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

FORM 10-Q

(Mark One)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 27, 2025

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____
Commission file number: 001-33170

NETLIST, INC.

(Exact name of registrant as specified in its charter)

Delaware	**95-4812784**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

111 Academy, Suite 100 **Irvine, California**	**92617**
(Address of principal executive offices)	(Zip Code)

(949) 435-0025
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: **None**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 6, 2025, there were 307,249,351 outstanding shares of the registrant's common stock.

NETLIST, INC. AND SUBSIDIARIES

Form 10-Q

For the Quarter Ended September 27, 2025

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PART I. — FINANCIAL INFORMATION

Item 1. Financial Statements

NETLIST, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value) (Unaudited)

	September 27, 2025	December 28, 2024
ASSETS		
Current assets:		
Cash and cash equivalents	$ 10,544	$ 22,507
Restricted cash	10,300	12,100
Accounts receivable, net of allowances of $33 (2025) and $41 (2024)	4,154	1,671
Inventories	17,565	2,744
Prepaid expenses and other current assets	12,312	733
Total current assets	54,875	39,755
Property and equipment, net	346	517
Operating lease right-of-use assets	683	1,101
Other assets	439	466
Total assets	$ 56,343	$ 41,839
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 37,283	$ 42,307
Revolving line of credit	3,437	1,230
Accrued payroll and related liabilities	865	808
Deferred revenue	26,974	40
Other current liabilities	861	2,675
Total current liabilities	69,420	47,060
Operating lease liabilities	181	641
Other liabilities	34	186
Total liabilities	69,635	47,887
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, $0.001 par value—10,000 shares authorized: Series A preferred stock, $0.001 par value; 1,000 shares authorized; none issued and outstanding	—	—
Common stock, $0.001 par value—675,000 (2025) and 450,000 (2024) shares authorized; 292,659 (2025) and 271,986 (2024) shares issued and outstanding	293	273
Additional paid-in capital	346,678	331,367
Accumulated deficit	(360,263)	(337,688)
Total stockholders' deficit	(13,292)	(6,048)
Total liabilities and stockholders' deficit	$ 56,343	$ 41,839

See accompanying Notes to Condensed Consolidated Financial Statements.

NETLIST, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts) (Unaudited)

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Net sales	$ 42,234	$ 40,186	$ 112,915	$ 112,828
Cost of sales	40,396	39,044	108,385	110,198
Gross profit	1,838	1,142	4,530	2,630
Operating expenses:				
Research and development	822	2,177	2,548	6,987
Intellectual property legal fees	5,035	5,349	15,542	28,403
Selling, general and administrative	3,131	3,271	9,604	9,353
Total operating expenses	8,988	10,797	27,694	44,743
Operating loss	(7,150)	(9,655)	(23,164)	(42,113)
Other income, net:				
Interest income, net	106	162	459	796
Other income, net	34	88	130	167
Total other income, net	140	250	589	963
Loss before provision for income taxes	(7,010)	(9,405)	(22,575)	(41,150)
Provision for income taxes	—	—	—	1
Net loss	$ (7,010)	$ (9,405)	$ (22,575)	$ (41,151)
Loss per share:				
Basic and diluted	$ (0.02)	$ (0.04)	$ (0.08)	$ (0.16)
Weighted-average common shares outstanding:				
Basic and diluted	292,557	258,025	280,229	256,509

See accompanying Notes to the Condensed Consolidated Financial Statements.

NETLIST, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(In thousands) (Unaudited)

	Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Deficit	Deficit
Balance, December 28, 2024	271,986	$ 273	$ 331,367	$ (337,688)	$ (6,048)
Net loss	—	—	—	(9,487)	(9,487)
Issuance of common stock, net	2,112	2	937	—	939
Exercise of stock options	23	—	12	—	12
Stock-based compensation	—	—	971	—	971
Restricted stock units vested and distributed	506	1	(1)	—	—
Tax withholdings related to net share settlements of equity awards	(54)	(1)	(58)	—	(59)
Balance, March 29, 2025	274,573	275	333,228	(347,175)	(13,672)
Net loss	—	—	—	(6,078)	(6,078)
Issuance of common stock, net	17,346	17	11,722	—	11,739
Exercise of stock options	73	1	39	—	40
Stock-based compensation	—	—	1,013	—	1,013
Restricted stock units vested and distributed	459	—	—	—	—
Balance, June 28, 2025	292,451	293	346,002	(353,253)	(6,958)
Net loss	—	—	—	(7,010)	(7,010)
Issuance of common stock, net	—	—	(107)	—	(107)
Exercise of stock options	33	—	23	—	23
Stock-based compensation	—	—	760	—	760
Restricted stock units vested and distributed	175	—	—	—	—
Balance, September 27, 2025	292,659	$ 293	$ 346,678	$ (360,263)	$ (13,292)

See accompanying Notes to the Condensed Consolidated Financial Statements.

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NETLIST, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT
(In thousands) (Unaudited) (Continued)

	Common Stock		Additional Paid-in	Accumulated	Total Stockholders'
	Shares	Amount	Capital	Deficit	Deficit
Balance, December 30, 2023	253,593	$ 254	$ 307,328	$ (283,823)	$ 23,759
Net loss	—	—	—	(16,968)	(16,968)
Issuance of common stock, net	1,244	1	2,130	—	2,131
Exercise of stock options	78	—	62	—	62
Stock-based compensation	—	—	1,374	—	1,374
Restricted stock units vested and distributed	678	1	(1)	—	—
Tax withholdings related to net share settlements of equity awards	(4)	—	(7)	—	(7)
Balance, March 30, 2024	255,589	256	310,886	(300,791)	10,351
Net loss	—	—	—	(14,778)	(14,778)
Issuance of common stock, net	1,962	2	3,108	—	3,110
Exercise of stock options	14	—	6	—	6
Stock-based compensation	—	—	1,128	—	1,128
Restricted stock units vested and distributed	181	—	—	—	—
Balance, June 29, 2024	257,746	258	315,128	(315,569)	(183)
Net loss	—	—	—	(9,405)	(9,405)
Issuance of common stock, net	—	—	—	—	—
Exercise of stock options	101	1	61	—	62
Stock-based compensation	—	—	1,130	—	1,130
Restricted stock units vested and distributed	344	—	—	—	—
Balance, September 28, 2024	258,191	$ 259	$ 316,319	$ (324,974)	$ (8,396)

See accompanying Notes to the Condensed Consolidated Financial Statements.

NETLIST, INC. AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands) (Unaudited)

	Nine Months Ended	
	September 27, 2025	September 28, 2024
Cash flows from operating activities:		
Net loss	$ (22,575)	$ (41,151)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	212	237
Non-cash lease expense	418	437
Gain on forgiveness of payables	(630)	—
Stock-based compensation	2,744	3,632
Changes in operating assets and liabilities:		
Accounts receivable	(2,483)	2,902
Inventories	(14,821)	8,263
Prepaid expenses and other assets	(11,031)	215
Accounts payable	(5,024)	(5,648)
Accrued payroll and related liabilities	57	6
Deferred revenue	26,934	5,914
Other liabilities	(1,796)	(311)
Net cash used in operating activities	(27,995)	(25,504)
Cash flows from investing activities:		
Acquisition of property and equipment	(25)	(64)
Net cash used in investing activities	(25)	(64)
Cash flows from financing activities:		
Net borrowings (repayments) under line of credit	2,207	(2,281)
Principal repayments under finance lease	—	(89)
Payments on notes payable	(537)	(500)
Proceeds from issuance of common stock, net	12,571	5,241
Proceeds from exercise of stock options	75	130
Payments for taxes related to net share settlement of equity awards	(59)	(7)
Net cash provided by financing activities	14,257	2,494
Effect of foreign exchange rates on cash, cash equivalents and restricted cash	—	(8)
Net change in cash, cash equivalents and restricted cash	(13,763)	(23,082)
Cash, cash equivalents and restricted cash at beginning of period	34,607	52,845
Cash, cash equivalents and restricted cash at end of period	$ 20,844	$ 29,763
Reconciliation of cash, cash equivalents and restricted cash at end of period:		
Cash and cash equivalents	$ 10,544	$ 17,163
Restricted cash	10,300	12,600
Cash, cash equivalents and restricted cash at end of period	$ 20,844	$ 29,763

See accompanying Notes to the Condensed Consolidated Financial Statements.

NETLIST, INC. AND SUBSIDIARIES

Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1—Summary of Significant Accounting Policies

Basis of Presentation

Our unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"). Certain information and footnote disclosures normally included in the condensed consolidated financial statements prepared in accordance with U.S. GAAP have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto as of and for the year ended December 28, 2024, included in our Annual Report on Form 10-K filed with the SEC on March 28, 2025.

In the opinion of management, all adjustments for the fair presentation of our condensed consolidated financial statements have been made. The adjustments are of a normal recurring nature except as otherwise noted. The results of operations for the interim periods are not necessarily indicative of the results to be expected for other periods or the full fiscal year. We have evaluated events occurring subsequent to September 27, 2025 through the filing date of this Quarterly Report on Form 10-Q and concluded that there were no events that required recognition and disclosures other than those discussed elsewhere in the notes hereto.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of Netlist, Inc. and its wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Fiscal Year

Our fiscal year is the 52- or 53-week period that ends on the Saturday nearest to December 31. Our fiscal year 2025 will include 52 weeks and ends on December 27, 2025. Each quarter of fiscal year 2025 will be comprised of 13 weeks. Unless otherwise stated, references to particular years, quarters, months and periods refer to our fiscal years ended in December and the associated quarters, months and periods of those fiscal years.

Use of Estimates

The preparation of the accompanying condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported. Significant items subject to such estimates and assumptions made by management include, but are not

limited to, the determination of inventory reserves, allowance for doubtful accounts, and the discount rate used for lease obligation. Actual results may differ materially from those estimates.

Liquidity

We incurred net loss of $22.6 million for the nine months ended September 27, 2025 and $41.2 million for the nine months ended September 28, 2024. We have historically financed our operations primarily with proceeds from issuances of equity and receipts from revenues. In addition, we have received proceeds from our entry into a Strategic Product Supply and License Agreement with SK hynix, Inc., a South Korean memory semiconductor supplier ("SK hynix"), on April 5, 2021 (the "Strategic Agreement"), which we used to support our operations. We have also funded our operations with a revolving line of credit under a bank credit facility with Silicon Valley Bank, a division of First-Citizens Bank & Trust Company ("SVB"), funds raised through the March 2025 Purchase Agreement (as defined below) and proceeds raised from the June 2025 Offering (as defined below) and the October 2025 Offering (as defined below) (see Notes 3 and 6).

October 2025 Offering

On October 6, 2025, we entered into a Securities Purchase Agreement (the "October 2025 Purchase Agreement") with certain investors (collectively, the "October 2025 Purchasers"), pursuant to which we issued and sold to the October 2025 Purchasers in a registered offering (the "October 2025 Offering") an aggregate of (i) 14,285,716 shares of our common stock and (ii) Common Stock Purchase Warrants (the "October 2025 Warrants") to purchase up to an aggregate of 28,571,432 shares (the "October 2025 Warrant Shares") of our common stock at a combined purchase price of $0.70 per share and accompanying October 2025 Warrant. The October 2025 Offering closed on October 7, 2025. The net proceeds to us from the October 2025 Offering were approximately $9.1 million, after deducting placement agent fees and offering costs paid by us. See Note 9 for further discussion.

June 2025 Offering

On June 24, 2025, we entered into a Securities Purchase Agreement (the "June 2025 Purchase Agreement") with certain investors, including Chun K. Hong, Chairperson of our board of directors, President and Chief Executive Officer (collectively, the "June 2025 Purchasers"), pursuant to which we issued and sold to the June 2025 Purchasers in a registered offering (the "June 2025 Offering") an aggregate of (i) 17,142,860 shares of our common stock and (ii) Common Stock Purchase Warrants (the "June 2025 Warrants") to purchase up to an aggregate of 34,285,720 shares (the "June 2025 Warrant Shares") of our common stock at a combined purchase price of $0.70 per share and accompanying June 2025 Warrant. Mr. Hong purchased $3.0 million of shares and accompanying June 2025 Warrants in the June 2025 Offering. The June 2025 Offering closed on June 25, 2025. The net proceeds to us from the June 2025 Offering were approximately $11.3 million, after deducting placement agent fees and offering costs paid by us (see Note 6).

The June 2025 Purchase Agreement also provides that we may not, subject to the exceptions described in the June 2025 Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the June 2025 Offering), effect or enter into any Variable Rate Transactions (as defined in the June 2025 Purchase Agreement) until the six-month anniversary of the closing date of the June 2025 Offering.

March 2025 Lincoln Park Purchase Agreement

On March 13, 2025, we entered into a purchase agreement (the "March 2025 Purchase Agreement") with Lincoln Park Capital Fund, LLC ("Lincoln Park"), pursuant to which we have the right to sell to Lincoln Park up to an aggregate of $75 million in shares of our common stock over the 36-month term of the March 2025 Purchase Agreement subject to the conditions and limitations set forth in the March 2025 Purchase Agreement. As of September 27, 2025, $73.9 million remains available under the March 2025 Purchase Agreement with Lincoln Park (see Note 6). Pursuant to the October 2025 Purchase Agreement, we may not

effect any sale under the March 2025 Purchase Agreement for a period of 90 days from the closing of the October 2025 Offering.

Inadequate working capital would have a material adverse effect on our business and operations and could cause us to fail to execute our business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require us to significantly modify our business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of our ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. While our estimates of our operating revenues and expenses and working capital requirements could be incorrect and we may use our cash resources faster than we anticipate, management believes our existing balance of cash and cash equivalents together with the Strategic Agreement with SK hynix, proceeds from issuances of debt and equity securities, including our equity line with Lincoln Park (see Note 6), cash receipts from revenues, borrowing availability under the 2023 SVB Credit Agreement (see Note 3), and funds raised through future equity offerings, will be sufficient to meet our anticipated cash needs for at least the next 12 months.

Recently Issued Accounting Standards

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosure, which improves reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. This ASU is effective for the annual periods beginning January 1, 2024, and becomes effective for interim periods within fiscal years beginning January 1, 2025. We adopted this guidance on December 28, 2024. The adoption only impacted our disclosure and has no material impact on the Company's condensed consolidated financial statements as of and for the quarter ended September 27, 2025.

In November 2024, the FASB issued ASU 2024-03, Income Statement – Reporting Comprehensive Income – Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses, which updates expense disclosure requirements on an annual and interim basis. This ASU is effective for the annual periods beginning after December 15, 2026, and the interim reporting periods beginning after December 15, 2027. Early adoption is permitted. We are currently evaluating the impact of adopting this ASU.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which will require us to disclose specified additional information in its income tax rate reconciliation and provide additional information for reconciling items that meet a quantitative threshold. This ASU is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. We will adopt this ASU using either a prospective or retrospective transition method. We are currently evaluating the impact of adopting this ASU.

Segment Information

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and in assessing performance.

The Company's chief operating decision maker, the chief executive officer, reviews financial information presented on a consolidated basis for purposes of making operating decisions and assessing financial performance on a regular basis. Accordingly, the Company considers itself to be one reportable segment, which is comprised of one operating segment: resales of third-party products and sale of our modular memory subsystems.

Significant expenses were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Expense:				
Employee Compensation (1)	$ 1,903	$ 2,385	$ 5,966	$ 7,465
Stock Based Compensation	760	1,130	2,744	3,632
Program Expenses (2)	717	965	1,833	2,948
Professional Fees (3)	4,835	5,394	14,976	28,098

(1) The amounts consisted of employee compensation related to both cost of goods sold ("COGS") and operating expenses. The amounts do not include stock-based compensation. The amounts do not include professional fees.
(2) The amounts consisted of costs, such as outside services, depreciation, and dues and subscriptions, related to both COGS and operating expenses. The amounts do not include professional fees.
(3) The amounts consisted of legal fees, tax and audit fees.

Note 2—Supplemental Financial Information

Inventories

Inventories consisted of the following (in thousands):

	September 27, 2025	December 28, 2024
Raw materials	$ 877	$ 379
Work in process	257	54
Finished goods	16,431	2,311
	$ 17,565	$ 2,744

Cash Flow Information

The following table shows supplemental disclosures of cash flow information and non-cash financing activities (in thousands):

	Nine Months Ended	
	September 27, 2025	September 28, 2024
Supplemental disclosure of cash flow information:		
Cash paid during the year for:		
Interest	$ 35	$ 85
Income taxes	$ —	$ 1
Supplemental disclosure of non-cash investing and financing activities:		
Debt financing of insurance	$ 537	$ 500

Loss Per Share

The following table shows the computation of basic and diluted loss per share of common stock (in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Numerator: Net loss	$ (7,010)	$ (9,405)	$ (22,575)	$ (41,151)
Denominator: Weighted-average basic shares outstanding - basic and diluted	292,557	258,025	280,229	256,509
Net loss per share - basic and diluted	$ (0.02)	$ (0.04)	$ (0.08)	$ (0.16)

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The table below shows potentially dilutive weighted average common share equivalents, consisting of shares issuable upon the exercise of outstanding stock options and warrants using the treasury stock method and the shares vesting of issuable upon the restricted stock units ("RSUs"). These potential weighted average common share equivalents have been excluded from the diluted net loss per share calculations above as their effect would be anti-dilutive (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Weighted average common share equivalents	418	1,478	532	1,822

Disaggregation of Net Sales

The following table shows disaggregated net sales by major source (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Resales of third-party products	$ 39,827	$ 37,691	$ 107,693	$ 102,295
Sale of our modular memory subsystems	2,407	2,495	5,222	10,533
Total net sales	$ 42,234	$ 40,186	$ 112,915	$ 112,828

Net product sales by country presented below are based on the billing location of the customer (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
United States	$ 3,618	$ 3,002	$ 7,446	$ 17,625
People's Republic of China (1)	36,112	36,587	101,129	92,800
Other countries	2,504	597	4,340	2,403
Total net sales	$ 42,234	$ 40,186	$ 112,915	$ 112,828

(1) The People's Republic of China ("PRC") includes Hong Kong and Taiwan.

The PRC accounted for more than 10% of our net product sales for each of the three and nine months ended September 27, 2025. The PRC accounted for more than 10% of our net product sales for each of the three and nine months ended September 28, 2024. The United States accounted for more than 10% of our net product sales for the nine months ended September 28, 2024.

As of September 27, 2025, we had deferred revenue of $27.0 million. These deferred revenues relate to advance payments received during the quarter on orders shipped subsequent to the end of quarter.

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Major Customers, Suppliers and Products

Our net product sales have historically been concentrated in a small number of customers. The following table sets forth the percentage of net product sales made to customers that each comprise 10% or more of total product sales:

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Customer A	36%	40%	30%	38%
Customer B	13%	26%	*	19%
Customer C	18%	*	12%	*

* Less than 10% of net sales during the period.

As of September 27, 2025, three customers represented approximately 43%, 23%, and 14% of aggregate gross accounts receivables, respectively. As of December 28, 2024, three customers represented approximately 25%, 11%, and 10%, respectively, of aggregate gross accounts receivables. The loss of a major customer or a reduction in sales to or difficulties collecting payments from these customers could significantly reduce our net sales and adversely affect our operating results. We mitigate risks associated with foreign and domestic receivables by purchasing comprehensive credit insurance.

We resell certain component products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers. For the three and nine months ended September 27, 2025, resales of these products represented approximately 94% and 95% of net sales, respectively. For the three and nine months ended September 28, 2024, resales of these products represented approximately 94% and 91% of net product sales, respectively.

Our purchases are typically concentrated in a small number of suppliers. The following table shows the percentage of purchases made from supplier(s) that each comprise 10% or more of total purchases:

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Supplier A	94%	93%	93%	90%

While we believe alternative suppliers may be available, our dependence on a small number of suppliers and the lack of any guaranteed sources for the essential components of our products and the components we resell exposes us to several risks, including the inability to obtain an adequate supply of these components, increases in their costs, delivery delays and poor quality. If we cannot obtain these components in the amounts needed on a timely basis and at commercially reasonable prices, we may not be able to develop or introduce new products, we may experience significant increases in our cost of sales if we are forced to procure components from alternative suppliers and are not able to negotiate favorable terms with these suppliers, we may experience interruptions or failures in the delivery of our products, or we may be forced to cease sales of products dependent on the components or resales of the components we resell to customers directly. Any of these events could have a material adverse effect on our business, operating results and financial condition.

Note 3—Financing Arrangements

On November 7, 2023, we entered into a loan and security agreement (as amended to date, the “2023 SVB Credit Agreement”) with SVB, which provides for a revolving line of credit up to $10.0 million. The borrowing base is limited to 85% of eligible accounts receivable, subject to certain adjustments. Borrowings accrue

interest on advance at a per annum rate equal to the greater of 8.50% and the Wall Street Journal prime rate. On November 7, 2025, we entered into a first amendment to the loan and security agreement (the "2023 SVB Credit Agreement Amendment") to, among other things, extend the maturity date from November 7, 2025 to November 7, 2027.

As of September 27, 2025, all obligations under the 2023 SVB Credit Agreement were secured by a first priority security interest in our tangible and intangible assets (excluding our intellectual property). The 2023 SVB Credit Agreement subjects us to certain affirmative and negative covenants, including financial covenants with respect to our liquidity and restrictions on the payment of dividends. As of September 27, 2025, we were in compliance with our covenants under the 2023 SVB Credit Agreement.

