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14 UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 IAN R. DIAZ,

19 Defendant.
 20

No. CR 8:21-cr-00084-JLS

GOVERNMENT'S TRIAL MEMORANDUM

Trial date: March 9, 2023

21 Plaintiff United States of America, by and through its counsel
 22 of record, hereby files the Government's Trial Memorandum in the
 23 above-captioned matter.

24 //

25 //

1 The Government's Trial Memorandum is based upon the attached
2 memorandum of points and authorities, the files and records in this
3 case, and such further evidence and argument as the Court may permit.
4

5 Dated: March 8, 2023

Respectfully submitted,

6 Corey R. Amundson
7 Chief, Public Integrity Section
8 U.S. Department of Justice

By:

9 /s/ Mona Sedky

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MEMORANDUM OF POINTS AND AUTHORITIES

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2 The four-count superseding indictment charges the defendant Ian
3 R. Diaz ("Diaz") with conspiracy to commit cyberstalking, in violation
4 of 18 U.S.C. § 371; substantive cyberstalking, in violation of 18
5 U.S.C. §§ 2261A and 2; perjury, in violation of 18 U.S.C. § 1621; and
6 obstruction in violation 18 U.S.C. §§ 1519 and 2. Dkt. 28. Trial is
7 set to begin on March 9, 2023.

8
9 The charges stem from Diaz's participation in a cyberstalking
10 scheme with his then-wife, Angela Connell, that framed his former
11 fiancé, Jane Doe, for threatening and attempting to rape Connell. The
12 defendant successfully caused Jane Doe to be charged with attempted
13 rape, among other charges, and detained in Orange County Jail for 88
14 days, where she was facing a decades-long prison sentence. Diaz is
15 also charged with obstructing a federal investigation by deleting two
16 personal email accounts in 2016. Further, Diaz is charged with perjury
17 for lying during his September 2019 sworn deposition, taken as part of
18 the civil suit Jane Doe filed, in which he falsely testified that he
19 had never accessed Connell's online accounts.

20
21 **THE FACTS EXPECTED TO BE PROVEN AT TRIAL**

22 **I. Diaz and His Relationship with Jane Doe**

23 Before and during the relevant time period, as a deputy U.S.
24 Marshal with the U.S. Department of Justice's U.S. Marshal's Service
25 ("DOJ-USMS") in Los Angeles, Diaz received training regarding criminal
26 investigations. Evidence will also show that Diaz has a history of
27 using Craigslist personals advertisements to find sexual partners and
28

1 of proposing and/or engaging in certain sexual activities relevant to
2 the instant cyberstalking scheme, including encounters where he
3 watched, recorded, and/or watched recordings of his female sexual
4 partner having sex with another person and "rape fantasy" encounters.

5 Diaz and Jane Doe met in the summer of 2013. They later moved
6 into together, and Diaz eventually suggested to Jane Doe that they
7 purchase a \$470,000 condominium in Anaheim, California (the "Condo"),
8 which was under construction and would be ready for move-in in June
9 2015. Because Diaz could not contribute to the down payment, Jane Doe
10 paid the full down payment and closing costs, totaling approximately
11 \$14,000. They moved into the Condo in June 2015 and split the mortgage
12 payments. However, the evidence will show that eventually the
13 relationship between Diaz and Jane Doe would end following a series of
14 significant and escalating conflicts and strains.
15

16 Jane Doe is expected to testify that fairly early in their
17 relationship and continuing throughout, conflicts arose over Diaz's
18 sexual demands. Diaz pressured Jane Doe, which she repeatedly
19 resisted, to engage in "cuckolding"--having sex with another man--while
20 Diaz either recorded it himself or watched her recordings of it. Diaz
21 told Jane Doe that he could arrange everything by finding a man on
22 Craigslist and told Jane Doe that an ex-girlfriend had done this for
23 him in the past. On occasion, Diaz sent Jane Doe links to Craigslist
24 posts for men seeking sexual encounters. Despite Jane Doe's continued
25 refusals, Diaz persisted with his requests. In mid-February 2014, Jane
26 Doe relented to Diaz's continued pressure and agreed to Diaz's demands.
27
28

1 Subsequently, Diaz arranged for a strange man to come to Jane Doe's
2 apartment, while she was intoxicated and on cold medicine. The man
3 had sex with Jane Doe, while Diaz hid in another room and recorded the
4 sexual encounter using multiple recording devices he had set up
5 beforehand in Jane Doe's bedroom.

6 Jane Doe is also expected to testify that the February 2014
7 cuckolding encounter was extremely traumatic for her. In her view,
8 she did not consent to the sexual encounter that Diaz had pressured
9 her into having. She expressed this to Diaz many times thereafter. She
10 came to view this as a rape. Jane Doe was also very concerned about
11 Diaz's recording of the incident. She repeatedly asked Diaz to destroy
12 the recording. Though Diaz initially assured Jane Doe that he deleted
13 the recording, he later claimed that he still had it and watched it.
14 Diaz continued to ask Jane Doe to have sex with other men, but Jane
15 Doe refused. The cuckolding incident and Diaz's recording of it,
16 combined with Diaz's continued cuckolding demands, along with other
17 incidents that strained their relationship, ultimately led to their
18 eventual breakup.
19
20

21 Prior to the end of their relationship, Jane Doe became more vocal
22 in her complaints about Diaz's making her have sex with another man
23 and other aspects of his abuse. She vocalized these complaints to Diaz
24 and to others. As she began sharing more with her friends and family,
25 with their support and encouragement, Jane Doe made plans to end her
26 relationship with Diaz permanently.
27

28 In late August 2015, Jane Doe ended the relationship with Diaz

1 and moved out of the Condo. Evidence will show that in early September
2 2015, Jane Doe began communicating more openly about her experiences
3 with Diaz—both to Diaz himself and to others. For example, Jane Doe
4 notified her graduate school personnel about her concerns about Diaz,
5 who in turn notified Diaz that he was not allowed on campus. On
6 September 10, 2015, Jane Doe sent another email to Diaz from her
7 verified Gmail account, which referred to the rape incident and accused
8 Diaz of being unfaithful during their relationship. In the text of
9 this email, Jane Doe included biblical references and a specific
10 reference to “Lillith.” Jane Doe will testify that the language used
11 in this latter email was out-of-character for her and, in her view,
12 resulted from her having a post-traumatic stress episode resulting from
13 her relationship with Diaz. The next day, on September 11, 2015, in
14 the first of a series of events of Ian Diaz involving the courts and
15 local law enforcement, Diaz filed an application for a Temporary
16 Restraining Order (“TRO”) against Jane Doe, attaching several of the
17 e-mails. The TRO was not granted. At or around the same time, he
18 complained to APD that Jane Doe was harassing him.

21 As noted, Jane Doe moved out of the Condo in late August 2015,
22 just a few months after she and Diaz had moved in. Evidence will show
23 that from September-October 2015, she attempted on her own to resolve
24 the transfer of the Condo’s ownership to Diaz. When a resolution could
25 not be reached, both Diaz and Jane Doe hired property attorneys, who
26 negotiated a settlement agreement. The evidence will further show that
27 ultimately Diaz did not honor the negotiated agreement, and a legal
28

1 dispute ensued that resulted in Jane Doe's filing a formal civil
2 lawsuit. The evidence will also show that there were several key dates
3 during the Condo dispute that overlapped with the cyberstalking scheme.

4 **II. The May-July 2016 Cyberstalking Scheme to Frame Jane Doe**

5 **A. Diaz's Motives and His Brief Relationship with Connell**

6 As the Condo dispute wore on, although Diaz was eager to remain
7 in the Condo, financial evidence will show that it became clear that
8 he could not afford to do so. Evidence will further show that Diaz was
9 also growing troubled by Jane Doe's increasingly public accusations
10 that Diaz had raped and abused her. It was at this time, in January
11 2016, that Diaz began dating Connell. Within a few weeks of meeting
12 Connell, Diaz proposed marriage. Shortly thereafter, they married and
13 Connell moved into the Condo that was the subject of his ongoing
14 property dispute with Jane Doe. Against this backdrop, the evidence
15 will show that Diaz and Connell initiated, and then executed, a complex
16 cyberstalking scheme with the objective of framing Jane Doe for
17 criminal conduct that Diaz and Connell perpetrated against themselves.
18
19

20 **B. The Cyberstalking Scheme**

21 The evidence will show that Diaz and Connell: (1) posed as Jane Doe
22 and sent emails to themselves threatening to kill and rape Connell;
23 (2) solicited, and then lured, men they found through Craigslist
24 "personal" advertisements to engage in a "rape fantasy" with Connell,
25 in an attempt to stage a non-consensual sexual assault on Connell; (3)
26 staged one or more hoax sexual assaults and hoax attempted sexual
27 assaults on Connell; (4) repeatedly reported the conduct to local law
28

1 enforcement, falsely claiming that Jane Doe was responsible for it and
2 was placing Connell's life in danger; 5) repeatedly asked and caused
3 the Anaheim Police Department and the Orange County District Attorney's
4 Office to arrest and charge Jane Doe with the attempted rape of Connell,
5 and (6) ultimately caused local authorities to detain Jane Doe in jail
6 for approximately 88 days.

7
8 **1. Opening Bogus Online Accounts**

9 The evidence will show that Diaz and Connell, using VPNs among
10 other tools, first established various fake online accounts to use in
11 the scheme. These included email accounts, social media accounts, and
12 Craigslist accounts. They selected account names that appeared to be
13 linked to Jane Doe, to make it look like Jane Doe was the one
14 controlling the accounts and therefore sending communications from the
15 accounts.

16
17 **2. Posing as "Lilith"/Jane Doe and Sending Death and Rape Threat
Emails to Themselves**

18 The government expects the evidence to show that in the first
19 phase of their scheme to frame Jane Doe, in late May to early June
20 2016, Diaz and Connell used the bogus Jane Doe accounts they created
21 to send themselves e-mail messages with graphic threats to rape,
22 injure, and kill Connell. Several of the e-mails they sent themselves
23 also contained attachments with graphic photographs depicting injured
24 and dead women, babies, and fetuses. To make it look like Jane Doe was
25 the sender, they also signed many of the messages with Jane Doe's first
26 name, last name, or other names or phrases associated with her,
27
28

