

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
8 Summ. J. ("Summ. J. Order") (Docket No. 56).) There, the court
9 granted Frank Jr.'s and Perri Electric's motion on the grounds
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.").)

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

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

9 IT IS THEREFORE ORDERED that the Motion to Dismiss
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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20 WILLIAM B. SHUBB
21 UNITED STATES DISTRICT JUDGE
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