We have letters of credit issued by SVB under the 2023 SVB Credit Agreement and Citibank, N.A., which are secured by cash and are classified as restricted cash in the condensed consolidated balance sheets. As of September 27, 2025 and December 28, 2024, (i) outstanding letters of credit were $10.3 million and $11.9 million, respectively, (ii) outstanding borrowings were $3.4 million and $1.2 million, respectively, and (iii) availability under the revolving line of credit was $0 and $0, respectively.

Note 4—Leases

We have operating and finance leases primarily associated with office and manufacturing facilities and certain equipment. The determination of which discount rate to use when measuring the lease obligation was deemed a significant judgment.

Lease cost and supplemental condensed consolidated cash flow information related to operating and finance leases were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Lease cost:				
Operating lease cost	$ 152	$ 138	$ 462	$ 503
Cash paid for amounts included in the measurement of lease liabilities:				
Operating cash flows from operating leases	$ 172	$ 153	$ 521	$ 548

For each of the three and nine months ended September 27, 2025 and September 28, 2024, finance lease costs and cash flows from finance leases were immaterial.

Supplemental condensed consolidated balance sheet information related to leases was as follows (in thousands):

	September 27, 2025	December 28, 2024
Operating Leases		
Operating lease right-of-use assets	$ 683	$ 1,101
Other current liabilities	$ 624	$ 640
Operating lease liabilities	181	641
Total operating lease liabilities	$ 805	$ 1,281
Finance Leases		
Property and equipment, at cost	$ 488	$ 488
Accumulated depreciation	(361)	(302)
Property and equipment, net	$ 127	$ 186
Other current liabilities	$ 4	$ 4
Other liabilities	—	3
Total finance lease liabilities	$ 4	$ 7

The following table includes supplemental information:

	September 27, 2025	December 28, 2024
Weighted Average Remaining Lease Term (in years)		
Operating leases	1.3	2.0
Finance leases	0.8	1.6
Weighted Average Discount Rate		
Operating leases	5.6%	5.7%
Finance leases	5.5%	5.5%

Maturities of lease liabilities as of September 27, 2025, were as follows (in thousands):

Fiscal Year	Operating Leases	Finance Leases
2025	$ 174	$ 1
2026	639	3
2027	23	—
Total lease payments	836	4
Less: imputed interest	(31)	—
Total	$ 805	$ 4

Note 5—Commitments and Contingencies

Contingent Legal Expenses

We retain the services of law firms that specialize in patent licensing and enforcement and patent law in connection with our licensing and enforcement activities. These law firms are often retained on a contingent fee basis whereby such law firms are paid on a scaled percentage of any negotiated fee, settlements or judgments awarded based on how and when the fees, settlements or judgments are obtained.

Litigation and Challenges to Netlist Patents at the USPTO and the PTAB

We are, from time to time, a party to litigation that arises in the normal course of our business operations. We own numerous patents and continue to seek to grow and strengthen our patent portfolio, which covers various aspects of our innovations and includes various claim scopes. We plan to pursue avenues to monetize our intellectual property portfolio, in which we would generate revenue by selling or licensing our technology, and we intend to vigorously enforce our patent rights against alleged infringers of such rights. We dedicate substantial resources to protecting and enforcing our intellectual property rights, including with patent infringement proceedings we file against third parties and defense of our patents against challenges made by way of reexamination and review proceedings at the U.S. Patent and Trademark Office ("USPTO") and Patent Trial & Appeal Board ("PTAB"). We expect these activities to continue for the foreseeable future, with no guarantee that any ongoing or future patent protection or litigation activities will be successful, or that we will be able to monetize our intellectual property portfolio.

Any litigation, regardless of its outcome, is inherently uncertain, involves a significant dedication of resources, including time and capital, and diverts management's attention from our other activities. As a result, any current or future claims, allegations, or challenges by or against third parties, whether eventually decided in our favor or settled, could materially adversely affect our business, financial condition and results of operations. Additionally, the outcome of pending or future litigation and/or related patent reviews and reexaminations, as well as any delay in their resolution, could affect our ability to continue to sell our products, protect against competition in the current and expected markets for our products or license or otherwise monetize our intellectual property rights in the future.

Samsung Litigation

On May 28, 2020, Netlist filed a complaint against Samsung Electronics Co., Ltd. ("SECL") in the U.S. District Court for the Central District of California ("CDCA") (*Netlist Inc. vs. Samsung Electronics Co., Ltd.*, Case No. 8:20-cv-00993) for SECL's breach of the Joint Development and License Agreement ("JDLA") between the parties. Netlist amended its complaint to seek a declaratory judgment that it properly terminated the JDLA in light of SECL's material breaches thereof. On October 14, 2021, the Court granted summary judgment in favor of Netlist on SECL's breach and Netlist's termination of the JDLA. The case proceeded to trial on the issue of damages on December 1, 2021, and the jury reached a verdict for SECL on December 3, 2021. The Court entered final judgment on February 15, 2022, and both parties appealed to the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed-in-part and reversed-in-part the judgment of the District Court, and remanded the case to the District Court, which reopened the case on November 13, 2023. The case proceeded to trial on May 14, 2024, and the jury reached a verdict for Netlist on May 17, 2024. On December 26, 2024, the Court granted SECL's motion for a new trial, holding that one juror's voir dire responses support a finding of implied juror bias which deprived both parties of their right to a fair trial. A new trial was held from March 18 to March 21, 2025. On March 24, 2025, the jury returned a verdict for Netlist. On April 7, 2025, the Court entered final judgment in favor of Netlist on its claims that Samsung breached the JDLA and that Netlist properly terminated the JDLA. On May 5, 2025, Samsung filed a motion for a new trial. On June 27, 2025, the Court issued an order directing the parties to file a status report proposing how the Court should elicit testimony from the jurors at issue in Samsung's motion for a new trial. The parties filed the status report on July 9, 2025 and appeared before the Court on July 11, 2025. On July 17, 2025, the Court issued an order setting an evidentiary hearing regarding Samsung's motion for a new trial, and the evidentiary hearing was held on July 30, 2025. On August 4, 2025, the Court issued an order denying Samsung's motion for a new trial. On August 29, 2025, SECL filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. On September 2, 2025, the appeal was docketed and assigned a Case No. 25-5531.

On October 15, 2021, SECL and Samsung Semiconductor, Inc. ("SSI") (collectively, "Samsung") filed a declaratory judgement action against Netlist in the U.S. District Court for the District of Delaware ("DDE") (*Samsung Electronics Co., Ltd. et. al. v. Netlist, Inc.*, Case No. 1:21-cv-01453), seeking a declaration that Samsung does not infringe the following Netlist patents: U.S. Patent Nos. 7,619,912; 9,858,218; 10,217,523; and 10,474,595 (respectively, the "'912, '218, '523, and '595 Patents"). Samsung filed amended complaints to add other Netlist patents: U.S. Patent Nos. 10,860,506; 10,949,339; 11,016,918; and 11,232,054

(respectively, the "'506, '339, '918, and '054 Patents"). Netlist filed a motion to dismiss, and on August 1, 2022, the Court granted this motion in part, declining to exercise jurisdiction over the '912, '506, '339, '918, and '054 Patents. On September 12, 2022, Netlist filed a crossclaim against Google LLC and Alphabet, Inc. (collectively, "Google") and counterclaims against Samsung, seeking damages from the infringement by Google and Samsung, a finding of willful infringement by Google and Samsung and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys' fees pursuant to 35 U.S.C. § 285, and equitable relief. On November 15, 2022, Google filed a motion to dismiss this case as to Google or, alternatively, for a severance, stay, and dismissal of willfulness and indirect infringement allegations. This motion was heard on May 22, 2023. On December 1, 2023, the Court stayed this case pending the resolution of the above CDCA case and ordered the parties to notify the Court within seven days of any action by the CDCA pertaining to the parties' rights under the JDLA that may merit lifting the stay. On March 31, 2025, the parties notified the Court of the jury verdict in the above CDCA case.

On December 20, 2021, Netlist filed a complaint against SECL, SSI, and Samsung Electronics America, Inc. ("SEA") (collectively, "Samsung") in the U.S. District Court for the Eastern District of Texas ("EDTX"), case no. 2:21-cv-00463, for infringement of the '506, '339, and '918 Patents. Netlist later amended its complaint to additionally assert infringement of the '054 Patent as well as U.S. Patent Nos. 8,787,060 and 9,318,160 (respectively, the "'060 and '160 Patents"). On April 14, 2023, this case proceeded to a jury trial on the '339, '918, '054, '060, and '160 Patents. On April 21, 2023, the jury returned a verdict finding that Samsung willfully infringed all five patents and awarded $303 million in damages to Netlist. The collectability of the damages award may be affected by the outcomes of pending appeals of final written decisions in the respective Inter Partes Reviews of the five patents (see below). On August 11, 2023, the Court entered final judgment. On August 9, 2024, Samsung filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit ("CAFC"), case no. 2024-2203. On January 6, 2025, Samsung filed a motion to stay this appeal pending the resolution of the above CDCA case. On February 18, 2025, the CAFC denied this motion without prejudice. The appeal is pending.

On August 1, 2022, Netlist filed a complaint against Samsung in EDTX (Case No. 2:22-cv-00293), for infringement of the '912 Patent. Netlist later amended its complaint to additionally assert infringement of U.S. Patent Nos. 11,093,417; 9,858,215; and 10,268,608 (respectively, the "'417, '215, and '608 Patents"). On November 12, 2024, this case proceeded to a jury trial on the '912, '417, and '608 Patents. On November 22, 2024, the jury returned a verdict finding that Samsung willfully infringed all three patents and awarded $118 million in damages to Netlist. The collectability of the damages award may be affected by the outcomes of pending appeals of final written decisions in the respective Inter Partes Reviews of the three patents (see below). On December 2, 2024, the Court entered final judgment. On December 4, 2024, Netlist filed a motion for a preliminary injunction and a subsequent permanent injunction. On December 30, Samsung filed a combined post-trial motion for judgment as a matter of law and for a new trial, and a motion to amend the judgment and to stay this case pending the resolution of the above CDCA case. On January 31, 2025, the Court denied Netlist's motion for a preliminary injunction and a subsequent permanent injunction.

On October 9, 2023, Samsung filed a declaratory judgement action against Netlist in the DDE (Case No. 1:23-cv-01122), seeking a declaration that Samsung does not infringe Netlist's U.S. Patent No. 11,386,024 (the "'024 Patent"). On November 6, 2023, Netlist moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. On March 4, 2025, the Court denied this motion. On June 13, 2025, Netlist filed a motion to stay this action pending the resolution of the IPR of the '024 Patent (Case No. IPR2025-00001). On July 8, 2025, the Court issued a scheduling and consolidation order consolidating this action with the action below (Case No. 1:24-cv-00614) and setting a Markman hearing on June 26, 2026, a hearing on case dispositive and Daubert motions on June 16, 2027, a pretrial conference on July 26, 2027, and a five-day jury trial starting on August 2, 2027. On August 1, 2025, the Court granted Netlist's motion to stay the consolidated action pending the final written decisions in the two IPRs.

On May 22, 2024, Samsung filed a declaratory judgement action against Netlist in the DDE (Case no. 1:24-cv-00614), seeking a declaration that Samsung does not infringe Netlist's U.S. Patent No. 11,880,319 (the "'319 Patent"). On July 15, 2024, Netlist moved to dismiss for lack of subject matter jurisdiction and failure to

state a claim, which the Court denied as moot in view of Samsung's First Amended Complaint filed on August 5, 2024. On August 21, 2024, Netlist moved to dismiss the First Amended Complaint for lack of subject matter jurisdiction and failure to state a claim. On March 4, 2025, the Court denied this motion. On June 13, 2025, Netlist filed a motion to stay this action pending the resolution of the IPR of the '319 Patent (Case No. IPR2025-00002). On July 8, 2025, the Court issued a scheduling and consolidation order consolidating this action with the action above (Case No. 1:23-cv-01122).

On May 19, 2025, Netlist filed a complaint against Samsung in the EDTX (Case No. 2:25-cv-00557) for infringement of U.S. Patent 12,308,087 (the "'087 Patent"). On June 27, 2025, the Court consolidated this case with the case against Micron asserting the '087 Patent (Case No. 2:25-cv-00558). On July 8, 2025, Netlist filed (a) a First Amended Complaint against Samsung and Avnet, Inc. ("Avnet") and (b) a First Amended Complaint against Micron and Avnet, asserting infringement of the '087 Patent and U.S. Patent 10,025,731 (the "'731 Patent"), seeking damages from the infringement by the defendants, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys' fees pursuant to 35 U.S.C. § 285, a permanent injunction pursuant to 35 U.S.C. § 283, and equitable relief. On July 22, 2025, Micron moved to dismiss the First Amended Complaint for improper venue. On July 25, 2025, the Court issued a Docket Control Order setting a claim construction hearing on September 25, 2026 and a trial date of March 15, 2027. On September 11, 2025, SEA and SSI filed a motion to dismiss for improper venue. On September 11, 2025, Samsung filed a motion to dismiss certain of Netlist's infringement claims in the First Amended Complaint. On September 15, 2025, Avnet filed motions to dismiss both First Amended Complaints. On October 9, 2025, Netlist filed a Second Amended Complaint against Samsung and Avnet asserting infringement of the '087 and '731 Patents.

On May 20, 2025, Samsung filed a declaratory judgement action against Netlist in the DDE (Case No. 1:25-cv-00626) seeking a declaration that Samsung does not infringe Netlist's '087 Patent. On June 11, 2025, Netlist filed a motion to dismiss or transfer this declaratory judgement action to the EDTX based upon its first-filed EDTX action asserting the '087 Patent. On July 29, 2025, Samsung filed a motion seeking leave to file an amended complaint seeking a declaration that Samsung does not infringe the '087 and '731 Patents as well as U.S. Patent 12,373,366 (the "'366 Patent").

On July 28, 2025, Netlist filed a complaint against Samsung and Avnet in the EDTX (Case No. 2:25-cv-00748) for infringement of the '366 Patent, seeking damages from the infringement by the defendants, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys' fees pursuant to 35 U.S.C. § 285, a permanent injunction pursuant to 35 U.S.C. § 283, and equitable relief. On October 29, 2025, the Court consolidated this case with the case against Micron and Avnet asserting the '366 Patent (Case No. 2:25-cv-00749).

On September 30, 2025, Netlist filed a complaint under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) at the U.S. International Trade Commission ("ITC") for patent infringement against Samsung, Google, and Super Micro Computer, Inc. ("Super Micro") (collectively, "Respondents"), Case No. 337-3854. The complaint alleges infringement of six Netlist patents (the '366, '731, '608, '523, '035, and '087 Patents) by one or more of Samsung's Double Data Rate 5th Gen. ("DDR5") Dual Inline Memory Module ("DIMM") or High Bandwidth Memory ("HBM") products, Google and Super Micro products containing the same, and components thereof. Netlist seeks a limited exclusion order and a permanent cease-and-desist order from the ITC to stop Respondents' infringing acts with respect to these infringing products.

Micron Litigation

On April 28, 2021, Netlist filed complaints against Micron Semiconductor Products, Inc., Micron Technology, Inc., and Micron Technology Texas, LLC (collectively, "Micron") in the Western District of Texas ("WDTX") (Case Nos. 6:21-cv-00430 and 6:21-cv-00431), for infringement of U.S. Patent Nos. 8,301,833; 9,824,035; 10,268,608; and 10,489,314 (respectively, the "'833, '035, '608, and '314 Patents"), seeking damages, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, and an exceptional case finding and reasonable attorneys' fees pursuant to 35 U.S.C. § 285. On February 14, 2022, the Court granted

Micron's motion to transfer venue for convenience to another court within WDTX, and the transferred cases were assigned new case nos. 1:22-cv-00134 and 1:22-cv-00136. On May 11, 2022, the Court granted motions to stay the two cases pending the respective Inter Partes Reviews of the '833, '035, '608, and '314 Patents.

On June 10, 2022, Netlist filed a complaint against Micron in EDTX (Case No. 2:22-cv-00203), for infringement of the '506, '339, '918, '054, '060 and '160 Patents, seeking damages, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys' fees pursuant to 35 U.S.C. § 285, and equitable relief. On May 19, 2023, Micron filed a motion to stay this case pending the respective Inter Partes Reviews of the six asserted patents. On October 22, 2023, the magistrate judge issued a claim construction order, which the Court adopted on January 17, 2024. On January 3, 2024, the magistrate judge issued a recommendation to deny Micron's motion to stay this case, which the Court adopted on January 31, 2024. On February 10, 2024, the Court vacated its prior order, staying this case pending the respective Inter Partes Reviews of the six asserted patents.

On August 1, 2022, Netlist filed a complaint against Micron in EDTX (Case No. 2:22-cv-00294), for infringement of the '912 Patent. Netlist later amended its complaint to additionally assert infringement of the '417 and '215 Patents. On May 20, 2024, this case proceeded to a jury trial on the '912 and '417 Patents. On May 23, 2024, the jury returned a verdict finding that Samsung willfully infringed both patents and awarded $445 million in damages to Netlist. The collectability of the damages award may be affected by the outcomes of pending appeals of final written decisions in the respective Inter Partes Reviews of the two patents (see below). On July 11, 2024, the Court entered final judgment. On August 7, 2024, Micron filed post-trial motions for judgment as a matter of law and for a new trial. On June 11, 2025, the Court denied Micron's motions for judgment as a matter of law on willfulness, on non-infringement, and on damages as well as Micron's motion for a new trial. On July 9, 2025, Micron filed a notice of appeal to the CAFC, case no. 2025-1936. The appeal is pending.

On December 11, 2023, Micron filed a complaint against Netlist in the District Court of the Fourth Judicial District of the State of Idaho, Ada County ("Idaho State Court") (Case No. CV01-23-19920), alleging that Netlist violated Idaho Code § 48-1703 by making a bad faith assertion of infringement of the '833 Patent in WDTX, seeking compensatory and exemplary damages pursuant to Code §§ 48-1706(b) and (d), and costs and fees, including reasonable attorneys' fees, pursuant to Code § 48-1706(c). Netlist removed the case to the U.S. District Court for the District of Idaho, and Micron moved to remand the case to the Idaho State Court. On August 16, 2024, the District of Idaho remanded this case to the Idaho State Court. On August 20, 2024, Netlist appealed the remand to the CAFC, case no. 2024-2281, and moved the District of Idaho to stay the remand. On September 17, 2024, Micron moved to dismiss or transfer the appeal to the U.S. Court of Appeals for the Ninth Circuit, which the CAFC denied on December 19, 2024. On September 18, 2024, Netlist moved to dismiss the Idaho State Court case for lack of personal jurisdiction and failure to state a claim, which the Idaho State Court denied on December 5, 2024. On June 12, 2025, the CAFC denied Netlist's motion to stay the remand pending the appeal; the appeal remains pending. The Idaho State Court case is currently set for trial starting on May 11, 2026.

On December 23, 2023, Netlist filed a complaint for declaratory judgment against Micron in EDTX (Case No. 2:23-cv-00628), seeking a declaration that Netlist had not asserted patent infringement in bad faith against Micron in the prior EDTX patent infringement cases. On January 19, 2024, Micron moved to dismiss this case for lack of subject matter jurisdiction. On February 7, 2024, Netlist filed a First Amended Complaint. On July 19, 2024, the Court denied Micron's motion to dismiss as moot. On December 5, 2024, Netlist moved for a protective order to preclude Micron from seeking discovery into Netlist's subjective intent in filing the prior EDTX patent infringement cases. On December 13, 2024, Micron moved to stay this case on abstention grounds. On March 27, 2025, the Court stayed this case pending the conclusion of the CAFC appeals of the Inter Partes Review ("IPR") decisions on the Netlist patents asserted against Micron in the prior EDTX patent infringement cases.

On January 16, 2024, Micron filed a complaint against Netlist in Idaho State Court (Case No. CV01-24-01032), alleging that Netlist violated Idaho Code § 48-1703 by making a bad faith assertion of infringement of the ’918 and ’054 Patents in the EDTX, seeking compensatory and exemplary damages pursuant to Code §§ 48-1706(b) and (d), and costs and fees, including reasonable attorneys’ fees, pursuant to Code § 48-1706(c). Netlist removed the case to the U.S. District Court for the District of Idaho, and Micron moved to remand the case to the Idaho State Court. On August 13, 2024, the District of Idaho remanded this case to the Idaho State Court. On August 20, 2024, Netlist appealed the remand to the CAFC, case no. 2024-2282, and moved the District of Idaho to stay the remand. On September 10, 2024, the appeal was consolidated with the above-related appeal (Case No. 2024-2281). On September 17, 2024, Netlist moved to dismiss the Idaho State Court case for lack of personal jurisdiction and failure to state a claim, which the Idaho State Court denied on December 20, 2024. On June 27, 2025, the Idaho State Court granted Netlist’s motion to stay this case until the CAFC issues its opinion in the appeal of the IPR decisions involving the two patents.

On May 19, 2025, Netlist filed a complaint against Micron in the EDTX (Case No. 2:25-cv-00558) for infringement of ’087 Patent. On June 17, 2025, Micron moved to dismiss the complaint for improper venue. On June 27, 2025, the Court consolidated this case with the case against Samsung asserting the ’087 Patent (Case No. 2:25-cv-00557).

On May 20, 2025, Micron filed a declaratory judgement action against Netlist in the DDE (Case No. 1:25-cv-00629) seeking a declaration that Micron does not infringe Netlist’s ’087 Patent. On June 11, 2025, Netlist filed a motion to dismiss or transfer this declaratory judgement action to the EDTX based upon its first-filed EDTX action asserting the ’087 Patent.

