1. **Missouri Statute §491.015 precludes evidence of other sexual conduct.**

The public policy supporting Missouri’s Rape Shield Law, Missouri Revised Statute Section 491.015, generally excludes evidence of specific instances of the complaining witness’ sexual conduct. The statute allows four narrow instances, in which such evidence may be admissible, if relevant to a material fact or issue. Mo. Rev. Stat. §491.015(2). The four instances are (1) evidence to prove consent, (2) evidence to show alternative source of semen, pregnancy or disease, (3) evidence of immediate surrounding circumstances of the alleged crime and (4) evidence relating to chastity if chaste character is required to be proved. *Id.* None of the exceptions apply to the present action. *Id.* To use evidence of prior sexual conduct, the defendant must show that the evidence falls within one of the rape shield statute exceptions *and* is relevant to a material fact.

In *State v. Kelly*, the Missouri Court of Appeals took up the issue of whether the trial court erred in precluding evidence of the victim’s sexual abuse by four other men. 83 S.W.3d 36 (Mo. Ct. App. W.D. 2002). The defendant in that case argued that this evidence should be admissible because it revealed the victim’s pattern of conduct in making sexual abuse allegations and was therefore relevant to the victim’s credibility, motive and possible fabrication. *Id.* at 40. In affirming the trial court’s decision, the Court held that the evidence did not fit one of the exceptions to the rape shield statute and defendant failed to show the relevance of prior allegations. *Id.* The Court noted that the victim’s offer of proof that the accusations were true was sufficient to render any evidence subject to the rape shield statute inadmissible. *Id.* Evidence of Plaintiff’s other sexual abuse does not fall under one of the rape shield statute exclusions and is only being pursued by Defendant as credibility, motive or fabrication testimony.

1. **Evidence of other abuse suffered by Plaintiff is not legally or logically relevant to the present litigation.**

Evidence must be legally and logically relevant to be admissible. *Adkins v. Hontz*, 337 S.W.3d 711 (Mo. Ct. App. W.D. 2011); *State v. Anderson*, 76 S.W.3d 275, 276 (Mo. banc 2002). The test of relevancy is “whether an offered fact tends to prove or disprove a fact in issue or corroborates other relevant evidence.” *Mehrer v. Diagnostic Imaging Ctr. P.C.*, 157 S.W.3d 315, 320 (Mo. App. W.D. 2005) quoting *Oldaker v. Peters*, 817 S.W.2d 245, 250 (Mo. banc 1991).

Evidence is legally relevant if its probative value outweighs its prejudicial dangers. *State v. Kennedy*, 107 S.W.3d 306, 311 (Mo. App. W.D. 2003). In determining legal relevance, “the court must weigh the probative value, or usefulness, of the evidence against its costs, specifically the dangers of unfair prejudice, confusion of the issues, undue delay, misleading the jury, waste of time, or needless presentation of cumulative evidence.” *State v. Sladek*, 835 S.W.2d 308, 314 (Mo. Banc 1992); *see also* *Guess v. Escobar*, 26 S.W.3d 235, 242 (Mo. App. W.D. 2000). Evidence is logically relevant if it tends to make the existence of a material fact more or less probable. *Kennedy* at 311.

Since Plaintiff is not seeking damages for the cost of any past or future treatment, but instead only damages that would naturally be expected to follow from her childhood sexual abuse, evidence of the other abuse Plaintiff suffered at the hands of \_\_\_\_\_ does not bear on any material fact in this case. Further, reference to and testimony about the abuse will only result in severe prejudice to Plaintiff. The potential evidence has little probative value. The abuse occurred years after defendant’s sexual abuse of Plaintiff. It occurred on two occasions, as opposed to the repeated infliction of abuse by defendant. Further, Plaintiff has testified that while the other abuse may have exacerbated her problems, it is not the cause of her damages. In her deposition Plaintiff testified that “people heal from a single rape as awful as that is, but when you are that young and your entire life becomes about being for someone else’s sexual gratification, I don’t think I’ll ever really heal from that.”

In contrast, the prejudice to Plaintiff is significant. Introduction of evidence of the other abuse will be a waste of judicial resources. In addition to misleading the jury about the material issues in this case, it is anticipated that Defendant will conduct a mini-trial on whether Plaintiff was abused by her neighbor resulting in a waste of time, distraction from the real issues for trial, and needless testimony regarding a nonmaterial fact.

1. **Introduction of other abuse evidence will result in a confusion of the issues.**

Even if relevant and material, evidence of collateral matters may be excluded where the evidence introduces many new controversial points and a confusion of the issues for the jury. *Brown v. Hamid*, 8856 S.W.2d 51, 55 (Mo. banc 1993). In the *Brown* case, the Missouri Supreme Court noted that the trial judge’s concern regarding testimony about a collateral issue was valid. The *Brown* parties intensely disputed what actually happened and the potential for confusion was great. Because the issue was collateral to the underlying claims, the trial court properly excluded such evidence.

It is well-settled that the trial court should exclude evidence pertaining to collateral matters if it would cause “prejudice wholly disproportionate to the value and usefulness of the offered evidence.” *Midwest Materials Co. v. Village Dev. Co.*, 806 S.W.2d 477, 495 (Mo. App. S.D. 1991). The issue of other abuse of Plaintiff is clearly collateral here. It does not go to the heart of the matter at issue; whether Plaintiff was sexually abused by defendant. Based on the motions and testimony at the various hearings thus far, evidence of this collateral issue will cause Plaintiff substantial prejudice wholly disproportionate to the value and usefulness of the offered evidence.