

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

RICHARD B. SMITH

CIVIL ACTION

VERSUS

NO. 14-569-BAJ-RLB

ACCUMETRICS, INC.

ORDER

Before the Court is an Ex Parte Motion and Order to Substitute Proper Party Defendant filed by Defendant Accumetrics, Inc. (R. Doc. 4). In the Motion, the defendant acknowledges that it is the named defendant in the state court petition in this matter. The defendant asserts, however, that it was acquired by, and merged into, an entity known as ITC Nexus Holdings, which later changed its name to Accriva Diagnostics, Inc. This same assertion was contained in the Notice of Removal filed on September 11, 2014. (R. Doc. 1). The Motion was filed on September 12, 2014.

Rule 15 of the Federal Rules of Civil Procedure governs amended and supplemental pleadings. The Rule allows that a party may amend its pleading before trial when certain circumstances are met. Rule 15 does not, however, permit one party, by ex parte motion, to amend the pleadings of the opposing party. The instant motion, while it may be well intentioned, is not the proper mechanism to amend the petition. Plaintiffs, however, have been informed of defendants' position that it is not the proper party named in the petition. It is up to the plaintiff to consider whether appropriate action to amend its pleading is proper. *See Paschall v. Enterprise Rent-A-Car Co.*, 08-CV-151, 2008 WL 2704828 (S.D. Miss. July 7, 2008) (allowing

plaintiff to file an amended complaint identifying the proper legal name of the defendant and denying motion to dismiss).

Therefore, defendant's Ex Parte Motion and Order to Substitute Proper Party Defendant (R. Doc. 4) named in plaintiff's petition is **DENIED**.

Signed in Baton Rouge, Louisiana, on October 14, 2014.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE