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8	UNITED STATES DISTRICT COURT
9	EASTERN DISTRICT OF CALIFORNIA
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12	PAUL LEHR and COLLEEN LEHR, No. 2:17-cv-1188 WBS AC
13	Plaintiffs,
14	V. <u>MEMORANDUM & ORDER RE: MOTION</u> FOR SUMMARY JUDGMENT
15	FRANK M. PERRI; PERRI ELECTRIC, INC., a California Corporation;
16	PERRI ELECTRIC INC. PROFIT SHARING PLAN; PERRI ELECTRIC
17	INC. PROFIT SHARING TRUST FUND; and DOES 1-50,
18	Defendants.
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22	Plaintiffs Paul and Colleen Lehr brought this action
23	against defendants Frank M. Perri ("Frank Jr."), Perri Electric,
24	Inc. ("Perri Electric"), Perri Electric Inc. Profit Sharing Plan,
25	Perri Electric Inc. Profit Sharing Trust Fund, 1 and Does 1-50,
26	alleging violations of the Employee Retirement Security Act of
27	¹ The court refers to the Profit Sharing Plan and the
28	Profit Sharing Trust Fund collectively as "the Plan defendants."

1 1974 ("ERISA"), 29 U.S.C. §§ § 1001 et seq. Before the court is 2 the Plan defendants' Motion to Dismiss Pursuant to Federal Rule 3 of Civil Procedure 12(b)(1) (Docket No. 91), which this court has 4 converted into a motion for summary judgment (Docket No. 101).

5 This court described much of the factual and procedural 6 background to the lawsuit in its order granting summary judgment 7 to Frank Jr. and Perri Electric. (Mem. & Order: Re Mot. for Summ. J. ("Summ. J. Order") (Docket No. 56).) There, the court 8 granted Frank Jr.'s and Perri Electric's motion on the grounds 9 10 that plaintiffs lacked statutory standing under ERISA. (See id. 11 at 6-13.) However, because counsel for those defendants 12 clarified that he did not represent the Plan defendants, the 13 court limited its grant of summary judgment to Frank Jr. and 14 Perri Electric only. (Id. at 13.)

15 The Plan defendants eventually filed their own motion 16 to dismiss, though they did so after filing an answer. (Docket 17 Nos. 88, 91.) The court then converted the motion to a motion 18 for summary judgment because the motion to dismiss concerns a 19 substantive element of plaintiffs' claims and matters outside the 20 pleadings. (Docket No. 101 (citing Leeson v. Transam. Disability 21 Income Plan, 671 F.3d 969, 977 (9th Cir. 2012) ("[W]hether a 22 plaintiff has statutory standing in an ERISA action is a merits-23 based determination, not a subject matter jurisdiction issue.").)

Plaintiffs concede that the court has already determined that they do not have statutory standing under ERISA to assert their claims against Frank Jr. and Perri Electric, and they apparently concede that this determination applies equally to their claims against the Plan defendants, though they continue

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to argue they have standing. (See Pls.' Opp'n 2 (Docket No. 1 100); Pls.' Supp. Opp'n 4-6 (Docket No. 107).) The court 2 3 reaffirms its prior determination that plaintiffs do not have standing with respect to their claims against Frank Jr. and Perri 4 Electric, and finds that this determination applies equally to 5 plaintiffs' claims against the Plan defendants. (See Summ. J. 6 7 Order.) Accordingly, the court will grant summary judgment to the Plan defendants. 8

IT IS THEREFORE ORDERED that the Motion to Dismiss 9 10 brought by Perri Electric Inc. Profit Sharing Plan and Perri 11 Electric Inc. Profit Sharing Trust Fund (Docket No. 91) be, 12 and the same hereby is, converted to a motion for summary 13 judgment and is GRANTED. Plaintiffs' claims against Perri 14 Electric Inc. Profit Sharing Plan and Perri Electric Inc. Profit 15 Sharing Trust Fund are hereby DISMISSED. As all claims have now 16 been dismissed, the Clerk of Court shall enter final judgment in 17 favor of all defendants.

18 Dated: September 25, 2019

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WILLIAM B. SHUBB UNITED STATES DISTRICT JUDGE

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