On June 2, 2025, Micron filed a complaint against Netlist in Idaho State Court (Case No. CV01-25-09858), alleging that Netlist violated Idaho Code § 48-1703 by making a bad faith assertion of infringement of the ’060, ’160, ’506, ’339, ’912, and ’417 Patents in the EDTX, seeking compensatory and exemplary damages pursuant to Code §§ 48-1706(b) and (d), and costs and fees, including reasonable attorneys’ fees, pursuant to Code § 48-1706(c). On June 24, 2025, Netlist removed the case to the U.S. District Court for the District of Idaho. On July 1, 2025, Netlist moved to dismiss or to transfer the case to the EDTX. On July 17, 2025, Micron filed a motion to remand the case to the Idaho State Court.

On July 10, 2025, Micron filed a declaratory judgement action against Netlist in the DDE (Case No. 1:25-cv-00863) seeking a declaration that Micron does not infringe Netlist’s ’731 Patent.

On July 28, 2025, Netlist filed a complaint against Micron and Avnet in the EDTX (Case No. 2:25-cv-00749) for infringement of the ’366 Patent, seeking damages from the infringement by the defendants, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys’ fees pursuant to 35 U.S.C. § 285, a permanent injunction pursuant to 35 U.S.C. § 283, and equitable relief. On October 29, 2025, the Court consolidated this case with the case against Samsung and Avnet asserting the ’366 Patent (Case No. 2:25-cv-00748).

On July 29, 2025, Micron filed a declaratory judgement action against Netlist in the DDE (Case No. 1:25-cv-00942) seeking a declaration that Micron does not infringe Netlist’s ’366 Patent.

Google Litigation

On December 4, 2009, Netlist filed a complaint against Google, Inc. in the U.S. District Court for the Northern District of California (Case no. 3:09-cv-05718), for infringement of the ’912 Patent, seeking damages, a finding of willful infringement and enhanced damages pursuant to 35 U.S.C. § 284, an exceptional case finding and reasonable attorneys’ fees pursuant to 35 U.S.C. § 285, and a preliminary and permanent injunction. On October 17, 2022, the Court entered a stipulated order to stay this case until the resolution of the patent infringement suit against Samsung filed on August 1, 2022 in EDTX (Case No. 2:22-cv-00293), including any appeal thereof.

Challenges to Netlist Patents at the USPTO and the PTAB

On October 15, 2021, SECL filed a Petition for IPR of the ’218 Patent (Case No. IPR2022-00062). On May 8, 2023, the PTAB issued a final written decision finding all challenged claims unpatentable.

On October 15, 2021, SECL filed a Petition for IPR of the ’523 Patent (Case No. IPR2022-00063). On May 3, 2023, the PTAB issued a final written decision finding no challenged claims unpatentable. On July 3, 2023, SECL filed a notice of appeal to the CAFC (Case No. 2023-2133). The CAFC heard oral arguments on March 4, 2025. On March 5, 2025, the CAFC affirmed the PTAB’s final written decision.

On October 15, 2021, SECL filed a Petition for IPR of the ’595 Patent (Case No. IPR2022-00064). On May 9, 2023, the PTAB issued a final written decision finding all challenged claims unpatentable.

On February 17, 2022, SECL filed a Petition for IPR of Claim 16 of the ’912 Patent (Case No. IPR2022-00615). On November 18, 2022, Micron also filed a Petition for IPR of Claim 16 of the ’912 Patent, IPR2023-00203. On April 17, 2024, the PTAB issued a final written decision in the two IPRs finding Claim 16 of the ’912 Patent unpatentable. On September 10, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2024-2304). The appeal is pending.

On March 2, 2022, SECL filed a Petition for IPR of the ’339 Patent (Case No. IPR2022-00639). On November 18, 2022, Micron also filed a Petition for IPR of the ’339 Patent (Case No. IPR2023-00204). On October 18, 2023, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On April 11, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2024-1707). The appeal is pending.

On March 22, 2022, SECL filed a Petition for IPR of the ’506 Patent (Case No. IPR2022-00711). On November 18, 2022, Micron also filed a Petition for IPR of the ’506 Patent (Case No. IPR2023-00205). On October 17, 2023, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On February 21, 2024, Netlist filed a notice of appeal to the CAFC, case no. 2024-1521. The appeal is pending.

On March 30, 2022, Micron filed a Petition for IPR of the ’314 Patent (Case No. IPR2022-00745). On October 30, 2023, the PTAB issued a final written decision finding no challenged claims unpatentable. On December 29, 2023, Micron filed a notice of appeal to the CAFC (Case No. 2024-1312). The appeal is pending.

On May 17, 2022, SECL filed a Petition for IPR of the ’918 Patent (Case No. IPR2022-00996). On January 6, 2023, Micron also filed a Petition for IPR of the ’918 Patent, case no. IPR2023-00406. On December 6, 2023, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On May 20, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2024-1859). The appeal is pending.

On May 17, 2022, SECL filed a Petition for IPR of the ’054 Patent (Case No. IPR2022-00999). On January 6, 2023, Micron also filed a Petition for IPR of the ’054 Patent (Case No. IPR2023-00405). On December 5, 2023, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On May 20, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2024-1863). On June 3, 2024, this appeal was consolidated with the above appeal on the IPR of the ’918 Patent (Case No. 2024-1859).

On August 26, 2022, SECL filed a Petition for IPR of the ’160 Patent (Case No. IPR2022-01427). On May 8, 2023, Micron also filed a Petition for IPR of the ’160 Patent, case no. IPR2023-00883. On April 1, 2024, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On August 19, 2024, Netlist filed a notice of appeal to the CAFC, case no. 2024-2240. The appeal is pending.

On August 26, 2022, SECL filed a Petition for IPR of the ’060 Patent (Case No. IPR2022-01428). On May 8, 2023, Micron also filed a Petition for IPR of the ’060 Patent (Case No. IPR2023-00882). On April 1, 2024, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On August

19, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2024-2241). On September 6, this appeal was consolidated with the above appeal on the IPR of the ’160 Patent (Case No. 2024-2240).

On January 10, 2023, SECL filed a Petition for IPR of the ’215 Patent, case no. IPR2023-00455. On May 8, 2023, Micron also filed a Petition for IPR of the ’215 Patent (Case No. IPR 2023-01142). On July 30, 2024, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On December 10, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2025-1286). The appeal is pending.

On January 10, 2023, SECL filed a Petition for IPR of the ’417 Patent (Case No. IPR2023-00454). On May 8, 2023, Micron also filed a Petition for IPR of the ’417 Patent (Case No. IPR2023-01141). On July 30, 2024, the PTAB issued a final written decision in the two IPRs finding all challenged claims unpatentable. On December 10, 2024, Netlist filed a notice of appeal to the CAFC (Case No. 2025-1296). On January 15, 2025, this appeal was consolidated with the above appeal on the IPR of the ’215 Patent (Case No. 2025-1286).

On April 27, 2023, SECL filed a Petition for IPR of the ’608 Patent (Case No. IPR2023-00847). On January 10, 2024, Micron also filed a Petition for IPR of the ’608 Patent (Case No. IPR2024-00370). On July 23, 2024, the PTAB denied institution of the IPR sought by Micron. On December 10, 2024, the PTAB issued a final written decision in the IPR brought by SECL finding no challenged claims unpatentable. On January 13, 2025, SECL filed a notice of appeal to the CAFC (Case No. 2025-1378). The appeal is pending.

On October 18, 2024, SECL filed a Petition for IPR of the ’024 Patent (Case No. IPR2025-00001). On February 20, 2025, Netlist filed its preliminary response to the Petition. On May 15, 2025, the PTAB granted institution of the IPR. On May 29, 2025, Netlist requested director review of the institution decision, which was denied on July 17, 2025. On August 7, 2025, Netlist filed a statutory disclaimer and a request for adverse judgment. On September 8, 2025, the PTAB granted Netlist’s request for adverse judgment.

On October 24, 2024, SECL filed a Petition for IPR of the ’319 Patent (Case No. IPR2025-00002). On February 21, 2025, Netlist filed its preliminary response to the Petition. On May 15, 2025, the PTAB granted institution of the IPR. On May 29, 2025, Netlist requested director review of the institution decision, which was denied on July 17, 2025. On August 7, 2025, Netlist filed a statutory disclaimer and a request for adverse judgment. On September 8, 2025, the PTAB granted Netlist’s request for adverse judgment.

On August 14, 2025, an unidentified party filed a request for Ex Parte Reexamination of the ’608 Patent (Application No. 90/015,449).

On August 25, 2025, SECL filed a Petition for Post Grant Review (“PGR”) of the ’087 Patent (Case No. PGR2025-00071) and a Petition for IPR of the ’087 Patent (IPR2025-01402).

On August 29, 2025, SECL filed a Petition for IPR of the ’731 Patent (IPR2025-01431).

On October 27, 2025, SECL filed a Petition for IPR of the ’035 Patent (IPR2026-00017).

On November 7, 2025, SECL filed a Petition for PGR of the ’366 Patent (Case No. PGR2026-00001) and a Petition for IPR of the ’366 Patent (IPR2026-00018).

German Proceedings

On March 31, 2022, Netlist filed infringement claims against Micron in Dusseldorf, Germany, seeking damages for infringement of European Patents EP 2,454,735 (“EP735”) and EP 3,404,660 (“EP660”). On September 1, 2022, Micron initiated nullity proceedings on the two patents in the German Federal Patent Court. On March 27, 2023, the Dusseldorf Court rescheduled the infringement hearing until April 11, 2024.

On March 18, 2024, the Dusseldorf Court stayed the case until the German Federal Patent Court decisions on the nullity proceedings on EP735 and EP660 either become final or are reversed or remanded on appeal.

On June 3, 2022, Netlist filed infringement claims against Samsung in Dusseldorf, Germany, seeking damages for infringement of European Patents EP735 and EP660. On September 25, 2023, the Dusseldorf Court stayed the case until the German Federal Patent Court decisions on the nullity proceedings on EP735 and EP660 either become final or are reversed or remanded on appeal.

On July 26, 2022, Netlist filed infringement claims against Google Cloud EMEA Limited, Google Germany GmbH, Redtec Computing GmbH, and Google LLC in Dusseldorf, Germany, seeking damages for infringement of European Patents EP735 and EP660. On March 18, 2024, the Dusseldorf Court stayed the case until the German Federal Patent Court decisions on the nullity proceedings on EP735 and EP660 either become final or are reversed or remanded on appeal.

In the nullity proceeding on EP735, the German Federal Patent Court issued its reasons of judgment revoking EP735 on April 18, 2024. Netlist filed an appeal on May 13, 2024. An oral hearing at the Federal Court of Justice is set for May 21, 2026. In the nullity proceeding on EP660, the German Federal Patent Court issued its reasons of judgment revoking EP660 on February 18, 2025. Netlist filed an appeal on March 12, 2025.

Other Contingent Obligations

In the ordinary course of our business, we have made certain indemnities, commitments and guarantees pursuant to which we may be required to make payments in relation to certain transactions. These may include, among others: (i) intellectual property indemnities to our customers and licensees in connection with the use, sale and/or license of our products; (ii) indemnities to vendors and service providers pertaining to claims based on our negligence or willful misconduct; (iii) indemnities involving the accuracy of representations and warranties in certain contracts; (iv) indemnities to our directors and officers to the maximum extent permitted under the laws of the State of Delaware; (v) indemnities pertaining to all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with transactions contemplated by applicable investment or loan documents, as applicable; and (vi) indemnities or other claims related to certain real estate leases, under which we may be required to indemnify property owners for environmental and other liabilities or may face other claims arising from our use of the applicable premises. The duration of these indemnities, commitments and guarantees varies and, in certain cases, is indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential for future payments we could be obligated to make. Historically, we have not been obligated to make significant payments as a result of these obligations, and no liabilities have been recorded for these indemnities, commitments and guarantees in the accompanying consolidated balance sheets.

Note 6—Stockholders' Equity

Serial Preferred Stock

Our authorized capital stock includes 10,000,000 shares of serial preferred stock, with a par value of $0.001 per share. No shares of preferred stock were outstanding as of September 27, 2025 or December 28, 2024.

On April 17, 2017, we entered into a rights agreement (as amended from time to time, the "Rights Agreement") with Computershare Trust Company, N.A., as rights agent. In connection with the adoption of the Rights Agreement and pursuant to its terms, our board of directors authorized and declared a dividend of one right (each, a "Right") for each outstanding share of our common stock to stockholders of record at the close of business on May 18, 2017 (the "Record Date"), and authorized the issuance of one Right for each share of our common stock issued by us (except as otherwise provided in the Rights Agreement) between the Record Date and the Distribution Date (as defined below). On April 17, 2024, we appointed Equiniti Trust Company, LLC ("Equiniti") as our rights agent under the Rights Agreement pursuant to that certain

Amendment No. 4 to Rights Agreement, dated as of April 17, 2024, by and between us and Equiniti (the "Fourth Amendment").

Each Right entitles the registered holder, subject to the terms of the Rights Agreement, to purchase from us, when exercisable and subject to adjustment, one unit consisting of one one-thousandth of a share (a "Unit") of our Series A Preferred Stock (the "Preferred Stock"), at a purchase price of $6.56 per Unit, subject to adjustment. Subject to the provisions of the Rights Agreement, including certain exceptions specified therein, a distribution date for the Rights (the "Distribution Date") will occur upon the earlier of (i) ten business days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired or otherwise obtained beneficial ownership of 15% or more of the then-outstanding shares of our common stock, and (ii) ten business days (or such later date as may be determined by our board of directors) following the commencement of a tender offer or exchange offer that would result in a person or group becoming an Acquiring Person. The Rights are not exercisable until the Distribution Date and, unless earlier redeemed or exchanged by us pursuant to the terms of the Rights Agreement, as amended, will expire on the close of business on April 17, 2027.

In connection with the adoption of the Rights Agreement, our board of directors approved a Certificate of Designation of the Series A Preferred Stock (the "Certificate of Designation") designating 1,000,000 shares of our serial preferred stock as Series A Preferred Stock and setting forth the rights, preferences and limitations of the Preferred Stock. We filed the Certificate of Designation with the Secretary of State of the State of Delaware on April 17, 2017.

Common Stock

On September 24, 2025, our stockholders approved the Certificate of Amendment to the Restated Certificate of Incorporation to increase the number of shares of common stock authorized for issuance from 450,000,000 to 675,000,000.

October 2025 Offering

On October 6, 2025, we entered into the October 2025 Purchase Agreement with the October 2025 Purchasers, pursuant to which we issued and sold to the October 2025 Purchasers in the October 2025 Offering an aggregate of (i) 14,285,716 shares of our common stock and (ii) 28,571,432 October 2025 Warrants to purchase the October 2025 Warrant Shares at a combined purchase price of $0.70 per share and accompanying October 2025 Warrant. The October 2025 Offering closed on October 7, 2025. The net proceeds to us from the October 2025 Offering were approximately $9.1 million, after deducting placement agent fees and offering costs paid by us. See Note 9 for further discussion.

June 2025 Offering

On June 24, 2025, we entered into the June 2025 Purchase Agreement with the June 2025 Purchasers, pursuant to which we issued and sold to the June 2025 Purchasers in the June 2025 Offering an aggregate of (i) 17,142,860 shares of our common stock and (ii) 34,285,720 June 2025 Warrants to purchase the June 2025 Warrant Shares at a combined purchase price of $0.70 per share and accompanying June 2025 Warrant. Mr. Hong purchased $3.0 million of shares and accompanying June 2025 Warrants in the June 2025 Offering. The June 2025 Offering closed on June 25, 2025. The net proceeds to us from the June 2025 Offering were approximately $11.3 million, after deducting placement agent fees and offering costs paid by us.

The June 2025 Warrants are exercisable at any time on or after the issuance date, have a term of five years from the issuance date, have an exercise price of $0.70 per share, contain customary 4.99%/9.99% blocker provisions and provide for the cash payment of the Black-Scholes value of the June 2025 Warrants upon the occurrence of certain fundamental transactions. The exercise price and the number of June 2025 Warrant Shares issuable upon exercise of the June 2025 Warrants are subject to adjustment in the event of, among other things, certain transactions affecting our common stock (including without limitation stock splits and stock dividends). In addition, the exercise price of the June 2025 Warrants is subject to reduction in the event of certain common stock and common stock equivalent issuances, other than certain agreed exempt issuances, at a price lower than the exercise price of the June 2025 Warrants then in effect. Furthermore, if at any time on or after the date of issuance there occurs any Share Combination Event and the lowest daily volume weighted average price of our common stock during the period commencing on the trading day immediately following the applicable Share Combination Event and ending on the fifth trading day immediately following the applicable Share Combination Event is less than the exercise price of the June 2025 Warrants then in effect, then the exercise price of the June 2025 Warrants will be reduced to the lowest daily volume weighted average price of our common stock during such period. On October 6, 2025, we amended the June 2025 Warrants. See Note 9 for further discussion.

The June 2025 Purchase Agreement provides that we may not, subject to the exceptions described in the June 2025 Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the June 2025 Offering), effect or enter into any Variable Rate Transactions (as defined in the June 2025 Purchase Agreement) until the six-month anniversary of the closing date of the June 2025 Offering.

March 2025 Lincoln Park Purchase Agreement

On March 13, 2025, we entered into the March 2025 Purchase Agreement with Lincoln Park, pursuant to which we have the right to sell to Lincoln Park up to an aggregate of $75 million in shares of our common

stock, subject to the conditions and limitations set forth in the March 2025 Purchase Agreement. Concurrent with the execution of the March 2025 Purchase Agreement, we also entered into a registration rights agreement with Lincoln Park relating to the common stock to be sold to Lincoln Park. As consideration for entering into the March 2025 Purchase Agreement, we issued to Lincoln Park 1,123,023 shares of our common stock as initial commitment shares in a noncash transaction on March 13, 2025 and agreed to issue up to 1,123,023 additional shares of our common stock as additional commitment shares on a pro rata basis in connection with any additional purchases. Pursuant to the October 2025 Purchase Agreement, we may not effect any sale under the March 2025 Purchase Agreement for a period of 90 days from the closing of the October 2025 Offering.

Pursuant to the March 2025 Purchase Agreement, on any business day and as often as every other business day over the 36-month term of the March 2025 Purchase Agreement, we have the right, from time to time, at our sole discretion and subject to certain conditions, to direct Lincoln Park to purchase up to 750,000 shares of our common stock, provided Lincoln Park's obligation under any single such purchase will not exceed $3.0 million, unless we and Lincoln Park mutually agree to increase the maximum amount of such single regular purchase. If we direct Lincoln Park to purchase the maximum number of shares of common stock it then may sell in a regular purchase, then in addition to such regular purchase, and subject to certain conditions and limitations in the March 2025 Purchase Agreement, we may direct Lincoln Park to purchase an additional amount of common stock that may not exceed the lesser of (i) 300% of the number of shares purchased pursuant to the corresponding regular purchase or (ii) 30% of the total number of shares of our common stock traded during a specified period on the applicable purchase date as set forth in the March 2025 Purchase Agreement. Under certain circumstances and in accordance with the March 2025 Purchase Agreement, we may direct Lincoln Park to purchase shares in multiple accelerated purchases on the same trading day.

We control the timing and amount of any sales of our common stock to Lincoln Park. There is no upper limit on the price per share that Lincoln Park must pay for our common stock under the March 2025 Purchase Agreement, but in no event will shares be sold to Lincoln Park on a day the closing price is less than the floor price specified in the March 2025 Purchase Agreement. In all instances, we may not sell shares of our common stock to Lincoln Park under the March 2025 Purchase Agreement if that would result in Lincoln Park beneficially owning more than 9.99% of its common stock.

The March 2025 Purchase Agreement does not limit our ability to raise capital from other sources at our sole discretion, except that, subject to certain exceptions, we may not enter into any Variable Rate Transaction (as defined in the March 2025 Purchase Agreement, including the issuance of any floating conversion rate or variable priced equity-like securities) during the 36 months after the date of the March 2025 Purchase Agreement. We have the right to terminate the March 2025 Purchase Agreement at any time, at no cost to us.

During the nine months ended September 27, 2025, Lincoln Park purchased an aggregate of 1,192,310 shares of our common stock for a net purchase price of approximately $1.1 million under the March 2025 Purchase Agreement. Subsequently, from September 28, 2025 through October 1, 2025, Lincoln Park purchased an aggregate of 303,699 shares of our common stock for a net purchase price of approximately $0.25 million under the March 2025 Purchase Agreement.

Note 7—Stock-Based Awards

On September 9, 2025, our stockholders approved the Netlist, Inc. 2025 Equity Incentive Plan (the "2025 Plan") at our 2025 Annual Meeting of Stockholders, pursuant to which (i) 2,500,000 shares of our common stock were reserved for issuance pursuant to the 2025 Plan and (ii) up to 4,721,706 shares of common stock may be added to the 2025 Plan attributable to awards granted under the Amended and Restated 2006 Equity Incentive Plan (the "Amended 2006 Plan") that are forfeited, expire or are cancelled without delivery of shares of common stock or which result in the forfeiture of shares of common stock back to the Company on or after September 9, 2025. The Amended 2006 Plan was terminated on September 9, 2025. As of September 27, 2025, we had 2,500,000 shares of our common stock reserved for future issuance under the 2025 Plan and

no shares of our common stock reserved for future issuance under the Amended 2006 Plan. Stock options granted under the 2025 Plan and the Amended 2006 Plan generally vest at a rate of at least 25% per year over four years and expire 10 years from the grant date. RSUs granted for our employees and consultants generally vest in equal installments annually and fully vest over a four-year term from the grant date.

