
15 ness done by said Dr. Yale, for the first six months;  
16 and 25% of the gross for the second six months\* period;  
17 (2) Dr. Yale to personally be responsible for super-  
18 vision, diagnosis and prescription; (3) Dr. Yale  
will not call it the 'Rife Ray' or advertise to that  
effect; (4) The applicable terms of the Lease Agree-  
ment now being used by this corporation for the lease  
of the Rife Ray instrument, to be incorporated in  
such agreement with Dr. Yale, omitting 'Rife Ray',  
monthly up-keep charges, etc.";

19 and that plaintiff alleges that such terms and conditions were im-  
20 proper and should not have been negotiated between Mr. Hutchinson and  
21 Dr. Yale, and should not have been presented by him to the Board of  
22 Directors for their approval; that plaintiff did not, at that time,  
23 know or understand that such an arrangement would be illegal or im-  
24 proper, and that plaintiff has been advised since that date that such  
25 arrangement was illegal and improper and should never have been pre-  
26 sented to the Board of Directors for approval.

27 XVI.

28 That the corporation is torn by internal ~~disorder~~ ~~disorder~~ ~~disorder~~  
29 order; and that the rights and the powers of the corporation are  
30 about to be challenged in litigation; and that the corporation has  
31 made certain contracts with British representatives; and that the  
32 said British contract parties, through their solicitors, have cabled

1 threats to the defendant corporation notifying the defendant corpora-  
2 tion of a breach of contract on the part of the defendant corpora-  
3 tion and notifying the defendant corporation of their intention to  
4 start suit on the said agreements;

5           And that the rights of the corporation on the contracts  
6 with the owners have been challenged and that the corporation claims  
7 to have an exclusive right to manufacture and distribute the machines  
8 embodying the Rife Ray; but that the contract actually made with the  
9 owners of the said Rife Ray does not specify that the said power is  
10 exclusive; and that plaintiff, as one of the owners, has already  
11 notified Beam Rays, Incorporated, that the corporation is attempting  
12 to exercise a power greater than the power which it possesses under  
13 its agreement with the owners; and that attached hereto as "Exhibit  
14 B" is a copy of the notice mailed by plaintiff to the defendant corpo-  
15 ration on January 13, 1939, in reference thereto;

16   XVII.

17           That the affairs of the corporation have become muddled  
18 and confused; and that the directors are unable to properly direct  
19 the affairs of the corporation; and that directors Ray Reynolds,  
20 George W. Edwards and C. W. Brunsting have a direct interest, owing  
21 to the circumstances hereinbefore described, in conflict with the  
22 interests of the defendant corporation as a whole, and that Director  
23 George W. Edwards was fully aware of the impropriety of the trans-  
24 action with C. R. Hutchinson above set forth and the falsity of the  
25 minutes thereon; and that the corporation has for many months last  
26 past and now, at this time, ~~been suffering from~~ ~~lack of~~ ~~proper~~ ~~direction~~  
27 of corporate activities;

28   XVIII.

29           That on January 15, 1939, plaintiff made a demand upon the  
30 directors, ~~requesting that they take certain action for and on behalf~~  
31 of the corporation and the stockholders thereof; and a copy of such  
32 demand is annexed hereto and made a part hereof as "Exhibit C"; that

