
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933**

NETLIST, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

95-4812784

(I.R.S. Employer
Identification No.)

**111 Academy, Suite 100
Irvine, CA 92617**

(Address of Principal Executive Offices) (Zip Code)

Amended and Restated 2006 Equity Incentive Plan of Netlist, Inc.

(Full title of the plans)

Chun K. Hong

President, Chief Executive Officer and Sole Director

111 Academy, Suite 100 Irvine, CA 92617

(Name and address of agent for service)

(949) 435-0025

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

EXPLANATORY NOTE

This registration statement on Form S-8 registers (i) 1,200,000 shares of Common Stock available for issuance under the Plan, and (ii) 55,000 shares of Common Stock that may be issued upon vesting of Inducement RSU Awards granted outside the Plan.

With respect to the shares of Common Stock available for issuance under the Plan, this registration statement is filed pursuant to General Instruction E to Form S-8 to register an additional 1,200,000 shares of Common Stock that may be offered and sold under the Plan. Such shares became available for issuance under the Plan as of January 1, 2022 pursuant to the terms of the Plan, which provides that the number of shares of the Company's Common Stock issuable under the Plan automatically increases on the first day of each calendar year by the number of shares equal to the lesser of (i) 2.5% of the issued and outstanding shares of Common Stock as of January 1 of such year and (ii) 1,200,000 shares of Common Stock. The Company hereby incorporates by reference (herein to the extent not otherwise amended or superseded by the contents hereof) into this registration statement the contents of the prior registration statements on Form S-8 relating to the Plan, filed with the Securities Exchange Commission (the "Commission") on:

December 18, 2006 (Commission [File No. 333-139435](#)), September 18, 2007 (Commission [File No. 333-146141](#)), June 13, 2008 (Commission [File No. 333-151644](#)), September 10, 2009 (Commission [File No. 333-161832](#)), April 6, 2010 (Commission [File No. 333-165916](#)), July 27, 2010 (Commission [File No. 333-168330](#)), April 21, 2011 (Commission [File No. 333-173646](#)), February 28, 2012 (Commission [File No. 333-179776](#)), February 10, 2014 (Commission [File No. 333-193862](#)), May 26, 2016 (Commission [File No. 333-211658](#)), November 17, 2017 (Commission [File No. 333-221655](#)), April 13, 2018 (Commission [File No. 333-224287](#)), March 22, 2019 (Commission [File No. 333-230443](#)), March 10, 2020 (Commission [File No. 333-237047](#)) and March 26, 2021 (Commission [File No. 333-254776](#))

With respect to the Common Stock subject to the Inducement RSU Awards, this registration statement is filed to register 55,000 shares of Common Stock issuable upon vesting of the Inducement RSU Awards granted to Tag Kim, Jeremy Lai, and Lani Billitti pursuant to Restricted Stock Unit Agreements dated as of February 9, 2022 between the Company and Mr. Kim, Mr. Lai, and Ms. Billitti.

PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information specified in this Part I of Form S-8 (plan information and registrant information) will be sent or given to the employees as specified by Rule 428(b)(1) under the Securities Act. In accordance with the note to Part I of Form S-8, such documents will not be filed with the Commission either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference pursuant to Item 3 of Part II of this registration statement, taken together, constitute the prospectus as required by Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Commission are incorporated herein by reference as of their respective dates of filing, except for the portions thereof that are “furnished” rather than “filed” with the Commission:

- [the Company’s Annual Report on Form 10-K for the fiscal year ended January 1, 2022 filed with the Commission on March 1, 2022](#); and
- [the description of the Common Stock contained in the Company’s registration statement on Form 8-A filed with the Commission on August 14, 2020, including any amendments or reports filed for the purpose of updating such description.](#)

All documents filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (“Exchange Act”), after the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent a statement contained in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Company is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law (the “DGCL”) provides that a corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 145 of the DGCL further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the DGCL.

Pursuant to the Company's Restated Certificate of Incorporation, as amended, a director shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by the DGCL. In addition, the Company's Amended and Restated Bylaws, as amended, provide for indemnification of directors, officers, employees and agents by the Company as the indemnitor of first resort and to the fullest extent permitted by Delaware law, and authorize the Company to purchase and maintain insurance to protect itself and any director, officer, employee or agent of the Company or another business entity against any expense, liability or loss, regardless of whether the Company would have the power to indemnify such person under its bylaws or Delaware law.

