

□ File No.: PS/00518/2021

## 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 November 11, 2021, the Director of the Spanish Agency  
of Data Protection agreed to initiate a sanctioning procedure against the COMMUNITY OF  
OWNERS R.R.R. (hereinafter, the claimed party), through the Agreement that  
is transcribed:

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File No.: PS/00518/2021

### AGREEMENT TO START A SANCTION PROCEDURE

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

### FACTS

FIRST: D.A.A.A. (hereinafter, the claimant) on 10/10/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against DATA 1000 FINCAS, S.L., (hereinafter, DATA 1000 FINCAS), and the  
The reasons on which the claim is based are, in short: that the administrator in  
functions of the COMMUNITY OF OWNERS R.R.R., located at \*\*\*ADDRESS.1  
(hereinafter COMMUNITY OF OWNERS), provided the Director of the company  
security "CMM Security", by email dated 09/30/2020, copy of the  
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Minutes of the Ordinary General Meeting held by the aforementioned Community on 03/05/2020; the aforementioned document contains the names and addresses of neighbors, list of defaulters and the accounts with all the income and expenses of the Community.

It adds that there is no contract between the Administrator and the security company, nor authorization of neighbors and defaulters to provide their data and statement of accounts to the security company.

The following documentation is attached to this claim:

. Copy of the Act object of the claim. It is found that it includes, among other information, detail regarding the owners with pending receipts, with indication of the "estate", name and surname of the owner, amount of the debt and shares undertaken to collect the amounts owed, if any; information on the rental of a parking space that is being carried out by an owner, with indication of your name and surnames; and renewal of charges, indicating the charge, the designated person and the property owned by him; In addition to the statement of accounts community. This document includes as an Annex the Notice of the Meeting.

. Copy of the email, dated 09/30/2020, sent by the claimed entity to the security company CMM Guard, S.L.

This email informs the aforementioned company of the meeting call carried out by a group of neighbors, scheduled for that same date, and they are provided with instructions on the measures to be carried out in accordance with the rules of established by the Community of Owners mentioned (closure of some facilities, notice to the police, where appropriate, conservation of the images of video surveillance, disconnection of lighting in certain areas of the

urbanization, etc).

In this same email it is expressly stated: "We enclose a copy of the minutes of the General Meeting held on March 5 of this year, which includes the appointments of the Governing Board.

SECOND: On 11/13/2020, the claim was transferred to DATA 1000

PROPERTIES, in accordance with the provisions of article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), in order to proceed to its analysis, notify the claimant of the decision adopted and provide this Agency with information about.

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On 12/14/2020, the aforementioned entity responded to the transfer stating the following:

. That DATA 1000 FINCAS acts as administrator of the COMMUNITY OF PROPRIETORS, not having received any administrative file, neither penal, nor disciplinary as a member of the Professional Association of Property Administrators of Madrid;

. That since October 2016 the company CMM Guard S.L. provides security service and security in the COMMUNITY OF OWNERS during the seven days of the week, 24 hours a day;

. That the claim must be understood within the context of confrontation between owners that the aforementioned Community has lived in the previous months and of which DATA 1000 FINCAS has not been able to stay on the sidelines;

. That the Minutes of the General Meeting to which reference is made do not include data on personal character of any owner such as their telephone numbers or bank accounts, nor any other data not available to the contracted security company due to its functions;

. That the minutes were not sent to people outside the COMMUNITY OF OWNERS, but to the Manager of the security company contracted by the itself, which had requested instructions before the confusion created by several owners about the lack of legitimacy of the Governing Board and the Administrator to carry out their functions. This is fulfilled, in the opinion of DATA 1000 FINCAS, the principle of necessity established by article 5 of the RGPD and the delivery of this document is justified as documentary evidence of the appointment of the members of the Governing Board, appointments that were being disputed by a group of co-owners;

. With the indicated reason, points out DATA 1000 FINCAS, the President of the COMMUNITY OF PROPRIETORS provided him with instructions to send the minutes in issue to the aforementioned security company, as documentary evidence of the appointment of the members of the Governing Board;

. That the claimant cannot act on behalf of a third party without having proven the representation, since in the aforementioned act the name or surnames do not even appear.

Provide a copy of the "Security Service Lease Agreement", of 11/01/2016, which binds the OWNERS COMMUNITY and the CMM entity Guard, S.L., and a copy of the email that the President of said Community

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forwarded the claim on 09/19/2020. This email indicates to the claimed to send a note to the security company "in which instructions are given how to proceed in the event that the people who want to carry out the Meeting" and a statement "indicating the reasons why the Meeting of the 30th convened by the promoters is not well convened". Nothing is indicated in this mail about sending the Minutes to the security company.

THIRD: On 02/19/2021, in accordance with article 65 of the LOPDGDD, The Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the entity claimed.

