

FILED by Arlington County Circuit Court
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL,

Plaintiff,

v.

ADVANCED TOWING COMPANY, LLC,
a Virginia limited liability company,

SERVE: James R. Harpold, Registered Agent
200 N. Maple Ave., 107
Falls Church City, VA 22406

Defendant.

Civil Action No. **CL20-1995**

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of the Attorney General of Virginia, Mark R. Herring (the "Plaintiff" or the "Commonwealth"), petitions this Court to declare that the activities in which the Defendant, Advanced Towing Company, LLC d/b/a Advanced Towing ("Advanced" or "Defendant"), has engaged constitute violations of the statutes governing towing and recovery operators, Virginia Code §§ 46.2-118 through 46.2-119, and the Arlington County Code, Chapter 14.3 ("ACC"). The Plaintiff prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

PRELIMINARY STATEMENT

The Consumer Protection Section of the Office of the Attorney General as Plaintiff brings this action against Defendant, a towing and recovery operator located in Arlington, Virginia and conducting towing and recovery services in Arlington and Fairfax Counties. Defendant has failed to

comply with the Virginia towing statutes and the ACC provisions regarding towing of vehicles on private property. The Office of the Attorney General brings this action to recover consumer restitution, civil penalties, attorney's fees and costs, as well as injunctive relief to end Defendant's illegal towing practices.

JURISDICTION AND VENUE

1. The Circuit Court for the County of Arlington has authority to entertain this action and to grant the relief requested herein pursuant to §§ 46.2-119(B), 8.01-620 and 17.1-513 of the Code of Virginia.

2. Prior to commencement of this action, the Plaintiff gave the Defendant written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the Virginia Code and the ACC had occurred, or, in the alternative, to execute an appropriate Consent Decree that is acceptable to the Commonwealth.

3. The Defendant failed to demonstrate that no violations had occurred and did not agree to execute a Consent Decree that was acceptable to the Commonwealth.

4. The Plaintiff is the Commonwealth of Virginia, by, through and at the relation of Mark R. Herring, Attorney General of Virginia.

5. Advanced is a Virginia limited liability company with its principal place of business at 4000-C North 5th Road, Arlington, Virginia 22203.

6. Advanced operates as a towing and recovery operator within the meaning of Virginia Code § 46.2-116 and ACC § 14.3-2.

7. Advanced regularly performs trespass tows of vehicles without the consent of their owners in Arlington County and Fairfax County within the meaning of ACC § 14.3-2.

FACTS

8. Advanced contracts with owners, agents, and managers of various parking lots, apartment and condominium complexes, and other businesses to remove vehicles from private property without the consent of the owners by towing them to Advanced's lot, which is located at 4000-C North 5th Road, Arlington, Virginia 22203.

9. These contracts outline the parameters of Advanced's scope of authority to monitor the parking lot or other property and tow vehicles (e.g., impermissibly parking in a handicapped space, overnight parking, etc.) without requiring the individual authorization of the property owner each time Advanced seeks to tow a vehicle.

10. Advanced's towing conduct is frequently predatory, aggressive, overreaching, and illegal, and it has caused financial harm to consumers in the Commonwealth.

11. Advanced has been the subject of numerous complaints to Arlington County, the Office of the Attorney General, and various consumer complaint websites (Yelp, Better Business Bureau, Google).

12. Consumers frequently complain that Advanced has towed their vehicles without proper authority, without proper signage at the parking lot from which the tow occurred, and that Advanced has damaged their vehicles.

13. Consumers also frequently complain about Advanced's use of threatening, rude, inappropriate, and aggressive language toward consumers, escalating an already unpleasant situation to another level of fear and intimidation.

14. On numerous occasions, Advanced has towed delivery vehicles from parking lots, including temporary food delivery (e.g., "Door Dash," "Uber Eats," and "GrubHub"), and Amazon delivery trucks.

15. Advanced also has employed the use of “spotters,” who are individuals (sometimes children or teenagers) who patrol a parking lot and contact Advanced’s drivers when they see a vehicle they believe is impermissibly parked.

16. Advanced frequently tows vehicles quickly and carelessly in an effort to tow as many vehicles as possible.

17. This predatory and overly aggressive behavior causes consumers to become irate and results in many phone calls to the local police department.