1 the said demand was discussed by the directors at a meeting of Janu-  
 2 ary 16, 1939; and that there were present at the said meeting  
 3 Directors Ray Williams, Ray Reynolds, George W. Edwards, and C. W.  
 4 Ernsting; and that Director Charles Winter absented himself from the  
 5 said meeting; and that Director Charles Winter absented himself from  
 6 the prior meeting of the Board of Directors on January 10, 1939; (and  
 7 that on the occasion of January 10, 1939, plaintiff is informed and  
 8 believes and therefore alleges that, Director Ray Williams, who is  
 9 an employee of Director Winter, made the statement that he and Mr.  
 10 Winter had been advised by Mr. Hutchinson that, in order to have a  
 11 legal meeting of the Board of Directors, it would be necessary to  
 12 have five (5) Directors present for a quorum of the Board of nine  
 13 (9) Directors authorized by the by-laws; and that, if any one director  
 14 would absent himself, the proceedings of the directors would be vain;  
 15 and that, therefore, Charles Winter did stay away from the said  
 16 meetings of January 10, 1939, and January 16, 1939, for the express  
 17 purpose of attempting to make void meetings of the board of directors  
 18 of the defendant corporation;) and that he did so at the suggestion  
 19 of Hutchinson and for the purpose of aiding the plans of C. R.  
 20 Hutchinson in his attempts to regain or retain control of defendant  
 21 corporation for reasons of self-advantage only.

XIX.

22  
 23 And that at the meeting of the four (4) directors on Janu-  
 24 ary 16, 1939, the directors engaged counsel; and that the directors  
 25 further resolved:

26 "That no further action be taken on these  
 27 ~~demands of stockholder Philip Hayward pending~~  
 28 ~~receipt of 10% of the shares of the corporation~~  
 29 authorized to be engaged, except that demand,  
 30 Number 8, to-wit, 'take steps to cancel the reso-  
 31 lution adopted about October 3, 1938, in reference  
 32 to an arrangement with Dr. Yale, as improper and  
 harmful to the interests of this corporation'.

33 ~~That that portion of the~~  
 34 ~~minutes of the corporation of the meeting of the~~  
 35 ~~directors of October 3, 1938, incorporating a~~  
 36 ~~resolution regarding a proposed contract between~~

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the corporation and Arthur W. Yale, M. D., be  
revoked and canceled for the reason that said  
resolution appears to have been improperly sub-  
mitted and adopted."

And that nothing further has been done by the said directors;  
and plaintiff is informed and believes, and, therefore, alleges that  
the said directors do not intend to carry out any of the various de-  
mands included in the said general demand "Exhibit C", or to do any-  
thing on the subject matter of the various points there included,  
except for the action on demand Number 6 as hereinabove set forth.

X.

That unless immediate action is taken on the various de-  
mands and matters set forth in the said "Exhibit C", and unless action  
is taken to efficiently and properly direct the affairs of the corpo-  
ration, the corporation will become insolvent, and the corporation  
will fail to achieve any of the purposes in which it is now active;  
and the defendant corporation and all of the stockholders thereof,  
and all of the creditors thereof will be injured and will suffer  
irreparable injury by reason of the complete neglect by the directors  
and the failure and inability of the said directors to properly manage  
and direct the affairs of the defendant corporation.

XI.

That it is impossible to correct this situation by electing  
a new Board of Directors for defendant corporation, for the reason  
that the issuances of stock have been and are invalid and improper and  
voting rights based thereon cannot legally and properly be exercised by  
the stockholders of record on the books of the corporation; and further  
alleges that several of the present directors, and other stockholders,  
have stated that they will not accept election as directors in the  
future because the affairs of the corporation are too involved and  
complicated and will inevitably lead to litigation and personal  
trouble for the directors involved with defendant corporation; and

1 that the aforesaid acts by directors and the failure and refusal of  
2 the present directors, defendants herein, to take steps to cancel  
3 the said outstanding notes held by Directors Edwards and Reynolds  
4 and by the sister and father of Director Ernesting and to collect the  
5 indebtedness due from G. R. Hutchinson, and to adjust the matters of  
6 stock issuances, and to adjust the contract with the British in-  
7 terests, and to adjust the contract with the owners of the Rife Ray  
8 machine, and to act in reference to the improper matters hereinabove  
9 set forth, among other things, constitute a course of gross abuse of  
10 authority and discretion, and constitute justification for the removal  
11 of the said directors.

