

**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.)

**51 Discovery, Suite 150  
Irvine, CA 92618**  
(Address of Principal Executive Offices) (Zip Code)

**2010 Employment Inducement Award**  
(Full title of the plans)

**Chun K. Hong**  
**President, Chief Executive Officer and Chairman of the Board**  
**51 Discovery, Irvine, CA 92618**  
(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, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company   
(Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share	100,000	\$ 5.095	\$ 509,500	\$ 36.33

- (1) In accordance with Rule 416(a) of the Securities Act of 1933, as amended, this registration statement shall also cover any additional shares of common stock which become issuable by reason of any stock dividend, stock split, recapitalization or similar transaction.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(h)(1) and 457(c), based on the average of the high and low sales prices of the Company's Common Stock as reported on the Nasdaq Global Market on January 4, 2010.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering a total of 100,000 shares of the Registrant's common stock, par value \$0.001 per share, for future issuance upon exercise of stock options granted pursuant to a Stock Option Agreement dated as of January 4, 2010 between the Registrant and Steve McClure.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

The documents containing the information specified in this Part I of Form S-8 will be sent or given to the employee as specified by Rule 428(b)(1) promulgated under the Securities Act of 1933 (the "Securities Act"). In accordance with the instructions of Part I of Form S-8, such documents will not be filed with the Securities and Exchange Commission (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 (File No. 1-33170):

- the Company's Annual Report on Form 10-K for the fiscal year ended January 3, 2009;
- the Company's Quarterly Reports on Form 10-Q for the quarters ended April 4, 2009, July 4, 2009, and October 3, 2009;
- the Company's Current Reports on Form 8-K filed on January 30, 2009, June 4, 2009, September 21, 2009, November 2, 2009, and December 2, 2009 (Date of Report: November 25, 2009) and portions of the Company's Current Report on Form 8-K filed on May 28, 2009 and December 2, 2009 (Date of Report: December 1, 2009); and
- the description of the Company's Common Stock contained in the Company's Registration Statement on Form 8-A filed with the SEC on November 27, 2006, including any amendments or reports filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), prior to the filing of a post-effective amendment which indicates that all Common Stock offered hereunder has been sold or which deregisters all Common Stock then remaining unsold hereunder, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents, except for the documents, or portions thereof, that are "furnished" rather than filed with the Commission.

Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or suspended for purposes of this Registration Statement to the extent that a statement contained in any other subsequently filed document which also is or 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.**

None.

**Item 6. Indemnification of Directors and Officers.**

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law 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 Delaware General Corporation Law 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 Delaware General Corporation Law.

The Registrant's restated certificate of incorporation eliminates the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liabilities arising (a) from any breach of the director's duty of loyalty to the corporation or its stockholders; (b) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the Delaware General Corporation Law; or (d) from any transaction from which the director derived an improper personal benefit. In addition, the Registrant's amended and restated bylaws provide for indemnification of directors, officers, employees and agents to the fullest extent permitted by Delaware law and authorize the Registrant to purchase and maintain insurance to protect itself and any director, officer, employee or agent of the Registrant or another business entity against any expense, liability, or loss, regardless of whether the Registrant would have the power to indemnify such person under its bylaws or Delaware law.

The Registrant has entered into indemnification agreements with each of its current directors and executive officers (the form of which is filed as Exhibit 10.12 to the Registrant's Registration Statement No. 333-136735 on Form S-1 filed with the SEC on August 18, 2006, as amended). These agreements will require the Registrant to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Registrant, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Registrant 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.**

Reference is made to the Exhibit Index.

## 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 this 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 this 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 SEC 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;
  - (iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

*provided, however*, that the undertakings set forth in paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in this 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.
  - (4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities: The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this Registration Statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser: (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424; (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant; (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (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 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 SEC 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.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on this 16th day of December, 2009.

NETLIST, INC.

By: /s/ Chun K. Hong  
Chun K. Hong  
President, Chief Executive Officer  
and Chairman of the Board

