

new customers to which he had not been assigned while in Collins' employ").¹ Plaintiff attempts to save the fatally flawed non-solicitation clause by arguing the provision protects Plaintiff's legitimate business interests such as the confidentiality of Chemgard's pricing formula. (Motion at p. 2.). However, the fundamental requirement is not whether the company has interests to protect but whether the restrictive covenant is no more broad than necessary to protect those legitimate business interests. See *Kerrigan*, 238 S.C. at 66, 119 S.E.2d at 539; *Lucas*, 395 S.C. at 245, 717 S.E.2d at 107. Although it is true that a customer-based restriction is a valid substitute for a geographic restriction, this allowance does not diminish the fundamental requirement that the resulting restriction must be as narrowly tailored as possible to protect the legitimate interest in question. See, e.g., *Fournil v. Turbeville Ins. Agency, Inc.*, 2009 U.S. Dist. LEXIS 16303, *11-12, 2009 WL 512261 (D.S.C. Mar. 2, 2009); *Rockford Mfg., Ltd. v. Bennet*, 296 F. Supp. 2d 681, 689 (D.S.C. 2003); *Collins Music Co. v. Parent*, 288 S.C. 91, 94, 340 S.E.2d 794, 796 (Ct. App. 1986) (reasoning that a non-solicitation covenant under South Carolina law *must* be limited in effect to those customers who were actually serviced or encountered by the former employee).

¹ See e.g., *Rental Uniform Serv. of Florence, Inc. v. Dudley*, 278 S.C. 674, 675-76, 301 S.E.2d 142, 143 (1983) (noting a critical factor to determine if a restrictive covenant is enforceable is whether "is limited to the territory in which the employee was able, during the term of his employment, to establish contact with his employer's customers.") (emphasis added) (citations omitted); *Standard Register Co. v. Kerrigan*, 238 S.C. 54, 119 S.E.2d 533 (1961) (holding former employee should be enjoined "from competing, directly or indirectly, with it, in selling to eighteen certain accounts in the Greenville area of South Carolina, formerly assigned to the respondent while he was employed as a sales representative of business forms and equipment for the appellant") (emphasis added); see also *ScanSource, Inc. v. Thurston Group, LLC*, C/A No. DKC 11-0380, 2011 WL 3608227, at *4-5 (D. Md. Aug. 15, 2011) (unpublished) (applying South Carolina law and concluding a non-solicitation clause was likely enforceable because it was limited to customers "with which Contractor had contact during the term of this Agreement as a result of being retained by the Company"); *Fournil v. Turbeville Ins. Agency, Inc.*, 2009 U.S. Dist. LEXIS 16303, *11-12, 2009 WL 512261 (D.S.C. Mar. 2, 2009) (holding non-solicitation provision was unenforceable because it prohibited the solicitation of *any* of the employer's customers, not just the ones the former employee had personally serviced).

In contradiction to established precedent, Chemgard seeks to prevent the solicitation of *all of its customers*, not simply those with whom Mr. Haynes had involvement or contact. (Agreement at ¶ 9(d)(i).) The Agreement is not limited as required by South Carolina law to customers which Haynes had contact with during the term of the Agreement. Therefore, on its face, Mr. Haynes is prohibited not only from soliciting his former customers, but also all of the customers of *other* salesmen, in *other* states, with whom he had no contact or involvement. South Carolina courts have never accepted such an overbroad restriction. For this reason, the Court is not persuaded to alter or amend its Order finding the restrictive covenant patently overbroad and unenforceable as a matter of law.

B. Plaintiff's Second Amended Complaint is Dismissed in its Entirety.

Plaintiff alleges four causes of action: (1) Breach of Contract (Injunctive Relief-Defendant Haynes); (2) Breach of Contract (Other Equitable and Legal Remedies/Attorney Fees Against Defendant Haynes); (3) Tortious Interference with Contractual Relations (Against ChemTek and Mr. Bell); and (4) Tortious Interference with Prospective Contractual Relations (Against All Defendants). Plaintiff's Second Amended Complaint and supporting affidavit seek equitable and monetary relief for damages caused by the alleged violation of the non-solicitation agreement and also requests monetary relief for the alleged interference with contractual relations with prospective and current customers. (Second Am. Comp. ¶¶ 22, 50, 53, 60, 70.) It is also undisputed that Plaintiff moved for injunctive relief pursuant to Section 9(d)(i) of Haynes' Employment Agreement to prevent improper solicitation of customers. The allegations within the complaint and all four causes of action alleged by Plaintiff are predicated on the breach of the non-solicitation provision as stated in Paragraph 9(d) of Haynes' Employment Agreement.