The Company has entered into indemnification agreements with each of its directors and executive officers. These agreements will require the Company to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Company, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Company also intends to enter into indemnification agreements with its future directors and executive officers.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description	Filed	Incorporated by Reference			
		Herewith	Form	File No.	Exhibit	Filing Date
4.1	Restated Certificate of Incorporation of Netlist, Inc.		10-Q	001-33170	3.1	August 15, 2017
4.1.1	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.		10-Q	001-33170	3.1.1	August 15, 2017
4.1.2	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.		8-K	001-33170	3.1	August 17, 2018
4.1.3	Certificate of Designation of the Series A Preferred Stock of Netlist, Inc.		10-Q	001-33170	3.1.2	August 15, 2017
4.2	Amended and Restated Bylaws of Netlist, Inc.		8-K	001-33170	3.1	December 20, 2012
4.2.1	Certificate of Amendment to Amended and Restated Bylaws of Netlist, Inc.		8-K	001-33170	3.1	December 29, 2017
4.3	Amended and Restated 2006 Equity Incentive Plan of Netlist, Inc.		10-K	001-33170	10.3	March 22, 2019
5.1	Opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	X				
23.1	Consent of KMJ Corbin & Company LLP	X				
23.2	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1).	X				
24.1	Power of Attorney (included on signature page hereto).	X				
99	Form of Restricted Stock Unit Agreement	X				
107	Filing Fee Table	X				

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



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Suite 300
San Diego, CA 92130
858 314 1500
mintz.com

March 2, 2022

Netlist, Inc.
111 Academy, Suite 100
Irvine, California 92617

Ladies and Gentlemen:

We have acted as legal counsel to Netlist, Inc., a Delaware corporation (the “Company”), in connection with the preparation and filing with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-8 (the “Registration Statement”), pursuant to which the Company is registering the issuance under the Securities Act of 1933, as amended (the “Securities Act”), of an aggregate of 1,255,000 shares (“Shares”) of the Company’s common stock, \$0.001 par value per share (“Common Stock”), consisting of (i) 1,200,000 shares of Common Stock issuable in accordance with the terms of the Company’s Amended and Restated 2006 Equity Incentive Plan (the “Plan”) and (ii) 55,000 shares of Common Stock issuable upon vesting of Inducement RSU Awards granted to Tag Kim, Jeremy Lai, and Lani Billitti, pursuant to Restricted Stock Unit Agreements, dated as of February 9, 2022 between the Company and Tag Kim, Jeremy Lai, and Lani Billitti outside of the Plan (the “Inducement RSU Award”). This opinion is being rendered in connection with the filing of the Registration Statement with the Commission. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to them in the Registration Statement.

In connection with this opinion, we have examined the Company’s Restated Certificate of Incorporation and Amended and Restated Bylaws, each as amended to date and currently in effect; such other records of the corporate proceedings of the Company and certificates of the Company’s officers as we have deemed relevant; and the Registration Statement and the exhibits thereto.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as copies, the authenticity of the originals of such copies, and the truth and correctness of any representations and warranties contained therein. In addition, we have assumed that the Company will receive any required consideration in accordance with the terms of the Plan.

Our opinion expressed herein is limited to the General Corporation Law of the State of Delaware and we express no opinion with respect to the laws of any other jurisdiction. No opinion is expressed herein with respect to the qualification of the Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

Based upon the foregoing, we are of the opinion that the Shares, when issued and delivered in accordance with the terms of the Plan and the Inducement RSU Award, as applicable, will be validly issued, fully paid and non-assessable.

BOSTON LONDON LOS ANGELES NEW YORK SAN DIEGO SAN FRANCISCO WASHINGTON
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C.

March 2, 2022

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We understand that you wish to file this opinion with the Commission as an exhibit to the Registration Statement in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act, and we hereby consent thereto. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on Form S-8 of Netlist, Inc. of our reports dated March 1, 2022, relating to the consolidated financial statements of Netlist, Inc. and subsidiaries as of January 1, 2022 and January 2, 2021, the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three years in the period ended January 1, 2022, and the related notes and financial statement schedule II, and the effectiveness of internal control over financial reporting as of January 1, 2022, which reports are included in the Annual Report on Form 10-K of Netlist, Inc. for the year ended January 1, 2022.

Our report dated March 1, 2022, on the effectiveness of internal control over financial reporting as of January 1, 2022, expresses our opinion that Netlist, Inc. and subsidiaries did not maintain effective internal control over financial reporting as of January 1, 2022 because of the effect of material weaknesses on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states the following material weaknesses have been identified:

- The Company's sole member of the board of directors also serves in an executive management role at the Company. As a result, the Company has ineffective oversight of the financial reporting process due to the lack of an audit committee and the lack of an independent board of directors to ensure adequate monitoring and oversight of internal controls. Additionally, the Company (i) did not have an effective risk assessment process as it did not sufficiently identify and assess risks, including financial reporting risks, that may limit the achievement of Company objectives, (ii) did not have effective monitoring as it did not implement effective monitoring controls that were responsive to changes in the business or the timely remediation of identified control deficiencies.
- The Company has ineffective design and maintenance of controls over user access and program change management related to certain information technology (IT) systems that support the Company's financial reporting processes. User and privileged access were not appropriately provisioned, and program changes were not adequately reviewed prior to being placed in production. As a result, process level automated controls and manual controls that are dependent on the completeness and accuracy of information derived from the affected IT systems were also ineffective because they could have been adversely impacted. This material weakness was due to an insufficient number of IT personnel to identify and assess risks associated with changes in the IT environment resulting in inappropriate assignment of user and privileged access as well as insufficient documentation for control operations.

