No. 21-1228

IN THE
Supreme Court of the United States

AMERANTH, INC.
Petitioner,

v.

OLO INC.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION

HEIDI L. KEEFE
Counsel of Record
LOWELL D. MEAD
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
(650) 843-5000
hkeefe@cooley.com

June 6, 2022

Counsel for Respondent

SUPPLEMENTAL BRIEF IN OPPOSITION

The brief of the Solicitor General in *American Axle & Mfg., Inc. v. Neapco Holdings LLC*, No. 20-891 only further confirms why the petition should be denied in the present case. The Solicitor General advocates for consideration of a narrowly-focused question that is specific to the driveshaft manufacturing patent at issue in *American Axle*:

> Whether claim 22 of petitioner's patent, which claims a process for manufacturing an automobile driveshaft that simultaneously reduces two types of driveshaft vibration, is patent-eligible under Section 101.

SG Brief at (I), 1, 9. As discussed in the Solicitor General's brief, *American Axle* applied Section 101 to a process that invokes a natural law (Hooke's law) in connection with building an automobile driveshaft, which was an issue that divided the Federal Circuit. *Id.* at 9-10.

By contrast, the present case involves a routine, unanimous summary disposition under well-settled precedent that is not challenged in *American Axle*. The asserted patent claims an ineligible abstract idea for automating hospitality services, such as restaurant food orders, that were traditionally performed with "pen and paper." Opp. Br. at 2, 11, 20-21. The patent proclaims that its purported invention uses only "commonly known" software programming steps and "typical hardware elements," thereby expressly disavowing any inventive new hardware and/or software. *Id.* at 2, 8-9, 22-23. As such, this patent falls squarely under this Court's holding in *Alice* that "mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into

a patent-eligible invention." *Alice Corp. v. CLS Bank International*, 573 U.S. 208, 222-23 (2014). It is no wonder that the Federal Circuit panel in this case (including Chief Judge Moore who led the dissent in *American Axle*) unanimously and summarily affirmed, only two days after the oral argument, that this patent is so clearly ineligible that no written opinion was warranted. Opp. Br. at 2, 3, 15.

Critically, neither the Solicitor General nor the petitioner in *American Axle*—nor petitioner in this case—challenges the dispositive holding of *Alice* that a generic computer implementation cannot confer eligibility on an abstract idea. Thus, regardless of the potential outcome of *American Axle*, the patent at issue here fails under Section 101 and *Alice* because "[i]t is not enough to point to conventional applications and say 'do it on a computer.'" *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1243 (Fed. Cir. 2016) (citing *Alice*, 573 U.S. at 222).

None of petitioner's arguments presents any good reason to further delay final disposition of this case. This case has no significant relationship to *American Axle* that would warrant a "hold." The Solicitor General's brief only highlights the stark substantive differences between that case and this case. Petitioner argues that Section 101 law is plagued by confusion and should be clarified, but tellingly petitioner never raised those arguments to the district court or the Federal Circuit in this case, despite being well aware of *American Axle*. *See* Opp. Br. at 1, 15-18. Petitioner thus waived those arguments. *See id.*

Finally, Petitioner's procedural arguments against dismissal of its complaint remain meritless under applicable law which is unaffected by *American Axle*. *See id.* at 22-25.

Accordingly, the Court should deny the petition just as it has denied numerous other petitions that have attempted to latch onto *American Axle*. *See id.* at 18-19.

Respectfully submitted,

HEIDI L. KEEFE
Counsel of Record
LOWELL D. MEAD
COOLEY LLP
3175 Hanover Street
Palo Alto, CA 94304
(650) 843-5000
hkeefe@cooley.com

Counsel for Respondent

June 6, 2022