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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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PAUL LEHR and COLLEEN LEHR,

Plaintiffs,

v.

FRANK M. PERRI; PERRI ELECTRIC,  
INC., a California Corporation;  
PERRI ELECTRIC INC. PROFIT  
SHARING PLAN; PERRI ELECTRIC  
INC. PROFIT SHARING TRUST FUND;  
and DOES 1-50,

Defendants.

No. 2:17-cv-1188 WBS AC

ORDER

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Perri Electric Inc. Profit Sharing Plan and Perri  
Electric Profit Sharing Trust Fund have improperly brought their  
motion to dismiss (Docket No. 91) under Federal Rule of Civil  
Procedure 12(b)(1). See Leeson v. Transam. Disability Income  
Plan, 671 F.3d 969, 977 (9th Cir. 2012) (“[W]hether a plaintiff  
has statutory standing in an ERISA action is a merits-based

1 determination, not a subject matter jurisdiction issue.”).  
2 Because this motion concerns a substantive element of plaintiffs’  
3 claims, see id. at 979, and matters outside the pleadings, the  
4 court will treat this motion as one for summary judgment under  
5 Rule 56. See Fed. R. Civ. P. 12(d). The motion is currently set  
6 for hearing on September 9, 2019. Accordingly, the parties shall  
7 file any evidence and supplemental briefs they may wish to be  
8 considered on the motion by September 3, 2019.

9 IT IS SO ORDERED.

10 Dated: August 29, 2019



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11 WILLIAM B. SHUBB  
12 UNITED STATES DISTRICT JUDGE  
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