

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE DENIS J. BUTLER
Justice

IAS Part 12

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GANG LI, on behalf of himself and all
persons similarly situated,

Index
Number:713860/2018

FILED

9/16/2020

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Plaintiff,

Motion Date:
September 1, 2020

-against-

Motion Sequence
Number:004

**COUNTY CLERK
QUEENS COUNTY**

KUENG CHAN, MAY TONG, SIMON CHAN, FEN
ZHEN CHEN a/k/a FENG ZHEN CHEN, WING
KEUNG ENTERPRISES, INC. d/b/a WK FOODS
and WK TRUCKING LLC, d/b/a WK FOODS,

Defendants.

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The following papers were read on this motion by plaintiff and the
proposed call for an order granting Class Certification.

	<u>Papers Numbered</u>
Notice of Motion, Affirmation, Exhibits, and Memorandum of Law.....	E113-138
Affirmation In Opposition, Exhibits, and Memorandum of Law.....	E141-153
Reply Affirmation.....	E155-179

Upon the foregoing papers, it is ordered that this motion is
determined as follows:

The proponent of a motion for class certification bears the
burden of establishing the requirements of CPLR article 9 (see
Cooper v Sleepy's, LLC, 120 AD3d 742, 743 [2d Dept 2014]). CPLR 901
sets forth five prerequisites to class certification. "These
factors are commonly referred to as the requirements of numerosity,
commonality, typicality, adequacy of representation and
superiority" (*City of New York v Maul*, 14 NY3d 499, 508 [2010]). "A
class action certification must be founded upon an evidentiary

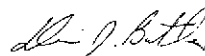
basis" (*Yonkers Contr. Co. v Romano Enters. of N.Y.*, 304 AD2d 657, 658 [2d Dept 2003]). A motion for class certification that is predicated on general, conclusory allegations should be denied (see *Canavan v Chase Manhattan Bank, N.A.*, 234 AD2d 493, 494 [2d Dept 1996]).

Here, plaintiff has failed to demonstrate entitlement to class certification. Plaintiff's conclusory allegations are insufficient to establish that all requirements for class certification have been met (see CPLR 901). In particular, plaintiff's inability to provide any evidence of numerosity renders the court unable to determine whether plaintiff has affirmatively established the other elements of CPLR 901 and, in turn, whether a class action is superior to other methods of adjudicating the controversy. Indeed, plaintiff has failed to identify any other members of the putative class. The court thereby cannot test whether plaintiff's claim is typical and whether plaintiff will fairly and adequately protect the interests of the class. Further, plaintiff has not demonstrated that joinder of all members would be impracticable, in the absence of class certification.

Accordingly, the motion is denied.

This constitutes the decision and order of the court.

Dated: September 14, 2020



Denis J. Butler, J.S.C.

FILED

9/16/2020

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**COUNTY CLERK
QUEENS COUNTY**