1 including "Lilith" in reference to the phrase Jane Doe included in her
2 September 2015 email to Diaz. Similarly, they included other language
3 Jane Doe used in some of her prior communications with Diaz, including
4 biblical references and accusations about Diaz. Diaz and Connell used
5 these so-called threats as a basis to obtain temporary restraining
6 orders ("TROs") against Jane Doe and then repeatedly advocated to
7 police, both in person when police were called to the Condo and through
8 emails sent to APD detectives, that they arrest Jane Doe for violating
9 the TROs and endangering Connell's life.
10

11 **3. Posing as "Lilith"/Jane Doe and Responding to Craigslist Rape**
12 **Fantasy Posts to Lure Men to Condo**

13 The evidence will show that Diaz and Connell became frustrated
14 with APD's lack of response and escalated their scheme to have Jane
15 Doe arrested. Specifically, in June 2016, they searched in the
16 Craigslist personals/casual sexual encounters section for men who were
17 seeking a "m4w" (men for--or seeking--women) "rape fantasy" or similar
18 types of casual sexual encounters with women. Again using the
19 counterfeit Jane Doe accounts they created, Diaz and Connell responded
20 to several of these male Craigslist rape fantasy posters. In their
21 responses, Diaz and Connell provided the Condo address, sometimes
22 Connell's photographs and Connell's and/or Diaz's cell phone numbers,
23 and encouraged the Craigslist posters to come to the Condo for a rape
24 fantasy, ostensibly with Connell.
25

26 For example, the evidence will show that on June 13, 2016, Connell
27 called APD and claimed that one of the Craigslist men that Jane Doe
28

1 communicated with on Craigslist had come to the Condo. APD officers
2 arrived at the Condo, with a police helicopter hovering above, and
3 found the defendant outside the front door of the Condo, with his USMS
4 badge around his neck and his unholstered firearm in his hand. Once on
5 scene, Diaz then blamed Jane Doe for responding to the Craigslist rape
6 fantasy advertisements and sending the men to the Condo. When speaking
7 to APD officers on scene, the defendant repeatedly claimed, as captured
8 on the officers' body-worn-camera footage, that Connell's life was in
9 danger, and even alluded that he might have fired his weapon on one of
10 the men sent to the Condo from Craigslist. As it happened, the evidence
11 will show that Diaz had communicated with the Craigslist poster,
12 identified by the initials V.C., and had successfully lured him to the
13 front gate of the Condo building that night.

14
15 **4. Posing as "Lilith"/Jane Doe and Posting to Craigslist Rape**
16 **Fantasy Posts to Lure Men to Condo**

17 The evidence will also show that in late June 2016, Diaz and
18 Connell shifted from responding to Craigslist ads to also include
19 posting their own "rape fantasy" solicitations in the "w4m" (women for
20 men) section of Craigslist.

21 Diaz and Connell used the bogus email accounts to communicate with
22 men on Craigslist in a continued campaign to lure men to the Condo,
23 and then call APD to report the incidents, as well as forward multiple
24 emails to APD detectives and police during this time. Ultimately, their
25 efforts led to Jane Doe being arrested and eventually held in jail
26 pending prosecution.
27
28

1 **5. Jane Doe's Arrests and Detention**

2 On June 24, 2016, Connell called APD and claimed that one of the
3 Craigslislist men that Jane Doe had communicated with had come to the
4 Condo and sexually assaulted Connell. APD officers arrived at the
5 Condo, interviewed Connell, and arrested Jane Doe later that same
6 night. On July 13, the evidence will show that Diaz and Connell
7 successfully lured one of the Craigslislist men, who at the time was 17-
8 years old, to the Condo to engage in a sexual encounter. At the same
9 time, they were in contact with APD detectives to ensure that APD was
10 at the Condo at the same time. APD confronted and detained the 17-year-
11 old for questioning. APD arrested Jane Doe again the next day, July
12 14. Following her second arrest, Jane Doe was held in jail for 88 days
13 before she was eventually exonerated.
14

15 **C. Evidence of Diaz's Role in the Scheme and His Concealment**

16 The evidence at trial will establish that Diaz conspired with
17 Connell and participated in the cyberstalking scheme, including, but
18 not limited to, by: (1) luring individual Craigslislist posters to the
19 Condo; (2) forwarding fake threats (whether emails or Craigslislist
20 communications) to APD, sometimes posing as Connell when doing so and
21 sending them from Connell's e-mail account; (3) altering some of the
22 fake threatening emails before sending them to APD officers; (4)
23 falsely claiming that Jane Doe posed a danger to Connell and Diaz; and
24 (5) demanding, often while referring to his status as a deputy U.S.
25 Marshal, that APD arrest, charge, and incarcerate Jane Doe. The
26 evidence at trial will also show that Diaz repeatedly lied to APD and
27
28

1 while testifying under oath during his civil deposition in 2019. The
2 defendant also deleted two of his email accounts used in the scheme;
3 changed his phone number used in the scheme multiple times; and wiped
4 his cell phone used in the scheme. The evidence will further show that
5 the defendant took these latter steps with the knowledge of an impending
6 investigation at the USMS.

