

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION

NETEZZA CORPORATION
Plaintiff,

v.

INTELLIGENT INTEGRATION SYSTEMS,
INC.
Defendant.

Civil Action No.

COMPLAINT

This civil action by Netezza Corporation (“Netezza”) arises from an unlawful attempt by Intelligent Integration Systems, Inc. (“IISI”) to coerce Netezza to renegotiate a deal that no longer suits IISI and in the process extract additional money to which it is not entitled. IISI’s transparent scheme to hold Netezza and its customers hostage by the improper withholding of software support and services that IISI promised to provide and for which Netezza has paid is not only a material breach, and cause for termination of the contract between the parties, but also tortious misconduct and an unfair and deceptive trade practice declared unlawful by M.G.L. c. 93A. Accordingly, Netezza has terminated the contract between the parties for cause based on IISI’s material breach and now seeks to recover the actual and multiple damages caused by IISI’s unlawful and willful misconduct, together with the costs of this litigation, including attorneys’ fees.

PARTIES, JURISDICTION AND VENUE

1. Netezza is a corporation organized and existing under Delaware law with a principal place of business at 26 Forest Street, Marlborough, Middlesex County, Massachusetts. Netezza is engaged in the business of designing, manufacturing and selling data warehouse and analytic products.

2. Upon information and belief, IISI is a corporation organized and existing under Delaware law and registered to transact business in Massachusetts with a principal place of business at Ten Post Office Square, 8th Floor, Boston, Suffolk County, Massachusetts. IISI is engaged in the business of developing software products and systems solutions that manage, analyze and clean large volumes of data.

3. This Court has jurisdiction over the causes of action alleged in Netezza's Complaint because both parties are registered to transact business and have their principal places of business in Massachusetts.

4. Venue in this Court is proper because IISI has its principal place of business in Suffolk County, and the causes of action alleged satisfy the conditions for litigation before the Business Litigation Session of the Superior Court. See Sup. Ct. Admin. Dir. No. 09-1 (Jan. 19, 2009).

FACTUAL ALLEGATIONS

Netezza's Business

The Netezza Data Warehouse

5. Netezza was founded in 2000 to develop data warehouse appliances that enable its customers to conduct real-time business intelligence. Netezza has developed rapidly into a global leader in the data warehouse and analytic appliances industry.

6. A data warehouse consists of three main elements -- database, server and storage -- and interacts with external systems to acquire and retain raw data, receive query instructions and provide analytical results. A well-designed data warehouse enables a business to better understand its customers' behavior patterns, competitive position, and internal efficiency and productivity. The ever-increasing amount of data that is generated and stored by business and governmental organizations has resulted in a heightened demand for data warehouses.

7. In or about 2003, Netezza completed development and began the sale of its family of data warehouse products known initially as the Netezza Performance Server (the "Netezza Data Warehouse").

8. Netezza derives its revenue from sales of the Netezza Data Warehouse, related products and services to large global enterprises, mid-market companies and government agencies. Sales are made directly by its own sales force as well as indirectly through a network of resellers, systems integration firms and analytic service providers. The price of the current version of the Netezza Data Warehouse varies according to model from approximately \$380,000 to \$13,900,000.

Netezza's Development "Partners"

9. Netezza has invested considerable sums in developing strategic relationships with leading development "partners" that *inter alia* attempt to develop products to be used with the Netezza Data Warehouse primarily in the complementary areas of data access and analytics, data integration and data protection. Netezza provides its "partners" with access to the Netezza Data Warehouse and invites them to work collaboratively in developing extensions and other "add-on" products.

10. From time to time, Netezza's "partners" have been successful in developing their own products for the Netezza Data Warehouse and have certified the Netezza Data Warehouse for integration with their own software solutions. "Partners" often participate with Netezza in joint sales and marketing activities for the Netezza Data Warehouse and related products they develop.

Initial Agreements With IISI

11. IISI has been a development "partner" since 2006 and has conducted research and development work on the Netezza Data Warehouse.

12. Netezza and IISI entered into a Solution Provider Agreement (Agreement No. 20060106007) dated as of January 31, 2006 ("SPA Agreement"). The SPA Agreement provides, in part, that Netezza appoints IISI as a non-exclusive re-seller of certain Netezza products to end-users, including the Netezza Data Warehouse.