12 XXII.

13 And that plaintiff has no adequate remedy at law; and that,  
14 if the various acts of the directors, defendants herein, in continu-  
15 ing the illegal acts of their predecessor directors, are not restrained,  
16 and, if the directors, defendants herein, persist in their refusal  
17 to take the various steps, or to face the various points listed by  
18 plaintiff in "Exhibit C", then the defendant corporation will become  
19 paralyzed and will be unable to perform any of its functions and  
20 will become insolvent and all of the interests of all persons con-  
21 cerned therewith will be completely destroyed;

22 XXIII.

23 And that plaintiff has brought this action for and on his  
24 own behalf, and in a representative capacity; and that plaintiff has  
25 made the demand upon the directors of the corporation as set out in  
26 Exhibit C"; and that by reason of failure and refusal <sup>of</sup> the directors  
27 ~~to take the steps...~~  
28 action in his own name and in a representative capacity, and the  
29 corporation has been made party defendant herein; that no personal  
30 profit will come to the plaintiff by reason of this action, except  
31 ~~the advantage...~~ whose advantage will come to him, if he is established  
32 as a stockholder to any substantial degree; and that the obligation

1 for compensation for counsel is properly a part of the obligation  
2 which this Court should impose upon the defendants and defendant  
3 corporation herein;

4 XXIV.

5 And that unless defendants, and all of them, are restrained  
6 from continuing to attempt to manufacture and distribute Rife Ray or  
7 other machines, without proper amendments to the Articles of Incorporation,  
8 and without proper contracts with the owners of the said Rife  
9 Ray, and without proper contracts for the distribution of these  
10 machines in British and other territories, substantial and irreparable  
11 damages will be done to plaintiff and to those represented by plaintiff;  
12 and unless the honorable Court restrains the said directors  
13 from holding further meetings, and from holding a meeting of the  
14 alleged stockholders of the corporation, further illegal acts will be  
15 done by the stockholders of the corporation and by the directors, and  
16 by the defendant corporation;

17 XXV.

18 And that the ability of the corporation to carry on any  
19 legal functions has been crippled and will continue to be crippled as  
20 long as the present directors attempt to administer the affairs of  
21 the corporation; and that the said corporation will be utterly destroyed  
22 unless this Court appoints a receiver to act in their place and stand  
23 on the various points set out in the demand of plaintiff's "Exhibit C"  
24 herein;

25 XXVI.

26 And that the defendant directors have been guilty of gross  
27 mismanagement of the affairs of the defendant corporation, and have  
28 been guilty of gross abuse of discretion in their conduct of the  
29 affairs of the defendant corporation; and that all of the defendant  
30 directors are guilty of misfeasance as above set forth; and that all  
31 of them should be removed by order of this Court from the offices they  
32 now hold in the said corporation, and that they should be prevented

1 from being directors or from being elected directors of this corpo-  
2 ration for such period as this Court may deem proper.

3 XXVII.

4 And that an accounting should be had of the receipts and  
5 expenditures of the defendant corporation from the inception there-  
6 of; and that the present directors, defendants herein, are not in a  
7 position to make or secure such an accounting because of the con-  
8 flict of the personal interests of a majority of such directors with  
9 the interests of the defendant corporation, particularly by reason  
10 of the improper and illegal transactions through which directors,  
11 Reynolds, Edwards, and, indirectly, director Ernsting, have become  
12 stockholders on the books and records of the corporation.

13 WHEREFORE, plaintiff prays:

14 1. That the actions of the Board of Directors in refer-  
15 ence to the original issuance of stock of Aero Reserve School-  
16 Western Division, Inc., and in the transfers of stock attempted to  
17 be accomplished by the said Board of Directors, after the original  
18 issue, be declared null and void and improper at law.

19 2. That the meeting of the directors held on June 1,  
20 1937, be declared void, except for the election of additional  
21 directors.

22 3. That all activities of the corporation, except  
23 activities in reference to the Virginia course or method for teach-  
24 ing aviation, be declared void and illegal and improper in law.