7 **D. Jane Doe's Resulting Emotional Distress**

8 As a result of Diaz and Connell's cyberstalking campaign, Jane
9 Doe was falsely accused of committing serious crimes, arrested twice
10 and remained in custody for 88 days. The evidence will show that Jane
11 Doe suffered substantial emotional distress as a result.
12

13 **THE EVIDENCE EXPECTED TO BE PRESENTED AT TRIAL**

14 **I. The Witnesses**

15 Jane Doe will testify at trial about her personal background, her
16 relationship with Diaz in 2013-2015, and about various salient events
17 and aspects of that relationship, including the pressure Diaz placed
18 on her to participate in a cuckolding sexual encounters, the 2014
19 cuckolding incident, their break-up, and the Condo dispute. She will
20 also describe the cyberstalking campaign, her arrests and the impact,
21 emotional and otherwise, the cyberstalking campaign inflicted on, and
22 continues to inflict, on her. The government further intends to call
23 a few of the men who communicated with Connell and the defendant in
24 response to Craigslist postings, ostensibly to arrange sexual
25 encounters at the Condo. It also intends to call a former Craigslist
26 employee who will explain about Craigslist's authorization process and
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28

1 business records from 2016. The government intends to call two of
2 Diaz's prior sexual partners. They are expected to testify about the
3 defendant's prior experiences in proposing and engaging in sexual
4 encounters, using Craigslist, involving third-parties and in proposing
5 "rape fantasy" sexual encounters. The government further expects to
6 call a number of law enforcement witnesses at trial, including one or
7 more special agents from the Department of Justice Office of Inspector
8 General ("OIG"), who will discuss the government's investigation in
9 this case, including evidence obtained through forensic analysis. The
10 government also expects to call APD officers and detectives involved
11 in the initial APD investigation, as well as officials from the USMS,
12 including USMS witnesses with knowledge of the USMS IT networks, the
13 defendant's personnel background, and his administrative
14 investigations. The government may also call FBI Special Agent Richard
15 Busick to offer expert testimony about historical cell site and
16 location data provided in AT&T phone records obtained through the
17 course of this investigation.
18
19

20 The government also intends to call one of Jane Doe's attorneys
21 involved in her federal civil rights lawsuit and one of her attorneys
22 involved in the Condo dispute. Finally, the government may call
23 Connell, who will testify about the cyberstalking scheme to frame Jane
24 Doe. In addition to her role in the scheme, Connell will discuss Diaz's
25 knowledge of and participation in the scheme. She will also discuss
26 Diaz's access to, and use of, her devices and accounts.
27

28 The government and the defendant have negotiated multiple

1 stipulations. The government anticipates that it may still need to
2 call several authentication witnesses.

3 **II. The Exhibits**

4 The government intends to introduce several categories of
5 exhibits, including, but not limited to, the following: (1) the
6 threatening e-mails and Craigslist rape fantasy communications,
7 including attachments; (2) Diaz's e-mail and text communications with
8 APD, USMS, Jane Doe and her lawyers, Connell, and others; (3) audio
9 and video recordings (and transcripts thereof) from body-worn-camera
10 and recorded phone calls of Diaz and Connell's interactions with APD;
11 (4) documents related to the Condo dispute; (5) Diaz's TRO applications
12 and attachments; (6) Diaz's financial records; (7) excerpts from Diaz's
13 deposition transcript and statements to APD; (8) files found on Diaz's
14 electronic devices, including emails, text messages, contacts, browser
15 cookies, temporary word files, recents logs, and deleted items; (9)
16 court filings from the state civil suit relating to the property dispute
17 and from the federal civil rights lawsuit filed by Jane; (11) provider
18 records; and(12)summary charts and demonstratives.

21 **POTENTIAL EVIDENTIARY ISSUES**

22 **I. Diaz's Statements Are Not Hearsay When Offered by The Government**

23 The government intends to offer statements by the defendant, made
24 in a variety of contexts, using a variety of methods, and to different
25 people, including Jane Doe, Connell, his former sexual partners, his
26 friend L.C., APD officers, the Craigslist men, and in documents he
27 authored. As the defendant in this matter, Diaz's statements are party
28

1 admissions and are not hearsay. Fed. R. Evid. 801(d)(2); see also
2 *United States v. Pelisamin*, 641 F.3d 399, 410 (9th Cir. 2011)
3 (defendant's TV and media phone interviews were not hearsay because
4 the Government offered them as statements of a party-opponent).

5 **II. Statements Using the Pseudonym "Lilith" Are Admissible**

6 The government expects that Diaz will argue that he was not the
7 sender of the "Lilith" and other similar bogus emails. Whether or not
8 Diaz was, at all times, "Lilith" has no bearing on the admissibility
9 of the emails. First, the government is not seeking to enter these
10 statements for the truth of the matter asserted, so it need not
11 establish that they were made by Diaz, the party-opponent. They largely
12 consist of threats and Craigslist rape fantasy communications. Second,
13 the emails are highly relevant, precisely because the government is
14 using them for the purpose of proving his identity. *United States v.*
15 *Patrick*, 959 F.2d 991, 999 (D.C. Cir. 1992) ("hav[ing] no difficulty"
16 in denying a hearsay objection to a receipt introduced to prove an item
17 belonging to defendant was found in same room as cocaine and weapon);
18 *United States v. Arrington*, 618 F.2d 1119, 1126 (5th Cir. 1980) (holding
19 utility bills found during search of house admissible to prove
20 defendant resided there), *cert. denied*, 449 U.S. 1086 (1981). The
21 emails will also prove Diaz's relationship with his co-conspirator,
22 Connell. Statements used to demonstrate a relationship between parties,
23 including co-conspirators, rather than for the truth of the matter
24 asserted, are not hearsay. See *United States v. Cesario-Ayala*, 576
25 F.3d 1120, 1129-30 (10th Cir. 2009) (holding statement "I've got your
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1 money" was not hearsay when offered to show relationship between
2 speaker and defendant); *United States v. Rodriguez Lopez*, 565 F.3d 312
3 (6th Cir. 2009) (calls to defendant asking for heroin not hearsay when
4 offered to circumstantially prove participation in conspiracy,
5 irrespective of truth); *United States v. Oguns*, 921 F.2d 442, 448-49
6 (2d Cir. 1990) (holding that the question "Have the apples arrived
7 there?" was not hearsay when offered as circumstantial evidence of
8 conspiracy).