13. Netezza also granted a license to IISI for permitted uses of copies of Netezza software and documentation, including for IISI's internal development use.

14. Netezza and IISI subsequently entered into Addendum to Solution Provider Agreement 20060106007 ("Addendum") effective January 3, 2007 wherein Netezza agreed to deliver a Netezza Performance Server ("NPS") 5200 product to IISI to be used for one year by IISI for internal development and testing purposes.

15. Netezza and IISI then entered into an OEM Agreement as of July 2, 2007 (the "OEM Agreement") wherein IISI appointed Netezza as a worldwide distributor of certain IISI products, including a geospatial analytics software module ("Geospatial Product") that IISI developed for use on the Netezza Data Warehouse. IISI also granted Netezza a non-exclusive license to copy, manufacture and distribute the Geospatial Product during the term of the OEM Agreement.

16. From and after the effective date and through the termination of the OEM Agreement, Netezza sold three Geospatial Products as an extension on the Netezza Data Warehouse.

Purchase and Distribution Agreement

17. In or about the spring of 2008, Netezza informed IISI that it wanted to negotiate a new agreement to enable Netezza to continue to distribute and ultimately acquire ownership rights in and to the Geospatial Product.

18. After several weeks of negotiation, the parties entered into the Purchase and Distribution Agreement dated as of August 6, 2008 (the "Agreement"), which expressly terminated and superseded the OEM Agreement. A true and accurate copy of the Agreement is attached as Ex. A.¹

19. The Agreement grants Netezza the right to continue to distribute the Geospatial Product for a three-year term and, subject to its payment of all amounts due, acquire ownership of the IISI Products. Netezza also agreed to distribute and acquire ownership of another IISI product known as the extended SQL toolkit (the "SQL Toolkit"). The Geospatial Product and the SQL Toolkit are referred to in the Agreement as the "IISI Products."

20. The Agreement went into effect on August 6, 2008 (the "Effective Date") and, unless terminated at an earlier time, continues until the earlier to occur of (a) the transfer of ownership of the IISI Products to Netezza or (b) one day after the third anniversary of the Effective Date. Ex. A at § 8.1.

¹ Netezza has intentionally deleted certain attachments to the Agreement that may contain information that is sensitive to IISI. Netezza will provide copies of these attachments to the Court upon the Court's request. Netezza will attempt to negotiate an appropriate confidentiality agreement with IISI as to all such information.

Netezza's Right to Purchase the IISI Products

21. The Agreement provides that, on the last day of Year Three, upon receipt by IISI of all payments due, IISI's entire right, title and interest in the IISI Products as they exist at such date, including any and all source and object code for the IISI Products and any and all Documentation, as defined in the Agreement, shall be transferred to and vested in Netezza such that Netezza shall be the sole and exclusive owner of the IISI Products. Ex. A at § 2.1.

22. Netezza agreed to make guaranteed payments to IISI as described in Schedule A - Additional Terms ("Schedule A"), subject to IISI's performance of its obligations under the Agreement; and certain additional progress payments payable only upon the attainment of the progress targets described in Schedule A. Ex. A p. 13-15.

23. Under Schedule A, guaranteed payments totaling \$2.8 million are payable as follows:

- (a) \$800,000.00 on the Effective Date (the "Year One Guaranteed Payment");
- (b) \$1,000,000.00 on the first anniversary of the Effective Date (the "Year Two Guaranteed Payment"); and
- (c) \$1,000,000.00 on the second anniversary of the Effective Date (the "Year Three Guaranteed Payment").

Ex. A p. 13 at §§ a.(i), b.(i) and c.(i).

24. And, if certain specified numbers of licenses were sold during the specified time periods, Netezza agreed to make additional progress payments as follows:

- (a) \$500,000.00 on the first anniversary of the Effective Date if Netezza has sold 10 or more licenses of the Geospatial Product and an additional \$500,000 if Netezza has sold 20 or more licenses of the Geospatial Product, prior to the first anniversary of the Effective Date ("Year One Progress Payment");
- (b) \$500,000.00 on the second anniversary of the Effective Date if Netezza has sold 20 or more licenses of the Geospatial Product during Year Two

and an additional \$500,000.00 if Netezza has sold 40 or more licenses of the Geospatial Product during Year Two (“Year Two Progress Payment”); and,

- (c) \$500,000.00 on the third anniversary of the Effective Date if Netezza has sold 60 or more licenses of the Geospatial Product prior to the third anniversary of the Effective Date and an additional \$500,000.00 if Netezza has sold more than 120 licenses of the Geospatial Product prior to the third anniversary of the Effective Date (“Year Three Progress Payment”).

Ex. A p. 13 at §§ a.(ii),b.(ii) and c.(ii).

25. In the event of a late payment, IISI is obligated to give written notice to Netezza and Netezza has 30 days to cure. Ex. A p. 13.

Netezza’s Right to Distribute the IISI Products

26. The Agreement further provides that, effective upon receipt by IISI of the Year One Guaranteed Payment, IISI appoints Netezza as a distributor of the IISI Products and grants Netezza an exclusive license (except for IISI and existing licensees) to: (a) manufacture, copy and distribute the IISI Products and Documentation (including any new releases or new versions of the IISI Products and Documentation developed by IISI during the term of the Agreement) directly to end users and through Netezza’s partner distribution channel; (b) manufacture and copy the IISI Products and Documentation for use in connection with product demonstrations, evaluations, trials, proofs of concept or as otherwise used in support of sales of the Netezza Data Warehouse and as needed for product development and support; (c) use, modify and make derivative works of the IISI Products and Documentation (including for manufacture and distribution); (d) provide maintenance and support services regarding the IISI Products with assistance from IISI; and (e) remove any IISI trademarks or other IISI proprietary marks in the IISI Products and Documentation (including for manufacture and distribution). Ex. A at § 2.2.

IISI's Obligation To Provide Support and Maintenance

27. IISI agreed to provide timely maintenance and support for the IISI Products in accordance with Schedule B of the Agreement ("Schedule B"), including without limitation, product enhancements. Ex. A p. 15.

28. IISI also agreed to use commercially reasonable efforts to provide such services, including in response to Customer Required Functionality, and work with Netezza in good faith to support customers. Ex. A p. 16 at § 2.1. Schedule B further obligates IISI to provide support for Critical Problems within one business day and on a reasonably continuous basis until the IISI Product is restored to service; and promptly for all other problems with the parties working together in good faith to resolve such problems until the IISI Product's operation is no longer impaired. Ex. A at §§ 2.2, 2.3.

29. The Agreement requires IISI to deposit, with a source code escrow agent selected by Netezza, the source code for the Geospatial Product (and each new release or new version), including any utilities, third party vendor contacts, specifications and documentation. The source code and related materials must be deposited with the escrow agent within 30 days of the release date of each new version of the Geospatial Product. Ex. A at § 2.4.

30. In the event of any "functionality" requested by a customer to address a Moderate Problem, Serious Problem, or Critical Problem with the Geospatial Product, as defined in Schedule B ("Customer Required Functionality"), Netezza is required to provide notice to IISI as soon as practicable with a reasonable requested response timeline.

31. In addition, in the event that Richard Zimmerman is no longer available to work with Netezza or IISI, and IISI does not inform Netezza by the response timeline that the Customer Required Functionality will be developed by IISI by a suitably qualified individual, the

Agreement provides for the release of the source code for the Geospatial Product to Netezza to enable Netezza to develop such Customer Required Functionality for its use and distribution to its customers. Ex. A at § 2.4.

IISI's Obligation to Provide Training and Certification

32. Schedule C - Training and Certification ("Schedule C") obligates the parties to work in good faith to establish a process to certify *inter alia* that installation/upgrade of the IISI Products does not adversely affect normal Netezza Products functionality; that the IISI Products and the Netezza Products operate error-free; and that issues/bugs/errors in either the IISI Products or Netezza Products are addressed and corrected in a timely manner with primary focus on ensuring on-schedule delivery of product releases and functionality. Ex. A p. 18.

33. The term "Netezza Products" is defined in the Agreement as the "Netezza Performance Server, including any subsequent versions or releases of Netezza's data warehouse appliance products made generally available to customers." Ex. A at § 1.