FOURTH: On 04/12/2021, the Director of the Spanish Protection Agency of Data agreed to initiate sanctioning proceedings against the entity DATA 1000 FINCAS. During the processing of this procedure, DATA 1000 FINCAS alleged that it carried out the sending of the record that motivates the claim by mandate of the people who to date 09/30/2020 held the position of President and Vice President COMMUNITY OF OWNERS, and provided a "Certification" signed digitally by the President and with the signature of the Vice President authenticated by a notary, in which they declare that they gave instructions to the Administrator of the same to send to the Managing Director of the company CMM Guard, S.L. the minutes of the General Meeting of 03/05/2020, "as documentary evidence of the people who, at that time, held the positions of the Governing Board of the Community, as it effectively did on the 30th of September 2020 in compliance with these instructions." In the same document, indicates that said shipment was made on 09/30/2020 "in compliance with those instructions"; that occurred at the request of the indicated company, which provides the service of vigilance; and on the occasion of the Meeting convened by a group of owners to that same day 09/30/2020.

Considering these facts, by resolution of 10/27/2021, the file was filed  
of the sanctioning procedure followed against the entity DATA 1000 FINCAS.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of  
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director  
of the Spanish Agency for Data Protection is competent to initiate and to  
resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the  
Spanish Agency for Data Protection will be governed by the provisions of the RGPD, in  
this organic law, by the regulatory provisions issued in its  
development and, in so far as they are not contradicted, on a subsidiary basis, by the rules  
general administrative procedures.

II

Article 5 of the RGPD refers to the principle of data minimization in letter c) of  
its section 1 in the following terms:

"Article 5 Principles relating to the treatment

1.The personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are  
processed ("data minimization").

In this case, the facts denounced are specified in the delivery to a third party, the

security company contracted by the COMMUNITY OF OWNERS, of copy of the Minutes of the General Meeting held on 03/05/2020, which contains data on personal character of the residents of the Community that are listed in the Background First, without there being any legal basis to justify this communication of personal data.

The Community has entered into a contract with the company receiving the information, CMM Guard S.L., by virtue of which this company provides the Community surveillance and security services. This contractual relationship justifies access by part of the aforementioned company to personal data of the people who make up the Community, whenever they are necessary for the fulfillment of the obligations

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that entails the provision of agreed services. Thus, CMM Guard S.L. could have legitimacy to know the identification data and some of the agreements made in the General Meeting, such as the appointment of the Governing Board; but not justifies access to information about neighbors who owe amounts to the Community, nor the details of the debt, nor the personal issues that can be addressed at a General Meeting such as the one held on 03/05/2020.

With the delivery of the Act in question to the security company, it was intended to give meet the members of the Governing Board appointed by the respective Board General Ordinary, since said information may be necessary for the performance of the aforementioned service contract. Therefore, it should have been limited to facilitating that information or to send the Minutes document after having been duly

anonymized.

Thus, the delivery of the Minutes to the security company, with all the information contained in that document, can be understood, without prejudice to what results from the instruction, such as the processing of inappropriate personal data, irrelevant and not necessary for the specific purpose of the treatment, contrary to the principles of data protection, specifically, the principle of "data minimization", regulated in article 5.1.c) of the RGPD.

The remission of the Minutes was made by DATA 1000 FINCAS, in its capacity as Administrator of the Community of Owners and, therefore, in charge of the treatment, in accordance with the instructions received from the controller, which is not other than the COMMUNITY OF OWNERS, and on behalf of the latter (it appears in the proceedings a "Certification" signed by the President and Vice President of the Community of Owners on the date of 09/30/2020, in which these people state that they gave instructions to DATA 1000 FINCAS to send to the company CMM Guard, S.L. the minutes of the General Meeting of 03/05/2020).

The essence of the "processor" function is that the personal data are processed in the name and on behalf of the data controller. In practice, it is the person in charge who determines the purpose and the means, at least the essential ones, while the person in charge of the treatment has a function of providing services to the responsible for the treatment. In other words, "acting in the name and on behalf of the data controller" means that the data controller is at the servicing the interest of the controller in carrying out a task specific and, therefore, follows the instructions established by the person in charge of the

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processing, at least as regards the purpose and essential means of processing.

ordered treatment.

The person in charge of the treatment is the one who has the obligation to guarantee the application of the data protection regulations and the protection of the rights of the interested, as well as being able to demonstrate it (articles 5.2, 24, 28 and 32 of the RGPD).

The control of compliance with the law extends throughout the treatment,

From the beginning to the end. The data controller must act, in

in any case, in a diligent, conscious, committed and active manner.

This mandate of the legislator is independent of whether the treatment is carried out directly the person in charge of the treatment or that it is carried out using a treatment manager.

In addition, the treatment carried out materially by a treatment manager for account of the person in charge of the treatment belongs to the sphere of action of this last, in the same way as if he did it directly himself. The person in charge of treatment, in the case examined, is an extension of the person responsible for the treatment.

The data controller has the obligation to integrate and deploy the protection of data within everything that makes up your organization, in all its areas. I know must bear in mind that, ultimately, the determining purpose is to guarantee the protection of the interested party.

In accordance with the foregoing, in the present case, proving that there was a legal basis to provide the security company with the Minutes of the General Meeting Ordinary with all the personal information outlined in said document corresponds to the COMMUNITY OF OWNERS, as the responsible entity.

