

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

DARRELL L. JACKSON,

Plaintiff,

v.

CASE NO. 5:11-CV-414-MW-GRJ

H. FROMM,

Defendant.

**ORDER ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION**

This Court has considered the Magistrate's Report and Recommendation, ECF No. 23, filed December 27, 2012. This Court has also reviewed *de novo* Plaintiff's Objections to the Report and Recommendation , ECF No.24, filed January 10, 2013. Upon consideration,

IT IS ORDERED:

The report and recommendation is accepted and adopted as this Court's opinion with comment. While the Eleventh Circuit has not addressed the issue, consistent with the view of the Seventh, Tenth, Fourth and D.C. Circuits, this Court concludes that dismissal of less than all of a prisoner's claims in an action

does not result in a “strike” for purposes of the three strike rule under § 1915(g). As for Thomas v. Parker, 672 F.3d 1182, 1183 (10th Cir. 2012), as noted by the Magistrate, the Tenth Circuit explicitly recognized that “[b]ecause the statute refers to dismissals of ‘actions,’ as opposed to ‘claims,’ it is well established that a partial dismissal based on one of the grounds enumerated in § 1915(g) is generally not a basis for assessing a strike.” The fact that Thomas went on to address a different issue, whether the dismissal of all claims, some as frivolous and others for failure to exhaust, does not in any way undermine its more general observation regarding a partial dismissal.

SO ORDERED on January 14, 2013.

s/Mark E. Walker
United States District Judge