9
10 **III. Diaz's Self-Serving Out-of-Court Statements are Inadmissible
Hearsay**

11 As the Ninth Circuit has noted, "plac[ing] [a defendant's]
12 statement [] before the jury without subjecting [him] to cross-
13 examination [] is exactly what the hearsay rule forbids." *United*
14 *States v. Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988); see also *United*
15 *States v. Quinones-Chavez*, 641 F. App'x 722, 725 (9th Cir. 2016)
16 (unpublished) ("If Quinones wished to communicate his version of
17 events, he could have testified.")

18
19 Diaz may attempt to offer statements he made that appear
20 exonerative. These might include, for example, statements to Connell,
21 APD and others, at the time of the scheme, that he claimed to believe
22 Jane Doe was responsible for the threatening emails, and believed she
23 was putting Connell's life in danger. The government contends that
24 Diaz intentionally made these false statements as part of the scheme.
25 Moreover, while the government may introduce some of these false
26 statements to demonstrate the defendant's role in the scheme, the
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1 defendant is precluded from introducing such statements because if Diaz
2 offers them, he would be doing so to establish the truth of the matter
3 asserted. Diaz cannot rely on Fed. R. Evid. 801(d)(2) because, as its
4 proponent, the evidence is not being offered against him. See, e.g.,
5 *United States v. Mitchell*, 502 F.3d 931, 965 (9th Cir. 2007); *United*
6 *States v. Ortega*, 203 F.3d 675, 679 (9th Cir. 2000); *United States v.*
7 *Fernandez*, 839 F.2d 639, 640 (9th Cir. 1988). "The self-inculpatory
8 statements, when offered by the government, are admissions by a party-
9 opponent and are therefore not hearsay, see Fed. R. Evid. 801(d)(2),
10 but the non-self-inculpatory statements are inadmissible hearsay."
11 *Ortega*, 203 F.3d at 679. A defendant cannot admit his own out-of-court
12 statements through someone else. See *United States v. Waters*, 627 F.3d
13 345, 358 (9th Cir. 2010) (holding that a statement by the defendant to
14 a relative, "I am innocent", was "clearly hearsay"); *United States v.*
15 *Marin*, 669 F.2d 73, 84 (2d Cir. 1982); *United States v. Waters*, 194
16 F.3d 926, 931 (8th Cir. 1999). Diaz's "non-self-inculpatory statements
17 are inadmissible even if they were made contemporaneously with other
18 self-inculpatory statements." *Ortega*, 203 F.3d at 682 (citing
19 *Williamson v. United States*, 512 U.S. 594, 599 (1994)). Simply stated,
20 the admissibility of a falsely exculpatory statements, like statements
21 of a party-opponent, is at the government's option, not Diaz's.

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23
24 The defense should also be prevented from slipping in Diaz's self-
25 serving statements for a supposedly non-hearsay purpose that's mere
26 pretext. See *United States v. Two Elk*, 536 F.3d 890, 901 (8th Cir.
27 2008) (abuse of discretion to allow agent to testify about alternative
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1 suspect's denial of culpability on the "fairly flimsy rationale" of
2 showing why FBI did not investigate him). If the defense admits an
3 out-of-court, self-serving statement on the basis that it's not for
4 the truth of the matter asserted (e.g., "effect on the listener"), it
5 would be improper to then turnaround and utilize the statement in
6 closing argument for its self-serving purpose. *Cf. United States v.*
7 *Adams*, 722 F.3d 788, 829-30 (6th Cir. 2013) (finding that government's
8 closing argument did not reference complaints of elections violations
9 admitted as non-hearsay for the improper purpose of proving vote-
10 buying). To prevent this, the Court should be wary of any non-hearsay
11 arguments to admit statements by Diaz with an obvious self-serving
12 purpose. And if such statements are admitted, the Court should disallow
13 the defense from utilizing the statements for their self-serving
14 purpose during closing argument and give a limiting instruction. See
15 *United States v. King*, 36 F.3d 728, 732 (8th Cir. 1994) (expressing
16 concern over lack of limiting instruction that jury was to consider
17 testimony only purpose for which it was admitted and not it for the
18 truth of the matter asserted).

