

Defendant has the burden of “produc[ing] evidence capable of showing that the district court dismissed the case on section 1915(g) grounds.” *Thompson v. DEA*, 492 F.3d 428, 436 (D.C. Cir. 2007). “Unexplained dismissals,” *id.* at 435, and those based on grounds not listed in

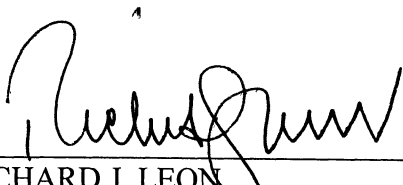
section 1915(g), do not suffice in this circuit. *See id.* at 439 (declining “to treat all section 1915A dismissals as presumptive strikes.”). Furthermore, “[i]f at least one claim within an action or appeal falls outside section 1915(g), the action or appeal does not count as a strike,” *id.* at 440, and the affirmance of a qualifying dismissal by the court of appeals does not count as a strike absent the court’s stating “that the appeal was frivolous, malicious, or failed to state a claim.” *Id.* at 436.

Under the foregoing criteria, defendant has identified just one qualifying strike. Def.’s Mot. for Reconsideration, Ex. A (*Fisher v. Casterline*, No. CV03-2231-A (W.D. La. Apr. 7, 2005) (dismissing case as frivolous). Defendant has requested in the alternative that the Court exercise its discretion “to withdraw [plaintiff’s] IFP privileges,” Def.’s Mot. for Reconsideration at 6, but he has not in any way shown that plaintiff has abused the privilege to proceed IFP. *See Thompson*, 492 F.3d at 439 (quoting *Butler v. Dep’t of Justice*, 492 F.3d 440, 446-47 (D.C. Cir. 2007)) (requiring examination of “the number, content, frequency, and disposition of [the prisoner’s] previous filings to determine if there is a pattern of abusing the IFP privilege in his litigation history”) (brackets in original). Accordingly, it is

ORDERED that defendant’s motion to reconsider the order granting plaintiff’s *in forma pauperis* motion [Dkt. # 12] is **DENIED**; and it is further

ORDERED that defendant’s motion for an enlargement of time to answer or otherwise respond to the complaint [Dkt. # 13] is **GRANTED**. Defendant shall respond to the complaint by **August 20, 2012**.

SO ORDERED.



RICHARD J. LEON
United States District Judge