

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**RAYMOND SCHWAB, et al.,**

**Plaintiffs,**

**v.**

**STATE OF KANSAS, et al.,**

**Defendants.**

**Case No. 16-CV-4033-DDC-KGS**

**MEMORANDUM AND ORDER**

Plaintiffs have filed a Notice of Interlocutory Appeal. Doc. 212. Plaintiffs also ask the court for leave to appeal in forma pauperis. Doc. 214. Leave to appeal in forma pauperis is not a matter of right. *Coppedge v. United States*, 369 U.S. 438, 447–48 (1962). Under 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” Federal Rule of Appellate Procedure 24(a)(3)(A) and 28 U.S.C. § 753(f) include similar language. An appeal is taken in “good faith” if the issues on appeal are not “frivolous” and the appellant has “a rational argument on the law or facts.” *Coppedge*, 369 U.S. at 448. Whether a particular appeal meets this standard is determined under an objective standard. *Id.* at 445.

An appeal is not taken in good faith when “the order sought to be reviewed is not appealable.” *Javor v. Brown*, 295 F.2d 60, 61 (9th Cir. 1961); *see also Braun v. Stotts*, No. 93-3118-GTV, 1995 WL 351415, at \*1 (D. Kan. May 24, 1995) (concluding that an appeal was not taken in good faith because the order from which plaintiff appealed was not a final order). Here, plaintiffs have appealed a Memorandum and Order (Doc. 210), that disposed of some, but not all of plaintiffs’ claims. It is not a final order, and thus not appealable. *See* 28 U.S.C. §§ 1291,

1292. Under the governing legal standard, plaintiffs have not appealed in good faith. The court thus denies their Motion for Leave to File an Appeal in forma pauperis.

**IT IS THEREFORE ORDERED BY THE COURT THAT** plaintiffs' Motion for Leave to Appeal in forma pauperis (Doc. 214) is denied.

**Dated this 31st day of July, 2017, at Topeka, Kansas.**

**s/ Daniel D. Crabtree**  
**Daniel D. Crabtree**  
**United States District Judge**