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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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 FUND, and DOES 1-50,
,
Defendants.

CIV NO. 2:17-01188 WBS GGH

ORDER RE: MOTION TO DISMISS

Plaintiffs Paul and Colleen Lehr brought this action against defendants Frank M. Perri, Perri Electric, Inc., Perri Electric Inc. Profit Sharing Plan, Perri Electric Inc. Profit Sharing Fund, and Does 1-50 alleging violations of the Employee Retirement Security act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(1)(B) and 1132(a)(3). Before the court is defendants' Frank M. Perry and Perri Electric, Inc. Motion to dismiss for failure to state a claim.

It is alleged in the complaint that Frank M. Perri was

1 the sole shareholder and executive officer of the entity
2 defendants; that Frank M. Perri acted as the authorized
3 representative of the Plan(s) and made affirmative claims on the
4 Plan(s) behalf to obtain insurance compensation and restitution
5 on behalf of the Plan(s); that Frank M. Perri did not use the
6 ERISA designated insurance and restitution proceeds for the
7 benefit of the Plan(s) or beneficiaries, but rather used them for
8 his own personal and/or business benefit, and; that Frank M.
9 Perri and his entities failed and refused to respond to questions
10 regarding the status of the Plan(s) and failed and refused to
11 provide the Plan(s) documentation to plaintiffs.

12 Because the foregoing facts are sufficient to state a
13 claim, IT IS HEREBY ORDERED that defendants' motion to dismiss
14 be, and the same hereby is, DENIED.

15 Dated: October 17, 2017



16 WILLIAM B. SHUBB
17 UNITED STATES DISTRICT JUDGE
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