



1 hospital. Id. at 5.

2 After his arrival at the jail, Plaintiff complained to Officer Schulthiess that Tran had ignored  
3 his injuries. (Doc. 14 at 6) As a result, Schulthiess took Plaintiff to a local hospital. Id. At the  
4 hospital, Plaintiff complained—not about his obvious injuries—but of a migraine headache and high  
5 blood pressure. Id. This resulted in the nurse referring him to a doctor. Id. The doctor conducted a  
6 “quick examination” and ordered a CT scan. Id. at 6-7. However, the doctor notified Schulthiess and  
7 Plaintiff a few minutes later that, because the CT machine was broken, the scan would be delayed six  
8 to eight hours. Id. at 7. Thus, though Schulthiess obtained the prescription provided by the doctor, he  
9 decided not to wait for the scan and transported Plaintiff to jail in Bakersfield, California. Id.

10 When he arrived at the jail in Bakersfield, Schulthiess told the jailers that Plaintiff had already  
11 received medical clearance. (Doc. 14 at 8) Plaintiff disputed this with the jailer—Officer Doe—and,  
12 though Plaintiff claims Officer Doe denied his request for medical treatment, he admits the Officer  
13 Doe took him to the nurse for a medical exam. Id. at 8. The nurse determined, apparently, that no  
14 additional treatment was needed and Plaintiff did not receive “diagnostic dental x-rays” until he  
15 arrived at Wasco State Prison about a month later. Id. at 8. They revealed Plaintiff had two broken  
16 teeth that medical professionals extracted. Id.

17 The Court determined that Plaintiff identified a serious medical need because the doctor  
18 deemed that treatment was needed as indicated by ordering the CT scan.<sup>1</sup> However, Plaintiff did not  
19 allege facts sufficient to demonstrate Defendants demonstrated deliberate indifference to the medical  
20 need. Notably, Tran was aware only of the injuries that were obvious—the black eyes and cut lips;  
21 Plaintiff does not contend he told Tran about his headache, high blood pressure or broken teeth.  
22 Notably, Plaintiff told Tran that he suffered the injuries the day before and had not obtained medical  
23 treatment on his own. Plaintiff did not allege that any medical professional determined at any time  
24 that his facial injuries were worthy of treatment. A month later, doctors discovered Plaintiff’s broken  
25 teeth and extracted them. Thus, the Court concluded Plaintiff failed to state a claim against Tran.

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<sup>1</sup> Notably, it appears there was a difference of opinion as to whether Plaintiff needed a CT scan given the fact that the nurse at the jail did not order one or refer Plaintiff to a doctor for further examination. However, the Court deferred to the pleading and Plaintiff adequately pleaded that he suffered a serious medical condition.

1           Though Schulthiess was aware Plaintiff suffered a serious medical need—due to the doctor  
2 ordering the CT scan—the doctor’s determination that Plaintiff could wait six to eight hours for the  
3 scan undermined that there was an imminent need for it. Moreover, Plaintiff failed to allege any facts  
4 to support that he suffered any harm from the failure to obtain the CT scan. Indeed, though he  
5 received additional medical treatment at Wasco State Prison, there is no allegation that he received a  
6 CT scan at that time or at any time. Rather, it appears that the medical exam at the jail revealed that  
7 there was a difference of opinion as to whether Plaintiff needed a CT scan, given the jail nurse did not  
8 order one or refer Plaintiff to a doctor. Thus, the Court concluded Plaintiff failed to state a claim  
9 against Schulthiess.

10           Finally, the Court determined Plaintiff failed to state a claim against Officer Doe. Though  
11 Plaintiff claimed that Doe denied him medical care, he admits that Doe took him to the facility’s nurse  
12 for a medical examination. Though Officer Doe did not take Plaintiff to a doctor as Plaintiff  
13 requested, this is insufficient to demonstrate Doe was deliberately indifferent to Plaintiff’s serious  
14 medical condition.

15           Notably, the Court previously dismissed Plaintiff’s original complaint with leave to amend  
16 (Doc. 12). In doing so, the Court provided Plaintiff all of the relevant pleading standards and  
17 instructed him on the insufficiencies of the complaint. The Court noted that Plaintiff had failed to  
18 allege facts that demonstrated Tran was aware of the serious medical conditions—the migraine  
19 headache and the high blood pressure. Likewise, the Court noted that Plaintiff failed to demonstrate  
20 that he was in imminent need of medical treatment or that he suffered any harm caused by the failure  
21 to undergo the CT scan before being booked into jail in Bakersfield. Finally, the Court noted that  
22 Officer Doe *did* provide him medical treatment, through the jail nurse, and there was no showing that  
23 this medical attention was constitutionally insufficient. Despite this, when he filed his first amended  
24 complaint, Plaintiff did not correct *any* of these factual deficiencies. Thus, the Court had no option but  
25 to conclude that Plaintiff could not allege in good faith sufficient facts to support the claim.

26           “An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not  
27 taken in good faith.” 28 U.S.C. § 1915(a)(3). The test for allowing an appeal in forma pauperis is  
28 easily met; the good faith requirement is satisfied if the appellant seeks review of any issue that is not

1 frivolous. *Gardner v. Pogue*, 558 F.2d 548, 550-51 (9th Cir. 1977) (citing *Coppedge v. United States*,  
2 369 U.S. 438, 445, 82 S.Ct. 917 (1962)) (quotation marks omitted); *see also Hooker v. American*  
3 *Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (if at least one issue or claim is non-frivolous, the appeal  
4 must proceed in forma pauperis as a whole).

5 Based upon the foregoing, the Court finds the appeal from the dismissal of the action lacks an  
6 arguable basis either in law or in fact and is not taken in good faith.

7 Accordingly, it is **HEREBY ORDERED** that:

8 1. The Court certifies that Plaintiff's appeal is not taken in good faith and Plaintiff's in  
9 forma pauperis status is **REVOKED**;

10 2. The Clerk of the Court is directed to forward a copy of this order to the Ninth Circuit  
11 Court of Appeals.

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13 IT IS SO ORDERED.

14 Dated: December 4, 2015

/s/ Jennifer L. Thurston  
15 UNITED STATES MAGISTRATE JUDGE