

1 **II. LEGAL STANDARD**

2 Under 28 U.S.C. § 1915(e)(2), the Court must conduct a review of a complaint to
3 determine whether it “state[s] a claim on which relief may be granted,” is “frivolous or
4 malicious,” or “seek[s] monetary relief against a defendant who is immune from such relief.” If
5 the Court determines that the complaint fails to state a claim, it must be dismissed. *Id.* Leave to
6 amend may be granted to the extent that the deficiencies of the complaint can be cured by
7 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set
14 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
15 *Ashcroft v. Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
16 are accepted as true, legal conclusion are not. *Id.* at 678.

18 In determining whether a complaint states an actionable claim, the Court must accept the
19 allegations in the complaint as true, *Hosp. Bldg. Co. v. Trs. of Rex Hospital*, 425 U.S. 738, 740
20 (1976), construe pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick v.*
21 *Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor. *Jenkins*
22 *v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of pro se plaintiffs “must be held to less
23 stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342
24 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after
25 *Iqbal*).

26
27 ///
28

1 **III. PLAINTIFF’S ALLEGATIONS**

2 The Complaint concerns Plaintiff’s attempts to assist her brother, Perry Washington, in his
3 currently pending case in federal court. Plaintiff alleges that she is assisting Mr. Washington in
4 challenging the conditions of his confinement. According to the Complaint, officials at the Fresno
5 County Jail have interfered with the delivery of “US Mail between Perry Washington and the US
6 District Court.” Jail officials have also threatened and/or abused Mr. Washington to the point that
7 he is afraid to leave his cell. As a result, Plaintiff has been unable to visit Mr. Washington in jail
8 during scheduled visitation hours. Because of this, Plaintiff alleges that Mr. Washington has been
9 unable to sign legal documents that were prepared by Plaintiff. Plaintiff concludes that, without
10 injunctive relief, Mr. Washington “will be forever denied his right to due process.” (Complaint,
11 Exh. B, ECF No. 1.) She also alleges that she has invested large amounts of “cash and time” into
12 the case because of Defendants’ actions. (Complaint 2.)

13 Plaintiff’s previous complaint, in Case No. 1:14-cv-00129-AWI-SAB, similarly alleged
14 that Defendant Fresno County Sheriff had infringed upon Mr. Washington’s due process rights by
15 preventing him from receiving documents “to sue Fresno County while in jail in a in pro per
16 case.” (First Amended Complaint, Case No. 1:14-cv-00129-AWI-SAB, ECF No. 27.) Plaintiff
17 was dismissed from that case on the grounds that she did not enjoy third party standing to bring
18 claims on behalf of Perry Washington. (Order Dismissing Anthonia Washington as a Plaintiff,
19 Case No. 1:14-cv-00129-AWI-SAB, ECF No. 43.)

20 **IV. DISCUSSION**

21 As an initial matter, Plaintiff does not have standing to pursue a claim for a deprivation of
22 Mr. Washington’s due process rights. Standing examines whether a particular plaintiff has a
23 “sufficiently concrete interest in the outcome of their suit to make it a case or controversy subject
24 to a federal court’s Art. III jurisdiction” and “as a prudential matter, the plaintiff-respondents are
25 to a federal court’s Art. III jurisdiction” and “as a prudential matter, the plaintiff-respondents are
26 to a federal court’s Art. III jurisdiction” and “as a prudential matter, the plaintiff-respondents are
27 to a federal court’s Art. III jurisdiction” and “as a prudential matter, the plaintiff-respondents are
28 to a federal court’s Art. III jurisdiction” and “as a prudential matter, the plaintiff-respondents are

1 proper proponents of the particular legal rights on which they base their suit.” *Singleton v. Wulff*,
2 428 U.S. 106, 112 (1976). Courts “must hesitate before resolving a controversy, even one within
3 their constitutional power to resolve, on the basis of the rights of third persons not parties to the
4 litigation.” *Id.* at 113 (“third parties themselves usually will be the best proponents of their own
5 rights”).

6
7 As Plaintiff was informed in her prior case, a plaintiff may only seek relief for third
8 persons if: (1) the plaintiff suffered an injury in fact; (2) there is a close relationship between the
9 plaintiff and the individual who possesses the right that the litigant is asserting; and (3) there is a
10 hindrance to the third party’s ability to assert his own rights. *Coalition of Clergy, Lawyers, and*
11 *Professionals v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002) (“a litigant may assert only his own
12 legal rights and interests and cannot rest a claim to relief on the legal rights or interests of third
13 parties”).

