IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

RAYMOND SCHWAB, et al.,

      Plaintiffs,

      v.

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

STATE OF KANSAS, et al.,

      Defendants.

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.

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

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