

**IN THE DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

NICHOLAS FIORELLI
3834 North Broadlawn Circle
Cincinnati, OH 45236

**On his own behalf and for all others
similarly situated,**

Plaintiffs,

VS.

COLUMBUS OUTLETS, LLC
400 S. Wilson Road
Sunbury, OH 43074

**TANGER FACTORY OUTLET
CENTERS, INC.**
3200 Northline Avenue, Suite 360
Greensboro, NC 27408

BROOKS BROTHERS GROUP, INC.
c/o Corporation Service Company
80 State Street
Albany, New York, 12207

Defendants.

CASE NO.:

JUDGE

CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiff Nicholas Fiorelli brings this complaint against Defendants on behalf of himself and a class of all other similarly situated consumers.

2. Defendants improperly collected fees from Plaintiff and other consumers, without disclosing that these fees would be added to the purchase price. This conduct occurred at the Tanger Outlet in Sunbury, Ohio at various retail stores. Defendants charged Plaintiff and the putative class additional fees (“NCA Charge”), but never told consumers that their purchases would be subject to these fees. Under these circumstances, Defendants were unjustly enriched.

PARTIES AND RELATIONSHIPS

3. Plaintiff Nicholas Fiorelli is an individual who resides in the State of Ohio, Hamilton County, and made a purchase at Brooks Brothers in the Tanger Outlet shopping center during the applicable class period.

4. Defendant Columbus Outlets, LLC (“Defendant Owner”) is a Delaware limited liability company with its principal place of business being Columbus, Ohio.

5. Defendant Tanger Factory Outlet Centers, Inc. (“Tanger Outlet”) is a real estate investment trust headquartered in Greensboro, North Carolina.

6. Defendant Owner owns and operates the Tanger Outlet in Sunbury, Ohio.

7. Defendant Owner leases space to Brooks Brothers Group, Inc. (“Brooks Brothers”) and other retailers at the Tanger Outlet.

8. Defendant Brooks Brothers is a New York Corporation with brick and mortar stores across Ohio, including at the Tanger Outlet in Sunbury, Ohio.

9. Defendant Brooks Brothers’ principal place of business and corporate headquarters is New York, New York.

JURISDICTION & VENUE

10. This Court has jurisdiction under the Class Action Fairness Act, 28 U.S.C. 1332(d) because: (a) minimal diversity exists in that the named Plaintiff is a citizen of Ohio and Defendant Brooks Brothers is headquartered in New York and Defendant Tanger Outlet is headquartered in North Carolina; and (b) upon information and belief, the matter exceeds the sum of \$5,000,000 exclusive of interest and costs.

11. Venue is appropriate in this Court as the events giving rise to Plaintiff’s claim occurred in Sunbury, Ohio, which is located within this District.

FACTS

Plaintiff's transactions

12. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

13. On February 21, 2019, Plaintiff visited Defendant Brooks Brothers' store at 400 S. Wilson Road, Tanger Outlet, Sunbury, Ohio 43074.

14. Nowhere in the Brooks Brothers store was there a disclosure that purchases would be subject to a fee.

15. Nowhere in the Tanger Outlet mall was there a disclosure that purchases would be subject to a fee.

16. Although no fee was disclosed to Plaintiff prior to his purchase, Defendants charged him a fee of \$.76, which was labeled "NCA Charges".

17. As this charge was not disclosed by Defendants anywhere in or around the stores or Tanger Outlet, Plaintiff was unaware of the NCA charges.

Defendants' collection of the NCA charges

18. The following facts are alleged based on information and belief; however, discovery will confirm the practices alleged and Plaintiff reserves the right to amend the allegations to conform to the evidence.

19. Defendant Owner is required to pay a monthly remittance to a "Community Authority" entity based on a percentage of retail sales at the retail stores (including Brooks Brothers) at the Tanger Outlet.

20. To meet this financial obligation, rather than paying this obligation directly, Defendant Owner requires certain retailers, including Defendant Brooks Brothers, acting as Defendant Owner's agents, to collect and remit an NCA Charge on transactions in the retail store.

21. Defendant Owner then uses the NCA charges collected from Plaintiff and other consumers to meet their financial obligations to the Community Authority.

22. In other words, Defendant Owner charges Plaintiff and other consumers the NCA charges, through Brooks Brothers and other retailers, and retains and uses these charges to its own benefit to satisfy its financial obligations to third parties.

23. Upon information and belief, by the lease it has entered into with Owner, Defendant Brooks Brothers is required to charge consumers these NCA charges.

24. Alternatively, Brooks Brothers is charging and retaining these monies for its own benefit, and not remitting the fees.

25. As reflected in the alternative claims pleaded below, discovery will reveal and confirm the practices alleged, and Plaintiff reserves the right to amend the allegations to conform to the evidence.

CLASS ALLEGATIONS

26. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

27. Plaintiff brings this action on behalf of two classes:

- a. As against Defendant Owners: all persons who, at any time during the statute of limitations, made a purchase from any of the retail stores located within Tanger Outlet in Sunbury, Ohio and were charged an undisclosed fee.

- b. As against Defendant Brooks Brothers: all persons who, at any time during the statute of limitations, made a purchase from Brooks Brothers at the Tanger Outlet in Sunbury, Ohio and were charged an undisclosed fee.