Conduct of Advanced at 3910 and 3924 Wilson Boulevard

18. Advanced has been the designated towing and recovery operator at 3910 and 3924 Wilson Boulevard, Arlington, Virginia since 2005 (the “Wilson Boulevard Lot”).

19. The Wilson Boulevard Lot includes parking for multiple retail businesses, including, among others, Gold’s Gym, &Pizza, and Spokes, Etc.

20. The businesses at the Wilson Boulevard Lot have changed and been replaced intermittently since 2005.

21. Prior to 2017, Advanced assigned the individual parking spaces in the Wilson Boulevard Lot to the retail businesses by spray painting or marking the spaces with a business name.

22. From 2017 through April 2019, Advanced towed vehicles from the Wilson Boulevard Lot if it determined that a consumer impermissibly parked their vehicle.

23. One reason for which Advanced would tow vehicles was when a consumer parked in a space marked for one retail business but entered another retail business first.

24. If Advanced (or one of its spotters) made the determination that the consumer did not enter the business affiliated with the parking space, Advanced would tow the vehicle off of the

lot.

25. On multiple occasions between 2017 and 2019, Advanced did not properly mark the parking spaces to clearly indicate the spaces reserved for a particular business.

26. For example, the retail businesses frequently changed, and Advanced did not always timely update the parking spaces to reflect the current businesses at the Lot.

27. On multiple occasions between 2017 and 2019, consumers were confused by the spray painting on the parking spaces, learned that Advanced had towed their vehicles, and were required to pay a tow fee and other surcharges to Advanced to retrieve their vehicles.

28. Advanced has issued refunds to several consumers after the Arlington County Police Department determined after receiving consumer complaints that certain spaces in the Wilson Boulevard Lot were not satisfactorily or clearly marked.

29. There are many more consumer complaints which allege similar confusion about the parking space markings or other conduct by Advanced at this Lot.

Contract at Wilson Boulevard Lot

30. Advanced is required to maintain a written contract with the owner of the lot from which it tows vehicles which “shall clearly state the terms on which towing and recovery operators may monitor private lots on behalf of property owners.” Va. Code § 46.2-1232(C).

31. The ACC requires Advanced to make this contract available “for public inspection” at its place of business. ACC § 14.3-5(A)(4).

32. The property management company that manages the Wilson Boulevard Lot is Capital Ventures, LLC (“Capital Ventures”).

33. From 2005 through the present, Advanced has had varying forms and scopes of authorization from Capital Ventures to tow vehicles from this lot.

34. Advanced and Capital Ventures executed a “contract” in 2005. EXHIBIT 1.
35. Advanced also has produced a separate contract with Capital Ventures that is dated sometime in July or August of 2017. EXHIBIT 2.
36. The circumstances surrounding the signature of the 2017 contract are questionable.
37. From 2005 through the present, Advanced has had apparent authority, either express or implied, from Capital Ventures to tow vehicles that is significantly different from what is reflected in the 2005 and 2017 contracts.
38. From 2005 to April 2019, Advanced towed vehicles without the owners’ consent upon its own independent determination that the vehicles were impermissibly parked, without being contacted by Capital Ventures or one of the retail businesses located at the Wilson Boulevard Lot.
39. During this time, the owners of some of the retail businesses were unhappy with Advanced’s towing conduct and asked Advanced to stop towing the vehicles in their lot spaces.
40. Advanced continued to tow vehicles as it saw fit, despite this request.
41. After April 2019, Advanced and Capital Ventures agreed that Advanced was not permitted to tow unless it was contacted by one of the owners or managers of the retail businesses in the Wilson Boulevard Lot.
42. Despite this change in its authority, Advanced did not enter into a new contract with Capital Ventures or amend its contract to reflect this change.
43. Upon information and belief, Advanced’s authority to tow vehicles from this lot has changed again since April 2019 and it has not amended its contract.
44. Neither the 2005 nor the 2017 contract provides written authority for Advanced to tow vehicles for being in the wrong assigned retail space, i.e., for parking in a space marked for Company A when the vehicle owner visited Company B.

45. Neither the 2005 nor the 2017 contract clearly states the authority provided to Advanced to tow vehicles from the Wilson Boulevard Lot, as required by the ACC and the Virginia Code.