Stock Options

The following table summarizes the activity related to stock options during the nine months ended September 27, 2025:

	Number of Shares (in thousands)	Weighted-Average Exercise Price
Outstanding as of December 28, 2024	3,257	$ 0.78
Granted	—	—
Exercised	(129)	0.57
Expired or forfeited	(419)	1.13
Outstanding as of September 27, 2025	2,709	$ 0.73

Restricted Stock Units

The following table summarizes the activity related to RSUs during the nine months ended September 27, 2025:

	Number of Shares (in thousands)	Weighted-Average Grant-Date Fair Value per Share
Balance nonvested as of December 28, 2024	3,682	$ 2.49
Granted	635	0.67
Vested	(1,140)	3.07
Forfeited	(302)	2.66
Balance nonvested as of September 27, 2025	2,875	$ 1.84

Stock-Based Compensation

The following table summarizes the stock-based compensation expense by line item in the condensed consolidated statements of operations (in thousands):

	Three Months Ended		Nine Months Ended	
	September 27, 2025	September 28, 2024	September 27, 2025	September 28, 2024
Cost of sales	$ 12	$ 16	$ 62	$ 82
Research and development	93	238	438	798
Selling, general and administrative	655	876	2,244	2,752
Total	$ 760	$ 1,130	$ 2,744	$ 3,632

As of September 27, 2025, we had approximately $4.0 million, net of estimated forfeitures, of unearned stock-based compensation, which we expect to recognize over a weighted-average period of approximately 1.8 years.

Note 8—Warrants

Warrant activity for the nine months ended September 27, 2025 is as follows:

	Number of Shares (in thousands)	Weighted Average Exercise Price
Outstanding as of December 28, 2024	38,384	$ 1.78
Granted	34,286	0.70
Exercised	—	—
Expired	(13,636)	1.10
Outstanding as of September 27, 2025	59,034	$ 1.31

Note 9—Subsequent Events

October 2025 Offering

On October 6, 2025, we entered into the October 2025 Purchase Agreement with the October 2025 Purchasers, pursuant to which we issued and sold to the October 2025 Purchasers in the October 2025 Offering an aggregate of (i) 14,285,716 shares of our common stock and (ii) 28,571,432 October 2025 Warrants to purchase the October 2025 Warrant Shares at a combined purchase price of $0.70 per share and accompanying October 2025 Warrant. The October 2025 Offering closed on October 7, 2025. The net proceeds to us from the October 2025 Offering were approximately $9.1 million, after deducting placement agent fees and offering costs paid by us.

The October 2025 Warrants are exercisable at any time on or after the issuance date, have a term of five years from the issuance date, have an exercise price of $0.70 per share, contain customary 4.99%/9.99% blocker provisions and provide for the cash payment of the Black-Scholes value of the October 2025 Warrants upon the occurrence of certain fundamental transactions. The exercise price and the number of October 2025 Warrant Shares issuable upon exercise of the October 2025 Warrants are subject to adjustment in the event of, among other things, certain transactions affecting our common stock (including without limitation stock splits and stock dividends). In addition, the exercise price of the October 2025 Warrants is subject to reduction in the event of certain common stock and common stock equivalent issuances, other than certain agreed exempt issuances, at a price lower than the exercise price of the October 2025 Warrants then in effect.

In addition, pursuant to the October 2025 Purchase Agreement, our directors and executive officers entered into lock-up agreements with us, pursuant to which they agreed not to offer for sale, contract to sell, or sell any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common stock, for a period of 90 days from the closing of the October 2025 Offering, subject to certain customary exceptions.

Further, pursuant to the terms of the October 2025 Purchase Agreement and subject to certain limited exceptions, we have agreed for a period of 90 days from the closing of the October 2025 Offering not to (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of common stock or Common Stock Equivalents (as defined in the October 2025 Purchase Agreement) or (ii) file any registration statement or amendment or supplement to any registration statement. The October 2025 Purchase Agreement also provides that we may not, subject to the exceptions described in the October 2025 Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the October 2025 Offering), effect or enter into any Variable Rate Transactions (as defined in the October 2025 Purchase Agreement) until the six-month anniversary of the closing date of the October 2025 Offering.

Amendment to Securities Purchase Agreements and Warrants

Some of the purchasers pursuant to the October 2025 Purchase Agreement are also holders of the June 2025 Warrants and were purchasers pursuant a securities purchase agreement dated October 11, 2024 (the "October 2024 Purchase Agreement"). Pursuant to the terms of the October 2025 Purchase Agreement, these holders agreed to waive certain variable rate prohibitions and participation rights set forth in the October 2024 Purchase Agreement relating to the October 2025 Offering and to, among other things, revise certain anti-dilution provisions relating to the valuation of derivative securities set forth in the June 2025 Warrants in exchange for our reduction of the exercise price of the June 2025 Warrants to an exercise price equal to the lesser of $0.60 and the lowest VWAP of the shares of common stock on any trading day during the period commencing on October 6, 2025 and including, the fourth trading day immediately following October 7, 2025 (such waivers and amendments, collectively the "Waiver and Amendment"). Additionally, on October 6, 2025, the remaining holders of the June 2025 Warrants who are not party to the October 2025 Purchase Agreement also entered into waiver and amendment agreements, pursuant to which they agreed to the Waiver and Amendment. The adjusted exercise price of the June 2025 Warrants is now $0.60. The June 2025 Warrants may be further adjusted for future dilutive issuances.

Amendment to 2023 SVB Credit Agreement

On November 7, 2025, we entered into the 2023 SVB Credit Agreement Amendment to, among other things, extend the maturity date from November 7, 2025 to November 7, 2027.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Note Regarding Forward-Looking Statements

This Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") and other parts of this report include "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements other than historical facts and often address future events or our future performance. Words such as "anticipate," "estimate," "expect," "project," "intend," "may," "will," "might," "plan," "predict," "believe," "should," "could" and similar words or expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words.

Forward-looking statements contained in this MD&A and the condensed consolidated financial statements and the related notes included in Part I, Item 1 of this report include statements about, among other things:

- *our beliefs regarding the market and demand for our products or the component products we resell;*
- *our ability to collect any damages awarded to us, including in our litigation with Samsung Electronics Co., Ltd., Samsung Semiconductor Inc., and Samsung Electronics America Inc. (collectively, "Samsung") and/or in our litigation with Micron Technology, Inc. ("Micron");*
- *our beliefs and estimates regarding potential intellectual property suits or claims in process under current litigation;*
- *our ability to defend successfully any challenges to our intellectual property or claims asserting patent infringement relating to our products;*
- *our ability to develop and launch new products that are attractive to the market and stimulate customer demand for these products;*
- *our plans relating to our intellectual property, including our goals of monetizing, protecting, licensing, expanding and defending our patent portfolio;*
- *our expectations and strategies regarding outstanding legal proceedings and patent reexaminations relating to our intellectual property portfolio;*
- *our expectations with respect to any strategic partnerships or other similar relationships we may pursue;*
- *the competitive landscape of our industry;*
- *general market, economic and political conditions;*
- *our business strategies and objectives;*
- *our expectations regarding our future operations and financial position, including revenues, costs and prospects, and our liquidity and capital resources, including cash flows, sufficiency of cash resources, efforts to reduce expenses and the potential for future financings;*
- *our ability to remediate any material weakness and maintain effective internal control over financial reporting; and*
- *the impact of the above factors and other future events on the market price and trading volume of our common stock.*

All forward-looking statements reflect management's present assumptions, expectations and beliefs regarding future events and are subject to known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those expressed in or implied by any forward-looking statements. These risks and uncertainties include those described under "Risk Factors" in Part II, Item 1A of this Quarterly Report. In light of these risks and uncertainties, our forward-looking statements should not be relied on as predictions of future events. All forward-looking statements reflect our assumptions, expectations and beliefs only as of the date they are made, and except as required by law, we undertake no obligation to revise or update any forward-looking statements for any reason.

The following MD&A should be read in conjunction with our condensed consolidated financial statements and the related notes included in Part I, Item 1 of this Quarterly Report, as well as our Annual Report on Form 10-

Samsung Ex. 1116, p. 41
Samsung Electronics Co., Ltd. v. Netlist, Inc., IPR2026-00018

K filed with the Securities and Exchange Commission (the "SEC") on March 28, 2025 (the "Annual Report"). All information presented herein is based on our fiscal calendar, and references to particular years, quarters, months or periods refer to our fiscal years ended in January or December and the associated quarters, months and periods of those fiscal years. Each of the terms the "Company," "Netlist," "we," "us," or "our" as used herein refers collectively to Netlist, Inc. and its consolidated subsidiaries, unless otherwise stated.

Overview

We are a leading innovator in advanced memory and storage solutions, pushing the boundaries of technology to deliver unparalleled performance and reliability. With a rich portfolio of patented technologies, we have consistently driven innovation in the field of cutting-edge enterprise memory and storage, advancing artificial intelligence ("AI") and empowering businesses and industries to thrive in the digital age.

During the third quarter of 2025, we recorded net sales of $42.2 million, gross profit of $1.8 million and net loss of $7.0 million. We have historically financed our operations primarily with proceeds from issuances of equity and debt securities and cash receipts from revenues. We have also funded our operations with a revolving line of credit under a bank credit facility with Silicon Valley Bank, a division of First-Citizens Bank & Trust Company ("SVB"), funds raised through our equity line arrangement under the March 2025 Purchase Agreement (as defined below), and proceeds raised from the June 2025 Offering (as defined below) and the October 2025 Offering (as defined below). See "Liquidity and Capital Resources" and "Recent Developments" below for more information.

Recent Developments

Netlist, Inc. 2025 Equity Incentive Plan

On September 9, 2025, our stockholders approved the Netlist, Inc. 2025 Equity Incentive Plan at our 2025 Annual Meeting of Stockholders.

Amendment to Restated Certificate of Incorporation

On September 24, 2025, our stockholders approved the Certificate of Amendment to the Restated Certificate of Incorporation to increase the number of authorized shares of our common stock from 450,000,000 to 675,000,000.

October 2025 Offering

On October 6, 2025, we entered into a Securities Purchase Agreement (the "October 2025 Purchase Agreement") with certain investors (collectively, the "October 2025 Purchasers"), pursuant to which we issued and sold to the October 2025 Purchasers in a registered offering (the "October 2025 Offering") an aggregate of (i) 14,285,716 shares of our common stock and (ii) Common Stock Purchase Warrants (the "October 2025 Warrants") to purchase up to an aggregate of 28,571,432 shares (the "October 2025 Warrant Shares") of our common stock at a combined purchase price of $0.70 per share and accompanying October 2025 Warrant. The October 2025 Offering closed on October 7, 2025. The net proceeds to us from the October 2025 Offering were approximately $9.1 million, after deducting placement agent fees and offering costs paid by us.

The October 2025 Warrants are exercisable at any time on or after the issuance date, have a term of five years from the issuance date, have an exercise price of $0.70 per share, contain customary 4.99%/9.99% blocker provisions and provide for the cash payment of the Black-Scholes value of the October 2025 Warrants upon the occurrence of certain fundamental transactions. The exercise price and the number of October 2025 Warrant Shares issuable upon exercise of the October 2025 Warrants are subject to adjustment in the event of, among other things, certain transactions affecting our common stock (including without limitation stock splits and stock dividends). In addition, the exercise price of the October 2025 Warrants is subject to reduction in the event of certain common stock and common stock equivalent issuances, other than certain agreed exempt issuances, at a price lower than the exercise price of the October 2025 Warrants then in effect.

On October 6, 2025, we entered into a Placement Agency Agreement (the "October 2025 Placement Agreement") with Roth Capital Partners, LLC ("Roth"), pursuant to which Roth agreed to act as our placement agent in connection with the October 2025 Offering. Pursuant to the terms of the October 2025 Placement Agreement, in consideration for its placement agent services, we paid Roth a cash fee in an amount equal to 4.0% of the aggregate gross proceeds received by us in connection with the closing of the October 2025 Offering.

In addition, pursuant to the October 2025 Purchase Agreement, our directors and executive officers entered into lock-up agreements with us, pursuant to which they agreed not to offer for sale, contract to sell, or sell any shares of our common stock or any securities convertible into, or exercisable or exchangeable for, shares of our common stock, for a period of 90 days from the closing of the October 2025 Offering, subject to certain customary exceptions.

Further, pursuant to the terms of the October 2025 Purchase Agreement and subject to certain limited exceptions, we have agreed for a period of 90 days from the closing of the October 2025 Offering not to (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of common stock or Common Stock Equivalents (as defined in the October 2025 Purchase Agreement) or (ii) file any registration statement or amendment or supplement to any registration statement. The October 2025 Purchase Agreement also provides that we may not, subject to the exceptions described in the October 2025

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Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the October 2025 Offering), effect or enter into any Variable Rate Transactions (as defined in the October 2025 Purchase Agreement) until the six-month anniversary of the closing date of the October 2025 Offering.

Economic Conditions, Challenges and Risks

The U.S. government has recently implemented significant tariff increases on imports from the People's Republic of China ("PRC") and the PRC has retaliated with its own tariffs. These tariffs are the subject of ongoing discussions and agreements between the United States and the PRC. While we do not believe we have been materially affected by the recent tariffs or changes in trade policy, tariffs, quotas, trade agreements or other trade restrictions could affect our supply and manufacturing capabilities in the PRC, increase our operating expenses and reduce gross margins and could reduce our sales to customers located in the PRC, which, as of the quarter ended September 27, 2025, accounted for a majority of our net sales. The scope, duration, and broader economic impact of such measures remain uncertain and will depend on several factors, including ongoing negotiations between the U.S. and the PRC and/or other countries, their respective responses, and any possible exemptions or exclusions that may be granted or other countries targeted with tariffs.

In addition, the vast majority of our net product sales in recent periods have been generated from resales of products sourced from SK hynix pursuant to the Strategic Agreement. The term of the supply provisions of this Strategic Agreement expire in April 2026. We may be unable to renew our supply agreements with SK hynix. We can provide no assurance that SK hynix will continue to supply us with products for resale on similar terms to our existing arrangements or at all. As a result, our revenue in future periods will be adversely affected if SK hynix does not continue to supply us with products for resale.

Our performance, financial condition and prospects are also affected by a number of factors and are exposed to a number of other risks and uncertainties. We operate in a competitive and rapidly evolving industry in which new risks emerge from time to time, and it is not possible for us to predict all of the risks we may face, nor can we assess the impact of all factors on our business or the extent to which any factor or combination of factors could cause actual results to differ from our expectations. See the discussion of certain risks that we face under "Risk Factors" in Part II, Item 1A of this report.

Results of Operations

Net Sales and Gross Profit

Net sales and gross profit for the three and nine months ended September 27, 2025 and September 28, 2024 were as follows (dollars in thousands):

	Three Months Ended			Nine Months Ended		
	September 27, 2025	September 28, 2024	% Change	September 27, 2025	September 28, 2024	% Change
Net sales	$ 42,234	$ 40,186	5%	$ 112,915	$ 112,828	0%
Cost of sales	40,396	39,044	3%	108,385	110,198	(2%)
Gross profit	$ 1,838	$ 1,142	61%	$ 4,530	$ 2,630	72%
Gross margin percentage	4%	3%		4%	2%	

Net Sales

Net sales increased by approximately $2.0 million during the third quarter of 2025 compared to the same period of 2024, primarily as a result of a $2.3 million increase in sales of low-profile memory subsystem products and a $0.4 million increase in the sale of registered DIMM ("RDIMM") and discrete memory component products, partially offset by a $0.6 million decrease in sales of our flash and solid-state drives ("SSD") products.

Net sales were consistent during the first nine months of 2025 compared to the same period of 2024. As of September 27, 2025, we had deferred revenue of $27.0 million. The deferred revenue relates to advance payments received during the quarter on orders shipped subsequent to the end of the quarter.

Gross Profit and Gross Margin

Gross profit and gross margin percentage increased during the third quarter and first nine months of 2025 compared to the same periods of 2024, primarily as a result of product sales mix.

Operating Expenses

Operating expenses for the three and nine months ended September 27, 2025 and September 28, 2024, were as follows (dollars in thousands):

	Three Months Ended			Nine Months Ended		
	September 27, 2025	September 28, 2024	% Change	September 27, 2025	September 28, 2024	% Change
Research and development	$ 822	$ 2,177	(62%)	$ 2,548	$ 6,987	(64%)
Percentage of net sales	2%	5%		2%	6%	
Intellectual property legal fees	$ 5,035	$ 5,349	(6%)	$ 15,542	$ 28,403	(45%)
Percentage of net sales	12%	13%		14%	25%	
Selling, general and administrative	$ 3,131	$ 3,271	(4%)	$ 9,604	$ 9,353	3%
Percentage of net sales	7%	8%		9%	8%	

Research and Development

Research and development expenses decreased during the third quarter and first nine months of 2025 compared to the same periods of 2024, primarily due to a reduction in employee headcount that occurred in October 2024 and the associated decrease in overhead costs.

Intellectual Property Legal Fees

Intellectual property legal fees consist of fees incurred for patent enforcement and licensing, appeals, patent drafting and prosecution, and opposition to third-party post-grant patent proceedings. Although we expect intellectual property legal fees to generally increase over time as we continue to expand, protect and enforce our patent portfolio, these increases may not be linear but may occur in lump sums depending on jury trial management, due dates of various filings and their associated fees, and the arrangements we may make with our legal advisors in connection with enforcement proceedings, which may include fee arrangements or contingent fee arrangements in which we would pay these legal advisors on a scaled percentage of any negotiated fees, settlements or judgments awarded to us based on if, how and when the fees, settlements or judgments are obtained. See Note 5 to the condensed consolidated financial statements included in Part I, Item 1 of this report for further discussion.

Intellectual property legal fees decreased during the third quarter and first nine months of 2025 compared to the same periods of 2024 due primarily to lower legal expenses incurred to protect and enforce our patent portfolio.

Selling, General and Administrative

Selling, general and administrative expenses slightly decreased during the third quarter compared to the same period of 2024 due primarily to lower audit and public company related fees.

Selling, general and administrative expenses slightly increased during the first nine months of 2025 compared to the same period of 2024 due primarily to an increase in employee headcount and the related overhead and outside services.

Other Income, Net

Other income, net for the three months and nine ended September 27, 2025 and September 28, 2024 was as follows (dollars in thousands):

	Three Months Ended			Nine Months Ended		
	September 27, 2025	September 28, 2024	% Change	September 27, 2025	September 28, 2024	% Change
Interest income, net	$ 106	$ 162		$ 459	$ 796	
Other income, net	34	88		130	167	
Total other income, net	$ 140	$ 250	(44%)	$ 589	$ 963	(39%)

Interest income, net decreased during the third quarter and first nine months of 2025 compared to the same periods of 2024, primarily as a result of interest earned on lower cash balances. Other income, net included a reversal of the reserve to cover flood damage in our former manufacturing facility located in the PRC during the third quarter and first nine months of 2024.

Liquidity and Capital Resources

Our primary sources of cash are historically proceeds from issuances of equity and receipts from revenues. In addition, we have received proceeds from our entry into the Strategic Agreement with SK hynix, which we used to support our operations. We have also funded our operations with our revolving line of credit under a bank credit facility with SVB, funds raised through the March 2025 Purchase Agreement, and proceeds raised from the June 2025 Offering and October 2025 Offering.

The following tables present selected financial information as of September 27, 2025 and December 28, 2024 and for the first nine months of 2025 and 2024 (in thousands):

	September 27, 2025	December 28, 2024
Cash, cash equivalents and restricted cash	$ 20,844	$ 34,607
Working capital	(14,545)	(7,305)

	Nine Months Ended	
	September 27, 2025	September 28, 2024
Net cash used in operating activities	$ (27,995)	$ (25,504)
Net cash used in investing activities	(25)	(64)
Net cash provided by financing activities	14,257	2,494

During the nine months ended September 27, 2025, net cash used in operating activities was primarily a result of net loss of $22.6 million, non-cash adjustments to net loss of $2.7 million, and net cash outflows from changes in operating assets and liabilities of $8.2 million driven predominantly by a decrease in accounts payable, an increase in inventories due to orders not shipped in September 2025, an increase in prepaid expenses and other assets, partially offset by an increase in deferred revenue related to advance payments received on orders shipped in October 2025. Net cash provided by financing activities during the nine months ended September 27, 2025 primarily consisted of $1.1 million in net proceeds from the issuance of common stock under the March 2025 Purchase Agreement and $11.6 million in net proceeds from issuance of common stock under the June 2025 Purchase

Agreement, $2.2 million in net borrowings under the 2023 SVB Credit Agreement (as defined below), partially offset by $0.5 million in payments of notes payable to finance insurance policies.

During the nine months ended September 28, 2024, net cash used in operating activities was primarily a result of net loss of $41.2 million, non-cash adjustments to net loss of $4.3 million, and net cash inflows from changes in operating assets and liabilities of $11.4 million driven predominantly by a decrease in inventories

due to higher turnovers, increase in deferred revenue related to an advance payment received on an order shipped in October 2024 and decrease in accounts receivable due to faster cash collections, partially offset by the decrease in accounts payable due to the payments made for the legal fees incurred to defend our patent portfolio. Net cash provided by financing activities during the nine months ended September 28, 2024 primarily consisted of $5.2 million in net proceeds from issuance of common stock under our purchase agreement with Lincoln Park Capital Fund, LLC ("Lincoln Park") dated September 28, 2021, partially offset by $2.3 million in net repayments under the 2023 SVB Credit Agreement and by $0.5 million in payments of notes payable to finance insurance policies.

