

Fill in this information to identify the case:

Debtor 1 Fresh Acquisitions, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 21-30721-11

E-Filed on 07/13/2021
Claim # 229

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Rachelle Kidd
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p>	<p>Where should payments to the creditor be sent? (if different)</p>
	<p><u>Brett T. Abbott</u> Name</p> <p><u>1110 N. Chinowth Street</u> Number Street</p> <p><u>Visalia</u> <u>CA</u> <u>93291</u> City State ZIP Code</p> <p>Contact phone <u>(559) 625-9600 x12</u></p> <p>Contact email <u>brett@thecalifornialawyers.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p>_____ Name</p> <p>_____ Number Street</p> <p>_____ City State ZIP Code</p> <p>Contact phone _____</p> <p>Contact email _____</p>

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 1 0 3 3

7. How much is the claim? \$ 100,000.00. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.
Wrongful termination, age and sex discrimination, unpaid breaks and wages

9. Is all or part of the claim secured? No Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff? No Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/13/2021
MM / DD / YYYY

Brett T. Abbott

Signature

Print the name of the person who is completing and signing this claim:

Name Brett T. Abbott
First name Middle name Last name

Title Attorney for Rachelle Kidd

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

Attachment 1 - Attachment to Proof of Claim.pdf

Description -

GUBLER & ABBOTT

ATTORNEYS AT LAW

BRETT T. ABBOTT
brett@thecalifornialawyers.com

LILLIAN C. MUÑOZ
lillian@thecalifornialawyers.com

E. WARREN GUBLER
Retired

1110 N. Chinowth Street • Visalia, California 93291

TEL: 559-625-9600

thecalifornialawyers.com

FAX: 559-625-9605

April 29, 2021

TAHOE JOE'S
2338 N. Loop 1604 W. #350
San Antonio, TX 78248

TAHOE JOE'S
120 Chula Vista Dr.
San Antonio, TX 78232

TAHOE JOE'S
4015 W. Caldwell Ave.
Visalia, CA 93277

Re: Mikayla Gonzales, Christine Coffman, Rachelle Kidd | Tahoe Joe's
Our File No. 21033

Dear Tahoe Joe's:

Our firm has been retained to represent Mikayla Gonzales, Christine Coffman, and Rachelle Kidd in their claims against Tahoe Joe's. The purpose of this letter is to provide background information, the facts and circumstances surrounding their claims, and outline your company's liability for the same. Please direct any further correspondence directly to our office, and please refrain from communicating with our clients directly. While this letter is lengthy, we feel it is necessary to advise you of the seriousness of this case, as well of the strength of our clients' position. We have chosen to send this demand letter prior to filing a lawsuit in order to give you the opportunity to resolve the case on an expedited and confidential basis. Be advised, however, that if we are unable to resolve this matter, our clients will immediately commence litigation against Tahoe Joe's in the Tulare County Superior Court. Our clients' claims are outlined below.

I. MIKAYLA GONZALES

Mikayla began her employment with Tahoe Joe's in or about November 2017 as a hostess. She later worked in the take-out division, then as an expeditor, and finally as a server. Mikayla has been an excellent employee who strived to do her job duties to the best of abilities. She was a dedicated worker who went above and beyond to do whatever was needed at the restaurant. Unfortunately for her, Mikayla was subjected to unlawful harassment, and was then retaliated against when she complained about it. In addition, as will be outlined below, Mikayla was forced to work in an unsanitary and unsafe workplace, for which she made additional complaints. Unfortunately, nothing was done to resolve these complaints, and Mikayla suffered additional retaliation and harassment because of her complaints.

Sexual Harassment

In late 2019, Mikayla was repeatedly sexually harassed by a coworker named Nathan. The sexual harassment took the form of inappropriate sexual comments as well as unlawful touching. Mikayla has informed us that Nathan would routinely make sexual comments about Mikayla's body, telling her on numerous occasions that he "wanted to see [her] boobies." Nathan also talked repeatedly about wanting to "have a threesome" with Mikayla. An employee named Mireya overheard Nathan's sexual harassment of Mikayla.