46. Advanced drafted the 2005 and the 2017 contracts.

47. Advanced did not make the 2017 contract publicly available for at least several months.

48. The 2005 and the 2017 contracts are form contracts that Advanced drafted and used at all other locations where it has a contract to tow vehicles in Fairfax and Arlington Counties.

Tows of Police Vehicles

49. Advanced has, on at least two occasions, towed vehicles belonging to law enforcement that constitute “public safety vehicles.”

50. On August 28, 2019, Advanced towed an Arlington County Police Department (“ACPD”) vehicle.

51. Advanced claimed that this vehicle was “unmarked,” despite the presence of a placard which read “official police business” on the dashboard.

52. In February 2020, Advanced towed another Arlington County Police Department vehicle at the Pentagon City Mall.

53. The owner or manager of the lot at the Pentagon City Mall did not request the tow of the police vehicle.

54. The Commonwealth understands that Advanced has towed other police or public safety vehicles.

55. Advanced is not permitted to tow public safety vehicles.

Unsafe Towing Practices

56. Advanced has a practice of unsafely towing vehicles by failing to properly secure the vehicles to the tow truck.

57. Arlington County police officers have observed this conduct and reported it in connection with an inspection of Advanced's lot and practices.

58. Retail tenants in the Wilson Boulevard Lot have observed this conduct by Advanced.

59. Consumers have observed and complained about this conduct.

60. Multiple drivers of Advanced's tow trucks have been cited by Arlington County police officers for this conduct.

61. In fact, the Commonwealth understands that Advanced has paid for the some of the fines associated with these citations of its drivers.

62. Despite knowing that some of its drivers have been cited repeatedly for this conduct, Advanced has not taken any action to correct this conduct.

63. On information and belief, Advanced has encouraged, induced or cooperated with its drivers to engage in improper or unsafe towing practices.

Drivers Employed by Advanced

64. At least one of Advanced's tow truck drivers, John Harley, is not registered with the Virginia Department of Criminal Justice Services ("DCJS").

65. Mr. Harley applied for a registration in 2017 with the Virginia DCJS but did not provide complete information, and his application was subsequently abandoned.

66. During the time he was not registered, Mr. Harley towed vehicles for Advanced.

67. Mr. Harley also has been convicted of three traffic infractions for the improper

towing of a vehicle, including

- a. “Improper Towing” in violation of Virginia Code § 46.2-1118 on November 15, 2017 in Arlington General District Court;
- b. “Failure to Secure Load” in violation of Virginia Code § 46.2-1156 on October 1, 2019 in Arlington General District Court; and
- c. “Improper Towing” in violation of Virginia Code § 46.2-1118 on February 27, 2020 in Arlington General District Court.

68. Carl P. Martin is also a tow truck driver for Advanced, and he has been convicted of seven traffic infractions for “Improper Towing” in violation of Virginia Code § 46.2-1118 in Arlington County General District Court on:

- a. April 22, 2011;
- b. February 3, 2014;
- c. March 3, 2014;
- d. June 16, 2014;
- e. August 20, 2019;
- f. October 18, 2019; and
- g. March 5, 2020.

69. Advanced employs drivers with a history of improperly towing vehicles and has not taken action to correct this conduct.

Arlington and Virginia Code Provisions

70. The Virginia Code provides specific statutory authority to the Commonwealth to regulate towing and recovery services, and for the Attorney General to enforce violations of certain statutes relating to towing services, in §§ 46.2-117 through 46.2-119.

71. The Virginia Code provides additional regulations governing the towing, immobilization and removal of vehicles from private property in §§ 46.2-1231 through 46.2-1233.3.

72. Virginia Code § 46.2-1232 permits “the governing body of any county, city, or town” to adopt ordinances which “regulate the removal of trespassing vehicles from property by or at the direction of the owner, operator, lessee, or authorized agent in charge of the property.”

73. Arlington County has adopted such local ordinances in accordance with Virginia Code § 46.2-1232, which are located in Chapter 14.3 of the ACC.

74. The Arlington County Board adopted Chapter 14.3 of the ACC to address “unfair and predatory towing practices,” and “inadequate notice of when vehicles are subject to towing.” ACC § 14.3-1.

