

1 statement of assets, showing that he is unable to pay the required filing fee. 28 U.S.C. § 1915(a)(1).

2 Proceeding *in forma pauperis* on appeal is a privilege, however, not a right. Thus, “An appeal
3 may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good
4 faith.” 28 U.S.C. § 1915(a)(3). In the absence of some evident improper motive, the applicant’s good
5 faith is established by the presentation of any issue on appeal that is not plainly frivolous. *Farley v.*
6 *United States*, 354 U.S. 521, 522–23 (1957). Thus, the request of an indigent for leave to appeal *in*
7 *forma pauperis* may be denied only if the issues raised are so frivolous that the appeal would be
8 dismissed in the case of a nonindigent litigant. *Ellis v. United States*, 356 U.S. 674, 675 (1958) (per
9 curiam); *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977).

10 An action is frivolous for purposes of section 1915 if it lacks any arguable basis in fact or law.
11 *Neitzke v. Williams*, 490 U.S. 319, 328-30 (1989). A complaint or appeal lacks an arguable basis in
12 law only if controlling authority requires a finding that the facts alleged fail to establish even an
13 “arguable legal claim.” *Guti v. INS*, 908 F.2d 495, 496 (9th Cir. 1990) (citation omitted). While the
14 facts alleged should generally be accepted as true, clearly baseless, “fanciful,” “fantastic” or
15 “delusional” factual contentions may be dismissed as frivolous under section 1915. *Denton v.*
16 *Hernandez*, 504 U.S. 25, 32 (1992).

17 Here, Appellant’s change of venue motions and recusal are so clearly without an arguable basis
18 in fact or law that no reasonable person could suppose that an appeal of the Court’s rulings would have
19 merit. And the Court dismissed Appellant’s third amended complaint as frivolous, concluding that
20 the complaint’s allegations “rise to the level of the wholly irrational or wholly incredible.” (Doc. No.
21 101 (quoting *Denton*, 504 U.S. at 33).)

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