Subsequent Version of the Netezza Data Warehouse – the TwinFin™

34. On August 4, 2009, Netezza announced the launch of the next version of the Netezza Data Warehouse known as the TwinFin™. Like its predecessor, the TwinFin™ data appliance integrates Netezza's same basic architecture and design through database, server and storage platforms in a single unit to enable detailed queries and analyses on large volumes of stored data.

35. Netezza made the TwinFin™ generally available for sale soon after its launch and expects sales to generate significant revenue.

36. Prior to the launch, Netezza conducted product briefings with its development “partners,” including IISI, to introduce the TwinFin™ and prepare them for use of TwinFin™ to help their existing business solutions work more effectively and create new applications.

Netezza’s Performance of the Agreement

37. From and after the Effective Date, Netezza has performed all of its obligations under the Agreement, including the payment of all amounts due to IISI and distribution of the IISI Products.

38. Netezza made the Year One and Year Two Guaranteed Payments to IISI in the total amount of \$1.8 million.

39. During Year One, Netezza was able to sell and license two Geospatial Products; and, to date, in Year Two, Netezza has sold and licensed one Geospatial Product.

IISI’s Breach of the Agreement and Willful Misconduct

40. On or about August 8, 2009, without any prior warning, Netezza received a letter from IISI dated August 7, 2009 accusing Netezza of breaching the Agreement by failing to pay the Year Two Guaranteed Payment in the amount of \$1 million and deciding “not to sell the [Geospatial Product].” According to IISI’s letter, a good faith performance by Netezza “would have resulted in achievement of all progress milestones” and a Year One Progress Payment in the amount of \$1 million.

41. Netezza received IISI’s letter four days after Netezza announced the launch of the TwinFin™ during Netezza’s initial efforts to market and sell the TwinFin™. A true and accurate copy of IISI’s August 7, 2009 letter is attached as Exhibit B (the “First Notice”).

42. Netezza responded to IISI’s allegations in a letter dated August 24, 2009 denying that it had breached the Agreement by nonpayment or deciding not to sell the IISI Products.

Netezza advised IISI that it would pay the Year Two Guaranteed Payment within the 30-day cure period provided in the Agreement. A true and accurate copy of Netezza's letter is attached as Exhibit C.

43. Thereafter, Netezza paid the \$1 million Year Two Guaranteed Payment as promised within the 30-day cure period. IISI accepted the payment without reservation.

44. On September 10, 2009, in response to IISI's request for a meeting under § 9.6 of the Agreement relating to Dispute Resolution, Netezza executives met with IISI representatives for the purpose of resolving any remaining differences. However, at the outset of the meeting, before the parties had a chance to discuss resolution, IISI's CEO delivered a second letter to Netezza containing additional accusations not included in the First Notice, including Netezza's alleged refusal to provide IISI with access to and information about the TwinFin™ necessary to enable IISI to "port" the Geospatial Product to the TwinFin. A true and accurate copy of IISI's September 10, 2009 letter is attached as Exhibit D (the "Second Notice").

45. During the September 10, 2009 meeting, Netezza again advised IISI that it had performed all of its obligations under the Agreement and had not breached the Agreement as alleged. Netezza also notified IISI that IISI's delay in developing a "port" of the Geospatial Product to the TwinFin™ was endangering an existing customer relationship with a large government agency and would interfere with Netezza's efforts to sell the Geospatial Product as an extension to the TwinFin™. At the conclusion of the meeting, Netezza agreed to and later did provide a development model of the TwinFin™ to IISI to assist IISI in completing a "port" of the Geospatial Product in response to the customer's request for assistance, and for use generally on the TwinFin™.

46. IISI, however, continued to delay the “port” of the Geospatial Product to the TwinFin™ notwithstanding Netezza’s repeated requests for customer assistance, increasing pressure by its government agency customer to provide a solution, Netezza’s desire to market the Geospatial Product to future TwinFin™ customers, and IISI’s repeated verbal assurances that development of the “port” would be completed by the 2009 Thanksgiving holiday.

47. On or about October 10, 2009, Netezza conducted a conference call with IISI executives to warn IISI again that its delay in developing a “port” was endangering a customer relationship and urge IISI to conclude its work on a “port” at the earliest possible time. IISI assured Netezza that it would provide a timeline and proposed solution for the “port.”

