

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

David Wesley Birrell, aka Bella-Christina Birrell v. Michele DiTomas,
et al.

Birrell v. DiTomas · No. 2:22-cv-01528-KJM-EFB (PC) · Decided November 4, 2025

SUMMARY

The document is an order and findings and recommendations in a 42 U.S.C. § 1983 action brought by a California state prisoner against prison medical and correctional officials. The court addresses an Eighth Amendment deliberate-indifference claim arising from the temporary removal of the plaintiff’s CPAP machine during the COVID-19 pandemic and concludes that defendants’ motion for summary judgment should be granted. The court also directs the Clerk to file the plaintiff’s complete deposition transcript on the public docket.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Edmund F. Brennan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 4, 2025
DOCKET	2:22-cv-01528-KJM-EFB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding without counsel brought an action under 42 U.S.C. § 1983 alleging Eighth Amendment deliberate-indifference claims arising from the temporary removal of access to her CPAP machine. Defendants moved for summary judgment, and the magistrate judge issued an order and findings and recommendations recommending that the motion be granted and the case closed.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The moving party bears the initial burden of showing the absence of a genuine dispute or the opposing party's lack of evidence; the burden then shifts to the nonmoving party to identify specific admissible evidence creating a genuine dispute. Evidence and

	reasonable inferences are viewed in favor of the nonmoving party, but a party may not rely solely on pleading allegations.
PRECEDENTIAL VALUE	unpublished
PARTIES	David Wesley Birrell, aka Bella-Christina Birrell v. Michele DiTomas, Liu, Footman

TOPICS

prisoners rights

section 1983

cruel and unusual punishment

summary judgment

civil procedure

PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether defendants were deliberately indifferent under the Eighth Amendment to a serious medical need by temporarily suspending plaintiff's CPAP access during a COVID-19 outbreak.
2. Whether defendant DiTomas's medical assessment and participation in the CPAP suspension constituted deliberate indifference.
3. Whether defendant Liu was deliberately indifferent by communicating and implementing the medical decision without personally making the suspension decision.
4. Whether defendant Footman was deliberately indifferent by removing the CPAP power cord in reliance on medical professionals' directive.
5. Whether defendants were entitled to qualified immunity.

HOLDINGS

1. Even assuming for purposes of the motion that plaintiff's sleep apnea constituted a serious medical need, the record did not show that any defendant acted with deliberate indifference by temporarily suspending CPAP access during the COVID-19 outbreak.
2. DiTomas was entitled to summary judgment because plaintiff failed to show that DiTomas's decision to suspend CPAP access was medically unacceptable under the circumstances or made in conscious disregard of an excessive risk to plaintiff's health.
3. Liu was entitled to summary judgment because she did not make the decision to suspend CPAP access and plaintiff failed to show that Liu knew the implementation of the medical directive created a substantial risk of serious harm.
4. Footman was entitled to summary judgment because she reasonably relied on the judgments and directive of medical professionals when implementing the CPAP suspension and plaintiff presented no evidence that Footman had medical expertise or personal knowledge of plaintiff's medical condition.

5. The defendants appeared entitled to qualified immunity because plaintiff could not show a clearly established right to continued CPAP use during a prison-wide COVID-19 outbreak after individualized medical professionals determined that her need did not outweigh the contagion risk.

KEY QUOTATIONS

“Summary judgment is appropriate when the moving party “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 9)

“To succeed on an Eighth Amendment claim predicated on deliberate indifference to medical need, a plaintiff must establish that: (1) she had a serious medical need; and (2) the defendant’s response to that need was deliberately indifferent.” (at 11)

“Rather, to prevail on a claim involving choices of treatment, a prisoner must show that the chosen course of treatment ‘was medically unacceptable under the circumstances,’ and was chosen ‘in conscious disregard of an excessive risk to [the prisoner’s] health.’” (at 12)

“It is generally reasonable for correctional officers to rely on the judgments of medical professionals, including nurses or other members of the prison medical staff.” (at 16)