14
15 Even assuming Plaintiff has suffered an injury in fact here, she cannot establish that she
16 enjoyed the kind of “close relationship” to Mr. Washington that third party standing requires. A
17 close relationship requires that the interests of the litigant “coincide with those” of the third party
18 “and are equally as intense.” *Wauchope v. U.S. Dep’t of State*, 985 F.2d 1407, 1411 (9th Cir.
19 1993). Thus, a legal relationship (such as one that implies a legal duty) may be sufficient, while a
20 familial relationship may not. *See, e.g., Griswold v. Connecticut*, 381 U.S. 479 (1965) (doctor-
21 patient relationship sufficiently close to justify third party standing); *McCollum v. Cal. Dep’t of*
22 *Corrs. & Rehab.*, 647 F.3d 870, 879 (9th Cir. 2011) (“the relationship between a prison chaplain
23 and an inmate to whom he ministers has the requisite degree of closeness to allow for third party
24 standing”); *Peoples v. Davis*, No. CV 06-7366-JVS (AGR), 2008 WL 4189672, at *7 (C.D. Cal.
25 Aug. 8, 2008) (no third party standing where plaintiff sued prison officials for endangering
26 plaintiff’s family members).

1 While Plaintiff may be assisting Mr. Washington with his pending litigation, she is not his
2 lawyer and cannot represent his interests in court. *Johns v. Cnty. of San Diego*, 114 F.3d 874, 877
3 (9th Cir. 1997). Nor has she otherwise demonstrated the requisite close relationship to establish
4 third party standing. In fact, the Complaint identifies two separate interests in the case between
5 Plaintiff and Mr. Washington: while the alleged damage to Mr. Washington is an infringement on
6 his due process rights, the alleged damage to Plaintiff is the “investment in cash and time” she has
7 lost to assist Mr. Washington in his case.
8

9 Mr. Washington has also not been hindered in exercising his own rights. *McCullum*, 647
10 F.3d at 279 (“the inmates are able to assert their own rights and . . . McCollum fails the essential
11 third requirement for standing—a showing that the rights holders are impeded from asserting their
12 own claims”). Indeed, Plaintiff was dismissed from the litigation in *Perry Washington et al. v.*
13 *Fresno County Sheriff*, Case No. 1:14-cv-00129-AWI-SAB, on September 24, 2014. Despite this,
14 Mr. Washington appears to have filed no less than eight motions or requests for the court to
15 consider since that date, as well as effected service of an amended complaint on defendants (with
16 the assistance of the United States Marshal). Mr. Washington thus appears able to assert his own
17 rights, precluding a finding of third party standing for Plaintiff to pursue claims on his behalf.¹
18

19 Leave to amend cannot cure this deficiency—the failure in the Complaint is not in the
20 facts alleged; it is in the choice of Plaintiff to pursue the asserted rights. Should Mr. Washington
21 experience problems with the conditions of his confinement, he must be the party that challenges
22

23
24 ¹ To the extent that Plaintiff alleges a constitutional violation as a result of her own inability to visit Mr. Washington
25 (and she does not appear to allege any such violation—the allegations center only on the asserted inability of Mr.
26 Washington to prosecute his pending case), the Complaint fails to plausibly allege a claim. **First**, the Complaint
27 alleges that Mr. Washington is unavailable to receive visitors because he is unwilling to leave his cell, not because
28 the Defendants have denied him visitors. Mr. Washington is thus the actor preventing the visits from occurring, not
Defendants. **Second**, Plaintiff does not possess a constitutional right to visit Mr. Washington and thus cannot state a
claim under § 1983. *Egberto v. McDaniel*, No. 3:08-cv-00312-HDM-VPC, 2011 WL 1233358, at *6 (D. Nev. March
28, 2011) (“Spouses and family members of prisoners do not have rights or privileges to visitation distinct from those
of the inmate to which they are married or related”); *Hill v. Wash. State Dep’t of Corrs.*, 628 F.Supp.2d 1250, 1262
(W.D. Wash. 2009) (“Neither prisoners nor visitors have a constitutional right to prison visitation”).

1 those conditions (as he apparently has done in his pending case). There is no amendment to the
2 Complaint that can remedy these deficiencies.

3 **V. RECOMMENDATION**

4 For the reasons set forth above, the Court finds that the Complaint fails to state a claim
5 under 28 U.S.C. § 1915(e)(2). Accordingly, it is recommended that the Complaint be
6 DISMISSED WITHOUT LEAVE TO AMEND.
7

8 These findings and recommendations will be submitted to the District Judge assigned to
9 this case pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after
10 being served with these Findings and Recommendations, Plaintiff may file written objections
11 with the Court. The document should be captioned “Objections to Magistrate Judge's Findings
12 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
13 time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th
14 Cir. 1991).
15

16
17 IT IS SO ORDERED.

18 Dated: June 24, 2015

/s/ Gary S. Austin
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25
26
27
28