In addition to harassing Mikayla directly, Nathan had a habit of posting inappropriate sexual comments on Tahoe Joe's official employee Facebook group. Attached hereto as Exhibit 1 is just a sample of some of the sexually explicit language that Nathan would post on the company's official employee Facebook page.

Nathan's sexual harassment also took the form of unlawful touching. Mikayla has informed us that on more than one occasion, Nathan intentionally rubbed his crotch on Mikayla's body.

Mikayla, knowing that such conduct was illegal and was completely inappropriate for the workplace, complained to Morgan Herron and Sierra Wilber (both Manager Assistants), who later reported the incident to General Manager, Jess Medina. Unfortunately, absolutely nothing was done about it. Mikayla was told by Ms. Medina that this was a "he said/she said" situation, and therefore there was nothing the company could do.¹ We have learned that another employee, Jazmine Quintero, also made a formal complaint of sexual harassment against Nathan.

After Mikayla complained about the harassment, her treatment got worse. She was routinely teased by her supervisors after she complained about the incident. The workplace, which was already rife with sexually-charged harassing language, soon became unbearable for Mikayla, and she believes that it all stemmed from the complaints that she made about the sexual harassment she suffered.

The Equal Employment Opportunity Commission (EEOC), which enforces federal prohibitions against sexual harassment, defines sexual harassment as "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" (29 CFR § 1604.11). Under California law, prohibitions against sexual harassment can be found in the Fair Employment and Housing Act, codified in Government Code § 12940. Under California law, sexual harassment is defined to include verbal harassment such as epithets, derogatory comments or slurs (2 CCR § 7287.6(b)). A California court of appeal has ruled that sexual harassment is not only conduct that discriminates against a person solely because of his or her sex, but also includes unwelcome conduct of a verbal nature regardless of the gender or sexual orientation of the harasser or victim; the harasser's motive is irrelevant (*Mogilefsky v. Superior Court* (1993) 20 Cal.App. 4th 1409).

¹ Mikayla became very emotional as she recounted her experience to me, at one point having to stop to wipe the tears from her eyes as she had to relive the sexual harassment.

As outlined previously herein, Mikayla was subjected to inappropriate and illegal sexual harassment from her coworker. When Mikayla complained about the harassment, absolutely nothing was done. Instead, she began to be harassed further because of her complaints. This type of conduct, and especially the company's response, has absolutely no place in 2021. A jury will have very little sympathy for the company, and the complete lack of any corrective action following our client's complaints makes liability for the company crystal clear.

Mikayla has also informed us that the company only recently began having sexual harassment training. It has been the law in California for many years that employers must hold routine sexual harassment training, and up until very recently, Tahoe Joe's violated the law in this regard. We believe that is one of the reasons why the workplace was so rife with sexually charged dialogue and sexual harassment.

Complaints Regarding Cleanliness

In addition to complaining about sexual harassment, Mikayla also complained about the disgusting conditions at the restaurant. Mikayla complained to her supervisors that Tahoe Joe's ran out of sanitizer and did not replenish the supply. She also complained about the restaurant's broken dishwasher, and about dirty plates and silverware. Mikayla complained that there were no toilet seat covers, and often no toilet paper for the employees to use. On numerous occasions, Mikayla actually had to walk across the street to the nearby Starbucks to use the restroom. Mikayla saw that employees were required to bring in their own cleaning supplies; she complained about this as well. Amazingly, despite these very serious sanitation defects, which created a hazardous environment for both Tahoe Joe's employees and its customers, nothing was done to resolve these concerns.

Constructive Termination

California law has long recognized constructive termination, which occurs when an employer permits working conditions that are so intolerable that a reasonable employee would have no choice but to resign.

As outlined previously in this letter, Mikayla complained numerous times to her supervisors about sexual harassment and unsafe working conditions, yet her complaints fell on deaf ears. As such, Mikayla knew that she had no choice but to resign. What other choice would an employee have when she is subjected to sexual harassment, and required to work in an environment that is unsanitary and dangerous? Put another way, it is difficult to imagine a more intolerable work environment than one where repeated complaints such as the ones outlined above are completely ignored. Given the outrageous conduct of Tahoe Joe's, Mikayla has a valid claim for constructive termination.

