# EXHIBIT A

# Morris, Nichols, Arsht & Tunnell llp

1201 North Market Street
P.O. Box 1347
Wilmington, Delaware  19899-1347

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(302) 658-9200
(302) 658-3989 fax

September 18, 2020

The Honorable Leonard P. Stark
J. Caleb Boggs Federal Building
844 N. King Street
Wilmington, Delaware 19801

Re:     *Ameranth, Inc. v. Olo Inc.*, C.A. No. 20-518-LPS

Dear Chief Judge Stark:

Defendant Olo Inc. ("Olo") respectfully submits this supplemental letter brief in advance of the September 30, 2020 Hearing on Olo's Motion To Dismiss (D.I. 8).  Plaintiff Ameranth, Inc. ("Ameranth") newly asserts in its September 16, 2020 pre-hearing letter that Olo infringes dependent claims 4, 9, and 10 of asserted U.S. Patent No. 9,747,651, which claims were not asserted in Ameranth's Complaint.  (D.I. 19 at 3.)  Those claims depend from claim 1 which is addressed in Olo's motion.  Those dependent claims are equally ineligible under § 101 for the reasons explained below.  Because Ameranth now asserts that Olo infringes those claims and plans to amend its complaint to assert them, the Court properly has jurisdiction to hold those claims invalid.[1]  Ameranth continues to have a full and fair opportunity to raise any arguments regarding these claims prior to and during the hearing scheduled for September 30, 2020.

As discussed in Olo's motion briefing, claim 1 of the '651 patent recites a system for communicating hospitality-related information using a system that is capable of synchronous communications and messaging.  (D.I. 9 at 8-10.)  The focus of the claimed invention is not a "specific means or method that improves the relevant technology" but merely a "result or effect that itself is the abstract idea and merely invokes generic processes and machinery." *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016).  Nothing in the claim recites transformative elements significantly more than the abstract idea.  (D.I. 9 at 13-15.)

Dependent claims 4, 9, and 10 merely recite high-level, desired functional capabilities for the communication system of claim 1, not any concrete inventive technological improvement to any underlying technology.  ('651 claims 4 ("wherein the system further includes functionality for two or more communications conversions one of which includes automated text messaging

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[1] "An actual suit affirmatively asserting the claims is not a requirement for an Article III case or controversy."  *Ameranth, Inc. v. Domino's Pizza, LLC*, 792 Fed.Appx. 780, 784 (Fed. Cir. Nov. 1, 2019) (citing *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993)).  Indeed, "even a 'reasonable apprehension of suit' is not a requirement for Article III jurisdiction," though a reasonable apprehension of imminent suit certainly may be "a factor that can satisfy Article III controversy." *Domino's Pizza*, 792 Fed.Appx. at 784 (citations omitted).

The Honorable Leonard P. Stark
September 18, 2020
Page 2

conversions"), 9 ("wherein a mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application"), 10 ("wherein a frequent customer mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application").)  In claim 4, the desired results of "communications conversions" including "automated text messaging conversions" are just that—desired results for communicating using the claimed system, not a concrete improvement to technology.  Claims 9 and 10 merely recite open-ended functional results that mobile applications are somehow, in some unspecified way, "used to interface" with a back office application.

The '651 patent does not purport to invent any new programming for mobile applications or otherwise.  (D.I. 9 at 7-8.)  Instead, it states that "[t]he software applications for performing the functions falling within the described invention can be written in any commonly used computer language" and "[t]he discrete programming steps are commonly known and thus programming details are not necessary to a full description of the invention."  ('651, col. 6:63-7:18, 13:12-17.)

As such, claims 4, 9, and 10—reciting only desired results to be achieved, somehow, with "commonly known" conventional software programming—are ineligible for the same reasons as the other challenged claims.  They fail to provide "the specificity required to transform [the] claim from one claiming only a result to one claiming a way of achieving it."  *Am. Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 18-1763, at 16-17 (Fed. Cir. 2020) (citation omitted).

Finally, in view of the claim language and the specification's admissions, any amendment to Ameranth's Complaint would be futile as no amendment could confer patent-eligibility on these claims where none exists.  *Search and Social Media Partners v. Facebook, Inc.*, C.A. No. 17-1120-LPS-CJB, 2019 WL 581616, at *6 (D. Del. Feb. 23, 2019) (granting motion to dismiss under § 101 where "any amendment would be futile"); *3G Licensing, S.A. v. HTC Corp.*, C.A. No. 17-83-LPS, 2019 WL 2904670, at *4 (D. Del. July 5, 2019) (same).

Respectfully,

/s/ Karen Jacobs

Karen Jacobs (#2881)


cc:    All Counsel of Record (by e-mail)