FACTUAL BACKGROUND

Plaintiff, a California state prisoner with a CPAP prescription for sleep apnea, alleged that defendants temporarily removed her CPAP power cord from December 13, 2020, through February 18, 2021, during a prison-wide COVID-19 outbreak. A California Correctional Health Care Services memorandum recommended discontinuing CPAP for most patients during the pandemic because of aerosolized-virus risks, while allowing exceptions for patients with severe sleep apnea and specified comorbidities. Medical personnel determined that plaintiff had mild sleep apnea and no qualifying heightened-risk factors, and correctional staff removed the cord pursuant to the medical directive. Plaintiff later reported disturbed sleep and gasping and the cord was returned on a medical chief’s instruction.

PROCEDURAL HISTORY

Plaintiff filed a prisoner civil-rights action against prison medical and correctional officials. Defendants moved for summary judgment, and plaintiff did not respond despite receiving five extensions of time. After reviewing the complete record, including plaintiff’s deposition transcript and defendants’ evidence, the magistrate judge ordered the transcript filed on the public docket and recommended that the assigned district judge grant summary judgment for defendants under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-325 (1986)

- *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)
- *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630-631 (9th Cir. 1987)
- *Wool v. Tandem Computers, Inc.*, 818 F.2d 1433, 1436 (9th Cir. 1987)
- *Walls v. Central Costa County Transit Auth.*, 653 F.3d 963, 966 (9th Cir. 2011)
- *Richards v. Nielsen Freight Lines*, 602 F. Supp. 1224, 1244-1245 (E.D. Cal. 1985), *aff’d*, 810 F.2d 898, 902 (9th Cir. 1987)
- *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006)
- *Estelle v. Gamble*, 429 U.S. 97, 105-106 (1976)
- *Farmer v. Brennan*, 511 U.S. 825, 847 (1994)
- *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992)
- *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988)
- *Ortiz v. City of Imperial*, 884 F.2d 1312, 1314 (9th Cir. 1989)
- *Broughton v. Cutter Laboratories*, 622 F.2d 4548, 460 (9th Cir. 1980)
- *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004)
- *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996)
- *Shapley*, 766 F.2d at 407
- *Pettigrew v. Shelby County Corr. Ctr. Warden*, No. 22-1101-SHM-tmp, 2023 WL 2724242, at *8 (W.D. Tenn. Mar. 30, 2023)
- *Lee v. Sewell*, 159 F. App’x 419, 421 n.3 (3d Cir. 2005)
- *Pullano v. Brammer*, 684 F. App’x 643, 644 (9th Cir. Mar. 21, 2017)
- *Fitts v. California Corrections Healthcare*, No. 5:22-cv-1935, 2024 WL 4933583, at *2, *5-*6 (C.D. Cal. Sept. 27, 2024)
- *Cox v. Daram*, No. 2:20-cv-1295 KJM DB P, 2021 WL 3662392, at *8 (E.D. Cal. Aug. 18, 2021)
- *Barbic v. Chirinos*, No. 2:20-cv-7071-FLA-JC, 2024 WL 3542573, at *7 (C.D. Cal. June 4, 2024)
- *King v. Kramer*, 680 F.3d 1013, 1018 (7th Cir. 2012)
- *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)
- *Ashcroft v. al-Kidd*, 563 U.S. 731, 735, 743 (2011)
- *Kisela v. Hughes*, 540 U.S. 100, 104-105 (2018)
- *Villanueva v. California*, 986 F.3d 1158, 1165 (9th Cir. 2021)
- *Wesby v. District of Columbia*, 583 U.S. 48, 64 (2018)
- *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021)
- *Hamby v. Hammond*, 821 F.3d 1085, 1095 (9th Cir. 2016)
- *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)
- *United States v. Lanier*, 520 U.S. 259, 271 (1997)
- *Morales v. Fry*, 873 F.3d 817, 819 (9th Cir. 2017)
- *Bird v. Dzurenda*, 131 F.4th 787, 790 (9th Cir. 2025)

- **Martinez v. Yist**, 951 F.2d 1153 (9th Cir. 1991)

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