Capital Resources

October 2025 Offering

On October 6, 2025, we entered into the October 2025 Purchase Agreement with the October 2025 Purchasers, pursuant to which we issued and sold to the October 2025 Purchasers in the October 2025 Offering an aggregate of (i) 14,285,716 shares of our common stock and (ii) 28,571,432 October 2025 Warrants to purchase the October 2025 Warrant Shares at a combined purchase price of $0.70 per share and accompanying October 2025 Warrant. The October 2025 Offering closed on October 7, 2025. The net proceeds to us from the October 2025 Offering were approximately $9.1 million, after deducting placement agent fees and offering costs paid by us.

Further, pursuant to the terms of the October 2025 Purchase Agreement and subject to certain exceptions, we have agreed for a period of 90 days from the closing of the October 2025 Offering not to (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of common stock or Common Stock Equivalents (as defined in the October 2025 Purchase Agreement) or (ii) file any registration statement or amendment or supplement to any registration statement. The October 2025 Purchase Agreement also provides that we may not, subject to the exceptions described in the October 2025 Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the October 2025 Offering), effect or enter into any Variable Rate Transactions (as defined in the October 2025 Purchase Agreement) until the six-month anniversary of the closing date of the October 2025 Offering.

June 2025 Offering

On June 24, 2025, we entered into a Securities Purchase Agreement (the "June 2025 Purchase Agreement") with certain investors, including Chun K. Hong, Chairperson of our board of directors, President and Chief Executive Officer (collectively, the "June 2025 Purchasers"), pursuant to which we issued and sold to the June 2025 Purchasers in a registered offering (the "June 2025 Offering") an aggregate of (i) 17,142,860 shares of our common stock and (ii) 34,285,720 Common Stock Purchase Warrants (the "June 2025 Warrants") to purchase up to an aggregate of 34,285,720 shares of our common stock at a combined purchase price of $0.70 per share and accompanying June 2025 Warrant. Mr. Hong purchased $3.0 million of shares and accompanying June 2025 Warrants in the June 2025 Offering. The June 2025 Offering closed on June 25, 2025. The net proceeds to us from the June 2025 Offering were approximately $11.3 million, after deducting placement agent fees and offering costs paid by us.

The June 2025 Purchase Agreement also provides that we may not, subject to the exceptions described in the June 2025 Purchase Agreement (including an exception permitting us to utilize the March 2025 Purchase Agreement following the expiration of the 90-day period following the closing of the June 2025 Offering),

effect or enter into any Variable Rate Transactions (as defined in the June 2025 Purchase Agreement) until the six-month anniversary of the closing date of the June 2025 Offering.

March 2025 Lincoln Park Purchase Agreement

On March 13, 2025, we entered into a purchase agreement (the "March 2025 Purchase Agreement") with Lincoln Park, pursuant to which we have the right to sell to Lincoln Park up to an aggregate of $75 million in shares of our common stock over the 36-month term of the March 2025 Purchase Agreement subject to the conditions and limitations set forth in the March 2025 Purchase Agreement. As of September 27, 2025, $73.9 million remains available under the March 2025 Purchase Agreement with Lincoln Park. Pursuant to the October 2025 Purchase Agreement, we may not effect any sale under the March 2025 Purchase Agreement for a period of 90 days from the closing of the October 2025 Offering.

2023 SVB Credit Agreement

On November 7, 2023, we entered into a loan and security agreement (as amended to date, the "2023 SVB Credit Agreement") with SVB, which provides for a revolving line of credit up to $10.0 million. The borrowing base is limited to 85% of eligible accounts receivable, subject to certain adjustments. Borrowings accrue interest on advance at a per annum rate equal to the greater of 8.50% and the Wall Street Journal prime rate. The maturity date was originally November 7, 2025. On November 7, 2025, we entered into a first amendment to the loan and security agreement (the "2023 SVB Credit Agreement Amendment") to, among other things, extend the maturity date from November 7, 2025 to November 7, 2027.

As of September 27, 2025, the outstanding borrowings under the 2023 SVB Credit Agreement were $1.1 million with no availability under the revolving line of credit. During the nine months ended September 27, 2025, we had net borrowings of $2.2 million under the 2023 SVB Credit Agreement.

Sufficiency of Cash Balances and Potential Sources of Additional Capital

We believe our existing balance of cash and cash equivalents together with the cash received under the Strategic Agreement with SK hynix, proceeds from issuances of debt and equity securities, including our equity line with Lincoln Park, cash receipts from net sales, funds raised through future equity offerings and taking into account cash expected to be used in our operations, will be sufficient to meet our anticipated cash needs for at least the next 12 months. However, this estimate may ultimately be incorrect and we may use our cash resources faster than we expect as a result of many factors, including costs to defend our intellectual property portfolio, the results of ongoing litigation and legal proceedings, demand and acceptance of our products, whether our current customers continue purchasing our products, costs of developing and improving our products, our results of operations, including our level of net product sales that we receive which can vary based on a number of factors, including the amount and timing of vendor payments, the timing of customer orders, the effects of changes in international trade policy, non-reoccurring items and changing projected inventory needs and estimates.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditure or capital resources that is material to investors.

Recent Accounting Pronouncements

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07, Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosure, which improves reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses. This ASU is effective for the annual periods beginning January 1, 2024, and

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becomes effective for interim periods within fiscal years beginning January 1, 2025. We adopted this guidance on December 28, 2024. The adoption only impacted our disclosure and has no material impact on the Company's condensed consolidated financial statements as of and for the quarter ended September 27, 2025.

In November 2024, the FASB issued ASU 2024-03, Income Statement – Reporting Comprehensive Income – Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses, which updates expense disclosure requirements on an annual and interim basis. This ASU is effective for the annual periods beginning after December 15, 2026, and the interim reporting periods beginning after December 15, 2027. Early adoption is permitted. We are currently evaluating the impact of adopting this ASU.

In December 2023, the FASB issued ASU 2023-09, Income Taxes (Topic 740): Improvements to Income Tax Disclosures, which will require us to disclose specified additional information in its income tax rate reconciliation and provide additional information for reconciling items that meet a quantitative threshold. This ASU is effective for annual periods beginning after December 15, 2024. Early adoption is permitted. We will adopt this ASU using either a prospective or retrospective transition method. We are currently evaluating the impact of adopting this ASU.

Critical Accounting Policies and Use of Estimates

The preparation of our condensed consolidated financial statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of net sales and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. We base our estimates and assumptions on our historical experience, knowledge of current conditions and our beliefs of what could occur in the future considering available information. We review our estimates and assumptions on an ongoing basis. Actual results may differ from our estimates, which may result in material adverse effects on our consolidated operating results and financial position.

Our critical accounting policies and estimates are discussed in Note 1 to the condensed consolidated financial statements in this report and in the notes to consolidated financial statements in Part II, Item 8 of our Annual Report and in the MD&A in our Annual Report. There have been no significant changes to our critical accounting policies since our Annual Report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not Applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, and we maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in reports we file or submit under the Securities Exchange Act of 1934, as amended (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

In designing our disclosure controls and procedures and internal control over financial reporting, our management recognizes that any control system, no matter how well-designed and operated, can provide

only reasonable, not absolute, assurance of achieving the desired control objectives. Further, the design of our controls and procedures must reflect the fact that there are resource constraints, and management necessarily applies its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of the inherent limitations, our disclosure and internal controls may not prevent or detect all instances of fraud, misstatements or other control issues, and our evaluations of disclosure and internal controls cannot provide assurance that all such control issues have been detected. In addition, projections of any evaluation of the effectiveness of disclosure or internal controls to future periods are subject to risks, including, among others, that controls may become inadequate because of changes in conditions or that compliance with policies or procedures may deteriorate.

Our management conducted an evaluation, with the participation of our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) as of the end of the period covered by this report. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") in Internal Control-Integrated Framework. Based on this evaluation, our management concluded there was a material weakness in our internal controls due to the historical lack of independent board member and audit committee oversight of our financial reporting process until the recent board appointments and audit committee's reformation in June 2025. While we now have a standing audit committee comprised of an independent board member, this oversight will need to operate effectively for a sufficient period of time before management may consider our previously identified material weakness to be remediated. As a result of these circumstances, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were not effective as of September 27, 2025.

While we are not required to provide an auditor's attestation report on internal control over financial reporting in this Form 10-Q, our independent registered public accounting firm expects to conduct an integrated audit of our financial statements and internal control over financial reporting in preparation for our Form 10-K for the year ending December 27, 2025. An integrated audit involves both an opinion on the financial statements and an opinion on the effectiveness of internal control over financial reporting, in accordance with the Public Company Accounting Oversight Board Auditing Standard No. 2201.

Notwithstanding the material weakness in our internal control over financial reporting, we have concluded that the unaudited condensed consolidated financial statements included in this Quarterly Report on Form 10-Q fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with U.S. GAAP.

Changes in Internal Control over Financial Reporting and Remediation Initiatives

In June 2025, we formed an audit committee of our board of directors (the "Audit Committee") and appointed two additional independent members of our Board of Directors. This Audit Committee now assists in evaluating our system of internal controls and provides oversight of our financial reporting process. Despite the reformation of our Audit Committee and these recent appointments, the material weakness discussed above cannot be considered remediated until these controls operate for a sufficient period and management has concluded, through testing, that our internal controls are operating effectively.

There have been no changes in our internal control over financial reporting that occurred during the quarter ended September 27, 2025 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. — OTHER INFORMATION

Item 1. Legal Proceedings

The information under "Commitments and Contingencies" in Note 5 to the condensed consolidated financial statements included in Part I, Item 1 of this report is incorporated herein by reference.

Item 1A. Risk Factors

We are subject to a number of risks that if realized could affect our business, financial condition, results of operations and cash flows. Some of the more significant challenges and risks include the following:

- We have historically incurred losses and may continue to incur losses;
- We may not be able to collect or otherwise receive value for the damages awarded to us in any of our litigations, including with Samsung and Micron, which could have an adverse impact on our business, financial condition and operating results;
- We are involved in multiple lawsuits and administrative actions in multiple jurisdictions to protect and assert our intellectual property rights against large, well-capitalized companies, which requires that we continue to expend substantial financial and management resources, and we may not be successful in these proceedings;
- We are and expect to continue to be involved in other legal and administrative proceedings to enforce or protect our intellectual property rights and to defend against claims that we infringe the intellectual property rights of others;
- The vast majority of our net product sales in recent periods have been generated from resales of products sourced from SK hynix pursuant to our Strategic Agreement with SK hynix. The supply terms of this Strategic Agreement expire in April 2026, and we may be unable to renew these terms. If SK hynix does not continue to supply us with products for resale, our revenues will be adversely affected;
- We are subject to risks relating to our focus on developing our compute express link ("CXL") products for our target customer markets;
- Sales to a small number of customers currently and have historically represented a significant portion of our net product sales, and the loss of, or a significant reduction in sales to, any one of these customers could materially harm our business;
- We are exposed to additional business, regulatory, political, operational, financial and economic risks related to our international sales and operations. In particular, a significant portion of our sales are to customers located in the PRC. Sales to these customers may be adversely affected as a result of international trade policies or the tariff environment between the United States and the PRC;
- We are subject to risks of disruption in the supply of component products;
- If we are unable to timely and cost-effectively develop new or enhanced products that achieve customer and market acceptance or technologies we can monetize, our revenues and prospects could be materially harmed;
- We face intense competition in our industry, and we may not be able to compete successfully in our target markets;
- Our operating results may be adversely impacted by worldwide economic and political uncertainties and specific conditions in the markets we address and in which we or our strategic partners or competitors do business, including the cyclical nature of and volatility in the memory market and semiconductor industry and the ongoing effects of recent changes to international trade and tariff policies;
- Our lack of a significant backlog of unfilled orders and the difficulty inherent in estimating customer demand makes it difficult to forecast our short-term requirements, and any failure to optimally calibrate our production capacity and inventory levels to meet customer demand could materially and adversely affect our revenues, gross margin and earnings;
- Our manufacturing operations involve significant risks;
- We also depend on third parties to design and manufacture components for our products and the component products we resell, which exposes us to risks;

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- If our products or the component products we resell do not meet quality standards or are defective or used in defective systems, we may be subject to quality holds, warranty claims, recalls or liability claims;
- We rely on our internal and third-party sales representatives to market and sell our products and the component products we resell, and any failure by these representatives to perform as expected could reduce our sales;
- Difficulties with our global information technology systems, including any unauthorized access or cyber-attacks, could harm our business;
- If we do not effectively manage any future growth we may experience, our resources, systems and controls may be strained and our results of operations may suffer;
- If we acquire businesses or technologies or pursue other strategic transactions or relationships in the future, these transactions could disrupt our business and harm our operating results and financial condition;
- Increased prices and inflation or the effects of changes in international trade policies and the changing tariff environment could negatively impact our margin performance and our financial results;
- Geopolitical risks associated with the ongoing conflicts between Russia and Ukraine and Israel and Palestine continue to contribute to heightened market volatility and uncertainty, which could negatively impact our business, financial condition, and results of operations;
- Our failure to comply with environmental and other applicable laws and regulations could subject us to significant fines and liabilities or cause us to incur significant costs;
- Regulations related to “conflict minerals” may cause us to incur additional expenses and could limit the supply and increase the cost of certain metals used in manufacturing our products;
- We have identified a material weakness in our internal control over financial reporting. While we have taken steps to remediate this material weakness, if we are unable to remediate this material weakness, or if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business;
- We may be unsuccessful in monetizing our intellectual property portfolio;
- If our proprietary rights are not protected, our customers or our competitors might gain access to our proprietary designs, processes and technologies, which could adversely affect our operating results;
- We may become involved in non-patent related litigation and administrative proceedings that may materially adversely affect us;
- We may not have sufficient working capital to fund our planned operations, and, as a result, we may need to raise additional capital in the future, which may not be available when needed, on acceptable terms or at all. Our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate;
- The price and trading volume of our common stock has and may continue to fluctuate significantly in reaction to real or perceived developments in our business;
- Adverse developments affecting financial institutions, companies in the financial services industry or the financial services industry generally could adversely affect our operations and liquidity;
- As our shares of common stock are not listed on a national securities exchange, it may be more difficult for you to dispose of your shares and they may be less liquid when compared to securities that are listed on a national securities exchange;
- Future issuances of our common stock or rights to purchase our common stock, including pursuant to our outstanding warrants, equity incentive plans or the March 2025 Purchase Agreement, would result in additional dilution to the percentage ownership of our stockholders and could cause the price of our common stock to decline;
- A large portion of our warrants contain anti-dilution provisions for certain dilutive issuances of our securities at prices lower than the exercise prices set forth in such warrants;
- Sales of our common stock, or the perception that such sales could occur, could cause the market price of our stock to drop significantly, regardless of the state of our business; and
- We do not currently intend to pay dividends on our common stock, and any return to investors is expected to result, if at all, only from potential increases in the price of our common stock.

Risks Related to Our Business, Operations and Industry

We have historically incurred losses and may continue to incur losses.

Since the inception of our business in 2000, we have only experienced two fiscal years (2006 and 2021) with profitable results. In order to sustain or again achieve profitability, or to achieve and sustain positive cash flows from operations, we must reduce operating expenses and/or increase our revenues and gross margin. Although we have in the past engaged in a series of cost reduction actions, such expense reductions alone will not make us profitable or allow us to sustain profitability if it is achieved, and eliminating or reducing strategic initiatives could limit our opportunities and prospects. Our ability to sustain profitability will depend on increased revenue growth from, among other things, increased demand for our product offerings and our ability to monetize our intellectual property. We may not be successful in any of these pursuits, and we may not be able to sustain profitability if achieved.

We may not be able to collect the damages awarded to us in any of our litigations with Samsung, which could have an adverse impact on our business, financial condition and operating results.

As previously reported, in our litigation with Samsung, we were awarded approximately $303 million and $118 million in damages in two separate cases. As of the reporting date, all Netlist patents found to be infringed in the respective jury verdicts and judgments remain subject to final written decisions by the Patent Trial & Appeal Board ("PTAB") in their corresponding inter partes reviews ("IPRs"), which are subject to appeals before the U.S. Court of Appeals for the Federal Circuit ("CAFC"). The first case (approximately $303 million) is also on appeal before the CAFC. See Note 5 to the condensed consolidated financial statements included in Part I, Item 1 of this report for discussion of the current status of these proceedings.

In the second case (approximately $118 million), Samsung has filed post-trial motions for judgment as a matter of law and for a new trial. These motions may cause a lengthy delay in our ability to collect the damages award and could also result in a reversal or reduction of the damages award. Even if these post-trial motions are ultimately unsuccessful, we would still need to successfully collect the damages awarded to us. Following the resolution of these post-trial motions, this case may be subject to further appeals. One of the patents found to have been infringed has also recently been challenged in an ex parte reexamination. See Note 5 to the condensed consolidated financial statements included in Part I, Item 1 of this report for discussion of the current status of these proceedings.

The outcomes of the pending IPR, the ex parte reexamination, appeals and the two cases (including appeals) may impact our ability to collect the respective damages awards and/or the amounts collected. In addition, if we are unable to sustain our operations through the post-trial phase of the second case or the appeals, we may be required to raise additional capital through proceeds from other litigated matters or debt or equity financing. We cannot be certain that we will prevail or settle in any other ongoing litigation, or that any additional financing we may need will be available on terms acceptable to us, or at all. If we do not receive funds from other litigation matters or secure financing in the future, we may be forced to liquidate our assets or discontinue our operations altogether.

We may not be able to collect the damages awarded to us in our litigation with Micron, which could have an adverse impact on our business, financial condition and operating results.

As previously reported, in our litigation with Micron, we were awarded approximately $445 million in damages. As of the reporting date, both Netlist patents found infringed in the jury verdict and judgment are subject to final written decisions by the PTAB in their corresponding IPRs, which are subject to appeals before the CAFC.

In the litigation, Micron has filed post-trial motions for judgment as a matter of law and for a new trial, which were denied by the Court. This case is on appeal before the CAFC.

The outcomes of the IPR appeals and the litigation may affect our ability to collect the damages award and the amount collected. In addition, if we are unable to sustain our operations through the post-trial phase of the litigation or the appeals, we may be required to raise additional capital through proceeds from other litigated matters or debt or equity financing. We cannot be certain that we will prevail or settle in any other ongoing litigation, or that any additional financing we may need will be available on terms acceptable to us, or at all. If we do not receive funds from other litigation matters or secure financing in the future, we may be forced to liquidate our assets or discontinue our operations altogether.

We are involved in multiple lawsuits and administrative actions in multiple jurisdictions to protect and assert our intellectual property rights against large, well-capitalized companies, which requires that we continue to expend substantial financial and management resources, and we may not be successful in these proceedings.

We are currently involved in a variety of proceedings in multiple jurisdictions against large, well-capitalized companies, including Samsung, Google Inc., and Micron, which have been ongoing for many years and have required substantial investments of financial and management resources. We anticipate that these and other similar proceedings will continue to require similar investments over an extended period of time. Each of the proceedings is subject to substantial uncertainty regarding their outcomes because of the unpredictable nature of the litigation and appeal process, which is highly dependent upon specific factual matters and legal interpretations. We believe that it is critical to our future success to continue to pursue these actions, and we intend to do so. Each action will result in court rulings and decisions about significant issues, such as claim construction, patent validity, infringement, jurisdiction and other matters, almost all of which are subject to an appeal process that are typically lengthy and unpredictable. Moreover, the ruling or decision in one proceeding is not necessarily indicative of rulings or decisions that may be issued in another proceeding, even if the factual and legal matters are similar. We expect that various courts and agencies will issue significant rulings in several of our proceedings within the next year, and the disclosure of those rulings may cause substantial volatility in our stock price. Regardless of the outcome of our actions to enforce our intellectual property rights, we expect to continue to invest financial and management resources in pursuing the actions and related appeals, which may require that we obtain additional capital.

We are and expect to continue to be involved in other legal and administrative proceedings to enforce or protect our intellectual property rights and to defend against claims that we infringe the intellectual property rights of others.

As is common in the semiconductor industry, we have experienced substantial litigation regarding patent and other intellectual property rights. We are currently involved in litigation and proceedings at the PTAB based on alleged third-party infringement of our patents, and lawsuits claiming we are infringing others' intellectual property rights also have been and may in the future be brought against us.

Our business strategy includes litigating claims against others, such as our competitors and customers, to enforce our intellectual property, contractual and commercial rights, including, in particular, our patent portfolio and our trade secrets, as well as to challenge the validity and scope of the proprietary rights of others. This or other similar proceedings also have and may again subject us to counterclaims or countersuits against us, or the parties we sue have and may again seek to invalidate our patents or other intellectual

property rights through reexamination or similar processes at the U.S. Patent and Trademark Office ("USPTO") or similar bodies. Further, any legal disputes with customers could cause them to cease buying or using our products or the component products we resell or delay their purchase of these products and could substantially damage our relationship with these customers.

Moreover, our ability to continue to pursue this strategy depends on our ability to obtain and protect patents, which is governed by an uncertain process. In addition to the patent issuance process established by law and the procedures of the USPTO, we must also comply with administrative procedures of the Joint Electron Device Engineering Council ("JEDEC") to protect our intellectual property within its industry standard-setting process. These procedures evolve over time, are subject to variability in their application and may be inconsistent with each other. Any failure to comply with the USPTO's or JEDEC's administrative procedures could jeopardize our ability to pursue patent infringement claims.