/s/ KMJ Corbin & Company LLP

Irvine, California
March 2, 2022

NETLIST, INC.

RESTRICTED STOCK UNIT AWARD NOTICE

(Time-Based)

- 1. Name of Participant: [●]
- 2. Grant Date: [Date of Board Grant]
- 3. Vesting Start Date: [●]
- 4. Number of Restricted Stock Units (“RSUs”) Awarded: [\$[] divided by closing price on the date of Board Grant rounded down to nearest whole share]

5. Vesting Schedule: This Award shall vest as follows provided (except as otherwise set forth below) the Participant is an Employee of the Company or of an Affiliate on the applicable vesting date:

[25% of the shares will vest on the first anniversary of the Vesting Start Date.

An additional 6.25% shall vest at the end of every three month period following the first anniversary of the Vesting Start Date.]

The Company and the Participant acknowledge receipt of this Restricted Stock Unit Award Notice and agree to the terms of the Restricted Stock Unit Agreement attached hereto, and the terms of this Award as set forth above (collectively, this “Agreement”).

This Agreement may be executed in by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For all purposes an electronic signature shall be treated as an original.

[COMPANY]

By: _____
Name:
Title:

[Participant]

[COMPANY]

**RESTRICTED STOCK UNIT AGREEMENT
INCORPORATED TERMS AND CONDITIONS**

AGREEMENT made as of the date of grant set forth in the Restricted Stock Unit Award Notice by and between [Company] (the “**Company**”), a Delaware corporation, and [Participant] (the “**Participant**”).

WHEREAS, the Company desires to grant to the Participant RSUs related to the Company’s common stock, \$0.0001 par value per share (the “**Common Stock**”), as an inducement material to the Participant’s entering into employment as [title] of the Company, effective [●];

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS.

Unless otherwise specified or unless the context otherwise requires, the following terms, as used in this Agreement, have the following meanings:

“**Administrator**” means the Board of Directors, unless it has delegated power to act on its behalf to the Committee, in which case the term Administrator means the Committee.

“**Affiliate**” means a corporation which, for purposes of Section 424 of the Code, is a parent or subsidiary of the Company, direct or indirect.

“**Board of Directors**” means the Board of Directors of the Company.

“**Code**” means the United States Internal Revenue Code of 1986, as amended, including any successor statute, regulation and guidance thereto.

“**Committee**” means the committee of the Board of Directors to which the Board of Directors has delegated power to act.

“**Director**” means any member of the Board of Directors.

“**Disability**” or “**Disabled**” has the meaning given to such term in the Employment Agreement.

“**Employee**” means any employee of the Company or of an Affiliate (including, without limitation, an employee who is also serving as an officer or director of the Company or of an Affiliate).

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**RSU**”s means Restricted Stock Units granted as an inducement award.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Survivor**” means the deceased Participant’s legal representatives and/or any person or persons who acquire the Award by will or by the laws of descent and distribution.

2. GRANT OF AWARD.

THE COMPANY HEREBY GRANTS TO THE PARTICIPANT AN AWARD FOR THE NUMBER OF RSUS SET FORTH IN THE RESTRICTED STOCK UNIT AWARD NOTICE (THE “**AWARD**”). EACH RSU REPRESENTS A CONTINGENT ENTITLEMENT OF THE PARTICIPANT TO RECEIVE ONE SHARE OF COMMON STOCK, ON THE TERMS AND CONDITIONS AND SUBJECT TO ALL THE LIMITATIONS SET FORTH HEREIN.

3. VESTING OF AWARD.

(a) Subject to the terms and conditions set forth in this Agreement, the Award granted hereby shall vest as set forth in the Restricted Stock Unit Award Notice and is subject to the other terms and conditions of this Agreement. On each vesting date set forth in the Restricted Stock Unit Award Notice, the Participant shall be entitled to receive such number of shares of Common Stock equivalent to the amount of RSUs set forth opposite such vesting date provided that the Participant is employed by the Company or an Affiliate on such vesting date (except as otherwise set forth herein). Such shares of Common Stock shall thereafter be delivered to the Participant within [five] days of the applicable vesting date and in accordance with this Agreement. The shares of Common Stock shall, upon delivery, be fully paid, non-assessable shares.

(b) Except as otherwise set forth in the Restricted Stock Unit Award Notice and this Agreement, if the Participant ceases to be employed for any reason by the Company or by an Affiliate (the “Termination Date”) prior to a vesting date set forth in the Restricted Stock Unit Award Notice, then as of the Termination Date, all unvested RSUs shall immediately be forfeited to the Company and this Agreement shall terminate and be of no further force or effect.