75. The Arlington County Board concluded that the regulations adopted in Chapter 14.3 “are required to protect the public health, safety and welfare generally, and particularly the safety of those members of the public whose vehicles have been towed from private property without their consent.” ACC § 14.3-1.

76. The ACC and the Virginia Code require any towing and recovery operator in Arlington County to maintain for public inspection all written contracts with the owner or agent of private lots which “clearly state[] the terms on which it may monitor private lots.” Va. Code § 46.2-1232(C) and ACC §14.3-5(A)(4).

77. The ACC also requires tow truck drivers to properly secure all loads to meet safety standards. ACC § 14.3-5(A)(10).

78. The ACC regulations do not apply to “public safety” vehicles, and Advanced does not have the authority to tow public safety vehicles. ACC § 14.3-5(B)

COUNT I – Violations of Virginia Towing Statutes

79. The Virginia Code prohibits towing and recovery operators from, among other things:

- a. Using fraud or deceit in the offering and delivery of towing and recovery services pursuant to Virginia Code § 46.2-118(B)(1);
- b. Conducting its business or services in such a manner as to endanger the health and welfare of the public pursuant to Virginia Code § 46.2-118(B)(2);
- c. Obtaining fees by fraud or misrepresentation pursuant to Virginia Code § 46.2-118(B)(5);
- d. Advertising services in any manner that deceives, misleads, or defrauds the public pursuant to Virginia Code § 46.2-118(B)(6); and
- e. Violating, or assisting, inducing, or cooperating with others to violate, any provision of law related to the offering or delivery of towing and recovery services pursuant to Virginia Code § 46.2-118(B)(17).

80. Defendant violated the Virginia towing statutes through the acts and practices described in this Complaint, including without limitation:

- a. Failing to properly or clearly mark parking spaces at the Wilson Boulevard Lot;
- b. Employing drivers that are not registered with the Virginia DCJS;
- c. Employing drivers with a history of unsafely or improperly towing vehicles;
- d. Encouraging, assisting, inducing or cooperating with its drivers to improperly or unsafely tow vehicles;
- e. Utilizing various contracts at the Wilson Boulevard Lot that do not and did not clearly state the terms on which it could monitor the Lot;

- f. Utilizing contracts at other lots in Arlington and Fairfax Counties which did not clearly state the terms on which it could monitor the lots;
- g. Failing to make its contract relating to the Wilson Boulevard Lot publicly available; and
- h. Towing public safety vehicles.

81. Individual consumers have suffered losses as a result of the aforesaid violations of the Virginia towing statutes.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Permanently enjoin Defendant and its officers, directors, members, managers, employees, agents, successors and assigns from violating § 46.2-118(B)(1), (2), (5), (6), and (17) of the Virginia towing statutes, pursuant to Virginia Code § 46.2-119(B);

B. Grant judgment against the Defendant and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by Defendant in connection with its violations of § 46.2-118 of the Virginia towing statutes pursuant to Virginia Code § 46.2-119(C);

