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UTA Sues Writer/Producer Over 'American Pie 4' Commissions

By NIKKI FINKE, Editor in Chief | Tuesday May 10, 2011 @ 1:46pm PDT

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EXCLUSIVE: UTA today sued screenwriter-producer client Adam Herz and his Los Angeles loanout company Atursis Entertainment in LA Superior Court for failing to pay the agency its 10% *American Pie 4*



commission from the scribe's deal with Universal Pictures. According to the complaint filed by Bryan Freedman of Freedman & Taitelman, "UTA represented Adam Herz as a writer and producer for more than nine years, during which time, UTA negotiated a lucrative deal for Herz for *American Pie 3* that provided him with millions of dollars as well as a right of first negotiation on any subsequent sequels and remakes with a guaranteed compensation package. When the studio decided to make *American Pie 4* without Herz, Herz received a generous compensation package as a result of the right of the first negotiation UTA obtained for him. Herz received millions of dollars even though Herz was not required to do any work on *American Pie 4*. In return, Herz left UTA and blatantly disregarded his contractual obligation to pay the agency its commissions for *American Pie 4*."

The complaint provides an insight into a lucrative writing deal. According to the complaint, Herz was compensated by Universal for *American Pie 3* in excess of \$700,000 for his services as producer (including box office bonuses) plus over \$6 million in profit participation. Herz paid UTA a 10% commission on these monies, per the Talent Agency Agreement, totaling approximately \$700,000 (exclusive of commission for writing services). The Producer Agreement negotiated by UTA also provided Herz with the right of first negotiation for individual producing services on any sequels or remakes of *American Pie 3*. The Producer Agreement required Universal to offer Herz "financial terms not less favorable than those provided herein ..." for future individual producer services in connection with sequels and remakes. "Universal did exercise its option to make a sequel to *American Pie 3* entitled *American Pie 4*, but declined to use Herz as a writer or producer on the picture. Nevertheless, as a result of the Producer Agreement and UTA's efforts on Herz's behalf, Universal paid Herz an amount presently unknown for the right to use a different writer and producer. By the terms of the Producer Agreement, UTA is informed and believes and based thereon alleges that Herz received financial compensation in an amount no less favorable than his compensation for *American Pie 3*. Pursuant to the terms of the Talent Agent Agreement, UTA is entitled to payment of a 10% commission on any and all monies which Herz has received in connection with *American Pie 4*."

But this past October, Herz terminated his Talent Agency Agreement with UTA. That month, UTA sent Herz a protection letter confirming Herz's outstanding obligations to pay commissions to UTA pursuant to the Talent Agency Agreement on *American Pie 4* (including any sequels, direct-to-DVD *American Pie* series, and something called the Untitled Adam Herz Blind Project II. But on Nov. 3, Herz, through legal counsel, sent a letter to UTA claiming that "UTA has absolutely no right to commission [on] *American Pie 4*." Herz has clearly indicated he does not intend to honor the oral contract entered into with UTA nine years prior. Ergo today's lawsuit. [FULL DISCLOSURE: Bryan Freedman handles some legal work for Deadline's parent company.]