28. This action is brought, and may properly be maintained, as a class action under Rule of Civil Procedure 23. The proposed class satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

29. Each proposed class numbers over 100 persons. The class is so numerous that joinder of all members is impracticable. And, it is impracticable to bring all such persons before this Court.

30. The injuries and damages to the class members in each class present common questions of law and fact, including:

- a. Whether Defendants disclosed to consumers the existence of the NCA Charge (or another charge by a similar name) on retail sales purchases;
- b. Whether failure to disclose the NCA charge (or another charge by a similar name) was unjust;
- c. Whether Defendant Owner was unjustly enriched in receiving the monies from the NCA charges (or charges by a similar name) that were not disclosed;
- d. Whether Defendant Brooks Brothers was unjustly enriched when it received the monies from the NCA charges (or charges by a similar name) that were not disclosed;
- e. Whether the class members are entitled to restitution for and/or disgorgement of the undisclosed charges collected by Defendant(s).

31. Defendants have engaged in the same conduct with respect to all the class members.

32. The named Plaintiff's claims, defenses, and injuries are typical of the claims, defenses, and injuries of all of the class members.

33. The named Plaintiff will fully and adequately protect and represent the interests of the class members.

34. The identity of the class members cannot be determined at this time, but will be determined at a later time.

35. The prosecution of separate actions by each class member would create a substantial risk of inconsistent or varying adjudications for each individual class member that would establish incompatible standards of conduct for the Defendants.

36. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class, which, as a practical matter, would be dispositive of the interests of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect those interests.

37. The maintenance of this suit as a class action is the superior means of disposing of the common questions that predominate herein.

FIRST CLAIM FOR RELIEF
Unjust Enrichment
(against Defendant Owner)

38. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

39. Plaintiff conferred a benefit on Defendant Owner when he paid an NCA charge as part of his retail purchase.

40. Defendant Owner leases retail space to retailers such as Brooks Brothers.

41. Upon information and belief, these leases require certain retailers, including Brooks Brothers, to collect NCA charges from consumers and remit this money to Owner.

42. Retailers such as Brooks Brothers act as agents for Owner's benefit when collecting NCA charges.

43. With every NCA charge consumers paid, Defendant Owner received a financial benefit and retained that benefit.

44. Defendant Owner was aware that Plaintiff conferred a benefit on it and that it retained that benefit.

45. The balance of the equities favors the Plaintiff because this fee was undisclosed.

46. It would be unjust for Owner to retain the benefit it received from Plaintiff given that the balance of the equities favor Plaintiff.

47. Plaintiff is entitled to restitution and/or disgorgement for money in the amount of the collected charge.

48. The putative class members are similarly entitled to restitution and/or disgorgement of the collected charge.

SECOND CLAIM FOR RELIEF
Unjust Enrichment
(against Defendant Brooks Brothers)

49. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

50. This cause of action is pleaded in the alternative to the First Claim for Relief.

51. With every NCA charge consumers paid, Brooks Brothers received a financial benefit and retained that benefit.

52. Brooks Brothers was aware that Plaintiff conferred a benefit on it and that it retained that benefit.

53. The balance of the equities favors Plaintiff because Defendant advertise their merchandise at certain prices, but charged Plaintiff more because of the imposition of the NCA Charge.

54. The balance of the equities favors Plaintiff because Brooks Brothers failed to disclose the NCA charges.

55. Plaintiff is entitled to restitution and/or disgorgement for money in the amount of the collected charge.

56. The putative class members are similarly entitled to restitution and/or disgorgement of the collected charge.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

1. For an Order (a) determining at the earliest possible time that this matter may proceed as a class action under Civil Rule 23, and (b) certifying the class;
2. For restitution in the form of all NCA charges, or similar charges, collected by Defendants, and any other appropriate measure of restitution;
3. For disgorgement in equity;
4. For such other or further relief as the Court deems the Plaintiff and the class members are entitled.

Respectfully submitted,

s/Nicole T. Fiorelli

Nicole T. Fiorelli, Esq. (#0079204)

Patrick J. Perotti, Esq. (#0005481)

Frank A. Bartela, Esq. (#0088128)

Dworken & Bernstein Co., L.P.A.

60 South Park Place

Painesville, Ohio 44077

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Email: *nfiorelli@dworkenlaw.com*

pperotti@dworkenlaw.com

fbartela@dworkenlaw.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Fiorelli, Nicholas</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Dworken & Bernstein Co., L.P.A. 60 S. Park Place Painesville, OH 44077</p>	<p>DEFENDANTS Columbus Outlets, LLC Tanger Factory Outlet Centers, Inc. Brooks Brothers</p> <p>County of Residence of First Listed Defendant <u>Delaware</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;"></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: left;"></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. 1332

Brief description of cause:
Unjust enrichment

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 5,000,001.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
 JUDGE _____
 DOCKET NUMBER _____

DATE 11/27/2019
 SIGNATURE OF ATTORNEY OF RECORD
s/Nicole T. Fiorelli

FOR OFFICE USE ONLY

RECEIPT # _____
 AMOUNT _____
 APPLYING IFP _____
 JUDGE _____
 MAG. JUDGE _____

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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