21 Along similar lines, Defendant may attempt to offer texts
22 purporting to show his care and concern for Connell under the state of
23 mind exception to the rule against hearsay. This, too, should not be
24 allowed, because the exception doesn't apply where the proponent's true
25 purpose is to prove the truth of the underlying facts asserted. See
26 *United States v. Hernandez*, 176 F.3d 719, 727 (3d Cir. 1999)
27 ("[S]tatements that are considered under . . . the 'state of mind'
28

1 exception, cannot be offered to prove the truth of the underlying facts
2 asserted." (internal citation omitted)); *Grove Fresh Distributors, Inc.*
3 *v. New England Apple Products Co., Inc.*, 969 F.2d 552, 556 (7th Cir.
4 1992). "[T]he scope of this [state of mind] exception must be limited
5 to prevent it from devouring the rule." *Id.* Here, the defendant's
6 statements of his purported belief that Connell was pregnant and was
7 legitimately in danger would be offered as mere pretext. Their true
8 purpose would be to show their truth---namely, that the defendant
9 believed Jane Doe, not Diaz and Connell, was behind the cyberstalking
10 scheme.
11

12 **IV. Implied Assertions by the Defendant Constitute Hearsay**

13 The defense may also attempt to pass off certain statements with
14 implied assertions as non-hearsay. For example, the government suspects
15 that the defense will attempt to portray Diaz as having been duped by
16 Connell during the relevant time period. In one text sent after she
17 supposedly tricked him into believing she was pregnant, Diaz messaged
18 UCC-1, asking Connell about her pregnancy. At first blush, this appears
19 as a non-assertive question, but the obvious, implied assertion is that
20 Diaz believed Connell was pregnant.
21

22 "It is widely recognized that the grammatical form of a verbal
23 utterance does not govern whether it fits within the definition of
24 hearsay." *United States v. Torres*, 794 F.3d 1053, 1060 (9th Cir. 2015).
25 The Ninth Circuit has held that "while some questions may constitute
26 non-hearsay, where the declarant intends the question to communicate
27 an implied assertion and the proponent offers it for this intended
28

1 message, the question falls within the definition of hearsay." *Id.* at
2 1059. "Because there may be instances where a party attempts to admit
3 hearsay by cloaking statements under the guise of a question, the focus
4 of the inquiry should be on what the declarant intended to say, whether
5 implied or directly asserted." *Id.* at 1061; see also *United States v.*
6 *Palma-Ruedas*, 121 F.3d 841, 857 (3rd Cir. 1996); cf. *United States v.*
7 *Long*, 905 F.2d 1572, 1580 (D.C. Cir. 1990) ("[T]he crucial distinction
8 under rule 801 is between intentional and unintentional messages,
9 regardless of whether they are express or implied."). In *Torres*, the
10 Ninth Circuit held that the trial court properly excluded a non-
11 testifier's questions to the defendant offered for the implied
12 assertion that he had been set up in a drug importation scheme. *Id.*
13 In *Palma-Ruedas*, the Third Circuit upheld the exclusion of the
14 defendant's statement "Nice to meet you" when offered by the defendant
15 as evidence that he and a second person had not met. *Id.* The court
16 concluded that use of the statement was improper because "statements
17 offered to support an implied assertion are inadmissible hearsay." *Id.*

18
19 Here, similarly, admitting a solicitous text messages by the
20 defendant asking Connell about her pregnancy are offered for no other
21 purpose but *implicitly* asserting that Diaz believed Connell was
22 pregnant. This would be no different than admitting a text message in
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1 which he's explicitly asserting, "I know you're pregnant." Both are
2 self-serving¹ hearsay that should be excluded.²

3 **V. Statements Between L.C. and Diaz are Not Hearsay.**

4 The government also intends to admit Diaz's text exchange with
5 his friend, L.C. Diaz's texts in the exchange are party admissions,
6 and L.C.'s responses will be offered not for the truth of the matter
7 asserted, but rather for the effect on the listener and for context.³

8 For example, the government intends to offer the following
9 exchange between Diaz and L.C., which followed a call from Detective
10 Cunha, who investigated Connell and Diaz for their role in the
11 underlying scheme. In the exchange, Diaz and Carlson reveal their
12

13
14
15 ¹ To be sure, "[w]hether self-serving, neutral, or dis-serving, a
16 hearsay statement that does not fit within one of the exceptions to
17 the hearsay rule is inadmissible," and "'self-serving' is a misnomer
18 that ought to be interred." *Chestnut v. Ford Motor Co.*, 445 F.2d 967,
19 972 (4th Cir. 1971). The self-serving nature of the statements that
the government anticipates the defense will seek to admit is not
important because it makes them any more or less hearsay, but rather,
because it belies the nonhearsay bases on which they may be offered.

20 ² As another example, Defendant may attempt to admit text messages
21 he sent describing Connell as "crazy," and argue that he is not seeking
22 to admit those messages to show that she actually was crazy. But he
23 would be trying to admit this for the obvious, implied assertion that
24 he believed she was crazy. The court should exclude this hearsay, or,
25 at the very least, forbid him to then argue it to the jury for the
26 truth of the implied assertion that he believed Connell to be crazy.

27 ³ These two bases for admissibility are sufficient in their own
28 right. But, in addition, to the extent that L.C. messaged Diaz with
questions, such messages are non-assertive. See *United States v.*
Jackson, 88 F.3d 845, 847-48 (10th Cir. 1996) (not hearsay where an
unidentified person messaged the defendant's confiscated pager and
asked a police officer, "Is this Kenny?"); see also *United States*
v. Waters, 627 F.3d 345, 358 (9th Cir. 2010) (holding that an imperative
statement is a nonassertion, not offered to prove the truth of the
matter asserted).

