

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Scher v. Cohen Fashion Optical, LLC

Scher · No. 2:25-cv-06071-JMW · Decided January 9, 2026

SUMMARY

The United States District Court for the Eastern District of New York grants an unopposed motion to consolidate five related data-breach class actions involving Cohen Fashion Optical, LLC. The court designates Scher v. Cohen Fashion Optical, LLC as the lead case, establishes the consolidated action under the title In re: Cohen Fashion Optical Data Incident Litigation, and appoints Gary Klinger and Adam M. Harris as interim co-lead class counsel.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	James M. Wicks
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	January 9, 2026
DOCKET	2:25-cv-06071-JMW
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs in five related putative data-breach class actions jointly moved under Federal Rule of Civil Procedure 42(a) to consolidate the actions and under Rule 23(g)(3) to appoint interim co-lead class counsel. The motion was unopposed, and the court granted it by memorandum and order.
STANDARD OF REVIEW	The court applied the discretionary standards governing consolidation under Federal Rule of Civil Procedure 42(a) and appointment of interim class counsel under Rule 23(g)(3), considering common questions, judicial economy, avoidance of inconsistent rulings, fairness, and counsel's qualifications and ability to protect the putative class.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; persuasive but not precedential outside the case
PARTIES	Wendy Scher, individually and on behalf of all others similarly situated, Denise Augenblick, Malcolm Hall, Laura Aiello, Efren

TOPICS

class actions joinder civil procedure pleadings

PRACTICE AREAS

Civil procedure Class actions Data breach litigation Consumer privacy

QUESTIONS PRESENTED

1. Whether the five related data-breach actions should be consolidated under Federal Rule of Civil Procedure 42(a).
2. Whether Gary Klinger and Adam M. Harris should be appointed interim co-lead class counsel under Federal Rule of Civil Procedure 23(g)(3).
3. Whether the applications for consolidation and interim counsel constituted nondispositive matters that could be resolved by memorandum and order rather than report and recommendation.

HOLDINGS

1. The five actions should be consolidated because they involve overlapping factual and legal issues arising from the same alleged data breach, and consolidation will promote judicial economy, coordinate discovery, and reduce the risk of inconsistent rulings without creating unfairness or prejudice.
2. Gary M. Klinger of Milberg, PLLC and Adam M. Harris of Israel David LLC should be appointed interim co-lead class counsel because appointment is necessary in the consolidated, overlapping litigation and the proposed counsel satisfy the applicable Rule 23(g) qualifications and adequacy factors.
3. The applications for consolidation and appointment of interim class counsel constituted nondispositive relief, so the magistrate judge could resolve them by memorandum and order rather than report and recommendation.

KEY QUOTATIONS

“For the reasons that follow, the unopposed Motion to Consolidate Cases and Appoint Interim Class Counsel (ECF No. 15) is GRANTED.” (at 2)

“Accordingly, the Motion to Consolidate is granted and the instant action is deemed as the lead case.” (at 5)

“Accordingly, Mr. Klinger and Mr. Harris are appointed as Interim Co-Lead Counsel.” (at 8)

FACTUAL BACKGROUND

Plaintiffs allege that a cyberattack involving Cohen Fashion Optical compromised personally identifiable information and protected health information of current and former customers. Four additional putative class actions were filed concerning the same data breach. The five plaintiffs and Defendant sought consolidation, with

Scher designated as the lead case, and plaintiffs sought appointment of Gary Klinger and Adam M. Harris as interim co-lead class counsel.

PROCEDURAL HISTORY

The Scher action and four related actions were filed in the Eastern District of New York after an alleged cyberattack involving Cohen Fashion Optical customer information. Plaintiffs sought consolidation for judicial economy and appointment of interim class counsel; Defendant took no position. The court consolidated the five actions under the title In Re: Cohen Fashion Optical Data Incident Litigation, designated Scher as the lead case, administratively closed the other actions, and appointed Gary Klinger and Adam M. Harris as interim co-lead class counsel.

DISPOSITION

other

CASES CITED

- Stewart v. Prac. Res., LLC, No. 22-CV-0905 (LEK)(DJS), 2022 WL 17155996, at *2 (N.D.N.Y. Nov. 22, 2022)
- Johnson v. Celotex Corp., 899 F.2d 1281, 1284 (2d Cir. 1990)
- Mogull v. Pete & Gerry's Organics, LLC, No. 21 CV 3521 (VB), 2022 WL 4661454, at *1 (S.D.N.Y. Sept. 30, 2022)
- Sullivan v. Barclays PLC, No. 13-CV-2811 (PKC), 2013 WL 2933480, at *1 (S.D.N.Y. June 11, 2013)
- In re Parking Heaters Memorandum Antitrust Litig., 310 F.R.D. 54, 57 (E.D.N.Y. 2015)
- McChesney v. Hogan, No. 08-CV-1186 (NAM)(DE), 2009 WL 607398, at *2 (N.D.N.Y. Mar. 9, 2009)
- Wilson v. Gen. Mills, Inc., No. 08-CV-00597 (JJM), 2009 WL 10681447, at *1 (W.D.N.Y. July 6, 2009)
- In re Synergy Pharms. Inc. Sec. Litig., No. 18-CV-873 (AMD)(VMS), 2020 WL 5763830, at *2 (E.D.N.Y. Sept. 28, 2020)
- Steiner v. UiPath, Inc., No. 24-CV-04702 (JPC)(SDA), 2024 WL 4054373, at *1 n.2 (S.D.N.Y. Sept. 5, 2024)
- Brown v. Whitley, No. 21-CV-2933 (AMD)(CLP), 2022 WL 21781441, at *8 (E.D.N.Y. Oct. 4, 2022)
- Toussie v. County of Suffolk, No. CV 01-CV-6716 (JS)(ARL), 2007 WL 1490463, at *1 (E.D.N.Y. May 21, 2007)
- Shiloah v. GEICO Indem. Co., No. 24-CV-06447 (EAW)(CDH), 2025 WL 2314761, at *2 (W.D.N.Y. Aug. 12, 2025)
- Melville v. HOP Energy, LLC, No. 21-CV-10406, 2024 WL 2240280, at *2 (S.D.N.Y. May 17, 2024)
- Estate of Sherlip v. Morgan Stanley, No. 24-CV-4571 (VEC), 2025 WL 2097872, at *2 (S.D.N.Y. July 25, 2025)
- In re Bank of Am. Corp. Sec., Derivative & ERISA Litig., 258 F.R.D. 260, 271-72 (S.D.N.Y. 2009)
- Bitzko v. Weltman, Weinberg, & Reis Co., LPA, No. 17-CV-458 (BKS)(DJS), 2018 WL 10593815, at *1 (N.D.N.Y. May 18, 2018)

- In re: Int. Rate Swaps Antitrust Litig., No. 16-MC-2704 (PAE), 2016 WL 4131846, at *3 (S.D.N.Y. Aug. 3, 2016)
- Delre v. Perry, 288 F.R.D. 241, 247 (E.D.N.Y. 2012)
- Buonasera v. Honest Co., Inc., 318 F.R.D. 17, 18 (S.D.N.Y. 2016)

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