4. PROHIBITIONS ON TRANSFER AND SALE.

THIS AWARD (INCLUDING ANY ADDITIONAL RSUS RECEIVED BY THE PARTICIPANT AS A RESULT OF STOCK DIVIDENDS, STOCK SPLITS OR ANY OTHER SIMILAR TRANSACTION AFFECTING THE COMPANY’S SECURITIES WITHOUT RECEIPT OF CONSIDERATION) SHALL NOT BE TRANSFERABLE BY THE PARTICIPANT OTHERWISE THAN (I) BY WILL OR BY THE LAWS OF DESCENT AND DISTRIBUTION, OR (II) PURSUANT TO A QUALIFIED DOMESTIC RELATIONS ORDER AS DEFINED BY THE CODE OR TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OR THE RULES THEREUNDER. EXCEPT AS PROVIDED IN THE PREVIOUS SENTENCE, THE SHARES OF COMMON STOCK TO BE ISSUED PURSUANT TO THIS AGREEMENT SHALL BE ISSUED, DURING THE PARTICIPANT’S LIFETIME, ONLY TO THE PARTICIPANT (OR, IN THE EVENT OF LEGAL INCAPACITY OR INCOMPETENCY, TO THE PARTICIPANT’S GUARDIAN OR REPRESENTATIVE). THIS AWARD SHALL NOT BE ASSIGNED, PLEDGED OR HYPOTHECATED IN ANY WAY (WHETHER BY OPERATION OF LAW OR OTHERWISE) AND SHALL NOT BE SUBJECT TO EXECUTION, ATTACHMENT OR SIMILAR PROCESS. ANY ATTEMPTED TRANSFER, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THIS AWARD OR OF ANY RIGHTS GRANTED HEREUNDER CONTRARY TO THE PROVISIONS OF THIS SECTION 3, OR THE LEVY OF ANY ATTACHMENT OR SIMILAR PROCESS UPON THIS AWARD SHALL BE NULL AND VOID. THE PARTICIPANT AGREES THAT IN THE EVENT THE COMPANY PROPOSES TO OFFER FOR SALE TO THE PUBLIC ANY OF ITS EQUITY SECURITIES AND THE PARTICIPANT IS REQUESTED BY THE COMPANY AND ANY UNDERWRITER ENGAGED BY THE COMPANY IN CONNECTION WITH SUCH OFFERING TO SIGN AN AGREEMENT RESTRICTING THE SALE OR OTHER TRANSFER OF SHARES, THEN THE PARTICIPANT WILL PROMPTLY SIGN SUCH AGREEMENT AND WILL NOT TRANSFER, WHETHER IN PRIVATELY NEGOTIATED TRANSACTIONS OR TO THE PUBLIC IN OPEN MARKET TRANSACTIONS OR OTHERWISE, ANY SHARES OR OTHER SECURITIES OF THE COMPANY HELD BY THE PARTICIPANT DURING SUCH PERIOD AS IS DETERMINED BY THE COMPANY AND THE UNDERWRITERS, NOT TO EXCEED 180 DAYS FOLLOWING THE CLOSING OF THE OFFERING, PLUS SUCH ADDITIONAL PERIOD OF TIME AS MAY BE REQUIRED TO COMPLY WITH FINRA RULES OR SIMILAR RULES THERETO PROMULGATED BY ANOTHER REGULATORY AUTHORITY (SUCH PERIOD, THE “**LOCK-UP PERIOD**”). SUCH AGREEMENT SHALL BE IN WRITING AND IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY AND SUCH UNDERWRITER AND PURSUANT TO CUSTOMARY AND PREVAILING TERMS AND CONDITIONS. WHETHER OR NOT THE PARTICIPANT HAS SIGNED SUCH AN AGREEMENT, THE COMPANY MAY IMPOSE STOP-TRANSFER INSTRUCTIONS WITH RESPECT TO THE SHARES OR OTHER SECURITIES OF THE COMPANY SUBJECT TO THE FOREGOING RESTRICTIONS UNTIL THE END OF THE LOCK-UP PERIOD.

5. ADJUSTMENTS.

UPON THE OCCURRENCE OF ANY OF THE FOLLOWING EVENTS, THE PARTICIPANT'S RIGHTS WITH RESPECT TO THE AWARD SHALL BE ADJUSTED AS HEREINAFTER PROVIDED.

(a) Stock Dividends and Stock Splits. If (i) the shares of Common Stock shall be subdivided or combined into a greater or smaller number of shares or if the Company shall issue any shares of Common Stock as a stock dividend on its outstanding Common Stock, or (ii) additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Common Stock, the Award and the number of shares of Common Stock deliverable thereunder shall be appropriately increased or decreased proportionately, and appropriate adjustments shall be made to reflect such events. No fractional shares shall be issued under this Agreement.