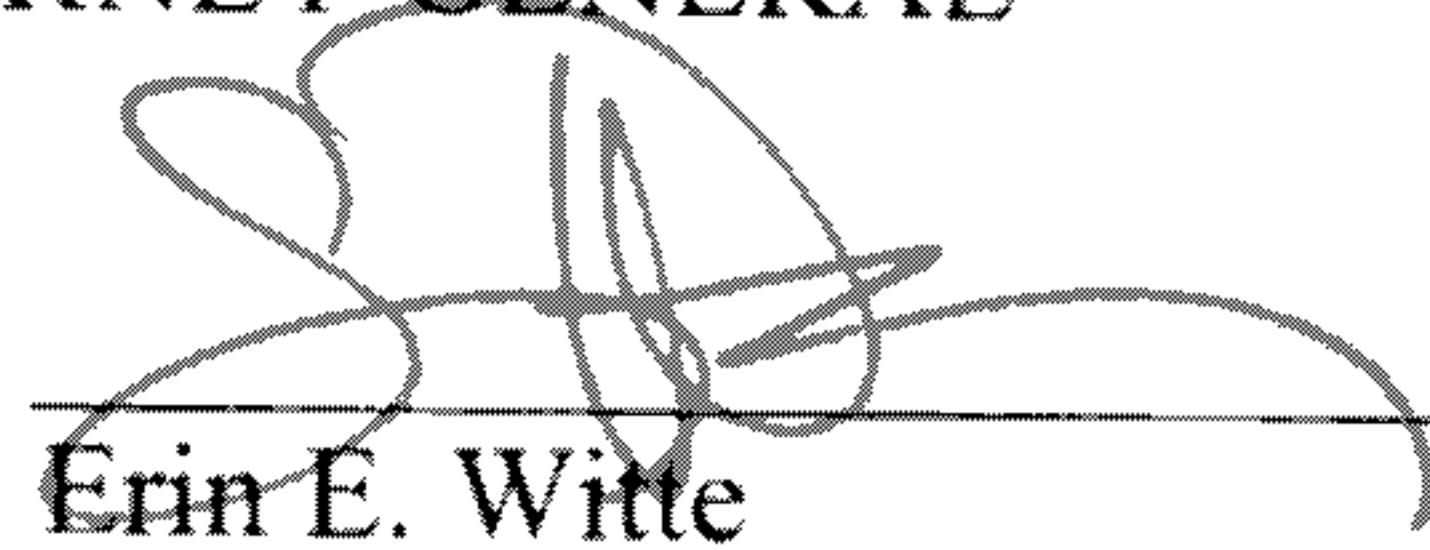
C. Grant judgment against the Defendant and award to the Commonwealth civil penalties of up to \$150.00 per violation for each violation of the Arlington County Code and each violation of § 46.2-118 of the Virginia towing statutes, pursuant to Virginia Code § 46.2-1233.3, the exact number of violations to be proven at trial;

D. Grant judgment against the Defendant and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case, and attorneys' fees pursuant to Virginia Code § 46.2-119(C); and

E. Grant such other and further relief as this Court deems equitable and proper.

COMMONWEALTH OF VIRGINIA,
EX. REL. MARK R. HERRING,
ATTORNEY GENERAL

By:


Erin E. Witte

Mark R. Herring
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Erin B. Ashwell
Chief Deputy Attorney General

Samuel T. Towell
Deputy Attorney General

Richard S. Schweiker, Jr.
Chief and Senior Assistant Attorney General

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Predatory Lending Unit
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Phone: (703) 359-6716
Fax: (804) 786-0122

Advanced Towing Company, LLC.
4000-C North 5th Road ♦ Arlington, Virginia 22203

Office (703) 525-0550

Fax (703) 525-8499

Towing Instruction Agreement

Authorized by: Property Owner/Name: Capital Ventures
Address: 3910 & 3924 Wilson Blvd
City/State/Zip: Arlington VA 22203

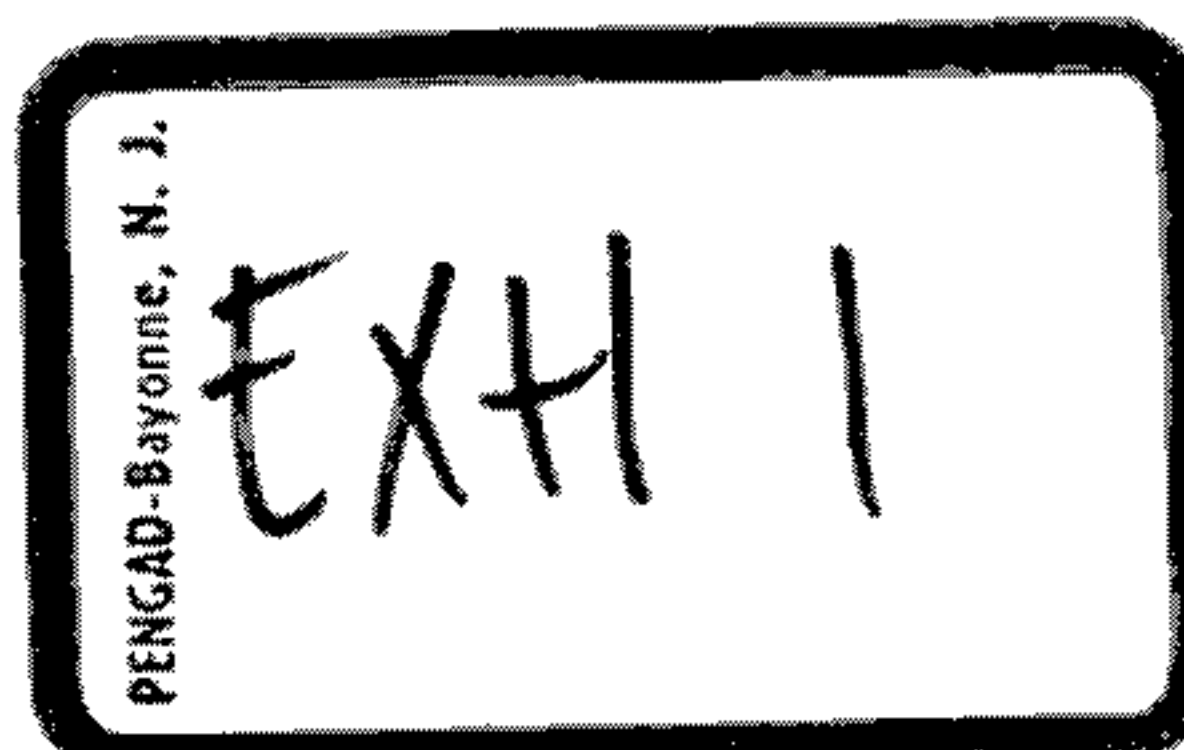
Check (✓) Applicable Service Type and Reasons Patrol Towing Hours 24 hours/7 days