Unpaid Breaks

In addition to the claims outlined above, Mikayla also has a claim for unpaid meal and rest breaks. Tahoe Joe's made a mockery of California's meal and rest break laws. The restaurant was so

understaffed that employees were never allowed to take meal or rest breaks. Our client has informed us that only on the busiest days of the year (i.e. Mother's Day, Father's Day, etc.) was there sufficient staff at the restaurant where breaks could be taken. And if an employee was able to break away for a minute or two to use the restroom, they were not given their full 15-minute rest break. Meal breaks were never permitted given the short staffing problems.

Pursuant to California law, if an employee is denied a meal or rest break, the employee is entitled to one extra hour of pay at their regular hourly rate for each workday the violation occurs. Demand is hereby made, pursuant to California Labor Code sections 432, 226 and 1198.5, that Tahoe Joe's provide copies of all of Mikayla's pay stubs, wage statements, and time records in their entirety, as well as any and all records relating to Mikayla's missed, late, or interrupted meal or rest breaks. These documents are required to be produced not later than 21 days from the date of this letter.

Turning to Mikayla's claim for unpaid rest breaks, given the frequency with which our client was required to work through her meal and/or rest breaks, or not given a full uninterrupted meal and/or rest break, the penalties owed to Mikayla are substantial. In addition to the amounts owed for meal and rest break premium pay, Mikayla is also owed interest, as well as waiting time penalties under Labor Code § 203.

Unpaid Wages

Mikayla has also informed us that Tahoe Joe's failed to pay her wages in the sum of \$1,169.00. Mikayla worked with the company to rectify this problem, to no avail. Just yesterday, she received a text from her supervisor asking if the "mix-up" had been resolved – it hasn't. Mikayla is still owed \$1,169.00 in unpaid wages, plus interest, and waiting time penalties of \$3,360.00 (\$14.00 x 8 hours x 30 days).

It is important to note that Mikayla's wage and hour claims are separate and distinct from her claims of harassment, retaliation, and constructive wrongful termination. Therefore, even if Tahoe Joe's disagrees with those claims, the penalties owed pursuant to the wage and hour claims remain in effect.

Proposal for Resolution

Normally, we would make a demand for settlement in this letter. However, we are unable to do so until we have reviewed the payroll records which are necessary to calculate the amount owing to Mikayla in the form of premium pay for missed meal and rest breaks. A settlement demand will be provided once we have had a chance to review the documents requested herein.

II. CHRISTINE COFFMAN

Christine began her employment in October 2012 as a server. Eventually, she was promoted to bartender. Similar to Mikayla, Christine was an excellent worker, who worked hard each and every day for the company. Unfortunately for Christine, she was terminated in October 2020, after she made complaints about unsafe working conditions.

Wrongful Termination

California's anti-retaliation and whistle-blower statutes prohibit employers from discharging or terminating employees for reporting or complaining of situations where the employer has violated or failed to comply with statutes, rules or regulations (see Labor Code §§ 1102.5(e), 6310, 6312, and 232.5). The employee's opposition is protected as long as the employee had a reasonable and good faith belief that the employer's practice was unlawful (*Trent v. Valley Lec. Association, Inc.* (9th Cir. 1994) 41 F. 3d 524, 526).

While performing her job duties as a bartender, Christine noticed that a substantial amount of black mold was in the bar area. She complained about this dangerous condition to her supervisors (Anthony Flores and Morgan Herron), yet her complaints fell on deaf ears. Tahoe Joe's failed to have professionals address the problem, instead asking employees to put bleach on it, or try other ineffective remedial measures. Christine also complained about broken and slippery tiles that created a hazardous condition for Tahoe Joe's employees. Christine made numerous complaints about these unsafe conditions, including complaints just a few days before she was terminated. Given the timing of her termination – just a few days after complaining about unsafe working conditions – we are confident that Christine was terminated because of these complaints.

Unpaid Meal and Rest Breaks

Similar to Mikayla, Christine was also denied the opportunity to take her required meal and rest breaks. Tahoe Joe's would routinely schedule only one bartender, meaning that it was impossible for Christine to take her legally mandated meal and rest breaks. Christine complained about this situation to her supervisors, yet nothing was done to remedy the situation.