(b) Corporate Transactions. If the Company is to be consolidated with or acquired by another entity in a merger, consolidation, or sale of all or substantially all of the Company's assets or the acquisition of all of the outstanding voting stock of the Company in a single transaction or a series of related transactions by a single entity, other than a transaction to merely change the state of incorporation (a "**Corporate Transaction**"), either (a) the Administrator or the board of directors of any entity assuming the obligations of the Company hereunder, shall make appropriate provision for the continuation of the Award by substituting on an equitable basis for the Common Stock then subject to the Award either the consideration payable with respect to the outstanding shares of Common Stock in connection with the Corporate Transaction or securities of any successor or acquiring entity, or (b) the Board of Directors may, in its discretion, provide that immediately prior to consummation of the Corporate Transaction, the Award shall be fully vested.

(c) Recapitalization or Reorganization. In the event of a recapitalization or reorganization of the Company other than a Corporate Transaction pursuant to which securities of the Company or of another corporation are issued with respect to the outstanding shares of Common Stock, the Participant shall be entitled to receive after the recapitalization or reorganization the number of replacement securities which would have been received if such shares had been issued prior to such recapitalization or reorganization.

(d) Dissolution or Liquidation of the Company. Upon the dissolution or liquidation of the Company other than in connection with a transaction, recapitalization or reorganization referenced in Section 4(b) or 4(c), the RSUs will terminate and become null and void.

6. SECURITIES LAW COMPLIANCE.

THE PARTICIPANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT ANY SALES OF SHARES OF COMMON STOCK SHALL BE MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE SECURITIES ACT. IF THE COMPANY DOES NOT HAVE AN EFFECTIVE REGISTRATION STATEMENT ON FILE WITH THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO THE COMMON STOCK TO BE ISSUED HEREUNDER FOR ANY REASON, THE PARTICIPANT WILL NOT BE ABLE TO TRANSFER OR SELL ANY OF THE SHARES OF COMMON STOCK ISSUED TO THE PARTICIPANT PURSUANT TO THIS AGREEMENT UNLESS EXEMPTIONS FROM REGISTRATION OR FILINGS UNDER APPLICABLE SECURITIES LAWS ARE AVAILABLE. FURTHERMORE, DESPITE REGISTRATION, APPLICABLE SECURITIES LAWS MAY RESTRICT THE ABILITY OF THE PARTICIPANT TO SELL HIS OR HER COMMON STOCK, INCLUDING DUE TO THE PARTICIPANT'S AFFILIATION WITH THE COMPANY. THE COMPANY SHALL NOT BE OBLIGATED TO EITHER ISSUE THE COMMON STOCK OR PERMIT THE RESALE OF ANY SHARES OF COMMON STOCK IF SUCH ISSUANCE OR RESALE WOULD VIOLATE ANY APPLICABLE SECURITIES LAW, RULE OR REGULATION.

Unless the offering and sale of the shares to be issued upon the particular vesting of the Award shall have been effectively registered under the Securities Act, the Company shall be under no obligation to issue the Common Stock covered by such vesting unless and until the following conditions have been fulfilled:

(a) The Participant shall warrant to the Company, at the time of such vesting, that the Participant is acquiring the Common Stock for his own account, for investment, and not with a view to, or for sale in connection with, the distribution of any such shares, in which event the Participant shall be bound by the provisions of the following legend (or a legend in substantially similar form) which shall be endorsed upon the certificate evidencing the shares issued pursuant to the Award:

“The shares represented by this certificate have been taken for investment and they may not be sold or otherwise transferred by any person, including a pledgee, unless (1) either (a) a registration statement with respect to such shares shall be effective under the Securities Act of 1933, as amended, or (b) the Company shall have received an opinion of counsel satisfactory to it that an exemption from registration under such Act is then available, and (2) there shall have been compliance with all applicable state securities laws.”

(b) If the Company so requires, the Company shall have received an opinion of its counsel that the shares may be issued in compliance with the Securities Act without registration thereunder. Without limiting the generality of the foregoing, the Company may delay issuance of the Shares until completion of any action or obtaining of any consent, which the Company reasonably and in good faith deems necessary under any applicable law (including without limitation state securities or “blue sky” laws).

7. RIGHTS AS A STOCKHOLDER.

THE PARTICIPANT SHALL HAVE NO RIGHT AS A STOCKHOLDER, INCLUDING VOTING AND DIVIDEND RIGHTS, WITH RESPECT TO THE RSUS SUBJECT TO THIS AGREEMENT.

