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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CORBY KUCIEMBA, et al.,
Plaintiffs,
v.
VICTORY WOODWORKS, INC.,
Defendant.

Case No. [20-cv-09355-MMC](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS; DISMISSING
FIRST AMENDED COMPLAINT
WITHOUT FURTHER LEAVE TO
AMEND**

Before the Court is defendant Victory Woodworks, Inc.'s Motion, filed April 1, 2021, to Dismiss Plaintiffs' First Amended Complaint ["FAC"] for Failure to State a Claim. Plaintiffs Corby Kuciemba and Robert Kuciemba have filed opposition, to which defendant has replied. The matter came on regularly for hearing on May 7, 2021. Martin Zurada of Venardi Zurada LLP appeared on behalf of plaintiffs; William Bogdan of Hinshaw & Culbertson LLP appeared on behalf of defendant.

Having read and considered the parties' respective written submissions as well as the arguments of counsel at the above-referenced hearing, the Court, for the reasons stated in detail on the record at said hearing, as well as the hearing conducted February 12, 2021, rules as follows:

1. To the extent plaintiffs' claims are based on allegations that Corby Kuciemba contracted COVID-19 "through direct contact with" Robert Kuciemba (see FAC ¶ 22), such claims are barred by the exclusive remedy provisions of California's workers' compensation statutes and, thus, are subject to dismissal. See Cal. Labor Code §§ 3600, 3602.

2. To the extent plaintiffs' claims are based on allegations that Corby

1 Kuciemba contracted COVID-19 “indirectly through fomites such as [Robert Kuciemba’s]
2 clothing” (see FAC ¶ 22), such claims are subject to dismissal for failure to plead a
3 plausible claim.

4 3. To the extent the above-described claims are neither barred by statute nor
5 deemed insufficiently pleaded, such claims are subject to dismissal for the reason that
6 defendant’s duty to provide a safe workplace to its employees does not extend to
7 nonemployees who, like Corby Kuciemba, contract a viral infection away from those
8 premises.


9 Accordingly, the Motion to Dismiss is hereby GRANTED, and the instant action is
10 hereby DISMISSED.

11 **IT IS SO ORDERED.**

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13 Dated: May 10, 2021

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MAXINE M. CHESNEY
United States District Judge

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