(✓) Identify and tow vehicles for the following reasons:

- | | | | |
|-------------------------------|-------------------------------------|--|--|
| (✓) Parked in Fire Lane | () No Visitor Permit | () Resident parked in Visitor | (✓) Customer Parking Only (Left property) |
| () No Valid Permit Displayed | () Expired Visitor Permit | () Visitor parked in Resident Parking | (✓) Safety hazard (on jacks, gas leak, etc.) |
| () Expired Permit | () Parked in Handicap | (✓) Blocking Dumpster | (✓) No/Exp. License Plate |
| (✓) Taking 2 Spaces | () Vehicle not in designated space | (✓) Parked in a No Parking Zone | () No/Exp. Inspection |
| () On Grass | (✓) Abandoned (Flats, wrecked) | () Loading Zone | () No Overnight Parking |
| () No Commuter Parking | () No For Sale Vehicles | () _____ | () _____ |

(✓) Tow if requested by:

- (✓) Property Owner or Agent
() Resident or Parking Space Owner/Custodian
() Security




Advanced Towing Company, LLC (Contractor) will identify and tow vehicles that do not comply with parking restrictions for the reasons noted above. Contractor agrees to indemnify and hold harmless the property owner or agent from any damages, liabilities or lawsuits as a result of negligence by the Contractor, its agents or employees. Towed vehicle owners will be charged within the maximum rates allowed by the jurisdiction from which vehicles are towed. Notices of maximum charges are posted at impound storage facilities.

The following persons are authorized to make individual towing requests if applicable:

Steve Parnell
Jean Compton


Advanced Towing Company, LLC Date

Jean Compton Aug 15-05
Property Owner/Agent Date

CAPITAL VENTURES
JEAN 

Advanced Towing Company, LLC.
4000-C North 5th Road ♦ Arlington, Virginia 22203

Office (703) 525-0550

Fax (703) 525-8499

Towing Instruction Agreement

Authorized by:

Property Owner/Name: CARIME Ventures LLC.

Address: 3910 - 3924 Wilson Blvd

City/State/Zip: Arl. VA 22203.