8. TAX LIABILITY OF THE PARTICIPANT AND PAYMENT OF TAXES.

THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT ANY INCOME OR OTHER TAXES DUE FROM THE PARTICIPANT WITH RESPECT TO THIS AWARD OR THE SHARES OF COMMON STOCK TO BE ISSUED PURSUANT TO THIS AGREEMENT OR OTHERWISE SOLD SHALL BE THE PARTICIPANT’S RESPONSIBILITY. WITHOUT LIMITING THE FOREGOING, THE PARTICIPANT AGREES THAT IF UNDER APPLICABLE LAW THE PARTICIPANT WILL OWE TAXES AT EACH VESTING DATE ON THE PORTION OF THE AWARD THEN VESTED, THE COMPANY SHALL BE ENTITLED TO IMMEDIATE PAYMENT FROM THE PARTICIPANT OF THE AMOUNT OF ANY TAX OR OTHER AMOUNTS REQUIRED TO BE WITHHELD BY THE COMPANY BY APPLICABLE LAW OR REGULATION. ANY TAXES OR OTHER AMOUNTS DUE SHALL BE PAID, AT THE OPTION OF THE COMPANY AS FOLLOWS:

(a) reducing the number of shares of Common Stock entitled to be issued to the Participant on the applicable vesting date in an amount equal to the statutory minimum of the Participant’s total tax and other withholding obligations due and payable by the Company. Fractional shares will not be retained to satisfy any portion of the Company’s withholding obligation. Accordingly, the Participant agrees that in the event that the amount of withholding required would result in a fraction of a share being owed, that amount will be satisfied by withholding the fractional amount from the Participant’s paycheck; or in the alternative, at the election of the Company, the Company may additionally reduce the number of shares of Common Stock entitled to be issued to the Participant on the applicable vesting date in an amount equal to those additional whole shares necessary to cover the minimum of the Participant’s total tax and other withholding obligations due and payable by the Company, and to the extent the proceeds of such sale exceed the Company’s withholding obligation, the Company agrees to pay such excess cash to the Participant as soon as practicable or to apply such excess as a payment of the Participant’s federal income tax withholding amount;

(b) requiring the Participant to deposit with the Company an amount of cash equal to the amount determined by the Company to be required to be withheld with respect to the statutory minimum amount of the Participant's total tax and other withholding obligations due and payable by the Company or otherwise withholding from the Participant's paycheck an amount equal to such amounts due and payable by the Company; or

(c) if the Company believes that the sale of shares can be made in compliance with applicable securities laws, authorizing, at a time when the Participant is not in possession of material nonpublic information, the sale by the Participant on the applicable vesting date of such number of shares of Common Stock as the Company instructs a registered broker to sell to satisfy the Company's withholding obligation, after deduction of the broker's commission, and the broker shall be required to remit to the Company the cash necessary in order for the Company to satisfy its withholding obligation. To the extent the proceeds of such sale exceed the Company's withholding obligation the Company agrees to pay such excess cash to the Participant as soon as practicable, or to apply such excess as a payment of the Participant's federal income tax withholding amount. In addition, if such sale is not sufficient to pay the Company's withholding obligation the Participant agrees to pay to the Company as soon as practicable, including through additional payroll withholding, the amount of any withholding obligation that is not satisfied by the sale of shares of Common Stock. The Participant agrees to hold the Company and the broker harmless from all costs, damages or expenses relating to any such sale. The Participant acknowledges that the Company and the broker are under no obligation to arrange for such sale at any particular price. In connection with such sale of shares of Common Stock, the Participant shall execute any such documents requested by the broker in order to effectuate the sale of shares of Common Stock and payment of the withholding obligation to the Company. The Participant acknowledges that this paragraph is intended to comply with Section 10b5-1(c)(1)(i)(B) under the Exchange Act.

It is the Company's intention that the Participant's tax obligations under this Section 7 shall be satisfied through the procedure of Subsection (c) above, unless the Company provides notice of an alternate procedure under this Section, in its discretion. The Company shall not deliver any shares of Common Stock to the Participant until it is satisfied that all required withholdings have been made.

9. PARTICIPANT ACKNOWLEDGEMENTS AND AUTHORIZATIONS.

The Participant acknowledges the following:

- (a) The Company is not by this Award obligated to continue the Participant as an employee of the Company or an Affiliate.

(b) The grant of this Award is considered a one-time benefit and does not create a contractual or other right to receive any other award, benefits in lieu of awards or any other benefits in the future.

(c) The value of this Award is an extraordinary item of compensation outside of the scope of the Participant's employment or consulting contract, if any. As such, the Award is not part of normal or expected compensation for purposes of calculating any severance, resignation, redundancy, end of service payments, bonuses, long-service awards, pension or retirement benefits or similar payments. The future value of the shares of Common Stock is unknown and cannot be predicted with certainty.

10. NOTICES.

ANY NOTICES REQUIRED OR PERMITTED BY THE TERMS OF THIS AGREEMENT SHALL BE GIVEN BY RECOGNIZED COURIER SERVICE, FACSIMILE, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED AS FOLLOWS:

If to the Company:

[Company]
[Address]
Attn: [●]

If to the Participant, to the last known address provided to the Human Resources department by the Participant or to such other address or addresses of which notice in the same manner has previously been given. Any such notice shall be deemed to have been given on the earliest of receipt, one business day following delivery by the sender to a recognized courier service, or three business days following mailing by registered or certified mail.

11. ASSIGNMENT AND SUCCESSORS.

(a) This Agreement is personal to the Participant and without the prior written consent of the Company shall not be assignable by the Participant otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Participant's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns; provided that the Company shall not assign this Agreement except to a parent entity, or a successor to all or substantially all of the business or assets of the Company (or a parent thereof), in a transaction or event to which Section 10 applies.

12. GOVERNING LAW.

THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF. FOR THE PURPOSE OF LITIGATING ANY DISPUTE THAT ARISES UNDER THIS AGREEMENT, WHETHER AT LAW OR IN EQUITY, THE PARTIES HEREBY CONSENT TO EXCLUSIVE JURISDICTION IN THE STATE OF CALIFORNIA AND AGREE THAT SUCH LITIGATION SHALL BE CONDUCTED IN THE STATE COURTS OF THE STATE OF CALIFORNIA OR THE FEDERAL COURTS OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

13. SEVERABILITY.

IF ANY PROVISION OF THIS AGREEMENT IS HELD TO BE INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, THEN SUCH PROVISION OR PROVISIONS SHALL BE MODIFIED TO THE EXTENT NECESSARY TO MAKE SUCH PROVISION VALID AND ENFORCEABLE, AND TO THE EXTENT THAT THIS IS IMPOSSIBLE, THEN SUCH PROVISION SHALL BE DEEMED TO BE EXCISED FROM THIS AGREEMENT, AND THE VALIDITY, LEGALITY AND ENFORCEABILITY OF THE REST OF THIS AGREEMENT SHALL NOT BE AFFECTED THEREBY.

14. ENTIRE AGREEMENT.

THIS AGREEMENT AND THE RELEVANT PROVISIONS OF THE EMPLOYMENT AGREEMENT CONSTITUTE THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ALL PRIOR ORAL OR WRITTEN AGREEMENTS AND UNDERSTANDINGS RELATING TO THE SUBJECT MATTER HEREOF.

15. MODIFICATIONS AND AMENDMENTS; WAIVERS AND CONSENTS.

THE TERMS OF THIS AGREEMENT MAY BE MODIFIED OR AMENDED BY THE ADMINISTRATOR; PROVIDED, HOWEVER, ANY MODIFICATION OR AMENDMENT OF THIS AGREEMENT SHALL NOT, WITHOUT THE CONSENT OF THE PARTICIPANT, ADVERSELY AFFECT THE PARTICIPANT'S RIGHTS UNDER THIS AGREEMENT, UNLESS SUCH AMENDMENT IS REQUIRED BY APPLICABLE LAW. THE TERMS AND PROVISIONS OF THIS AGREEMENT MAY BE WAIVED, OR CONSENT FOR THE DEPARTURE THEREFROM GRANTED, ONLY BY WRITTEN DOCUMENT EXECUTED BY THE PARTY ENTITLED TO THE BENEFITS OF SUCH TERMS OR PROVISIONS. NO SUCH WAIVER OR CONSENT SHALL BE DEEMED TO BE OR SHALL CONSTITUTE A WAIVER OR CONSENT WITH RESPECT TO ANY OTHER TERMS OR PROVISIONS OF THIS AGREEMENT, WHETHER OR NOT SIMILAR. EACH SUCH WAIVER OR CONSENT SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE PURPOSE FOR WHICH IT WAS GIVEN, AND SHALL NOT CONSTITUTE A CONTINUING WAIVER OR CONSENT.

16. SECTION 409A.

THE AWARD OF RSUS EVIDENCED BY THIS AGREEMENT IS INTENDED TO BE EXEMPT FROM THE NONQUALIFIED DEFERRED COMPENSATION RULES OF SECTION 409A OF THE CODE AS A "SHORT TERM DEFERRAL" (AS THAT TERM IS USED IN THE FINAL REGULATIONS AND OTHER GUIDANCE ISSUED UNDER SECTION 409A OF THE CODE, INCLUDING TREASURY REGULATION SECTION 1.409A-1(B)(4)(I)), AND SHALL BE CONSTRUED ACCORDINGLY. NEITHER THE ADMINISTRATOR, THE COMPANY, ITS AFFILIATES, NOR ANY OF ITS OFFICERS OR DIRECTORS, SHALL BE HELD LIABLE FOR ANY APPLICABLE COSTS, TAXES, OR PENALTIES ASSOCIATED WITH THE AWARD IF, IN FACT, THE INTERNAL REVENUE SERVICE WERE TO DETERMINE THAT THE AWARD CONSTITUTES DEFERRED COMPENSATION UNDER SECTION 409A OF THE CODE.

17. CLAWBACK.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE COMPANY MAY RECOVER FROM THE PARTICIPANT ANY COMPENSATION RECEIVED FROM THE AWARD (WHETHER OR NOT SETTLED) OR CAUSE THE PARTICIPANT TO FORFEIT THE AWARD (WHETHER OR NOT VESTED) IN ACCORDANCE WITH ANY FORFEITURE OR CLAWBACK POLICY ESTABLISHED BY THE COMPANY GENERALLY FOR EXECUTIVES FROM TIME TO TIME.