## POWER OF ATTORNEY

We, the undersigned officers and directors of Netlist, Inc., hereby severally constitute and appoint Chun K. Hong and Gail Itow, and each of them singly, our true and lawful attorneys-in-fact and agents with full power and authority to sign any and all amendments (including post-effective amendments) and supplements to this Registration Statement, and any additional registration statement filed pursuant to Rule 462 (b) under the Securities Act of 1933, as amended, for the same offering contemplated by this Registration Statement, and to file the same, with exhibits and any and all other documents and instruments filed with respect thereto, with the Securities and Exchange Commission (or any other governmental or regulatory authority), granting unto said attorneys-in-fact and agents, and each of them, full power and authority in the name and on behalf of each of the undersigned to do and to perform each and every act and thing requisite and necessary or advisable to be done in order to effectuate the same as fully as to all intents and purposes as he might or could do if personally present, hereby ratifying and confirming all that said attorneys-in-fact and agents, and/or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title(s)</u>	<u>Date</u>
<u>/s/ Chun K. Hong</u> Chun K. Hong	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	December 16, 2009
<u>/s/ Gail Itow</u> Gail Itow	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	December 16, 2009
<u>/s/ Nam Ki Hong</u> Nam Ki Hong	Director	December 16, 2009
<u>/s/ Thomas F. Lagatta</u> Thomas F. Lagatta	Director	December 16, 2009
<u>/s/ Alan H. Portnoy</u> Alan H. Portnoy	Director	December 16, 2009

## EXHIBIT INDEX

- 4.1 Restated Certificate of Incorporation (Incorporated by reference to the Company's registration statement on Form S-1 (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006).
- 4.2 Amended and Restated Bylaws (Incorporated by reference to the Company's registration statement on Form S-1 (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006).
- \*4.3 Stock Option Agreement dated as of January 4, 2010 by and between the Company and Steve McClure.
- \*5.1 Opinion of Bryan Cave LLP.
- \*23.1 Consent of KMJ Corbin & Company LLP.
- \*23.2 Consent of Bryan Cave LLP (included in Exhibit 5.1).
- \*24.1 Power of Attorney (included on signature page hereto).

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\* Filed herewith

STOCK OPTION AGREEMENT  
(Employment Inducement Grant)

This NON-STATUTORY STOCK OPTION AGREEMENT, dated as of January 4, 2010 (this “Agreement”), is between NETLIST, INC., a Delaware corporation (the “Company”), and Steve McClure (the “Optionee”).

**RECITALS**

- A. Optionee has not previously been an officer, director or employee of the Company, and this Option (as defined below) is granted to Optionee to attract and retain Optionee to serve the Company in the capacity of Vice President of Business Development.
- B. This Agreement, and the grant of an Option to the Optionee pursuant to the terms and conditions hereof, have been approved by the Board of Directors of the Company (the “Board”).
- C. This Option is designated as a non-qualified stock option, and does **not** qualify as an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”).

**AGREEMENT**

In consideration of the foregoing recitals and of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. Grant of Option. The Company hereby grants to the Optionee, as an inducement to accept employment with the Company, an option (the “Option”) to purchase from the Company all or any number of an aggregate of 100,000 shares (the “Option Shares”), of the Company’s common stock, \$.001 par value per share, at a price of \$ 5.00 per share, on the terms and subject to the conditions of this Agreement. This grant is **not** made pursuant to the Company’s 2006 Equity Incentive Plan (the “Plan”), attached as Exhibit A. However, except as otherwise expressly provided herein, this grant is subject to the rules, terms and conditions of the Plan as if it were a grant made pursuant to and under the Plan, and all such rules, terms and conditions are hereby incorporated herein by reference as if set forth herein in their entirety. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Plan. The Option is granted as of January 4, 2010 (the “Grant Date”).
  2. Character of Option. The Option is **not** intended to be treated as an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”).
  3. Duration of Option. Unless subject to earlier expiration or termination pursuant to the terms of the Plan, the Option shall expire on the ten year anniversary of the Grant Date.
  4. Exercisability of Option. The Option may be exercised, at any time and from time to time until its expiration or termination, for any or all of those Option Shares in respect of which the Option shall have become exercisable, in accordance with the provisions set forth below in this Section 4, on or at any time prior to the date of any such exercise. Subject to the provisions of the Plan (including, without limitation, the
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provisions of Section 7.1(e) of the Plan), the Option shall become exercisable as follows: (i) 25,000 shares on April 4, 2010; and (ii) 12 quarterly installments of 6,250 shares from July 4, 2010 through April 1, 2013, until vested in full (or otherwise terminated), such that, on April 1, 2013, the Option shall be vested as to all of the Shares and fully exercisable. These installments shall be cumulative, such that Optionee may exercise the Option as to any or all of the Shares covered by any installment at any time or times after such installment vests and prior to termination of the Option. The foregoing notwithstanding, the Option shall cease vesting upon the termination of Optionee's status as an employee of the Company for any reason. Notwithstanding anything expressed or implied to the contrary in the foregoing provisions of this Section 4, the exercisability of the Option may, as provided in Section 7.1(d) of the Plan, at any time be Accelerated in the discretion of the Committee.