The same demand is made herein for Christine's employment records, including her pay stubs, wage statements and time records, as well as any records relating to Christine's missed, late or interrupted meal and/or rest breaks. These documents are due within 21 days.

A settlement demand will be made once we have had a chance to review these documents.

III. RACHELLE KIDD

Rachelle began her employment with Tahoe Joe's on or about March 23, 2014. Rachelle's final position was a supervisor and bartender. Like Mikayla and Christine, Rachelle also complained about the unhygienic, unsanitary, and frankly, unsafe conditions at Tahoe Joe's. She complained numerous times to her supervisors about the black mold problem. In addition to those complaints, Rachelle also complained to Anthony Flores about the inappropriate and sexually charged language that was used on Tahoe Joe's employee Facebook group (usually by Manager Angel Amezcua). Attached hereto as Exhibit 1 are further examples of this inappropriate language. Unfortunately, Tahoe Joe's did nothing with Rachelle's complaints. All the company did was retaliate against her.

Wrongful Termination

As outlined previously in this letter, California law prohibits retaliation of employees who make complaints. Rachelle was protected by these statutes when she complained about the unsafe working conditions and the inappropriate and harassing language on the company's Facebook page, yet nothing was done about it. Soon after complaining, Rachelle was taken off the schedule – in essence, terminated – and we believe that a motivating factor for this action was because the company grew tired of Rachelle's frequent complaints. This is the very definition of a retaliatory wrongful termination.

Age and Sex Discrimination

California's Fair Employment and Housing Act prohibits discrimination on the basis of sex and age (Government Code § 12940(a)). Rachelle, who is 52 years old, believes that she was terminated in part because of her age. The majority of employees at Tahoe Joe's were much younger than her, and we believe that the company wanted to replace her with a younger employee.

Rachelle was also discriminated against on account of her sex. Years ago, she was told by her supervisor that he would let her work in the bar if she "weighed 20 pounds less." There is no way that such language would be directed towards a male employee. In addition, the company's failure to fully investigate and take corrective action regarding the complaints Rachelle made about the inappropriate language on the Facebook page provides further evidence of sex discrimination. The sexual language was used almost exclusively by male employees, and much of it was harassing and demeaning towards women. Rachelle complained about this problem, yet nothing was done.

Unpaid Meal and Rest Breaks

Rachelle has the same claim for unpaid meal and rest breaks as Mikayla and Christine. We hereby demand the same records that have been demanded on behalf of Mikayla and Christine. Those are due within 21 days of the date of this letter.

Similar to the other claimants, Rachelle will be in a position to make a formal settlement demand after we have reviewed the payroll and other requested documentation.

IV. DAMAGES

Each of our clients have been devastated by the wrongful conduct of Tahoe Joe's. The sexual harassment levied against Mikayla and the company's total disregard for her complaints caused her to suffer, and to continue to suffer, severe emotional distress. Further, all three of our clients faced near constant anxiety in having to work in such an unprofessional, unsanitary, and frankly, unsafe working environment. What made it all worse was that the company refused to do anything when they complained about it. Christine, who was wrongfully terminated for her complaints, has suffered severe economic harm, and her lost wages alone are substantial.

And as you may be aware, punitive damages are available in wrongful termination claims, and would surely be awarded in this case if our clients choose to litigate this matter, given that they were terminated solely because of complaints they made about the workplace. It is important to note that there is no statutory limit on the amount of punitive damages awardable under the Fair Employment and Housing Act (FEHA). In addition to punitive damages, both Title VII and FEHA give the court discretion to award reasonable attorney's fees and costs to the prevailing party. Given the fact that liability on the part of Tahoe Joe's will not be difficult to prove, your company would also be liable for our clients' attorney's fees following a verdict in their favor.

V. DEMAND FOR TOLLING AGREEMENT

Given the statute of limitation associated with our clients' wage/hour claims, we hereby demand that Tahoe Joe's enter into a tolling agreement preserving the relevant statutes of limitations. If Tahoe Joe's does not agree to such an arrangement, our clients will have no choice but to file with the Labor Commissioner to preserve their rights under the applicable statutes of limitation.