18. DATA PRIVACY.

BY ENTERING INTO THIS AGREEMENT, THE PARTICIPANT: (I) AUTHORIZES THE COMPANY AND EACH AFFILIATE, AND ANY AGENT OF THE COMPANY OR ANY AFFILIATE FACILITATING THE GRANT OR ADMINISTRATION OF THE AWARD UNDER THIS AGREEMENT, TO DISCLOSE TO THE COMPANY OR ANY OF ITS AFFILIATES SUCH INFORMATION AND DATA AS THE COMPANY OR ANY SUCH AFFILIATE SHALL REQUEST IN ORDER TO FACILITATE THE GRANT OR ADMINISTRATION OF THE OF AWARD; AND (II) TO THE EXTENT PERMITTED BY APPLICABLE LAW WAIVES ANY DATA PRIVACY RIGHTS HE MAY HAVE WITH RESPECT TO SUCH INFORMATION, AND (III) AUTHORIZES THE COMPANY AND EACH AFFILIATE TO STORE AND TRANSMIT SUCH INFORMATION IN ELECTRONIC FORM FOR THE PURPOSES SET FORTH IN THIS AGREEMENT.

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Calculation of Filing Fee Tables

FORM S-8

(Form Type)

NETLIST, INC.

(Exact Name of Registrant as Specified in its Charter)

(Translation of Registrant's Name into English)

Table 1: Newly Registered and Carry Forward Securities

Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered (1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee	Carry Forward Form Type	Carry Forward File Number	Carry Forward Initial effective date	Filing Fee Previously Paid In Connection with Unsold Securities to be Carried Forward
Newly Registered Securities											
Fees to Be Paid	Equity	Common Stock, par value \$0.001 per share	Rule 457(c) and 457(h)	1,200,000(2)	\$ 4.9495(3)	\$ 5,939,400	\$ 551				
Fees to Be Paid	Equity	Common Stock, par value \$0.001 per share	Rule 457(c) and 457(h)	55,000(4)	\$ 4.4400(5)	\$ 244,200	\$ 23				
Fees Previously Paid											
Carry Forward Securities											
Carry Forward Securities											
	Total Offering Amounts					\$ 6,183,600	\$ 574				
	Total Fees Previously Paid										
	Total Fee Offsets										
	Net Fee Due						<u>\$ 574</u>				

Table 2: Fee Offset Claims and Sources

Registrant or Filer Name	Form or Filing Type	File Number	Initial Filing Date	Filing Date	Fee Offset Claimed	Security Type Associated with Fee Offset Claimed	Security Title Associated with Fee Offset Claimed	Unsold Securities Associated with Fee Offset Claimed	Unsold Aggregate Offering Amount Associated with Fee Offset Claimed	Fee Paid with Fee Offset Source
Fee Offset Claims										
Fee Offset Sources										
Rule 457(b) and 0-11(a)(2)										
Rule 457(p)										
Fee Offset Claims										
Fee Offset Sources										

Table 3: Combined Prospectuses

Security Type	Security Class Title	Amount of Securities Previously Registered	Maximum Aggregate Offering Price of Securities Previously Registered	Form Type	File Number	Initial Effective Date
(1)	Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement covers any additional securities that may from time to time be offered or issued pursuant to the adjustment provisions of the above-referenced plan to prevent dilution resulting from stock splits, stock dividends or similar transactions.					
(2)	Represents shares of the common stock, par value \$0.001 per share ("Common Stock"), of Netlist, Inc. (the "Company") available for issuance but not yet issued as of the date of this registration statement under the Amended and Restated 2006 Equity Incentive Plan of Netlist, Inc. (the "Plan").					
(3)	Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act, based on the average of the high and low prices of the Common Stock as reported by the OTCQB on February 28, 2022.					
(4)	Represents shares of Common Stock to be issuable upon the vesting of restricted stock units (the "Inducement RSU Award") granted to Tag Kim, Jeremy Lai, and Lani Billitti pursuant to restricted stock unit agreements by and between the Registrant and Tag Kim, Jeremy Lai, and Lani Billitti (the "Inducement Agreements"). The maximum number of shares which may be sold upon the vesting of the Inducement RSU Awards is subject to adjustment in accordance with certain anti-dilution and other provisions of the Inducement RSU Agreements. Pursuant to Rule 416 under the Securities Act, this Registration Statement covers, in addition to the number of shares stated above, an indeterminate number of shares which may be issuable after the operation of anti-dilution and other provisions of the Inducement RSU Agreements.					
(5)	Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) under the Securities Act. The offering price of \$4.44 per share and the aggregate offering price for shares issuable upon the vesting of the Inducement RSU Award are based on the average of the high and low price of the Registrant's Common Stock as reported on as reported by the OTCQB as of a date (February 28, 2022) within five business days prior to filing this Registration Statement.					