Making use of new technologies and entering new markets increases the likelihood that others might allege that our products or the component products we resell infringe their intellectual property rights. The likelihood of this type of lawsuit may also be increased due to the limited pool of experienced technical personnel that we can draw on to meet our hiring needs. As a result, a number of our existing employees have worked for our existing or potential competitors at some point during their careers, and we anticipate a number of our future employees will have similar work histories. We have been the subject of such claims in the past and may again be subject to these types of claims. Moreover, lawsuits of this type may be brought, even if there is no merit to the claim, as a strategy to prevent us from hiring qualified candidates, drain our financial resources and divert management's attention away from our business.

Litigation is inherently uncertain. An adverse outcome in existing or any future litigation could force us to, among other things:

- relinquish material patents or other protections of our technologies if they are invalidated, which would enable our competitors and others to freely use this technology;
- compete with products that rely on technologies and other intellectual property rights that we believe we have the right to protect from third-party use;
- accept terms of an arrangement to license our technologies to a third party that are not as favorable as we might expect;
- receive little or no returns for our time and capital investments in the litigation;
- cease manufacturing and/or selling products or using certain processes that are claimed to be infringing a third party's intellectual property;
- pay damages (which in some instances may be three times actual damages), including royalties on past or future sales, if we are found to infringe a third party's intellectual property;
- seek a license from a third-party intellectual property owner to use its technology in our products or the component products we resell, which may not be available on reasonable terms or at all; or
- redesign any products that are claimed to be infringing a third party's intellectual property, which may not be possible to do in a timely manner, without incurring significant costs or at all.

Moreover, any litigation, regardless of its outcome, involves a significant dedication of resources, including time and capital, and diverts management's attention from our other activities. As a result, any current or future infringement claims or patent challenges by or against third parties, whether or not eventually decided in our favor or settled, could materially adversely affect our business, financial condition and results of operations. Additionally, the outcome of pending or future litigation and related patent reviews and reexaminations, as well as any delay in their resolution, could affect our ability to continue to sell our products, protect against competition in the current and expected markets for our products or license or otherwise monetize our intellectual property rights in the future.

The vast majority of our net product sales in recent periods have been generated from resales of products, including products sourced from SK hynix, and any decline in these product resales could significantly harm our performance.

The vast majority of our net product sales in recent periods have been generated from resales of computer memory and storage components and products, including but not limited to SSDs, NAND flash and dual in-line memory module. We resell products to end-customers that are not reached in the distribution models of the component manufacturers, including storage customers, appliance customers, system builders and cloud and datacenter customers.

These resales are subject to a number of risks. For example, demand for any computer memory or storage products could decline at any time for a number of reasons, including, among others, international tariffs, changing customer requirements or preferences, product obsolescence, introduction of more advanced or otherwise superior competing products by our competitors, the ability of our customers to obtain these products or substitute products from alternate sources (including from the manufacturer directly), customers reducing their need for these products generally, or the other risk factors described in this report. We have no long-term agreements or other commitments with respect to sales of these or any of the other products we sell. As a result, any decrease in demand for these products from us would reduce our sale levels and could materially adversely impact our revenues. Additionally, opportunistic purchases of products for resale, when coupled with a decrease in demand, may cause us to write off excess inventory which would adversely affect our operating performance.

The vast majority of our net product sales in recent periods have been generated from resales of products sourced from SK hynix pursuant to the Strategic Agreement. The term of the supply provisions of this Strategic Agreement expire in April 2026. We may be unable to renew our supply agreements with SK hynix. We can provide no assurance that SK hynix will continue to supply us with products for resale on similar terms to our existing arrangements or at all. As a result, our revenue in future periods will be adversely affected if SK hynix does not continue to supply us with products for resale. In addition, we may experience supply shortages at any time and for a variety of reasons, including, among others, spikes in customer demand that cannot be satisfied or shortages due to international tariffs, and any problems that arise with SK hynix's manufacturing operations or facilities that cause disruptions or delays, or any failure to comply with the terms of the agreements regarding the supply of these products. If we choose, or if we are forced, to seek to supply the component products we resell from other suppliers, we may not be able to identify other suppliers that are available and able to produce the particular components with the specific product specifications and in the quantities our customers require, or we may not be able to make arrangements with any other suppliers in a timely manner to avoid delays in satisfying customer orders. Further, even if we are able to make arrangements with other suppliers for sufficient component products to replace any undersupply from SK hynix, we may not be able to make these arrangements on financial and other terms comparable to those we have negotiated with SK hynix. As a result, any inability to obtain sufficient component products from SK hynix could increase our cost of sales for component product resales if we are forced to pay higher prices to obtain the products from other suppliers. Moreover, all of our supply arrangements for these component products and any arrangements we may establish with other suppliers, are subject to the other supply and manufacturing risks discussed elsewhere in these risk factors.

Increased reliance on product resales also has a substantial impact on our results of operations. Because the cost of the component products we purchase for resale is added to our cost of sales for these products, our gross margin on resales of component products is significantly lower than our gross margin on sales of our own memory subsystem products. As a result, increased resales of component products as a percentage of our total product sales have a significant negative impact on our gross margin and gross margin percentage. We may experience lower margins compared to prior periods as a result of international tariffs. This gross margin and gross margin percentage differential between memory product sales and component product resales would be amplified if our costs to purchase component products were to increase. The occurrence of any one or more of these risks could cause our performance to materially suffer.

We or any of our third-party partners may fail to comply with our or their contractual obligations under our third-party contracts.

We rely on a variety of third-party vendors, manufacturers, and strategic partners, such as SK hynix, to support critical aspects of our operations. Our or our third-party partners' failure to comply with the terms and conditions of these third-party contracts—whether due to oversight, misinterpretation, operational challenges, or changes in business priorities—could result in contractual breaches. Such breaches may lead to penalties, termination of agreements, litigation, reputational harm, or disruptions in service delivery. Additionally, non-compliance could adversely affect our ability to maintain key relationships, negotiate favorable terms in future contracts, or scale our operations efficiently. Any of these outcomes could materially and adversely impact our financial condition, results of operations, and business prospects.

We are subject to risks relating to our focus on developing our CXL products for our target customer markets.

We have historically derived revenues from sales of our high-performance memory products to original equipment manufacturers ("OEMs") in the server, high-performance computing and communications markets. Although we expect these memory products to continue to account for a portion of our revenues, we have experienced declines in sales of these products in recent periods, and these declines could continue or intensify in the future particularly as a result of newly enacted international tariffs. We believe market acceptance of these products or derivative products that incorporate our technology is critical to our success, and any continued decline in sales of these products could have a material adverse impact on our performance and long-term prospects.

We have invested significant research and development time and capital in the design of application-specific integrated circuits ("ASICs") and hybrid devices, including our CXL technology-based memory expansion controller. These products are subject to significant risks, including the following:

- we are dependent on a limited number of suppliers for the non-volatile memory, volatile memory, ASICs, and other components that are essential to the functionality of these products, and in the past, we have experienced supply chain disruptions and shortages of volatile and non-volatile memory components required to create these products as a result of issues that are specific to our suppliers or the industry as a whole and these shortages may be exacerbated by newly imposed international tariffs;
- CXL and some of our other next-generation products may require additional time including the services and attention of key employees who have competing demands on their available time and may require capital investment to bring the products to market;
- our development and commercialization strategies for these products may not align with industry demands;
- we are required to demonstrate the quality and reliability of our products to and qualify them with our customers before purchases are made, which requires investments of time and resources in significant and unpredictable amounts prior to the receipt of any revenues from these customers; and
- our memory expansion controller products or other new products, such as CXL, may contain currently undiscovered flaws, the correction of which could result in increased costs and time to market.

These and other risks associated with our memory subsystem products could impair our ability to obtain customer or market acceptance of these products or obtain such acceptance in a timely manner, which would reduce our achievable revenues from these products and limit our ability to recoup our investments in developing these technologies.

Additionally, if the demand for servers deteriorates, if the demand for our products to be incorporated in servers continues to decline, or if demand for our products deteriorates because customers in our other target markets change their requirements or preferences or otherwise reduce their need for these types of products generally, our operating results would be adversely affected, and we would be forced to diversify our product portfolio and our target customer markets in order to try to replace revenues lost from the further decreases in product sales. We may not be able to achieve this diversification, and any inability to do so may adversely affect our business, operating performance and prospects.

Sales to a small number of customers currently and have historically represented a significant portion of our net product sales, and the loss of, or a significant reduction in sales to, any one of these customers could materially harm our business.

Our target markets are characterized by a limited number of large companies, and consolidation in one or more of these markets may further increase this concentration. As a result, sales to small numbers of customers have historically represented and currently represent a substantial portion of our net product sales, and we expect this concentration to continue. For example, for the quarter ended September 27, 2025, three customers represented approximately 36%, 18%, and 13% of our net product sales, respectively. Additionally, the composition of major customers and their respective contributions to our net product sales have fluctuated and will likely continue to fluctuate from period to period as our existing and prospective customers progress through the life cycle of the products they produce and sell and experience resulting fluctuations in their product demand. We believe our performance depends in significant part on our ability to establish and maintain relationships with and effect substantial sales to our large customers.

We do not have long-term agreements with any of our customers and, as result, any or all of them could decide at any time to decrease, delay or discontinue their purchase of our products or the component products we resell. In addition, the prices customers pay for products are subject to fluctuations, and large or key customers may exert pressure on us to make concessions in the prices at which we sell products to them. Further, we may not be able to sell some of our products developed for one customer to a different customer because our products are often customized to address specific customer requirements, and even if we are able to sell these products to another customer, our margin on these products may be reduced. Additionally, although customers are generally allowed only limited rights of return after purchasing our products or the component products we resell, we may determine that it is in our best interest to accept returns from certain large or key customers even if we are not contractually obligated to accept them in order to maintain good relations with these customers. Any returns beyond our expectations could negatively impact our operating results. Moreover, because a few customers often account for a substantial portion of our net product sales, the failure of any one of these customers to pay on a timely basis would negatively impact our cash flows. As a result, our net product sales and operating results could be materially adversely affected by the loss of any of our customers, particularly our large or key customers, a decrease in product sales to any of our customers, including as a result of normal fluctuations in demand or other factors, reductions in the prices at which we sell products to any of our customers, including as a result of price concessions or general declines in average sale prices, or difficulties collecting payments from any of our customers.

Our ability to maintain or increase our product sales to our key customers depends on a variety of factors, many of which are beyond our control. These factors include our customers' continued sales of servers and other computing systems that incorporate our memory subsystems, our customers' continued incorporation of our products or the component products we resell into their systems, and our customers' sales activity and business results. Because of these and other factors, sales to these customers may not continue and the amount of such sales may not reach or exceed historical levels in any future period. The loss of a major customer or a reduction in sales to or difficulties in collecting payments from these customers could significantly reduce our net sales and adversely affect our operating results.

We are subject to risks of disruption in the supply of component products.

Our ability to fulfill customer orders for or produce qualification samples of our products, as well as orders for the components and/or products we resell, is dependent on a sufficient supply of SSDs, field programmable gate arrays, ASICs, volatile memory components, and non-volatile memory components. Further, there are a relatively small number of suppliers of these components, and we typically purchase from only a subset of these suppliers. As a result, our inventory purchases have historically been concentrated in a small number of suppliers, including SK hynix, from which we obtained a large portion of our products purchased for resale. We also use consumables and other components, including printed circuit boards, to manufacture our memory subsystems, which we sometimes procure from single or limited sources to take advantage of volume pricing discounts.

From time to time, shortages in SSDs, volatile memory components, and/or non-volatile memory components have required some suppliers to limit the supply of these components. We have experienced supply chain disruptions and shortages of SSDs, volatile memory components, and/or non-volatile memory components required to create certain of our memory subsystem products, and we have been forced to procure the component products we resell from other suppliers to the extent sufficient product is not available from SK hynix to meet customer demand or in the event of other SK hynix supply issues. We are continually working to secure adequate supplies of the components necessary to fill customers' orders in a timely manner. These circumstances may be adversely affected by the recently imposed international tariffs. If we are unable to obtain a sufficient supply of SSDs, volatile memory components, non-volatile memory components and/or other essential components, as a result of the global tariff environment, a natural disaster, political unrest, military conflict, labor disruptions, medical epidemics, climate change, economic instability, equipment failure or other cause, to avoid interruptions or failures in the delivery of our products as required by our customers or the delivery of these components to customers to whom we resell them directly, these customers may reduce future orders for these products or not purchase these products from us at all, which could cause our net product sales to decline and harm our operating results. In addition, our reputation could be harmed due to failures to meet our customers' demands and, even assuming we are successful in resolving supply chain disruptions, we may not be able to replace any lost business and we may lose market share to our competitors. Further, if our suppliers are unable to produce qualification samples of our products on a timely basis or at all, we could experience delays in the qualification process with existing or prospective customers, which could have a significant impact on our ability to sell our products. Moreover, if we are not able to obtain these components in the amounts needed on a timely basis and at commercially reasonable prices, we may not be able to develop or introduce new products, we may experience significant increases in our cost of sales if we are forced to procure components from alternative suppliers and are not able to negotiate favorable terms with these suppliers, or we may be forced to cease our sales of products dependent on the components or resales of the components we sell to customers directly.

Our dependence on a small number of suppliers and the components we resell expose us to several risks, including the inability to obtain an adequate supply of these components, increases in their costs, delivery delays and poor quality. Additionally, our customers qualify certain of the components provided by our suppliers for use in their systems. If one of our suppliers experiences quality control or other problems, it may be disqualified by one or more of our customers. This would disrupt our supplies of these components and would also reduce the number of suppliers available to us and may require that we qualify a new supplier, which we may not be able to do.

Declines in customer demand for our products in recent periods have caused us to reduce our purchases of SSDs, volatile memory components, and non-volatile memory components for use in our products. Such declines or other fluctuations could continue in the future. If we fail to maintain sufficient purchase levels with some suppliers, our ability to obtain supplies of these raw materials may be impaired due to the practice of some suppliers of allocating their products to customers with the highest regular demand.

Frequent technology changes and the introduction of next-generation versions of component products may also result in the obsolescence of our inventory on-hand, which could involve significant time and costs to

replace, reduce our net product sales and gross margin and adversely affect our operating performance and financial condition.

Our customers require that our products undergo a lengthy and expensive qualification process without any assurance of sales.

Our prospective customers generally test and evaluate our memory subsystems before purchasing our products and integrating them into their systems. This extensive qualification process involves rigorous reliability testing and evaluation of our products, which may continue for nine months or longer and is often subject to delays. In addition to qualification of specific products, some of our customers may also require us to undergo a technology qualification if our product designs incorporate innovative technologies that the customer may not have previously encountered. Such technology qualifications often take substantially longer than product qualifications and can take over a year to complete. Even after our products are qualified with existing or new customers, the customer may take several months to begin purchasing the product or may decide not to purchase the product at all, as qualification does not ensure product sales. As a result, we could receive no or limited revenues from a customer even after our investment of time and resources in the qualification process with this customer, which could adversely affect our operating results.

Even after successful qualification and sales of our products to a customer, because the qualification process is both product-specific and platform-specific, our existing customers sometimes require us to re-qualify our products or to qualify our new products for use in new platforms or applications. For example, as our OEM customers transition from prior generation architectures to current generation architectures, we must design and qualify new products for use by these customers. Our net product sales to these customers can decline significantly during this re-qualification process.

Likewise, changes in our products, our manufacturing facilities, our production processes or our component suppliers may require a new qualification process. For example, if our SSD, volatile memory component, and non-volatile memory component suppliers discontinue production of these products or components, it may be necessary for us to design and qualify new products for our customers. As a result, some customers may require us, or we may decide, to purchase an estimated quantity of discontinued memory components necessary to ensure a steady supply of existing products until products with new components can be qualified. Purchases of this nature may affect our liquidity. Additionally, our forecasts of quantities required during the transition may be incorrect, which could adversely impact our results of operations through lost revenue opportunities or charges related to excess and obsolete inventory.

We must devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with prospective customers in anticipation of sales. Significant delays or other difficulties in the qualification process could result in an inability to keep pace with rapid technology change or new competitive products. If we experience delays or do not succeed in qualifying a product with an existing or prospective customer, we would not be able to sell that product to that customer, which may result in excess and obsolete inventory that we may not be able to sell to another customer and could reduce our net product sales and customer base, any of which could materially harm our operating results and business.

If we are unable to timely and cost-effectively develop new or enhanced products that achieve customer and market acceptance or technologies we can monetize, our revenues and prospects could be materially harmed.

Our industry is characterized by rapid technological change, evolving industry standards and rapid product obsolescence. As a result, continuous development of new technology, processes and product innovations is necessary in order to be successful. For example, the emergence of new tools such as machine learning and AI that capitalize on the availability of large data sets is leading semiconductor manufacturers to pursue new products and approaches that exploit those tools to advance technology development. We believe the continued and timely development of new products and technologies and improvement of existing products and technologies are critical to our business and prospects for growth. In the face of uncertainty on which new

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technology solutions will become successful, we endeavor to focus our efforts on developing the technology changes that are ultimately successful in supporting our customers' requirements.

In order to continue to develop and introduce new or enhanced products and technologies, we need to:

- retain and continue to attract new engineers with expertise in memory subsystems and our other key technology competencies;
- identify and adjust to the changing requirements and preferences of our existing and potential future customers and markets;
- identify and adapt to emerging technological trends and evolving industry standards in our markets;
- continue to develop and enhance our design tools, manufacturing processes and other technologies on which we rely to produce new products or product enhancements;
- design and introduce cost-effective, innovative and performance-enhancing features that differentiate our products and technologies from those of our competitors;
- secure licenses as needed to enable us to use any technologies, processes or other rights needed for the manufacture or use of any new products or product enhancements we may develop, which licenses may not be available when needed, on acceptable terms or at all;
- maintain or develop new relationships with suppliers of components required for any new or enhanced products and technologies;
- qualify any new or enhanced products for use in our customers' products; and
- develop and maintain effective commercialization and marketing strategies.

We may not be successful at any of these activities. As a result, we may not be able to successfully develop new or enhanced products or technology or we may experience delays in this process. Our failure to develop and offer the correct technology solutions in a timely manner with productive and cost-effective products could adversely affect our business in a material way. Failures or delays in product development and introduction could result in the loss of, or delays in generating, net products sales or other revenues and the loss of key customer relationships. Even if we develop new or enhanced products or technologies, they may not meet our customers' requirements, gain market acceptance or attract monetization opportunities, as our product and technology development efforts are inherently risky due to the challenges of foreseeing changes or developments in technology, predicting changes in customer requirements or preferences or anticipating the adoption of new industry standards. Moreover, we have invested significant resources in our product and technology development efforts, which would be lost if we fail to generate revenues from these efforts. If any of these risks occur, our revenues, prospects and reputation could be materially adversely affected.

The use of artificial intelligence could adversely affect our business and operating results.

Certain of our products and technology utilize AI, including third-party generative AI models. Our business operations also utilize third-party platforms that leverage AI. The use of AI inherently carries a broad range of risks typical to emerging technologies, and requires an investment of resources in the development, integration, and procurement of the technology. These investments may be costly and could impact our operating results as we continue to incorporate AI into our products and services and leverage AI in our operations. The integration of these AI models within our products and services means that the performance of our products and services is, in part, reliant on third-party developers of the underlying AI models. Moreover, the pricing arrangements with third-party developers associated with integrating these AI models can result in large or unpredictable costs due to excess or non-standard customer usage, which we may not be able to pass through to our customers and which could adversely impact our business.

The AI tools we offer or use could also generate content that infringes upon or misappropriates third-party intellectual property rights. This risk is intensified by the current trend of entities seeking patents and other intellectual property protections in AI to gain a competitive edge. While we have made efforts to mitigate risk under our terms of service, our deployment and use of AI tools may still expose us to increased litigation risk

associated with intellectual property infringement claims. Further, the probabilistic nature of AI technologies can result in unwanted, inaccurate, or offensive outputs. In the event the AI tools we provide to customers do not perform reliably or in accordance with stated expectations, we may need to disable user access to such AI tools; similarly, if the AI tools that we use for internal business purposes do not perform in accordance with expectations, we may be forced to discontinue or restrict the use of such tools. Any mitigation efforts related to the foregoing may negatively affect our business and operations.

Additionally, government regulation related to AI may also increase the risks and costs in developing and leveraging AI tools in our products and services and to support our operations. For example, the EU recently approved the Artificial Intelligence Act, which requires that users of AI technology be made aware that they are interacting with AI or that they are facing an AI generated output. Continued legal and regulatory updates related to AI may occur quickly and could restrict or delay our ability to utilize AI, require significant cost and resources to support compliance, and harm our operating results.

We face intense competition in our industry, and we may not be able to compete successfully in our target markets.

Our products are primarily targeted to OEMs in the server, high-performance computing and communications markets. In addition, we resell certain component products to storage customers, appliance customers, system builders and cloud and datacenter customers. These markets are intensely competitive, as numerous companies vie for business opportunities at a limited number of large OEMs and other customers. We face competition from volatile memory component suppliers, memory module providers, and logic suppliers for many of our products. We also face competition from the manufacturers and distributors of the component products we resell to customers, as these manufacturers and distributors could decide at any time to sell these component products to these customers directly. Additionally, if and to the extent we enter new markets or pursue licensing arrangements to monetize our technologies and intellectual property portfolio, we may face competition from a large number of competitors that produce solutions utilizing similar or competing technologies.