48. However, despite IISI’s assurances of customer assistance and its prior complaints about being denied access to the TwinFin™ to develop a “port” of the Geospatial Product, IISI sent an email to Netezza on October 12, 2009 claiming for the first time that the “porting” of the Geospatial Product to the TwinFin™ was “beyond the scope work” and would not be done without “governing terms and consideration,” and that “any new deals for new IISI products like the requested TwinFin spatial product would require resolution of outstanding issues.” A true and accurate copy of IISI’s email is attached as Exhibit E.

49. IISI’s email contradicted its prior assurances of assistance and admissions that “porting” work was underway, and constituted a crude and heavy-handed attempt to coerce additional payments from Netezza at a critical time in the launch of the TwinFin™.

50. Netezza again requested IISI’s assistance in “porting” the Geospatial Product to the TwinFin™ for the benefit of their mutual government customer, again offered assistance to support IISI in developing the “port”, and again advised IISI that it would be “in our mutual best interest to meet this client’s needs quickly.”

51. After IISI's delay in responding to the customer's request for assistance continued, Netezza sent IISI a letter dated October 14, 2009 requesting that IISI complete the "port" and assure full functionality of the Geospatial Product on the TwinFin™ no later than October 23, 2009. A true and accurate copy of Netezza's letter is attached as Exhibit F.

52. IISI's response was a letter dated October 28, 2009 from its New York law firm asserting that "there currently is no geospatial product for the new TwinFin appliance" and "no obligation . . . to create such a product under the [Agreement]". According to IISI's attorney, the "fact that the IISi geospatial product does not run on Netezza's new TwinFin product is of no more relevance to IISi's support obligations under the [Agreement] than the fact that IISi spatial does not run on the Oracle platform."

53. IISI concluded by agreeing to "port" the Geospatial Product to the TwinFin™ but only if Netezza agreed, *inter alia*, to pay: (i) "appropriate compensation" for the theft of IISI trade secrets; (ii) "satisfaction" of unspecified payments under the Agreement and additional compensation for the alleged breaches of that Agreement; and (iii) guaranteed payment for "development of new products for TwinFin commensurate with the value to be delivered." A true and accurate copy of the letter from IISI's lawyer is attached as Exhibit G.

54. In addition, IISI has refused to provide the Geospatial Product's source code to Netezza -- even on a temporary basis as contemplated in the Agreement -- to enable Netezza to do what IISI refuses to do: namely, respond to the customer's requests for the "porting" of the Geospatial Product to the TwinFin™; and provide ongoing support and maintenance, including a "port" of the Geospatial Product, to its other existing and future customers.

55. By a letter dated November 20, 2009, Netezza notified IISI of the termination of the Agreement for cause.

COUNT I

Breach of Contract

56. Netezza repeats and realleges the allegations in ¶¶ 1-55 of the Complaint.

57. A written contract (the Agreement, Ex. A) exists between Netezza and IISI. At all relevant times, Netezza performed its obligations under the Agreement.

58. IISI materially breached the Agreement by failing and refusing to: (i) provide maintenance and support services as required; (ii) inform Netezza within the requested response timeline that Customer Required Functionality would be developed by IISI by a suitably qualified individual or otherwise satisfactorily address the problems experienced by Netezza's customer relating to "porting" of the Geospatial Product to the TwinFin™; (iii) provide training and certification as required; (iv) provide new versions, releases and enhancements of the Geospatial Product; and (v) deliver the source code for the Geospatial Product (and each new release or new version) to Netezza, including any utilities, third party vendor contracts, specification and documentation, to enable Netezza to assist its customers.

59. IISI's material breach of the Agreement constitutes good cause for termination.

60. As a direct and proximate result of IISI's breach of the Agreement, Netezza has notified IISI of the termination of the Agreement and has suffered and will continue to suffer substantial financial harm.

COUNT II

Breach of the Implied Covenant of Good Faith and Fair Dealing

61. Netezza repeats and realleges the allegations in ¶¶ 1-55 of the Complaint.

62. The Agreement includes an implied covenant of good faith and fair dealing, which precludes IISI from engaging in conduct that deprives Netezza of the benefit of its bargain.

63. IISI's breach of the Agreement as described above, together with its other willful and bad faith conduct described in this Complaint, constitutes a breach of the implied covenant of good faith and fair dealing.