1 concern about Detective Cunha's investigation, including the
2 following:

- 3 • L.C.: "he didn't ask to set up time for your phone?"
- 4 • Diaz: "no, I was waiting for it"
- 5 • L.C.: "ok good,"
- 6 • Diaz: "having heart palpitations from that short phone call"
- 7 • L.C.: "I think it's good that he didn't ask . . . don't you"
- 8 • Diaz: "yes and no, I can see why jenn wants to talk to him
9 so bad"
- L.C.: "what did you decide on that? You let her? Or wait?"
- Diaz: "Waiting till he asks".
- L.C.: "good"

10 "An out-of-court statement offered to show the effect on the
11 listener, rather than the truth of the matter asserted, is not hearsay."
12 *Fischer v. Travelers Commer. Ins. Co.*, 2015 U.S. Dist. LEXIS 182101,
13 at *7 (C.D. Cal. Dec. 15, 2015) (citing *United States v. Lopez*, 185
14 F.3d 870 (9th Cir. 1999) [published in full-text format at 1999 U.S.
15 App. LEXIS 13197]); see also *United States v. Payne*, 944 F.2d 1458,
16 1472 (9th Cir. 1991) (holding statement was non-hearsay where "it was
17 introduced to show the effect on the listener" and "to explain the
18 circumstances under which her denial of the molestation took place"),
19 *cert. denied*, 1112 S. Ct. 1598 (1992); *United States v. Barragan*, 871
20 F.3d 689, 705 (9th Cir. 2017) (holding that "the informant's statements
21 on the tapes were not hearsay because, as the court instructed the
22 jury, they were offered only for context, not for the truth of the
23 matter asserted."); *United States v. Valerio*, 441 F.3d 837, 844 (9th
24 Cir. 2006) ("Nothing the undercover informant said would be considered
25 by the jury for its truth, but only to give context to what [the
26 defendant] said, under the admonition."); *United States v. Whitman*,

1 771 F.2d 1348, 1352 (9th Cir.1985) (same, when tape recorded statements
2 introduced to aid jury in understanding defendant's statements).⁴

3 To the extent that Diaz's statements are being offered for the
4 truth of the matter asserted to demonstrate evidence of a guilty
5 conscience (e.g., that he was "having heart palpitations"), they are
6 admissible as statements of a party-opponent and highly relevant. Fed.
7 R. Evid. 801(d)(2); see also *United States v. Collins*, 90 F.3d 1420,
8 1428 (9th Cir. 1996) (evidence of defendants' attempts to induce
9 witnesses to lie is indicative of consciousness of guilt and is
10 admissible).

11
12 **VI. Emails from the Lilithistruth and IanRDiaz Accounts are Not**
13 **Hearsay Insofar as They Will Not be Offered for their Truth**

14 Diaz perpetrated his cyberstalking of Jane Doe using false threats
15 and fake Craigslist lures. These threats and Craigslist posts are not
16 being admitted for the truth of the matter asserted. Quite the
17 opposite, the government contends that Diaz and Connell fabricated
18 threats to deceive law enforcement and fabricated the Craigslist posts

19
20 ⁴ See also *United States v. Foster*, 701 F.3d 1142, 1150-51 (7th
21 Cir. 2012) ("The admission of recorded conversations between informants
22 and defendants is permissible where an informant's statements provide
23 context for the defendant's own admissions."); *United States v. Price*,
24 792 F.2d 994, 997 (11th Cir. 1986) (statements admitted "to make
25 understandable to the jury the statements made by" the defendant);
26 *United States v. Williams*, 604 F.2d 1102, 1108 (8th Cir.1979) ("the
27 tape recorded conversation was not hearsay because it was admitted to
28 provide context for [the defendant's] end of the conversation.").

1 to deceive would-be partners in consensual rape fantasies. Threats
2 and Craigslist posts admitted for this purpose are not hearsay. See
3 also *United States v. Krug*, 666 F. App'x 665, 669 (9th Cir. 2016)
4 (unpublished) ("The effect of a purportedly threatening statement on
5 the listener or recipient, and the listener's reaction, is highly
6 relevant" and not hearsay); *Planned Parenthood of Columbia/Willamette,*
7 *Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1083 (9th Cir.
8 2002), as amended (July 10, 2002) (testimony that the FBI and Justice
9 Department considered anti-abortion posters to be "serious threats"
10 admissible to show physicians' state of mind in response).

12 **VII. Diaz's False Statements Are Admissible to Prove the Charged**
13 **Conduct and to Show Consciousness of Guilt.**

14 The government plans to introduce Diaz's repeated lies to law
15 enforcement and under oath at his deposition. Because he is charged
16 with obstruction of justice and perjury, these lies are admissible,
17 inextricably intertwined evidence. See *United States v. Loftis*, 843
18 F.3d 1173, 1177-78 (9th Cir. 2016) (explaining that evidence is
19 inextricably intertwined when it 1) "constitutes a part of the
20 transaction that serves as the basis for the criminal charge" or 2) is
21 necessary "to permit the prosecutor to offer a coherent and
22 comprehensible story regarding the commission of the crime.")
23 They are also highly relevant: the Ninth Circuit has repeatedly held
24 that false exculpatory statements may be admissible as circumstantial
25 evidence tending to show consciousness of guilt. See *United States v.*
26 *Candoli*, 870 F.2d 496, 508 (9th Cir. 1989); *United States v. Hackett*,

1 638 F.2d 1179, 1186-87 (9th Cir. 1980), *cert. denied*, 450 U.S. 1001,
2 101 S. Ct. 1709 (1981); *United States v. Boekelman*, 594 F.2d 1238, 1240
3 (9th Cir. 1978); *United States v. Wood*, 550 F.2d 435, 442-43 (9th Cir.
4 1977).

5 **VIII. Condo Dispute Dispute Evidence Is Not Hearsay**

6 The government intends to offer documents and communications
7 related to the property dispute between Diaz and Jane Doe, including a
8 property agreement. Documents with significance independent of their
9 content, or those that determine the rights of parties, do not
10 constitute hearsay. See *United States v. Pang*, 362 F.3d 1187, 1192
11 (9th Cir. 2004) (“[O]ut-of-court statements that are offered as
12 evidence of legally operative verbal conduct are not hearsay.”); *Stuart*
13 *v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1154 (9th Cir. 2000)
14 (holding that insurance policy was “excluded from the definition of
15 hearsay . . . because it is a legally operative document that defines
16 the rights and liabilities of the parties in this case.”); *United*
17 *States v. Bellucci*, 995 F.2d 157, 161 (9th Cir. 1993) (holding
18 certificate of insurance was not hearsay because it memorialized the
19 legal relationship between the insurer-the FDIC-and the insured-the
20 financial institution).

23 The government also intends to admit emails to Diaz from Jane
24 Doe’s attorneys.⁵ These emails are being admitted to prove Diaz was
25

27 ⁵ The government may also seek to admit emails from the defendant’s
28 attorney to Jane Doe’s attorneys, which the government submits are
admissible under Rule 801(d) (2) (C), which states a statement is not

1 put on notice about certain actions related to the property dispute as
2 well as to explain defendant's subsequent actions. Therefore, they
3 too are not hearsay. See *Clemmons v. Strona*, 2021 WL 6496776, at *4
4 (C.D. Cal. Aug. 13, 2021) ("If an out-of-court statement is not
5 introduced for the truth of the matter asserted, but to establish the
6 effect on the listener or a basis in fact for the listener's subsequent
7 actions, the statement is not hearsay.") (citing *Payne, supra*, 944 F.2d
8 at 1472)). Even where the out-of-court statement contains an
9 allegation against a litigant, the statement is nonetheless admissible
10 where its relevance lies in the fact the statement was made and its
11 effect, rather than its content. See, e.g., *Bakst v. Cmty. Mem'l Health*
12 *Sys., Inc.*, 2011 WL 13214315, at *33 (C.D. Cal. Mar. 7, 2011) (admitting
13 statement by Chief Counsel to the Office of the Inspector General that
14 individuals should be held accountable for healthcare fraud as
15 alternative explanation for plaintiff's inability to find employment);
16 *E.E.O.C. v. Evans Fruit Co.*, 2013 WL 1703537, at *4 (E.D. Wash. Apr.
17 19, 2013) (holding that out of court statements relayed to a sexual
18 harassment claimant regarding similar acts of harassment in the
19 workplace may be admissible for the purpose of showing the effect on
20 the claimant).

23 **IX. The TROs that Diaz Obtained against Jane Doe are Not Hearsay**

24 The government also intends to enter various TRO orders and
25 applications that Connell and Diaz applied for and/or obtained against
26

27 _____
28 hearsay when offered "against an opposing party and was made by a
person whom the party authorized to make a statement on the subject."

1 Jane Doe. The TRO served as an important step in Diaz's efforts to
2 have Jane Doe charged and arrested for, among other things, violating
3 the TRO. The TRO is not being offered for the truth of the matter
4 asserted. Indeed, the assertions that Connell and Diaz made in the
5 TRO applications and in the attached communications are largely false.
6 The TRO is not hearsay when admitted for this purpose. See 5-801
7 Weinstein's Federal Evidence § 801.11[5][a]; *United States v. Dupree*,
8 706 F.3d 131, 136-38 (2d Cir. 2013); *United States v. Boulware*, 384
9 F.3d 794, 806 (9th Cir. 2004).

10
11 **X. Jane Doe's Statements to USMS-IA and APD Are Not Hearsay**

12 The government intends to admit statements by Jane Doe to USMS-IA
13 and APD alleging that Diaz framed her. Reports to these investigative
14 bodies provided Diaz's incentive to cover up his actions and provide
15 evidence of Diaz's motive to obstruct justice. As discussed above,
16 statements offered to show effect on the listener are not hearsay.
17 This can include allegations of wrongdoing which prompt actions in
18 response. See, e.g., *United States v. Connelly*, 395 Fed. Appx. 407,
19 408 (9th Cir. 2010); *Raiser v. City of Temecula*, 2019 U.S. Dist. LEXIS
20 63628, at *76 (C.D. Cal. Feb. 11, 2019); *Fischer v. Travelers Commer.*
21 *Ins. Co.*, 2015 U.S. Dist. LEXIS 182101, at *6 (C.D. Cal. Dec. 15,
22 2015); *Jackson v. Cnty. of San Bernardino*, 2016 U.S. Dist. LEXIS 184177,
23 at *15 (C.D. Cal. July 5, 2016). Such was the case here, as Jane Doe's
24 allegations prompted responses from USMS-IA, APD, and most importantly,
25 Diaz.
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27

28 //

1 Respectfully submitted,

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