

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

POST-EFFECTIVE AMENDMENT NO. 1

File No. 333-263233

POST-EFFECTIVE AMENDMENT NO. 1

File No. 333-266679

**TO
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.
Employment Inducement Stock Option Agreement**
(Full title of the plan)

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.

DEREGISTRATION OF UNSOLD SECURITIES

Netlist, Inc. (the “Company” or “Registrant”) is filing these post-effective amendments (the “Post-Effective Amendments”) to the following Registration Statements on Form S-8 (each, a “Registration Statement,” and collectively, the “Registration Statements”), which have been previously filed with the Securities and Exchange Commission (the “SEC”), to deregister certain shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), registered but unsold or otherwise unissued under the below Registration Statements as follows:

- Registration Statement on Form S-8 (No. 333-263233) filed with the SEC on March 2, 2022, pertaining to the registration of (i) 1,200,000 shares of Common Stock available for issuance under the Amended and Restated 2006 Equity Incentive Plan of the Company and (ii) 55,000 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards (the “Kim, Lai, and Billitti Inducement Award”) 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 (the “Kim, Lai, and Billitti Agreement”).

With respect to the Common Stock subject to the Kim, Lai, and Billitti Inducement Award, 50,000 shares of Common Stock included in this Registration Statement are no longer issuable pursuant to the Kim, Lai, and Billitti Agreement.

- Registration Statement on Form S-8 (No. 333-266679) filed with the SEC on August 9, 2022, pertaining to the registration of (i) 105,000 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards granted to Joao Alcantara and Bryce Glen pursuant to Restricted Stock Unit Agreements dated as of March 7, 2022 between the Company and Mr. Alcantara and Mr. Glen, (ii) 415,000 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards (the “Park and Eslamy Inducement Award”) granted to Devon Park and Mohammad Eslamy pursuant to Restricted Stock Unit Agreements dated as of April 6, 2022 between the Company and Mr. Park and Mr. Eslamy (the “Park and Eslamy Agreement”), (iii) 86,500 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards granted to Eric Lucas, Phong Vo, and Betty Nguyen pursuant to Restricted Stock Unit Agreements dated as of May 9, 2022 between the Company and Mr. Lucas, Mr. Vo, and Ms. Nguyen, (iv) 10,000 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards granted to Karen Cheng pursuant to Restricted Stock Unit Agreements dated as of June 1, 2022 between the Company and Ms. Cheng, (v) 28,333 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards granted to Ricardo Cassia and Sara Houshangi pursuant to Restricted Stock Unit Agreements dated as of July 11, 2022 between the Company and Mr. Cassia and Ms. Houshangi, and (vi) 150,000 shares of Common Stock that may be issued upon vesting of the Inducement RSU Awards (the “Jiang and Furrow Inducement Award”) granted to Raymond Jiang and Patrick Furrow pursuant to Restricted Stock Unit Agreements dated as of August 1, 2022 between the Company and Mr. Jiang and Mr. Furrow (the “Jiang and Furrow Agreement”).

With respect to the Common Stock subject to the Park and Eslamy Inducement Award, 15,000 shares of Common Stock included in this Registration Statement are no longer issuable pursuant to the Park and Eslamy Agreement.

With respect to the Common Stock subject to the Jiang and Furrow Inducement Award, 100,000 shares of Common Stock included in this Registration Statement are no longer issuable pursuant to the Jiang and Furrow Agreement.

Therefore, in accordance with an undertaking made by the Company in the Registration Statements to remove from registration, by means of a post-effective amendment, the securities registered under the Registration Statements that have not been sold, the Company hereby amends the Registration Statements to deregister (i) 50,000 shares of Common Stock registered and unsold under the Registration Statement on Form S-8 (No. 333-263233) and (ii) 115,000 shares of Common Stock registered and unsold under the Registration Statement on Form S-8 (No. 333-266679).

INDEX TO EXHIBITS

Exhibit No.	Description	Filed Herewith	Incorporated by Reference			
			Form	File No.	Exhibit	Filing Date
23.1	Consent of KMJ Corbin & Company LLP.	X				

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Post-Effective Amendment No. 1 to Registration Statements on Forms S-8 (333-263233 and 333-266679) of Netlist, Inc. of our reports dated February 28, 2023, relating to the consolidated financial statements of Netlist, Inc. and subsidiaries as of December 31, 2022 and January 1, 2022, the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule II, and the effectiveness of internal control over financial reporting as of December 31, 2022, which reports are included in the Annual Report on Form 10-K of Netlist, Inc. for the year ended December 31, 2022.

Our report dated February 28, 2023, on the effectiveness of internal control over financial reporting as of December 31, 2022, expresses our opinion that Netlist, Inc. and subsidiaries did not maintain effective internal control over financial reporting as of December 31, 2022 because of the effect of a material weakness on the achievement of the objectives of the control criteria and contains an explanatory paragraph that states the following material weakness has 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.

/s/ KMJ Corbin & Company LLP

Irvine, California
March 2, 2023