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As explained *supra*, there is no genuine issue of material fact that the non-solicitation covenant, as written, is overbroad and void as a matter of law. It is well established that “only a valid agreement can support claims” for breach of contract and tortious interference with a contract. See *Prudential Real Estate Affiliates, Inc. v. Long & Foster Real Estate, Inc.*, 208 F.3d 210 (4th Cir. 2000) (citing *Fraidin v. Weitzman*, 611 A.2d 1046, 1056 (Md. Ct. Spec. App. 1992) (“Only a valid agreement can support a claim for tortious interference with contract; an invalid agreement cannot.”); see also *Poole v. Incentives Unlimited, Inc.*, 338 S.C. 271, 276, 525 S.E.2d 898, 901 (Ct. App. 1999), *aff’d*, 345 S.C. 378, 548 S.E.2d 207 (2001) (granting former employee summary judgment, finding covenant not to compete invalid and unenforceable). The Court acknowledges that Plaintiff has a business interest in protecting confidential information in order to prevent improper solicitation; however, Plaintiff cannot circumvent the patent invalidity of the non-solicitation provision meant to protect those business interest by newly asserting claims pursuant to the confidentiality provision. Ultimately, Plaintiff’s causes of action remain predicated upon the alleged breach of a void restrictive covenant.

For these reasons, the Court is not persuaded to reconsider its ruling granting summary judgment on Plaintiff’s four causes of actions.

C. A Rule 59(e) Motion is the Wrong Vehicle to Raise New Legal Issues

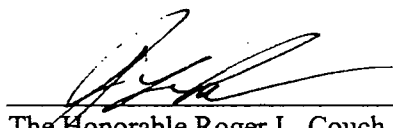
“The purpose of Rule 59(e), SCRCPP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Counsel’s mere disagreement with this Court’s ruling does not warrant a Rule 59(e) motion. *Hutchinson v. Staton*, 994 F.2d 1076 (4th Cir.1993) (citing *Atkins v. Marathon LeTourneau Co.*, 130 F.R.D. 625, 626 (S.D.Miss.1990)). Because of the interests in finality and conservation of judicial resources, Rule 59(e) motions “are not at the

disposal of an unsuccessful party to 'rehash' the same arguments and facts previously presented." *Keyes v. National R.R. Passenger Corp.*, 766 F. Supp. 277, 280 (E.D. Pa. 1991), and "cannot be used to raise arguments which could, and should, have been made before the judgment issued," *F.D.I.C. v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986); or to submit evidence that should have been previously submitted. *Borvan v. United States*, 884 F.2d 767, 771 (4th Cir. 1989); *Rouse v. Nielsen*, 851 F. Supp. 717 (D.S.C. 1994).

The Court fully considered the pleadings, evidence and the parties arguments. Plaintiff argues that "newly discovered" evidence supports its claims for breach of the non-disclosure agreement and confidentiality agreement. (Motion at p. 8-9.) However, a Rule 59(e) motion is simply "not the proper vehicle to amend" the pleadings to add additional grounds for relief after a judgment and a hearing on the merits of the motion. *Arnold v. State*, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992); see generally James F. Flanagan, South Carolina Civil Procedure, at 493-95 (3d. Ed. 2010) (the motion to amend cannot be used to raise an issue not previously before the court and must specifically raise the issue on which a ruling is sought).

After careful consideration of Plaintiff's Motion to Alter or Amend Judgment entered on November 8, 2016, the Court finds that no material fact or principle of law has been either overlooked or disregarded, and therefore, there is no basis to reconsider the Order granting summary judgment in favor of Defendants. Accordingly, the Plaintiff's Motion to Alter or Amend Judgment is hereby **DENIED**.

IT IS SO ORDERED.



 The Honorable Roger L. Couch
 Presiding Judge, Seventh Judicial Circuit

This ^{May} 16 day of April, 2017
 Greenville, South Carolina
 Charleston