5. Transfer of Option . Other than as expressly permitted by the provisions of Section 6.4 of the Plan, the Option may not be transferred except by will or the laws of descent and distribution and, during the lifetime of the Optionee, may be exercised only by the Optionee.

6. Incorporation of Plan Terms . The Option is granted subject to all of the applicable terms and provisions of the Plan, which terms and provisions are incorporated herein by reference pursuant to Section 1 of this Agreement, including, but not limited to, the limitations on the Company's obligation to deliver Option Shares upon exercise set forth in Section 9.2 (Violation of Law), Section 9.3 (Corporate Restrictions on Rights in Stock), Section 9.4 (Investment Representations) and Section 9.7 (Tax Withholding).

7. Miscellaneous . This Agreement shall be construed and enforced in accordance with the internal, substantive laws of the State of Delaware and shall be binding upon and inure to the benefit of any successor or assign of the Company and any executor, administrator, trustee, guardian, or other legal representative of the Optionee.

IN WITNESS WHEREOF, the parties have executed this Stock Option Agreement as a sealed instrument as of the date first above written.

NETLIST, INC.

By: \_\_\_\_\_  
Michael S. Oswald  
Assistant Secretary

OPTIONEE

\_\_\_\_\_  
Steve McClure

Optionee's Address:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Netlist, Inc.  
2006 Equity Incentive Plan**

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**Bryan Cave LLP**

3161 Michelson Drive  
Suite 1500  
Irvine, CA 92612-4414  
Tel (949) 223-7000  
Fax (949) 223-7100  
www.bryancave.com

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January 7, 2010

Netlist, Inc.  
51 Discovery, Suite 150  
Irvine, California 92618

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as special counsel to Netlist, Inc., a Delaware corporation (the "Company"), in connection with the registration under the Securities Act of 1933, as amended (the "Act"), of 100,000 shares of the Company's common stock, par value \$.001 per share (the "Shares"), issuable upon the exercise of stock options awarded pursuant to that certain Stock Option Agreement dated January 4, 2010, by and between the Company and Steve McClure (the "Agreement"), by means of a registration statement on Form S-8 (the "Registration Statement").

In connection herewith, we have examined:

- (1) the Agreement; and
- (2) the Registration Statement.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of the Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company, each as currently in effect, and such other corporate records, agreements and instruments of the Company, certificates of public officials and officers of the Company, and such other documents, records and instruments, and we have made such legal and factual inquiries, as we have deemed necessary or appropriate as a basis for us to render the opinions hereinafter expressed. In our examination of the foregoing, we have assumed the genuineness of all signatures, the legal competence and capacity of natural persons, the authenticity of all documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies. When relevant facts were not independently established, we have relied without independent investigation as to matters of fact upon statements of governmental officials and certificates and statements of appropriate representatives of the Company.

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Based upon the foregoing and in reliance thereon, and subject to the assumptions, comments, qualifications, limitations and exceptions set forth herein, we are of the opinion that the Shares have been duly authorized for issuance in accordance with the terms of the Agreement, and upon issuance and delivery and the receipt by the Company of all consideration therefore in accordance with the terms of the Agreement, will be validly issued, fully paid and non-assessable.

This opinion is limited to the applicable General Corporation Law of the State of Delaware. The opinion set forth herein is made as of the date hereof and is subject to, and may be limited by, future changes in the factual matters set forth herein, and we undertake no duty to advise you of the same. The opinion expressed herein is based upon the law in effect (and published or otherwise generally available) on the date hereof, and we assume no obligation to revise or supplement this opinion should such law be changed by legislative action, judicial decision or otherwise.

We do not render any opinions except as set forth above. This opinion letter is being delivered by us solely for purposes of the filing of the Registration Statement with the Securities and Exchange Commission. We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. We also consent to your filing copies of this opinion letter as an exhibit to the Registration Statement with agencies of such states as you deem necessary in the course of complying with the laws of such states regarding the offering and sale of the Shares. In giving such consent, we do not thereby concede that we are within the category of persons whose consent is required under Section 7 of the Act or the Rules and Regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

*/s/ Bryan Cave LLP*

Bryan Cave LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated March 30, 2009, relating to the consolidated financial statements of Netlist, Inc. and subsidiaries as of January 3, 2009 and December 29, 2007 and for each of the years then ended (which report expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement 109* ), which report is included in Netlist, Inc.'s Annual Report on Form 10-K for the year ended January 3, 2009.

/s/ KMJ Corbin & Company LLP

Costa Mesa, California  
January 4, 2010

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