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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 FRESNO DIVISION

6 In re) Case No. 01-19647-B-11
7 Coast Grain Company,)
8 Debtor.)
9 _____)
10 Greg Braun, Plan Agent,) Adversary Proceeding No. 03-1446
11 Plaintiff,) DC No. WLG-2
12 v.)
13 Paul Huizenga Dairy,)
14 Defendant.)
15 _____)

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16 **MEMORANDUM DECISION DENYING MOTION
FOR PARTIAL SUMMARY JUDGMENT**

17 Justin D. Harris, Esq., of Walter Law Group, appeared on behalf of Greg Braun, Plan
18 Agent (the "Plaintiff").

19 Ronald N. Sarian, Esq., of Astor & Phillips, appeared on behalf of Paul Huizenga Dairy
(the "Defendant").

20 Plaintiff's Motion for Partial Summary Judgment was argued before the
21 undersigned on April 28, 2005. Plaintiff seeks summary adjudication of its Second and
22 Fourth claims for relief. Based on the court's statement of decision and undisputed facts
23 as stated on the record, the court cannot conclude that Plaintiff is entitled to judgment on
24 these claims as a matter of law.

25 The Defendant argues, *inter alia*, that Plaintiff's claims are barred by the doctrine
26 of recoupment. The court agrees. In December 2000, the Debtor and the Defendant
27 entered into a binding "requirements" contract, as that term is used in Cal.Comm.Code §
28 2306, for the purchase and sale of \$120,000 worth of wet malt. The product was

1 delivered to the Defendant during the year 2001, according to Defendant's requirements.
2 Both parties fully performed that contract. Based on this court's analysis in *Braun v.*
3 *Bouma Dairy (In re Coast Grain Co.)*, 317 B.R. 796 (Bankr. E.D. Cal. 2004) regarding
4 application of the recoupment defense, and the prepayment of dairy feed products, this
5 court finds and concludes that Defendant's Third Affirmative Defense of recoupment is a
6 complete defense to the Plaintiff's Second and Fourth claims for relief. The recoupment
7 issue has been fully briefed and argued in both the moving papers and the opposition
8 papers. Summary adjudication of the recoupment defense in favor of the nonmoving
9 party is appropriate because both parties have been provided with a "full and fair
10 opportunity to ventilate the issues in the motion." *United States v. Real Property Located*
11 *at 25445 via Dona Christa, Valencia, California*, 138 F.3d 403, 407 n.4 (9th Cir. 1998)
12 citing *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 311 (9th Cir. 1982).

13 Dated: April _____, 2005
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15 /s/ W. Richard Lee
16 W. Richard Lee
United States Bankruptcy Judge
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