Some of our customers and suppliers have proprietary products or technologies that are competitive with our products or the components we resell to them or could develop internal solutions or enter into strategic relationships with, or acquire, other high-density memory module or component providers. Any of these actions could reduce our customers' demand for our products or the component products we resell. Additionally, some of our significant suppliers could choose to sell component products to customers directly, which could materially and adversely affect our ability to resell these products or may choose to manufacture competitive memory subsystem products themselves or reduce our supply of essential components of our products, which could materially and adversely affect our ability to manufacture and sell our memory subsystems.

We believe our ability to compete in our current target markets and potential future markets will depend in part on our ability to successfully and timely develop, introduce and sell at attractive prices new and enhanced products or technologies and otherwise respond to changing market requirements, which we may not be able to do faster and better than our competitors. Moreover, many of our competitors have substantially greater financial, technical, marketing, distribution and other resources, broader product lines, lower cost structures, greater brand recognition, more influence on industry standards, more extensive or established patent portfolios and longer standing relationships with customers and suppliers. We may not be able to compete effectively against any of these organizations. If we are unable to compete effectively, then our market position and prospects could deteriorate and our revenues could decline.

In particular, semiconductor memory and storage markets are highly competitive which could materially and adversely affect our business, results of operations, or financial condition.

The semiconductor memory and storage markets, in particular, are generally highly competitive and companies may use aggressive pricing to obtain market share. Our suppliers may seek to increase wafer

output, improve yields, and reduce die size, which could result in significant increases in worldwide supply and downward pressure on prices. Increases in worldwide supply of semiconductor memory and storage also result from fabrication capacity expansions, either by way of new facilities, increased capacity utilization, or reallocation of other semiconductor production to semiconductor memory and storage production. Increases in worldwide supply of semiconductor memory and storage could lead to declines in average selling prices and a decrease in short-term and/or long-term demand resulting in industry oversupply and could materially adversely affect our business, results of operations, or financial condition.

Our operating results may be adversely impacted by worldwide economic and political uncertainties and specific conditions in the markets we address and in which we or our strategic partners or competitors do business, including the cyclical nature of and volatility in the memory market and semiconductor industry and the ongoing effects of recent changes to international trade and tariff policies.

Changes in domestic and global economic and political conditions, including the recently enacted changes in international tariff policies, make it difficult for our customers, our vendors and us to accurately forecast and plan future business activities, and these conditions have caused and could continue to cause United States and foreign businesses to slow or decrease spending on our products and the products we resell.

In addition, sales of our products and the products we resell are dependent on demand by customers in our target markets. These markets are characterized by wide fluctuations in product supply and demand and have been cyclical in the past, which may result in substantial period-to-period fluctuations in our operating results. In addition, these markets have in the past experienced significant downturns, often connected with or in anticipation of maturing product cycles, reductions in technology spending and declines in general economic conditions. During these downturns, product demand diminishes, production capacity exceeds demand, inventory levels increase and average sale prices decline, all of which would materially adversely impact our business and operating results. In addition, because many of our costs and operating expenses are relatively fixed, if we are unable to control our expenses adequately in response to reduced product demand and sales, our gross margin and cash flows would be negatively impacted. Further, such a downturn could decrease the perceived value of our intellectual property portfolio and reduce our ability to pursue our intellectual property monetization objectives.

During challenging economic times, our customers may face challenges gaining timely access to sufficient credit, which could impair their ability to make timely payments to us. This may negatively affect our liquidity and cash flows and require us to increase our allowance for doubtful accounts. Furthermore, our vendors may face similar issues gaining access to credit, which may limit their ability to supply components or provide trade credit to us. We are monitoring ongoing events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions or other companies in the financial services industry or the financial services industry generally. We are also monitoring the impacts that these events may have on our customers and vendors.

We cannot predict the timing, strength or duration of any economic slowdown or subsequent economic recovery, either generally or in our customer markets. If the economy or markets in which we operate experience such a slowdown, our business, financial condition and results of operations could be materially and adversely affected. The combination of our lengthy sales cycle coupled with any challenging macroeconomic conditions could compound the negative impact of any such downturn on the results of our operations.

Our lack of a significant backlog of unfilled orders and the difficulty inherent in estimating customer demand makes it difficult to forecast our short-term requirements, and any failure to optimally

calibrate our production capacity and inventory levels to meet customer demand could materially and adversely affect our revenues, gross margin and earnings.

We make significant decisions regarding the levels of business we will seek and accept, production schedules, component procurement, personnel needs and other resource requirements based on our estimates of customer demand. We do not have long-term agreements with any of our customers. Instead, our product sales are made primarily pursuant to stand-alone purchase orders that we often receive no more than two weeks in advance of the desired delivery date and that may be rescheduled or cancelled on relatively short notice. The short-term nature of the commitments by many of our customers and our customers' ability to cancel or defer purchase orders for any reason reduces our backlog of firm orders and our ability to accurately estimate future customer requirements for our products or the component products we resell. These facts, combined with the short turnaround times that apply to most orders, makes it difficult to predict our production and inventory needs and allocate production capacity and capital for inventory purchases effectively. As a result, we attempt to forecast the demand for the components needed to manufacture our products and to resell to customers directly, but any such forecasts could turn out to be wrong. Further, lead times for components vary significantly and depend on various factors, such as the specific supplier and the demand and supply for a component at any given time.

Our production expense and component purchase levels are to a large extent fixed in the short term. As a result, we may be unable to adjust spending on a timely basis to compensate for any unexpected shortfall in customer orders. If we overestimate customer demand, we may have excess component or finished goods inventory, which may not be able to be used in other products or resold and may become obsolete before any such use or resale. If there is a subsequent decline in the prices of components, the value of our inventory would fall and we may be required to write-down the value of our component inventory, which may result in a significant increase in our cost of sales and decrease in our gross margin. In the past, we have had to write-down inventory due to obsolescence, excess quantities and declines in market value below our costs. As a result, any significant shortfall of customer orders in relation to our expectations could hurt our operating results, cash flows and financial condition.

Conversely, any rapid increases in demand by our customers could strain our resources. If we underestimate customer demand, we may not have sufficient inventory of necessary components on hand to meet that demand and we may need to try to procure additional quantities, which may not be available or may only be available at high prices or on otherwise unfavorable terms. We also may not have sufficient manufacturing capacity at any given time to meet any demands for rapid increases in production of our memory subsystem products. Any shortages of inventory or manufacturing capacity could lead to delays in the delivery of products, which may force us to forego sales opportunities, reduce our net product sales and damage our customer relationships.

In addition, if our product demand forecasts are wrong, we may understate or overstate the provision required for excess and obsolete inventory. If our inventories are determined to be overvalued, we would be required to recognize additional expense in our cost of sales at the time of the determination. Conversely, if our inventories are determined to be undervalued, we may have over-reported our costs of sales in previous periods and would be required to recognize additional gross margin at the time the inventories are sold.

Declines in our average sale prices, driven by volatile prices for components and other factors, may result in material declines in our revenues and gross margin.

Our industry has historically been characterized by declines in average sale prices and we have at times experienced declines in average sale prices. If sale price declines are not offset by corresponding decreases in costs or increases in sales volume or sales of products with higher margins, these sale price declines could have a material adverse effect on our operating results.

The prices customers pay for the products we sell can fluctuate due to many factors, including, among others, competitive conditions in our key customer markets, international tariff policies, changes in customer

requirements or preferences, volatility in the market prices for SSDs, volatile memory components, non-volatile memory components, and other components or products, and changes in manufacturing efficiencies or capacities related to the aforementioned. Market prices for component products have historically constituted a substantial portion of the total cost of our memory subsystems and in recent periods have constituted the vast majority of the cost of resales of these products to customers directly. As a result, fluctuations in the prices for these component products, due to overcapacity in worldwide supply or increased manufacturing efficiencies, implementation of new manufacturing processes or expansion of manufacturing capacity by component suppliers, among other factors, significantly impact our costs to sell our products or component products.

Once our prices with a customer are negotiated, we are generally unable to revise pricing with that customer until our next regularly scheduled price adjustment. As a result, if market prices for essential components increase, we generally cannot pass the price increases through to our customers for products purchased under an existing purchase order. Consequently, we are exposed to the risks associated with the volatility of prices for these components and our cost of sales could increase and our gross margin could decrease in the event of sudden price increases. Alternatively, if there are declines in the prices of these components, we may be required to reduce our selling prices for subsequent purchase orders, which may result in a decline in our net product sales.

Our manufacturing operations involve significant risks.

We utilize third-party manufacturing facilities in the PRC, Taiwan and Korea where we produce our products. As we manufacture new and more complex products, the risk of encountering delays, difficulties or higher costs increases. In addition, the start-up costs associated with implementing new manufacturing technologies, methods and processes, including the purchase of new equipment and any resulting manufacturing delays and inefficiencies, could negatively impact our results of operations.

Additionally, we could experience prolonged disruption, material malfunction, interruption or other loss of operations at any manufacturing facility for any number of reasons, including the occurrence of a contagious disease or illness, international tariffs or trade wars, such as the recent tariffs between the United States and PRC, cyber-attacks, catastrophic weather events, labor disruptions, or conflicts or disagreements between the PRC and Taiwan or the PRC and the United States, or we may need to add manufacturing capacity to satisfy any increased demand for our products. Under these circumstances, our manufacturing costs may increase, decrease our gross margin, decrease our control over manufacturing processes, limit our ability to satisfy customer requirements and demand and delay new product development until we secure additional manufacturing capacity, which we may not be able to do in a timely manner, on acceptable terms or at all. We may also experience a decline in our gross margin and supply disruptions as a result of the recent international tariffs between the United States and China and this trend may continue. If any of these risks occur, our operations, performance and customer relationships could be severely harmed.

We also may need to expand our existing manufacturing capacity or establish additional capacity in the future. Any need to expand or replace our manufacturing capacity would be expensive and time-consuming and could also subject us to factory audits by our customers that could themselves result in delays, unexpected costs or customer losses if we cannot meet the standards of any such audits. Further, we may not be able to replace or increase our manufacturing capacity at all. The occurrence of any of these events could have a material adverse effect on our business, financial condition and results of operations.

We also depend on third parties to design and manufacture components for our products and the component products we resell, which exposes us to risks.

Components that are used in our products, as well as all of the component products we resell, are designed and manufactured by third parties. In addition, some of our memory subsystem products rely on significantly customized components. The ability and willingness of third parties to enter into these engagements with us and perform in accordance with these engagements is largely outside our control. If one or more of our design

or manufacturing partners experiences a manufacturing disruption for any number of factors including labor disruptions, catastrophic weather events, political instability, acts of terror or war, and military hostilities in multiple geographies (including the ongoing conflicts in Ukraine as well as Israel and Palestine), and the occurrence of a contagious disease or illness, fails to dedicate adequate resources to the production of the components we use in our products or the components we resell, experiences financial instability or otherwise fails to perform its obligations to us in a timely manner or at satisfactory quality levels, our ability to bring products to market or deliver products to our customers, as well as our reputation, could suffer and our business and prospects could be materially harmed. In the event of any failure by our component manufacturers, we may have no readily available alternative source of supply for these components, since, in our experience, the lead time needed to establish a relationship with a new design or manufacturing partner is substantial, and the time for our OEM customers to re-qualify our products with components from a new vendor is also significant. Additionally, even if an alternative manufacturer is available, we may not be able to engage the manufacturer on acceptable terms, which could result in increased costs, timing requirements or other adverse changes. Further, we may not be able to redesign the customized components used in our products to be manufactured by a new manufacturer, in which case we could infringe on the intellectual property of our current design or manufacturing partner when we manufacture the products with a new design or manufacturing partner. Such an occurrence could force us to stop selling certain of our products or could expose us to lawsuits, license payments or other liabilities.

Our dependence on third-party manufacturers exposes us to many other risks, including, among others: reduced control over delivery schedules, quality, manufacturing yields and costs; the potential lack of adequate capacity during periods of excess demand; limited warranties on products supplied to us; and potential infringement or misappropriation of our intellectual property or the intellectual property of others. We are dependent on our manufacturing partners to manufacture components with acceptable quality and manufacturing yields, to deliver these components to us on a timely basis and at an acceptable cost and to allocate a portion of their manufacturing capacity sufficient to meet our needs. However, these component manufacturers may not be able to achieve these tasks. Additionally, our manufacturing partners may not continue to devote adequate resources to produce our products or the component products we resell or continue to advance the process design technologies on which the customer qualifications of our products are based. Any of these risks could limit our ability to meet customer demand and materially adversely affect our business and operating results.

If our products or the component products we resell do not meet quality standards or are defective or used in defective systems, we may be subject to quality holds, warranty claims, recalls or liability claims.

Our customers require our products and the component products we resell to meet strict quality standards. If the products fail to meet these standards, our customers may discontinue purchases from us until we are able to resolve the quality issues that are causing these failures, which we may not be able to do. These “quality holds” can be costly and time-consuming to resolve. In addition, if the products we sell are defectively manufactured, contain defective components or are used in defective or malfunctioning systems, we could be subject to warranty and product liability claims, product recalls, safety alerts or advisory notices.

Although we generally attempt to contractually limit our exposure to incidental and consequential damages, if these contract provisions are not enforced or if liabilities arise that are not effectively limited, we could incur substantial costs in defending or settling product liability claims. While we currently have product liability insurance, it may not provide coverage under certain circumstances, and it may not be adequate to satisfy claims made against us. We also may be unable to maintain insurance in the future at satisfactory rates or in adequate amounts.

Warranty and product liability claims, product “quality holds,” product recalls, safety alerts or advisory notices, regardless of their coverage by insurance or their ultimate outcome, could have a material adverse effect on our business, performance and financial condition, as well as our ability to attract and retain customers.

Our indemnification obligations, including our indemnification obligations for the infringement by our products of the rights of others, could require us to pay substantial damages.

As is common in our industry, we have a number of agreements in which we have agreed to defend, indemnify and hold harmless our customers and suppliers from damages and costs that may arise from the infringement by our products of third-party patents, trademarks or other proprietary rights, claims based on our negligence or willful misconduct and indemnities involving the accuracy of representations and warranties. We also have indemnification obligations (i) to our directors and officers to the maximum extent permitted under the laws of the State of Delaware, (ii) pertaining to obligations, demands, claims, relating to liabilities claimed or asserted by other parties in connection with transactions contemplated by applicable investment or loan documents, and (iii) arising from other claims related to certain real estate leases, under which we may be required to indemnify property owners for environmental and other liabilities or may face other claims arising from our use of the applicable premises. The scope of these indemnities varies, the duration of these indemnities is often perpetual after execution of an agreement, and the maximum potential amount of future payments we could be required to make under these indemnities is often unlimited. Any indemnification claims could require us to incur significant legal fees and could potentially result in our payment of substantial damages, and our insurance, depending on the circumstances or claims, generally would not or may not cover these fees or damages. As a result, the occurrence of any of these circumstances could have a material adverse effect on our business and results of operations.

We depend on certain key employees, and our business could be harmed if we lose the services of any of these employees or are unable to attract and retain other qualified personnel.

To date, we have been highly dependent on the experience, relationships and technical knowledge of certain key employees. We believe our future success will be dependent on our ability to retain the services of these key employees, develop their successors and properly manage the transition of their roles should departures occur. The loss of these key employees or their inability to continue to provide their services could delay the development and introduction of new or enhanced products or technologies, negatively impact our ability to sell our existing products, limit our ability to pursue our other business goals and strategies and otherwise harm our business. We do not have employment agreements with any of our employees other than Chun K. Hong, our President, Chief Executive Officer and a member of our board of directors, and as a result, most of our employees may terminate their employment with us at any time.

Our future success also depends on our ability to attract, retain and motivate highly skilled engineering, manufacturing and other technical and sales personnel. Competition for these personnel is intense. We may not be successful in attracting new engineers or other technical personnel or in retaining or motivating our existing personnel. If we are unable to hire and retain personnel with the skills necessary to keep pace with the evolving technologies in our markets, our ability to continue to provide our existing products and to develop new or enhanced products and technologies would be negatively impacted, which could harm our business. In addition, a general shortage of experienced engineers or other technical personnel could lead to increased recruiting, relocation and compensation costs to attract new recruits, which may increase our operating expenses or make these hires more difficult or impossible if increased recruiting costs exceed our resources.

A significant portion of our workforce consists of contract personnel. We invest considerable time and expense to train these contract personnel; however, they typically may terminate their relationships with us at any time. As a result, we may experience high turnover rates in this contract personnel workforce, which may require us to expend additional resources to attract, train and retain replacements. Additionally, if we convert any of these contract personnel to permanent employees, we may have to pay finder’s fees to the contract agency. These risks associated with our contract personnel workforce may involve increased costs or delays or failures in meeting customer requirements or developing new or enhanced products or technologies, any of which could materially adversely affect our business and operating performance.

We are also subject to employment laws and regulations, including the changing regulatory landscape. For example, in California, State Assembly Bill 5 ("AB5"), which went into effect in January 2020, codifies a test to determine whether a worker is an employee under California law. AB5 provides a mechanism for determining whether workers of a hiring entity are employees or independent contractors, but AB5 does not result in any immediate change in how workers are classified. If the State of California, cities or municipalities, or workers disagree with how a hiring entity classifies workers, AB5 sets forth the test for evaluating their classification. The legal and other costs associated with any misclassification of our personnel can be substantial and could materially adversely affect our results of operations and financial condition.

We rely on our internal and third-party sales representatives to market and sell our products and the component products we resell, and any failure by these representatives to perform as expected could reduce our sales.

We primarily market and sell our products and the component products we resell through a direct sales force and a network of independent sales representatives. We have expended significant resources to build our internal sales and marketing function, but compared to many of our competitors, we have relatively little experience creating a sales and marketing platform and developing a team to implement it. We may be unsuccessful in these efforts.

Our sales representatives generally may terminate their relationships with us at any time. As a result, our performance depends in part on our ability to retain existing and attract additional sales representatives that will be able to effectively market and support our products or the component products we resell, especially in markets in which we have not previously distributed these products. Our efforts to attract, train and retain these sales representatives to be knowledgeable about our industry, products and technologies are costly and time-consuming. If these efforts fail, our investments in these sales representatives may not produce the expected or any benefits and our ability to market and sell our products or the component products we resell may be limited, which could materially harm our financial condition and operating results. Further, our reliance on independent sales representatives subjects us to risks, as we have very little control over their activities and they are generally free to market and sell other, potentially competing, products. As a result, these independent sales representatives could devote insufficient time or resources to marketing our products or the component products we resell, could market them in an ineffective manner or could otherwise be unsuccessful in selling adequate quantities of these products.

Our operations could be disrupted by power outages, natural disasters, cyber-attacks or other factors.

Due to our small number of suppliers, including SK hynix for many of the components and/or products we resell, a disruption resulting from equipment or power failures, quality control issues, human errors, government intervention, cyber-attacks, geopolitical changes or natural disasters, including earthquakes and floods, could require significant costs to repair and could interrupt or interfere with product manufacture and sale and cause significant delays in product shipments, which could harm our customer relationships, financial condition and results of operations. In the past, our prior PRC manufacturing facility suffered water damage as a result of heavy rains and floods, which forced us to temporarily halt manufacturing at the facility while necessary repairs or equipment replacements were made. This incident caused us to incur additional expenses because we were forced to shift our manufacturing activities to a third-party facility in the PRC to mitigate the disruption in product shipments to our customers. If manufacturing at any of our or our partners' or suppliers' facility is disrupted for similar or other reasons in the future, we may again be subject to increased expenses in order to secure alternative manufacturing capabilities, our ability to sell products and our relationships with our customers could be materially harmed. Additionally, we may be forced to bear significant costs in order to repair any damage to our manufacturing equipment and facility. Any of these outcomes could have a material adverse effect on our business and results of operations.

Difficulties with our global information technology systems, including any unauthorized access or cyber-attacks, could materially and adversely harm our business.

We store key data about our business, including certain customer data, information about our and our customers' intellectual property and other proprietary information, on our global information technology systems. Any material failure or malfunctioning of our global information technology systems, errors or misuse by system users, cyber-attacks, difficulties migrating stand-alone systems to our centralized systems or inadequacy of the systems in addressing the needs of our operations could disrupt our ability to timely and accurately manufacture and ship products, divert management's and key employees' attention from other business matters and involve significant costs and other resources to repair or otherwise resolve, any of which could have a material adverse effect on our business, financial condition and results of operations. Any such event could also materially disrupt our ability to timely and accurately process, report and evaluate key operating metrics and key components of our results of operations, financial position and cash flows and could adversely affect our ability to complete other important business processes, such as maintenance of our disclosure controls and procedures and internal control over financial reporting.

While our information technology systems include security measures designed to prevent unauthorized access, employee error, employee malfeasance, or other causes including intentional misconduct by computer hackers, could circumvent these measures and result in unauthorized access to these systems in a manner that materially and adversely affects our operations. Because the techniques used to gain unauthorized access to information technology systems evolve frequently and often are not recognized until successful, we may be unable to anticipate these techniques or implement adequate preventative measures in a timely manner. The growth of AI capabilities may also lead to new or more sophisticated methods of attack that are not anticipated. Any security breach could require significant resources to correct, if correction is possible, and could result in a material disruption to our business, misappropriation or loss of data, loss of confidence in us by our customers, damage to our reputation, and legal liability. Further, any failure to implement appropriate security measures to protect our information or any breach or other failure of our systems that results in unauthorized access, manipulation, disclosure or loss of this information could result in our violation of any U.S. or foreign data protection laws that are applicable to us, including the California Consumer Privacy Act ("CCPA") which went into effect in January 2020. Further, the California Privacy Rights Act ("CPRA"), which became effective in 2023 and amends the CCPA, creates additional obligations with respect to processing and storing personal information, as well as establishes a new regulatory authority to enforce the CCPA and CPRA which is in the process of drafting and implementing new regulations. Unlike other state privacy laws, the CCPA also regulates personal information collected in business to business and in human resources contexts which impacts our business operations. These laws, the regulations, and their interpretation and application are constantly evolving, and they could be interpreted and applied in a manner that is inconsistent with our current practices or they could become more stringent over time. Efforts to comply with applicable data protection laws or any new interpretations of their application could involve significant time and substantial costs or require us to change our business practices and compliance procedures, and any failures to so comply could subject us to substantial civil or criminal fines or sanctions. Any of these outcomes could have a material negative impact on our business, performance and prospects.

