## 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 TONY LESSIE, No. 1:19-cv-01637-DAD-SKO (PC) 12 Plaintiff. 13 v. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING 14 MARIO LOZANO, Correctional Officer at **ACTION** Kern Valley State Prison, 15 (Doc. No. 10) Defendant. 16 17 18 Plaintiff Tony Lessie is a state prisoner proceeding pro se and in forma pauperis in this 19 civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate 20 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On March 6, 2020, the assigned magistrate judge issued findings and recommendations, 22 recommending that this action be dismissed due to plaintiff's lack of standing. (Doc. No. 10.) 23 The magistrate judge concluded that plaintiff did not assert any violation of his own rights in his 24 complaint, but, rather, alleged that the constitutional rights of his wife had been violated while attempting to visit him, despite not alleging facts sufficient to make the requisite showing for 25 26 third-party standing. (Id. at 2–3.) The findings and recommendations were served on plaintiff 27 and contained notice that any objections thereto were to be filed within twenty-one (21) days of 28 service. (*Id.*) On April 1, 2020, plaintiff filed timely objections. (Doc. No. 11.)

1	In his objections, plaintiff contends that "a habeas petitioner may demonstrate standing as
2	a 'next friend' of the real party in interest." (Id. at 1 (citing Whitmore v. Arkansas, 495 U.S. 149,
3	160–62 (1990)).) <sup>1</sup> However, a petitioner seeking standing as a "next friend" must, among other
4	things, demonstrate that the real party in interest cannot appear on its own behalf to prosecute the
5	action. See Whitmore, 495 U.S. at 163-64. Here, plaintiff failed to respond to the magistrate
6	judge's finding that he failed to "show any hindrance to his wife's ability to prosecute her own
7	lawsuit." (Doc. No. 10 at 3.) Simply being married does not automatically entitle a spouse to
8	"next friend" standing. See, e.g., DiPietro v. Senula, No. 1:12-cv-0189-NLH, 2012 WL 136812,
9	at *2 (D.N.J. Jan. 18, 2012) (holding that a wife does not have standing in her own right to file a
10	habeas petition for her husband) (citing <i>Amato v. Wilentz</i> , 952 F.2d 742, 751 (3d Cir. 1991) and
11	Whitmore, 495 U.S. at 163–64).
12	In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
13	de novo review of this case. Having carefully reviewed the entire file, including plaintiff's
14	objections, the court concludes that the findings and recommendations are supported by the
15	record and proper analysis.
16	Accordingly,
17	1. The findings and recommendations filed on March 6, 2020 (Doc. No. 10) are
18	adopted in full;
19	2. This action is dismissed without prejudice due to plaintiff's lack of standing to
20	prosecute this action on behalf of his spouse; and
21	3. The Clerk of the Court is directed to close this case.
22	IT IS SO ORDERED.
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24	Dated: April 28, 2020 UNITED STATES DISTRICT JUDGE
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 $<sup>^{1}\,</sup>$  As noted, plaintiff has filed this civil rights action under 42 U.S.C.  $\S$  1983 and does not seek federal habeas relief.