Consequently, in accordance with the exposed evidence, available in the moment in which the opening of the procedure takes place, and without prejudice to what result of the investigation, the aforementioned facts could suppose a violation by the of the COMMUNITY OF OWNERS of the provisions of article 5.1.c) of the RGPD, which, if confirmed, would lead to the application of the corrective powers that Article 58 of the aforementioned Regulation grants the Spanish Agency for the Protection of [www.aepd.es](http://www.aepd.es)

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III

In the event that there is an infringement of the provisions of the RGPD, between the corrective powers available to the Spanish Data Protection Agency, as a control authority, article 58.2 of said Regulation contemplates the following:

“2 Each control authority will have all the following corrective powers indicated below:

continuation:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;

(...)

d) order the person responsible or in charge of the treatment that the treatment operations be comply with the provisions of this Regulation, where appropriate, of a given manner and within a specified time;

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;".

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

#### IV

Failure to comply with the provisions of article 5 of the RGPD implies the commission of an infringement typified in section 5.a) of article 83 of the RGPD, which under the heading "General conditions for the imposition of administrative fines" provides the next:

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"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent to tenor of articles 5, 6, 7 and 9".

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 72 of the LOPDGDD, "Infringements considered very serious", it indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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:

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

In order to establish the administrative fine to be imposed, the following conditions must be observed: provisions contained in articles 83.1 and 83.2 of the RGPD, which indicate:

"1. Each control authority will guarantee that the imposition of administrative fines with in accordance with this article for the infringements of this Regulation indicated in the sections 4, 5 and 6 are in each individual case effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each case individually, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount

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In each individual case, due account shall be taken of:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages they have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the person responsible or in charge of the treatment to alleviate the

damages suffered by the interested parties;

d) the degree of responsibility of the data controller or processor, taking into account

of the technical or organizational measures that they have applied by virtue of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the

The person responsible or the person in charge notified the infringement and, if so, to what extent;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the same

matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or certification mechanisms

approved under article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as

financial benefits obtained or losses avoided, directly or indirectly, through

the infraction".

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76,

"Sanctions and corrective measures", establishes that:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the

section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also

may be taken into account:

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- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing personal.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the crime. infringement.
- e) The existence of a merger by absorption process subsequent to the commission of the infraction, that cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in the present case for the infraction typified in article 83.5.a) of the RGPD for which the OWNERS COMMUNITY is responsible,

It considers that the following factors concur as aggravating factors:

- . The damage occurred since they were provided to a third party, not only the data of personal character of the neighbors, but also the delinquency condition of some from them.
- . There is no evidence that the entity had acted maliciously, although the performance reveals gross negligence.
- . The categories of personal data affected by the infringement;

It is also considered that there are extenuating circumstances

following:

- . The merely local scope of the treatment carried out by the claimed entity.

- . The claimed entity is a small business.

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- . The scant link between the activity of the offender and the performance of treatment of personal data.

- . The absence of benefits obtained as a result of the commission of the infringement.

Considering the exposed factors, the initial valuation that reaches the fine for the imputed infraction is 2,000 euros (two thousand euros).

v

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...”.

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined, adapt the data processing that it carries out to the data protection regulations in accordance with what is indicated

in the preceding Foundations of Law.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, being able to motivate such conduct the opening of a subsequent administrative procedure sanctioning

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

Spanish Data Protection,

HE REMEMBERS:

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FIRST: START A PUNISHMENT PROCEDURE against the COMMUNITY entity OF PROPIETARIOS R.R.R., with NIF \*\*\*NIF.1, for the alleged violation of 5.1.c) of RGPD, typified in article 83.5.a) of the aforementioned RGPD.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Subdirector General for Inspection of Data. It also incorporates the documentation provided by the interested party during the processing of the sanctioning procedure indicated with the number PS/00092/2021.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1



October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 2,000 euros (two thousand euros), without prejudice of what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

SIXTH: NOTIFY this agreement to the COMMUNITY OF OWNERS

R.R.R., with NIF \*\*\*NIF.1, granting a hearing period of ten business days to formulate the allegations and present the evidence it deems appropriate. In your brief of allegations must provide your NIF and the number of the procedure that appears at the top of this document

If within the stipulated period it 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, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

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In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the this initiation agreement; which will entail a reduction of 20% of the sanction to be imposed in this proceeding. With the application of this reduction, the sanction would be established at 1,600 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1,600 euros and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The 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 it were appropriate to apply both reductions, the amount of the penalty would be set at 1,200 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (1,600 or 1,200 euros), you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity

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entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On January 12, 2022, the claimed party has proceeded to pay of the sanction in the amount of 1200 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment 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 resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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II

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

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in 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 alleged perpetrator, in any time 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 infringement.

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

competent body to resolve the procedure will apply reductions of, at least, 20% of the amount of the proposed sanction, these being cumulative with each other.

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 recourse against the sanction.

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

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00518/2021, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.

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

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

Common of the Public Administrations, the interested parties may file an appeal contentious-administrative before the Contentious-administrative 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 in article 46.1 of the aforementioned Law.

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