

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

DEBRA RUTLEDGE, ERIC RUTLEDGE  
and JEANNE MOORE,

Plaintiffs,

v.

Case No: 6:09-cv-1245-Orl-36GJK

ACTION PRODUCTS INTERNATIONAL,  
INC., ACTION TOYS, INC., ACTION  
HEALTHCARE PRODUCTS, INC. and  
CURIOSITY KITS, INC.,

Defendants.

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**ORDER**

This cause comes before the Court upon the Report and Recommendation filed by Magistrate Judge Gregory J. Kelly on June 11, 2012 (Doc. 189). In the Report and Recommendation, Judge Kelly recommends that the Court grant in part and deny in part Plaintiffs' Amended Motion for Attorneys Fees and Costs, filed on October 24, 2011 (Doc. 173). Neither party has objected to the Report and Recommendation and the time to do so has expired.

First, the Court agrees with Judge Kelly that because it properly exercised supplemental jurisdiction over Plaintiffs' state law claims, it has jurisdiction to award attorney's fees to Plaintiffs pursuant to Florida Statutes Section 448.08.<sup>1</sup> Doc. 189, p. 15. Second, the Court agrees with Judge Kelly that because Defendants consciously withheld Plaintiffs' wages and then failed to pay the deferred wages, attorney's fees may be awarded pursuant to Section 448.08. Doc. 189, p. 15. Third, with respect to the discretionary award of attorney's fees pursuant to 28 U.S.C. §1132(g), the Court agrees with Judge Kelly's recommendation that the balance of

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<sup>1</sup> "The court may award to the prevailing party in an action for unpaid wages costs of the action and a reasonable attorney's fee." Fla. Stat. § 448.08

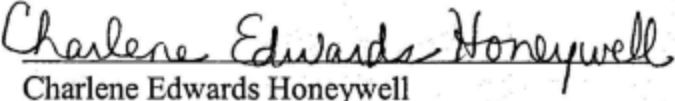
factors weighs in favor of awarding attorney's fees. *Id.*, pp. 16-18. Therefore, after careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

Accordingly, it is hereby **ORDERED and ADJUDGED**:

1. The Report and Recommendation of the Magistrate Judge (Doc. 189) is adopted, confirmed, and approved in all respects and is made a part of this order for all purposes, including appellate review.
2. Plaintiffs' Amended Motion for Attorneys' Fees and Costs, filed on October 24, 2011 (Doc. 173) is **GRANTED in part and DENIED in part**:
3. Plaintiffs are entitled to an award of fees as follows:
  - a. A reasonable hourly rate for Martha Chapman is \$350.00. A reasonable hourly rate for Irene Zabytko, Attorney Chapman's paralegal, is \$85.00. A reasonable number of hours for Martha Chapman is 88.7, and a reasonable number of hours for her paralegal is 33.9.
  - b. A reasonable fee for Ms. Meeks, the attorney fee expert, is \$1,875.00.
4. Plaintiffs are awarded a total sum of \$35,801.50. for attorneys' fees.
5. Plaintiffs' request for prejudgment interest is **DENIED**.
6. Plaintiffs are awarded postjudgment interest, pursuant to 28 U.S.C. § 1961, at the legal rate.
7. This judgment for fees is awarded in favor of Plaintiffs and against Defendants Action Products International, Inc., Action Toys, Inc., Action Healthcare Products, Inc., and Curiosity Kits, Inc., jointly and severally

8. In all other respects, the Amended Motion for Attorneys' Fees and Costs is **DENIED**.
9. The Clerk is directed to enter judgment accordingly.

**DONE** and **ORDERED** in Orlando, Florida on June 28, 2012.

  
Charlene Edwards Honeywell  
United States District Judge

**Copies furnished to:**

Counsel of Record

Unrepresented Parties

U.S. Magistrate Judge Gregory J. Kelly