25 4. That the notes heretofore issued by the corporation  
26 to George W. Edwards, Ray Reynolds, Viola Ernsting, and Christian  
27 W. Ernsting, be declared void and be canceled and annulled.

28 5. That the directors, ~~Ray Reynolds, Viola Ernsting, and Christian~~  
29 ~~W. Ernsting,~~ and George W. Edwards, directors of the corpora-  
30 tion, be declared void and be canceled and annulled, by reason  
31 of their gross mismanagement and gross abuse of discretion in  
32 handling of the affairs of the corporation.

33 6. That the Court order that an accounting be made by

1 the said directors of the corporation of all the funds of the corpo-  
2 ration expended under their authority and of the disposition of all  
3 of the assets of the corporation and the consideration received  
4 therefor.

5 7. That the defendants be enjoined from further acting  
6 as directors of the said corporation, and that they be enjoined and  
7 restrained from calling, or holding, or attempting to hold any  
8 meeting of the stockholders of the said corporation, until this  
9 Court, or the representative of this Court, shall determine who are  
10 the stockholders of the corporation, and what stock is entitled to  
11 vote at any meetings of the corporation.

12 8. That the Court appoint a receiver for the purpose of  
13 continuing and administering certain affairs of the defendant corpo-  
14 ration; and that this receiver operate under the direction of this  
15 Court, so as to prevent the waste and misuse of the funds and assets  
16 of this corporation; and that the said receiver be authorized to  
17 proceed against C. R. Hutchinson for the collection of such monies  
18 as may be owing by said C. R. Hutchinson to the corporation; that  
19 the said receiver be authorized to collect from United Aero Schools,  
20 Inc., any funds paid to or at the order of the said corporation with-  
21 out full warrant and justification.

22 9. That the receiver be authorized to initiate proceedings  
23 before the Commissioner of Corporations of the State of California  
24 to determine what permits issued by the Commissioner of Corporations,  
25 if any, in reference to the stock of defendant corporation, may still  
26 be considered valid; that the receiver be authorized to negotiate a  
27 new contract for the adjustment of the old contract between the  
28 owners of the Rife Ray and defendant corporation so as to remove any  
29 challenge or ambiguity therefrom; that the receiver be authorized to  
30 negotiate or adjust contractual relations with the British interests  
31 so as to avoid litigation of possible  
32 taneous terms for defendant corporation; that the receiver be




1 authorized to make collections of funds due under outstanding leases  
2 of Hife Ray machines and apply the proceeds to the up-keep of the  
3 corporation and payment of legitimate outstanding obligations of the  
4 corporation; that the receiver be authorized to investigate and  
5 adjust, subject to the approval of this Court, any and all claims,  
6 which any stockholders of the corporation may have against the  
7 corporation, by reason of their acceptance of illegal or void stock  
8 in consideration of things of value delivered to the defendant corpo-  
9 ration.

10 10. That the plaintiff be awarded such an amount as to  
11 the Court may seem reasonable for attorneys' fees in these proceedings.

12 11. That plaintiff be awarded his cost of suit herein,  
13 and for other and further relief as to the Court may seem just and  
14 equitable.

15  
16 ELI E. LEVENSON and  
17 AARON SAPIRO

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19 Attorneys for Plaintiff.  
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1 STATE OF CALIFORNIA)  
( ss.  
2 COUNTY OF SAN DIEGO)

3 PHILIP HOYLAND, being first duly sworn, deposes and says:  
4 That he is the plaintiff in the above-entitled action; that he has  
5 read the foregoing Complaint and knows the contents thereof; that  
6 the same is true of his own knowledge, except as to those matters  
7 which are therein stated on his information or belief and as to those  
8 matters that he believes it to be true.

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Philip Hoyland.

SUBSCRIBED AND SWORN TO before me  
this 27 day of January, 1939.

E. H. [Signature]  
Notary Public in and for the County  
of San Diego, State of California.