Please confirm within seven days of receipt of this letter that Tahoe Joe's will enter into a tolling agreement on behalf of all three of our clients.

VI. CONCLUSION

Please respond to this letter within seven days regarding the execution of a tolling agreement. Further, we look forward to receipt of the payroll and other documents demanded herein within 21 days.

Yours very truly,

GUBLER & ABBOTT

Brett T. Abbott

Attachments

cc: Clients (*via email*)



Anthony >

8,747

42.6K



Like



Comment



Share



December 30 at 2:38 PM · 🌐



Me making sure my girl all the way in the store before I check my phone and text my hoes back



Esai Sosa

EXHIBIT 1



iMessage





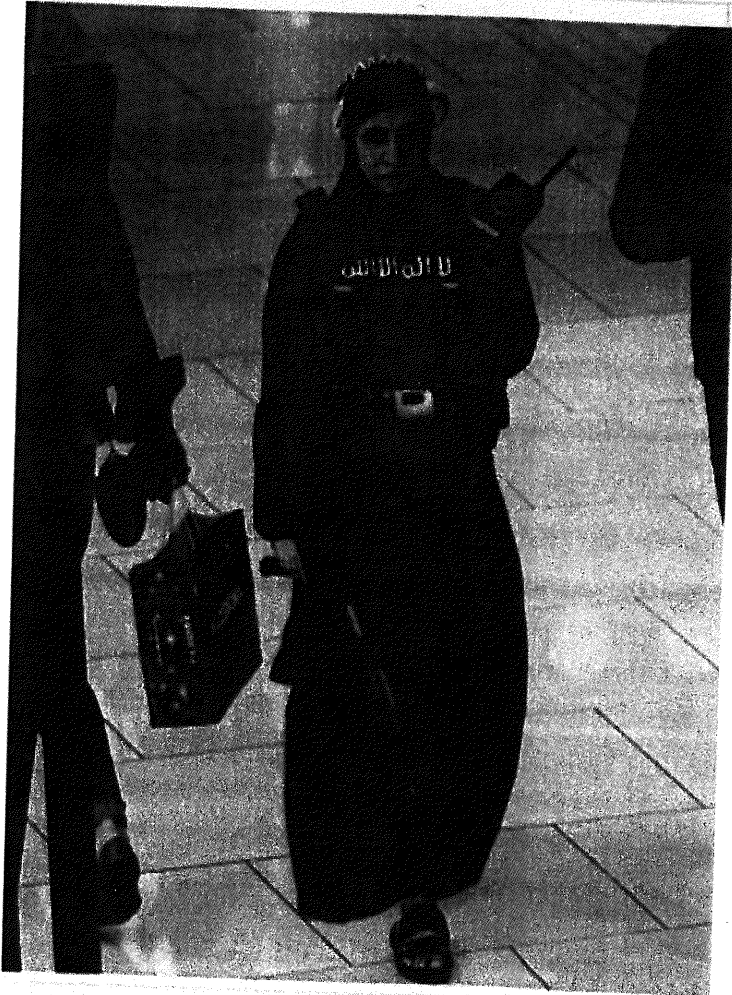
Anthony >



Like

Comment

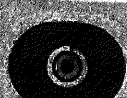
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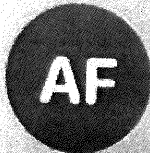


Lol



iMessage





Anthony >



when you accidentally cum inside her but it's all good cause she got a boyfriend



Anthony

Yesterday at 10:05 PM



iMessage



Steinar Thrastarson ▶ TJs Crew
3 hrs ·

Who wants my 530 today

Like

Comment

Seen by 32 people



Nathan Boyd Allen Jr.
Go to work

3h Like Reply



Steinar Thrastarson
Nathan Boyd Allen Jr. You don't even know what work is.

3h Like Reply 1



Nathan Boyd Allen Jr.
Steinar Thrastarson what about that work I put in on your butthole last night?

2h Like Reply 1



Steinar Thrastarson
Nathan Boyd Allen Jr. That was a



Write a comment...