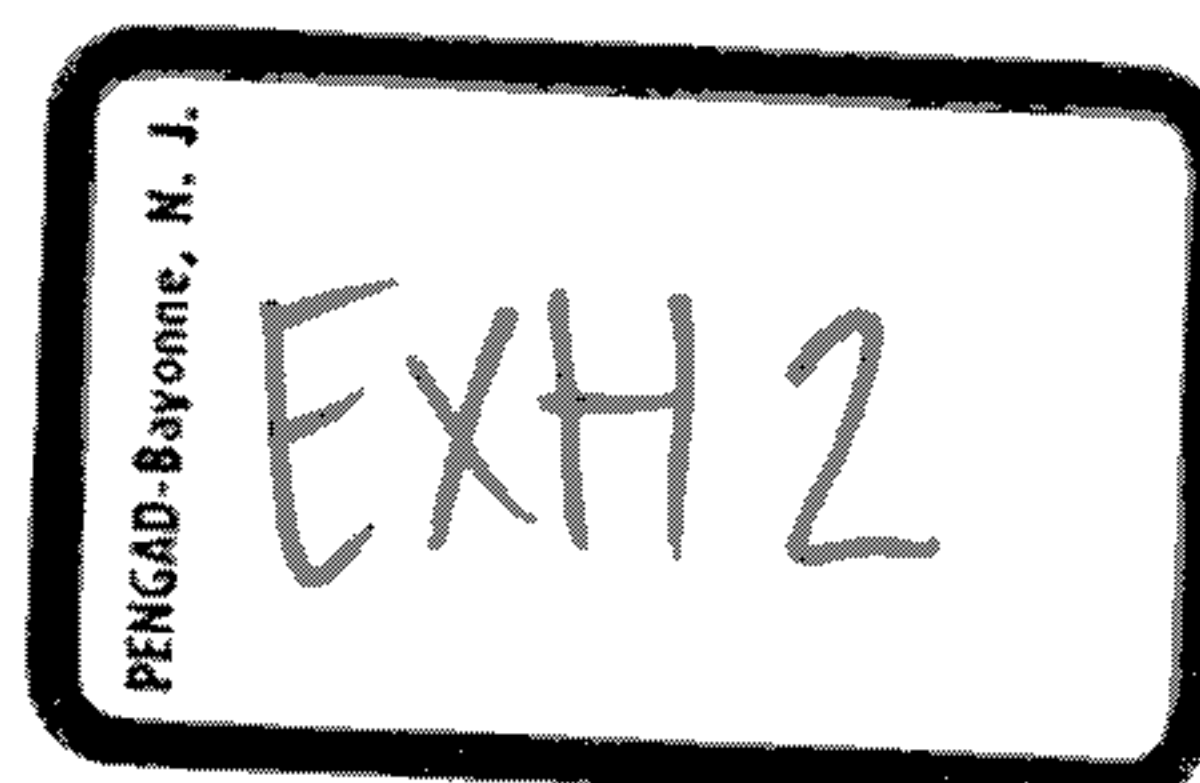
Check (✓) Applicable Service Type and Reasons Patrol Towing Hours 24-7

(✓) Identify and tow vehicles for the following reasons:

- | | | | |
|-------------------------------|---|--|--|
| () Parked in Fire Lanes | () No Visitor Permit Displayed | () Resident parked in Visitor Parking | (✓) Customer Parking Only (Parked and left property) |
| () No Valid Permit Displayed | () Expired Visitor Permit | () Visitor parked in Resident Parking | () Safety hazard (on jacks, blocks, gas leak, etc.) |
| () Expired Permit | (✓) Parked in Handicap Parking | (✓) Blocking Dumpster | () No/Exp. License Plate |
| (✓) Taking 2 Spaces | (✓) Vehicle not parked in designated space | (✓) Parked in a No Parking Zone | () No/Exp. Inspection |
| () Parked on Grass | (✓) Abandoned (Flats, not moved, wrecked, etc.) | () Loading Zone | (✓) No Overnight Parking |
| (✓) No Commuter Parking | (✓) No For Sale Vehicles | () _____ | () _____ |

() Tow if requested by:

- () Property Owner or Agent
- () Resident or Parking Space Owner/Custodian
- () Security



This Agreement is for a period of one year beginning 8/1/17 and will automatically renew. The Agreement may be terminated in writing by either party with 30 days notice provided that Property Owner/Agent has given Contractor written notice of deficiencies and has allowed 10 days for correction. Advanced Towing Company, LLC (Contractor) agrees to identify and tow vehicles that do not comply with noted parking restrictions. Contractor agrees to indemnify and hold harmless the Property Owner or Agent from any damages, liabilities or lawsuits as a result of negligence by the Contractor, it's agents or employee's.

The following persons are authorized to make individual towing requests if applicable:

[Signature] 8/1/17
Advanced Towing Company, LLC Date

[Signature] 8-1-17
Property Owner/Agent Date