

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a
2 de novo review of the case. Having carefully reviewed the entire file, the court finds the findings
3 and recommendations to be supported by the record and by proper analysis.

4 Under 28 U.S.C. § 1915(g)'s so-called "three strikes" provision, prisoners may be barred
5 from proceeding IFP if they, "on 3 or more prior occasions, while incarcerated or detained in any
6 facility, brought an action or appeal in a court of the United States that was dismissed on the
7 grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be
8 granted[.]" Although plaintiff does not contest that he has accumulated enough prior strike
9 dismissals to be barred under the "three strikes" provision, he contends that he qualifies for the
10 exception in that provision applicable to prisoners who face "imminent danger of serious physical
11 injury." 28 U.S.C. § 1915(g).

12 The assigned magistrate judge rejected that argument in the pending findings and
13 recommendations, concluding that plaintiff's allegations that the prison's decision to discontinue
14 treatment of his chronic medical condition caused him "excruciating pain" were belied by his
15 failure to request injunctive relief to remedy his situation.² (Doc. No. 8.)

16 Under § 1915(g), a plaintiff can proceed IFP if his complaint contains "a plausible
17 allegation that the prisoner faced 'imminent danger of serious physical injury' at the time of
18 filing." *Andrews v. Cervantes*, 493 F.3d 1047, 1053–55 (9th Cir. 2007) ("[T]he availability of the
19 exception turns on the conditions a prisoner faced at the time the complaint was filed, not at some
20 earlier or later time."). Moreover, in determining whether the exception applies in a given case,
21 the court "should not make an overly detailed inquiry into whether the allegations qualify for the
22 exception[.]" *Id.* at 1055.

23 The court acknowledges that plaintiff's initial failure to seek injunctive relief may raise
24 some doubt as to the legitimacy of his claim, particularly in light of his many prior strike
25 dismissals. But as a pro se litigant, plaintiff is entitled to liberal construal of his allegations.
26 *Andrews*, 493 F.3d at 1055 (citations omitted). This means the court should be cautious about
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28 ² In his complaint, plaintiff seeks only money damages—not injunctive relief. (Doc. No. 1 at 8.)

1 withholding IFP status merely because plaintiff requested the wrong form of relief, an oversight
2 he now appears to be attempting to correct. (See Doc. No. 9.)

3 However, plaintiff's allegation that "walking on uneven terrain causes [him] excruciating
4 pain and suffering 24 hours everyday" (Doc. No. 1 at 6) is insufficient to support an inference of
5 "imminent danger of serious physical injury." 28 U.S.C. § 1915(g); see *Fields v. Omosaiye*, No.
6 18-cv-04469-CRB (PR), 2019 WL 1755712, at *2 (N.D. Cal. Apr. 19, 2019) ("[C]hronic pain
7 generally is not enough to support an inference of imminent danger.") (citing *Fletcher v.*
8 *Sherman*, No. 1:18-cv-01317-LJO-EPG, 2018 WL 6385538, at *5 (E.D. Cal. Dec. 6, 2018)).
9 Though plaintiff's allegations of chronic pain, in conjunction with the allegation that his most
10 recent doctor improperly discontinued his medical treatment, makes this a closer call, plaintiff's
11 mere "disagree[ment] with prison medical personnel about the course or adequacy of any
12 treatment he was receiving does not establish imminent danger." *Balzarini v. Lewis*, No. 1:13-cv-
13 00820-LJO, 2015 WL 2345464, at *8 (E.D. Cal. May 14, 2015) (collecting cases).

14 Accordingly,

- 15 1. The findings and recommendations issued on May 20, 2019, (Doc. No. 8), are
16 adopted;
- 17 2. Plaintiff's application to proceed in forma pauperis, (Doc. No. 7), is denied pursuant
18 to 28 U.S.C. § 1915(g);
- 19 3. Within twenty-one (21) days from the date of service of this order, plaintiff shall pay
20 the \$400.00 filing fee in full to proceed with this action;
- 21 4. Plaintiff is forewarned that failure to comply with this order will result in the dismissal
22 of this action without prejudice to refile upon prepayment of the required filing fee;
23 and
- 24 5. The matter is referred back to the assigned magistrate for further proceedings
25 consistent with this order.

26 IT IS SO ORDERED.

27 Dated: December 18, 2019

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UNITED STATES DISTRICT JUDGE