64. As a direct and proximate result of IISI's breach of the implied covenant of good faith and fair dealing, Netezza has suffered and will continue to suffer substantial financial harm.

COUNT III

Intentional Interference with Contractual Relations and Beneficial Business Relations

65. Netezza repeats and realleges the allegations in ¶¶ 1-55 of the Complaint.

66. Netezza possessed prospective economic and business advantages in the marketplace as a result of contracts and relationships with third party data warehouse appliance customers.

67. Upon information and belief, IISI knew of Netezza's contracts and relationships with third party data warehouse appliance customers.

68. As a result of its purposeful delays and non-performance, and other wrongful and willful misconduct described in this Complaint, IISI has intentionally interfered with the prospective economic advantages of Netezza's third party contracts and relationships for an improper purpose and/or by improper means.

69. As a direct and proximate result of this unlawful conduct, Netezza's prospective economic advantages may be irretrievably lost, and Netezza has suffered and will continue to suffer substantial financial harm.

COUNT IV

Violation of M.G.L. c. 93A, §11

70. Netezza repeats and realleges the allegations in ¶¶ 1-55 of the Complaint.

71. At all relevant times, IISI was engaged in trade and/or commerce within the meaning of M.G.L. c. 93A, §§ 1, 11.

72. IISI's unfair acts and practices that occurred primarily and substantially in Massachusetts include, without limitation, breach of contract, together with wrongful threats and intimidation, for the purpose of coercing and extracting an unfair advantage, breach of the implied covenant of good faith and fair dealing, and intentional interference with contractual relations and beneficial business relations.

73. As a direct and proximate result of IISI's unlawful conduct, including its knowing and/or willful unfair acts and practices, Netezza has suffered and will continue to suffer substantial financial harm, including up to three but not less than two times its actual damages and attorneys' fees and costs.

COUNT V

Declaratory Judgment

74. Netezza repeats and realleges the allegations in ¶¶ 1-55 of the Complaint.

75. An actual controversy exists under M.G.L. c. 231A, and as set forth above, IISI's willful misconduct and breach of the Agreement has caused Netezza to suffer substantial financial harm.

76. A judicial determination pursuant to Mass. R. Civ. P. 57 is necessary and appropriate declaring that based on IISI's material breach and other willful misconduct, Netezza had good cause to terminate the Agreement under § 8.2(a) and in accordance with other relevant terms; and, moreover, that Netezza is entitled to recover any and all damages caused by IISI's material breach and willful misconduct, including without limitation, multiple damages and attorneys' fees and costs.

REQUESTS FOR RELIEF

WHEREFORE, Netezza requests the entry of a final judgment in its favor against IISI as follows:

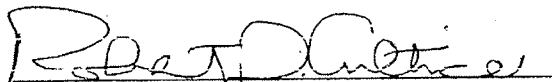
1. With respect to Count I, an amount equal to the damages suffered by Netezza as a result of IISI's material breach of the Agreement;
2. With respect to Count II, an amount equal to the damages suffered by Netezza as a result of IISI's breach of the implied covenant of good faith and fair dealing;
3. With respect to Count III, an amount equal to the damages suffered by Netezza as a result of IISI's tortious interference with Netezza's contractual and beneficial business relationships with third parties;
4. With respect to Count IV, an amount equal to the actual damages suffered by Netezza as a result of IISI's violation of M.G.L. c. 93A, together with up to three but not less than two times actual damages, and attorneys' fees and costs;
5. With respect to Count V, a declaration that Netezza's termination of the Agreement was for cause in accordance with the terms of the Agreement;
6. That, in the event existing customers with the Geospatial Product require support, maintenance or assistance in their use of the Geospatial Product as provided in the Agreement that IISI refuses to provide, the entry of an order directing IISI to provide such support, maintenance and assistance or deliver the source code for the Geospatial Product to Netezza to enable Netezza to provide such support, maintenance and assistance;
7. That, given Netezza's termination for cause, IISI promptly return all property and Proprietary Information of Netezza as defined in the Agreement, including without limitation the TwinFin™ appliance and NPS 5200 product; and,

8. Such other relief as the Court may deem just and proper.

NETEZZA DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

NETEZZA CORPORATION

By its attorneys:

A handwritten signature in black ink, appearing to read "Robert D. Cultice", written over a horizontal line.

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