

□ File No.: EXP202104924

## RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

Of the procedure instructed by the Spanish Agency for Data Protection and based on  
to the following

### BACKGROUND

FIRST: On December 13, 2022, the Director of the Spanish Agency  
of Data Protection agreed to start a sanctioning procedure against FARMACIA  
CENTRAL MARKET OF SAN FERNANDO C.B (hereinafter, the claimed party),  
through the Agreement that is transcribed:

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File No.: EXP202104924

### AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in  
based on the following

### FACTS

FIRST: A.A.A. (\*hereinafter, the claiming party) dated November 11,  
2021 filed a claim with the Spanish Data Protection Agency. The re-  
complaint is directed against the entity FARMACIA MERCADO CENTRAL DE SAN  
FERNANDO C.B. with NIF E72225956 (hereinafter, the claimed party/ ALIAS). The

The reasons on which the claim is based are the following:

"(...) that in the Pharmacy where he works, video cameras have been installed-  
surveillance that would capture the public thoroughfare and that would record the sound of conversations held  
held between the workers and users of the Pharmacy" (folio No. 1).

It provides a video of a recording from a priori video surveillance system.

Lancia of the Pharmacy (Annex I).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the party claimed on fe-  
date 11/26/2021, to proceed with its analysis and inform this Agency in the  
within one month, of the actions carried out to adapt to the prerequisites  
seen in the data protection regulations.

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The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of  
October 1, of the Common Administrative Procedure of Public Administrations  
cas (hereinafter, LPACAP), was collected on time and in the manner as stated in the acknowledgment  
of receipt that works in the file.

THIRD: With dates 12/23/21, 04/13/22 and 05/09/22, writings of the claim are received.

mada, the content of which is briefly collected for reasons of procedural economy.

mental in point 5 of the current FACTS exposed.

FOURTH: On February 11, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: The General Sub-directorate of Data Inspection proceeded to carry out

previous investigative actions to clarify the facts in question

tion, by virtue of the functions assigned to the control authorities in article

57.1 and of the powers granted in article 58.1 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), and in accordance

with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, subject

having knowledge of the following extremes:

The file is processed by the Data Inspection Subdirectorate (AEPD).

with number.

EXP202104924, being investigated MARKET PHARMACY

CENTRAL DE SAN FERNANDO C.B with NIF E72225956 with address at

\*\*\*ADDRESS 1.

#### RESULT OF INVESTIGATION ACTIONS

On April 6 and 27, 2022, the claimed party is required to inform this

Agency on the video intercoms installed at the main entrance and in the turnstile through

through which items are dispensed during on-call duty. Dated 13 of

April and May 9, 2022, two letters were received at this Agency in which they ma-

nparty:

-

The video intercoms installed are from the Ring Video brand, Doorbell Eli-model.

te, and the installation date is March 22, 2021.

- Masks have been placed on the video door entry cameras for the areas

that exceed the essential space for the safety purposes that

follows the claimed party, which states that the establishment has a

extensive history of robberies even with violence.

The video intercoms are configured to activate after the ringing and the

system configuration does not allow recording or logging

of past events.

-

- There is only one device, a mobile phone that is at all times in the

pharmacy office, for viewing images in real time and trans-

conversation mission. The application associated with the mobile phone for the video and voice streaming is Ring for Android.

The mobile phone is used exclusively for the management of the videoport-ros and has the screen lock enabled, requiring the introduction of an Android pattern to use. This pattern is only known by the person

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authorized nal, technicians and pharmacists from the night shift, who guard the mobile phone at all times.

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The claimed party has not contracted with the manufacturer, Ring, service maintenance or additional cloud or local service.

And provide the following relevant documentation:

- Copy of the purchase invoice for the video intercoms in which the marking is included.

ca and model: Ring Video Doorbell Elite – Wireless Doorbell Camera

(802, 11b/g/n, 2.4GHz, 5GHz).

Likewise, a link is included to the manufacturer's website where you can

Consult the characteristics and the operating mode.

About Ring Video Doorbell Elite – Ring Help

From the information published on the manufacturer's website, the following stands out:

next:

Does Ring Video Doorbell Elite save videos for later review?

Can do it. However, it does require a subscription to the Data Protection Plan.

Ring, an optional service that allows you to view, save, and share videos.

For more information on the Ring Protection Plan and what plans are available, see [Subscribe to Ring Protection Plans](#).

Photographs showing the field of view of the vigilante cameras.

deporteros. The existence of masks in the cameras that avoid that capture public roads.

List of people with access to the mobile phone used for the management of the video intercoms.

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On April 27, 2022, a request for information was sent to the manufacturer via

international certificate to report if you have any subscription to

Ring Protection Plans associated with devices installed in the pharmacy

of the claimed party. This request for information has not been answered as of the date of re-drafting of this report.

On May 20, 2022, a request for information was sent to the complaining party.

to report on the following aspects in relation to the video provided-

do in your claim:

- Brand, model and ownership of the device through which the video was recorded

forwarded to this Agency.

- Detailed description of how the video was downloaded and on which device contributed.

- Detailed description of how the recording was made, specifying if it was carried out through the "screen recording" functionality that users mobile phones included as standard or through another application.

- Explanation of the mobile screenshot that appears at the end of the video and

of the meaning of the video camera icon next to the WhatsApp icon.

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This information requirement, which has an acknowledgment date of December 31, May 2022 has not been attended to within the term or on the date of writing this report.

I.

## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, we proceed to examine the claim dated 11/11/2021 for through which the following is transferred "installation of security cameras that could

give access to the public thoroughfare and the interior of the establishment without justified cause” (folio no.

1).

The art. 5.1 c) GDPR provides the following: Personal data will be: “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”).

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, certifying that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space. since this is the exclusive competence of the Security Forces and Bodies of the State tado.

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On the part of individuals, it is not possible to install imaging devices of public space and/or transit of third parties, outside of the cases allowed in the regulations. tive.

The purpose of this type of device must be the security of the property and its

residents, avoiding the affectation of rights of third parties who are intimidated

with the same

II

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

instruction, it is considered that the claimed party has a camera system

video surveillance that is obtaining recordings of customer conversations

and establishment operators.

The requested entity does not deny the existence of video surveillance devices,

arguing to have an informative sign(s) informing that it is a residential area

deo-surveilled, although it acknowledges the "recording of the conversations".

The voice is a personal data, so that although the

presence of video surveillance cameras for security reasons, the possibility of

obtain conversations with customers or their conversations with operators or staff

of the establishment, it is considered an excessive measure in the preservation of the establishment.

foundation, against suppose hypothetical thefts.

The use of cameras at work is therefore legally permitted as long as it is

respect the principles of "proportionality" and "minimum intervention" in the 'invasion'

that these produce in the right to privacy of the staff.

The defendant acknowledges in writing 05/09/22 "in relation to the functionalities to

the ones that users have access to are exclusively the viewing of images in

real time and transmission of the conversation".

In this sense, article 89 of the LOPDGDD expressly authorizes video recordings

tions at work, but adds that "in no case will the installation of systems

issues of sound recording or video surveillance in places intended for rest

use or recreation of workers or public employees, such as clothing



rivers, toilets, dining rooms and the like".

The known facts could constitute an infringement, attributable to the party claimed for the affectation to the content of article 5.1 c) GDPR, previously mentioned.

Article 73 LOPDGDD (LO 3/2018) "Very Serious Offenses".

1. Based on what is established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)".

In this case, it is taken into account that it is a pharmaceutical establishment co, as well as the absence of previous infractions, although the possibility of

record private conversations, all of which lead to initially proposing a penalty in the amount of €1,000, according to the facts described, considered classifying the negligence as serious.

V

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the controller or processor that the processing operations comply with the provisions of this

Regulation, where appropriate, in a certain way and within a specified period.

cified...". The imposition of this measure is compatible with the sanction consisting of Administrative fine, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body may be considered classified as an administrative offense in accordance with the provisions of the GDPR, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency

Data Protection tab,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against FARMACIA MERCADO

CENTRAL DE SAN FERNANDO C.B, with NIF E72225956, for the alleged infringement of article 5.1 c) GDPR, typified in article 83.5 a) GDPR.

SECOND: APPOINT as instructor B.B.B. and, as secretary, to C.C.C., indicating stating that any of them may be challenged, if applicable, in accordance with the provisions referred to in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

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THIRD: INCORPORATING into the disciplinary file, for evidentiary purposes, the claim petition filed by the claimant and its documentation, as well as the documents obtained and generated by the General Sub-directorate of Data Inspection in the actions prior to the start of this disciplinary procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1, tube, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be €1,000, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to FARMACIA MERCADO CENTRAL DE SAN FERNANDO C.B., with NIF E72225956, granting a hearing period of ten business days for him to formulate the allegations and present the evidence he considers dere convenient In your statement of allegations you must provide your NIF and the number of procedure that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the pre-set start agreement; which will entail a 20% reduction in blood tion that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 800 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which supposes will give a reduction of 20% of its amount. With the application of this reduction, the tion would be established at 800 euros and its payment will imply the termination of the procedure. I lie.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In In this case, if both reductions were to be applied, the amount of the penalty would remain set at €600.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or waiver of any action or appeal through administrative treatment against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €480 or €360, you must make it effective by depositing it in Account IBAN No.: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code: .....)

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opened in the name of the Spanish Agency for Data Protection in the bank

CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of income to the Sub-directorate General of Inspection to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed- After this period, its expiration will take place and, consequently, the file of actions; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPA-CAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On December 20, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 600 euros using the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

Yo

## Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character [www.aepd.es](http://www.aepd.es)

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subsidiary, by the general rules on administrative procedures."

## II

### Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the inadmissibility of the second, the voluntary payment by the presumed perpetrator, in any moment prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202104924, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to FARMACIA MERCADO CENTRAL OF SAN FERNANDO C.B.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal administrative litigation before the Administrative Litigation Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the referred Law.

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