Our operations in the PRC could also be subject to recent significant developments concerning privacy and data security. The Data Security Law of the PRC ("Data Security Law"), which took effect on September 1, 2021, requires data processing (which includes the collection, storage, use, processing, transmission, provision and publication of data), to be conducted in a legitimate and proper manner. The Data Security Law imposes data security and privacy obligations on entities and individuals carrying out data processing activities and also introduces a data classification and hierarchical protection system based on the importance of data in economic and social development and the degree of harm it may cause to national security, public interests, or legitimate rights and interests of individuals or organizations if such data are tampered with, destroyed, leaked, illegally acquired or illegally used. The appropriate level of protection measures is required to be taken for each respective category of data. Also in the PRC, the Personal Information Protection Law, which took effect on November 1, 2023, introduced stringent protection measures for processing personal information. We may be required to make further adjustments to our business practices to comply with the

Samsung Ex. 1116, p. 72
Samsung Electronics Co., Ltd. v. Netlist, Inc., IPR2026-00018

data security and data protection laws in the PRC, and such regulations may interfere with intended business activities, or cause us to incur additional costs. Further, the Department of Justice's Data Transfer Rule took full effect as of October 6, 2025 and it prohibits or restricts the flow of bulk sensitive U.S. personal data to "countries of concern" and "covered persons" to protect national security. It mandates U.S. companies to take proactive steps, such as data mapping, partner vetting and due diligence, and the implementation of robust compliance programs to detect, control, and document such data flows. In addition to other countries, the Bulk Transfer Rule includes China as a country of concern and may have impact on our business activities, or cause us to incur additional costs associated with compliance.

If we do not effectively manage any future growth we may experience, our resources, systems and controls may be strained and our results of operations may suffer.

Any future growth we may experience could strain our resources, management, information and telecommunication systems and operating and financial controls. To manage future growth effectively, we must be able to improve and expand our systems and controls, which we may not be able to do in a timely or cost-effective manner. In addition, our management team has relatively limited experience managing a rapidly growing business. As a result, they may not be able to manage any future growth we may experience. A failure to manage any growth we may experience or improve or expand our existing systems and controls and to grow and scale our manufacturing capabilities, or unexpected difficulties in doing so, could harm our business and results of operations.

If we acquire businesses or technologies or pursue other strategic transactions or relationships in the future, these transactions could disrupt our business and harm our operating results and financial condition.

From time to time, we evaluate opportunities to acquire businesses or technologies or pursue other strategic transactions or relationships, including collaboration or joint development arrangements, which might complement our current product offerings or enhance our intellectual property portfolio or technical capabilities.

Acquisitions and other strategic transactions or relationships entail a number of risks that could adversely affect our business and operating results, including, among others:

- difficulties integrating the operations, technologies or products of acquired companies or working with third parties with which we may partner on joint development or collaboration relationships;
- the diversion of management's time and attention from the daily operations of our business;
- insufficient increases in revenues to offset increased expenses associated with an acquisition or strategic transaction or relationship;
- difficulties retaining business relationships with our existing suppliers and customers or the suppliers and customers of an acquired company;
- overestimation of potential synergies or other benefits, or a delay in realizing these synergies or other benefits;
- entering markets in which we have no or limited experience and in which competitors have stronger market positions;
- the potential loss of our key employees or those of an acquired company;
- exposure to contingent liabilities of an acquired company;
- depletion of cash resources to fund an acquisition or other strategic transaction or establish a strategic relationship, or dilution of existing stockholders or increased leverage relative to our earnings or to our equity capitalization if we issue debt or equity securities for these purposes;
- adverse tax consequences; and
- incurrence of material charges, such as depreciation, deferred compensation charges, in-process research and development charges, the amortization of amounts related to deferred stock-based compensation expense and identifiable purchased intangible assets or impairment of goodwill.

If any of these risks occur, we may not be able to realize the intended benefits of an acquisition or strategic transaction or relationship, and our operating results, financial condition and business prospects could be materially negatively affected.

Increased prices and inflation or the effects of changes in international trade policies and the changing tariff environment could negatively impact our margin performance and our financial results.

Increased inflation, including rising prices for raw materials, parts and components, freight, packaging, labor and energy increases, the costs to manufacture and distribute our products, and we may be unable/are not always able to fully to pass these costs on to our customers. Additionally, we are exposed to fluctuations in other costs such as packaging, freight, labor and energy prices. We may experience inflation in connection with the newly enacted and proposed international tariffs. If inflation in these costs increases beyond our ability to control for them through measures such as implementing operating efficiencies, we may not be able to increase prices to sufficiently offset the effect of various cost increases without negatively impacting customer demand, thereby negatively impacting our margin performance and results of operations.

Geopolitical risks associated with the ongoing conflicts between Russia and Ukraine and Israel and Palestine continue to contribute to heightened market volatility and uncertainty, which could negatively impact our business, financial condition, and results of operations.

The uncertain nature, scope, magnitude, and duration of hostilities stemming from the conflict between Ukraine and Russia- including the potential effects of such hostilities as well as sanctions, embargoes, asset freezes, cyber-attacks and other actions taken in response to such hostilities on the world economy and markets- along with the ongoing conflict between Israel and Palestine have disrupted global markets and contributed to increased market volatility and uncertainty. These developments could have an adverse impact on macroeconomic and other factors that affect our business and supply chain. Any disruption in our supply chain could reduce our revenue and adversely impact our financial results. Such a disruption could occur as a result of any number of events, including, but not limited to, military conflicts, geopolitical developments, war or terrorism, including the ongoing conflicts between Russia and Ukraine and Israel and Palestine, regional or global pandemics, and disruptions in utility and other services. Any inability to obtain adequate deliveries or any other circumstance that would require us to seek alternative sources of supply or to manufacture, assemble, and test such components internally could significantly delay our ability to ship our products, which could damage relationships with current and prospective customers and could harm our reputation and brand and could adversely affect our business, financial condition, and results of operations.

In February 2022, in response to the military conflict between Russia and Ukraine, the United States and other North Atlantic Treaty Organization member states, as well as non-member states, announced targeted economic sanctions on Russia, including certain Russian citizens and enterprises. The continuation and potential escalation of this conflict may trigger additional economic and other sanctions. The potential impacts of the conflict and related sanctions could include disruptions to supply chain and logistics, macro financial impacts resulting from the exclusion of Russian financial institutions from the global banking system, volatility in foreign exchange rates and interest rates, inflationary pressures on raw materials and energy, and heightened cybersecurity threats.

In addition, the ongoing conflict between Israel and Palestine, which has expanded into a broader regional crisis involving multiple state and non-state actors, presents additional geopolitical risks. This conflict could destabilize key global trade routes, increase energy prices, further strain international relations, and contribute to inflationary and security pressures.

We do not and cannot know if either or both of these conflicts will further escalate, nor can we predict the resulting global economic, political or security consequences. These could include additional sanctions, embargoes, regional instability, geopolitical shifts and adverse effects on macroeconomic conditions, the

availability and cost of materials, supplies, labor, currency exchange rates and financial markets. Any of these developments could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Laws and Regulations

We are exposed to additional business, regulatory, political, operational, financial and economic risks related to our international sales and operations. In particular, a significant portion of our sales are to customers located in the PRC. Sales to these customers may be adversely affected as a result of international trade policies or the tariff environment between the United States and the PRC.

We sell products to foreign corporations and deliver products to facilities located in foreign countries. To facilitate this process and to meet the long-term projected demand for our products, we utilize manufacturing facilities in the PRC, Taiwan and Korea where our contracted third parties, produce our products.

Selling and manufacturing in foreign countries subjects us to additional risks not present with our domestic operations, as we are operating in business and regulatory environments in which we have limited experience and that may impose materially different requirements. Further, the geographic distance from our headquarters in Irvine, California, compounds the difficulties of maintaining or supervising a manufacturing operation in the PRC, Taiwan and Korea. For instance, we may not be able to maintain the desired amount of control over production capacity and timing, inventory levels, product quality, delivery schedules, manufacturing yields or costs. Moreover, we will need to continue to overcome language and cultural barriers to effectively conduct these international operations. Failures in any of these areas could result in legal consequences or production delays and increased turnaround times, which could adversely affect our business. In addition, changes to the labor or other laws of the PRC, Taiwan and Korea or the economic and political conditions in the PRC, Taiwan and Korea, including recent heightened tensions between the PRC and Taiwan, increased industrialization in recent years, natural disasters, public health crises, including the occurrence of a contagious disease or illness, and other catastrophic events, could increase the costs of employing a local workforce or conducting our manufacturing facilities in the PRC, Taiwan and Korea. Any of these factors could negatively impact any cost savings we experience from locating our manufacturing facilities in the PRC, Taiwan and Korea. For example, in December 2021, the United States adopted the Uyghur Forced Labor Prevention Act ("UFLPA") which creates a rebuttable presumption that any goods, wares, articles, and merchandise mined, produced, or manufactured in whole or in part in the Xinjiang Uyghur Administrative Region of the PRC or that are produced by certain entities are prohibited from importation into the United States. These import restrictions came into effect on June 21, 2022. While we are not presently aware of any direct impacts of these restrictions on our supply chain, the UFLPA may have an adverse effect on global supply chains which could adversely impact our business and results of operations.

In addition, under its current leadership, the government of the PRC has been pursuing economic reform policies, including by encouraging foreign trade and investment. However, there is no assurance that the PRC government will continue to pursue such policies, that such policies will be successfully implemented, that such policies will not be significantly altered, or that such policies will be beneficial to our activities in the PRC. A large part of the PRC's economy is still being operated under varying degrees of control by the PRC government. By imposing industrial policies and other economic measures, such as control of foreign exchange, taxation, import and export tariffs, environmental regulations, land use rights, intellectual property and restrictions on foreign participation in the domestic market of various industries, the PRC government exerts considerable direct and indirect influence on the development of the PRC economy. Many of the economic reforms carried out by the PRC government are unprecedented or experimental and could change further. The PRC's system of laws can be unpredictable, especially with respect to foreign investment and foreign trade. The U.S. government has called for substantial changes to foreign trade policy with PRC and has raised, and has proposed to further raise in the future, tariffs on several PRC goods. The PRC has retaliated with increased tariffs on U.S. goods. Some of these additional tariffs have been implemented and others have been conditionally paused, and it is reasonably possible that new or additional tariffs will be periodically announced given the current global trade environment. A significant portion of our sales are to

customers located in the PRC. Depending upon their implementation and duration of these tariffs, as well as our ability to mitigate their impact, these tariffs and any other future regulatory actions implemented on a broader range of products or raw materials could materially affect our business, including in the form of increased cost of goods sold, decreased margins, increased pricing for customers and consumers, reduced sales of our products, and disruptions in our supply chain. The volatility and unpredictability of international trade policies and conditions add further complexity to our operations, making it challenging to forecast and plan effectively. We are not able to predict future trade policy of the United States (including any potential changes in U.S. trade policy if there is a change in administration) or of any foreign countries in which we operate or purchase goods, or the terms of any trade agreements or their impact on our business. The adoption and expansion of trade restrictions and tariffs, quotas and embargoes, the occurrence or threat of a trade war or other governmental action related to tariffs or trade agreements or policies, has the potential to adversely impact demand for our products, our costs, our customers, our suppliers and the world and U.S. economies, which in turn could have a material adverse effect on our business, operating results and financial condition.

Moreover, the PRC's legislature has adopted a national security law to substantially change the way Hong Kong has been governed since the territory was handed over by the United Kingdom to the PRC in 1997. This law increases the power of the central government in Beijing over Hong Kong, limits the civil liberties of residents of Hong Kong and could restrict the ability of businesses in Hong Kong to continue to conduct business or to continue to with business as previously conducted. The U.S. State Department has indicated that the United States no longer considers Hong Kong to have significant autonomy from the PRC. The U.S. State Department has enacted sanctions related to the PRC's governing of Hong Kong. Any further changes in U.S. trade policy could trigger retaliatory actions by affected countries, including the PRC, resulting in trade wars. Any regulatory changes and changes in United States and China relations may have a material adverse effect on our activities in the PRC, which could materially harm our business and financial condition.

These matters will likely continue to develop and change. In particular, we may be exposed to risks related to changes in trade relations, tariffs, export controls, and other regulatory restrictions that may be imposed on U.S. companies with operations in the PRC. Notably, the U.S. government has recently implemented significant tariff increases on imports from the PRC. If maintained and if extended to other countries, tariffs and the potential escalation of trade disputes with PRC and other countries could pose a significant risk to our operations and could result in higher operating expenses and lower gross margins. The extent and duration of any tariffs and the resulting impact on general economic conditions and on our business are uncertain and depend on various factors, such as negotiations between the United States and the PRC and/or other countries, the response of such countries and possible exemptions or exclusions that may be granted or other countries targeted with tariffs.

Additionally, the escalating trade conflicts between the United States and its trading partners, including PRC, could also cause/has caused the costs of components to increase or fluctuate, which could materially harm our business/has negatively affected our results of operations. Those conflicts could also interfere with the ability of our customers to make and sell products to their customers, which could reduce demand for the products we sell and therefore adversely affect our business and operating results. Moreover, economic uncertainty arising from rapidly changing trade policies may lead to a global economic slowdown that could increase costs of our products and/or reduce demand for our products.

Further, there are uncertainties regarding the interpretation and application of PRC, Taiwan and Korea laws, rules, and regulations, including, but not limited to, the laws, rules and regulations governing our third-party suppliers' manufacturing facilities in the PRC, Taiwan and Korea. Because many laws and regulations are relatively new, the interpretations of many laws, regulations and rules are not always uniform. Moreover, the interpretation of statutes and regulations may be subject to government policies reflecting domestic political agendas. Enforcement of existing laws or contracts based on existing law may be uncertain and sporadic. We cannot assure you that the PRC, Taiwan and Korea regulatory authorities will not determine that our third-party suppliers' manufacturing facilities in PRC, Taiwan and Korea do not violate the local laws, rules or regulations. The PRC, Taiwan and Korea have broad discretion in dealing with violations of laws and

regulations, including levying fines, revoking business and other licenses and requiring actions necessary for compliance. In particular, licenses and permits issued or granted by relevant governmental agencies may be revoked at a later time by other regulatory agencies. We cannot predict the effect of the interpretation of existing or new PRC, Taiwan and Korea laws or regulations on our business. Any of these or similar actions could significantly disrupt our operations or restrict us from conducting a substantial portion of our operations, which could materially and adversely affect our business, financial condition and results of operations.

To date, the majority of our net product sales have been denominated in U.S. dollars. In the future, however, some of our net product sales may be denominated in Chinese Renminbi ("RMB"). The PRC government controls the procedures by which RMB is converted into other currencies, which generally requires government consent. As a result, RMB may not be freely convertible into other currencies at all times. If the PRC government institutes changes in currency conversion procedures or imposes additional restrictions on currency conversion, our operations and our operating results could be negatively impacted. In addition, PRC law imposes restrictions on the movement of funds outside of the PRC. If we need or decide to repatriate funds from our PRC operations, we would be required to comply with the procedures and regulations of applicable PRC law, and any failure to so comply could adversely affect our liquidity and financial condition. Further, if we are able to repatriate funds from our PRC operations, these funds would be subject to U.S. taxes. In addition, fluctuations in the exchange rate between RMB and U.S. dollars may adversely affect our expenses, the value of our assets and liabilities and the comparability of our period-to-period results.

Our international operations and sales are subject to a number of additional risks, including, among others, timing and availability of export licenses; difficulties in accounts receivable collections; difficulties managing distributors; lack of a significant local sales presence in a number of markets; difficulties obtaining government approvals; compliance with anti-bribery, data protection and other applicable U.S. and foreign laws, including the U.S. Foreign Corrupt Practices Act and similar anti-bribery laws in the non-U.S. jurisdictions in which we operate, as well as a wide variety of other complex foreign laws, regulations and treaties; and potentially adverse tax consequences. In addition, the United States or foreign countries may implement quotas, duties, tariffs, taxes or other charges or restrictions on the importation or exportation of our products or the component products we resell, which could lead to a reduction in sales and profitability in that country. The United States is in the process of designing and imposing tariffs on international commerce, the ultimate scope of these tariffs is somewhat uncertain. The implementation of tariffs, or additional tariffs, by the United States on goods manufactured in other countries, including PRC, could cause the costs of our products to increase, which could significantly impair the gross margin we receive and thereby harm our operating results significantly.

In addition, international turmoil and the threat of future terrorist attacks have contributed to an uncertain political and economic climate, both in the United States and globally, and have negatively impacted the worldwide economy. The economies of the PRC and other countries in which we make sales have been volatile in recent years, resulting in significant fluctuations in local currencies and other instabilities. These conditions could continue or worsen, which could adversely affect our foreign operations and our performance. The occurrence of any of these risks related to our international operations, including our international sales, could have a material adverse effect on our business, financial condition and prospects for growth.

Our failure to comply with environmental and other applicable laws and regulations could subject us to significant fines and liabilities or cause us to incur significant costs.

We are subject to various and frequently changing U.S. federal, state and local and foreign laws and regulations relating to the protection of the environment, including laws governing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes and the clean-up of contaminated sites. In particular, some of our manufacturing processes may require us to handle and dispose of hazardous materials from time to time. For example, in the past our manufacturing operations have used lead-based solder in the assembly of our products. Today, we use lead-free soldering technologies in our manufacturing processes, as this is required for products entering the European Union. We could incur

substantial costs, including clean-up costs, civil or criminal fines or sanctions and third-party claims for property damage or personal injury, as a result of violations of or noncompliance with these and other environmental laws and regulations. Although we have not incurred significant costs to date to comply with these laws and regulations, new laws or changes to current laws and regulations to make them more stringent could require us to incur significant costs to remain in compliance.

We also may be subject to a variety of laws and regulations relating to other matters, including workplace health and safety, labor and employment, foreign business practices (including the U.S. Foreign Corrupt Practices Act and applicable foreign anti-bribery laws), data protection, public reporting and taxation, among others. It is difficult and costly to manage the requirements of every authority having jurisdiction over our various activities and to comply with their varying standards. Additionally, any changes to existing regulations or adoption of new regulations may result in significant additional expense to us or our customers. Further, our failure to comply with any applicable laws and regulations may result in a variety of administrative, civil and criminal enforcement measures, including monetary penalties or imposition of sanctions or other corrective requirements, any of which could materially adversely affect our reputation and our business.

Regulations related to "conflict minerals" may cause us to incur additional expenses and could limit the supply and increase the cost of certain metals used in manufacturing our products.

The U.S. Congress has enacted laws, and the SEC has adopted rules, requiring disclosure of specified minerals, known as conflict minerals, that are necessary to the functionality or production of products manufactured or contracted to be manufactured by public companies. These laws and rules require companies to verify and disclose whether or not such minerals, as used in a company's products or their manufacture, originate from the Democratic Republic of Congo or an adjoining country. Because our products contain certain conflict minerals and we or our manufacturers use these conflict minerals in the manufacture of our products, we are required to comply with these laws and disclosure rules. To comply, we are required to conduct a reasonable country of origin inquiry each year and, depending on the results of that inquiry, we may be required to exercise due diligence on the source and chain of custody of conflict minerals contained in or used to manufacture our products. Such due diligence must conform to a nationally or internationally recognized due diligence framework. We are also required to file a disclosure report with the SEC each year relating to our conflict mineral use.

The due diligence activities required to determine the source and chain of custody of minerals contained in our products or used in their manufacture are time-consuming and may result in significant costs. Due to the size and complexity of our supply chain, we face significant challenges verifying the origins of the minerals used in our products or their manufacture. Further, these rules could affect the availability in sufficient quantities and at competitive prices of certain minerals used in our products and their manufacture, which could result in increased material and component costs and additional costs associated with potential changes to our products, processes or sources of supply. Additionally, if we are unable to sufficiently verify the origin of the minerals used in our products through the due diligence measures we implement, we may not be able to satisfy customer preferences or requirements regarding the use of conflict minerals in the products they purchase, which could place us at a competitive disadvantage.

We have identified a material weakness in our internal control over financial reporting. While we have taken steps to remediate this material weakness, if we are unable to remediate the material weakness, or if we identify additional material weaknesses in the future or otherwise fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial condition or results of operations, which may adversely affect our business.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim consolidated financial statements will not be prevented or detected on a timely basis. As of September 27, 2025, our management concluded there was a material weakness in our internal controls due to the lack of an independent board and audit committee until the recent board appointments and audit committee's

reformation in June 2025. As a result of these circumstances and the related lack of independent committee oversight of the financial reporting process, our principal executive officer and our principal financial officer concluded that our internal control over financial reporting was not effective as of September 27, 2025 based on the criteria set forth by COSO.

In June 2025, we formed an Audit Committee and appointed two additional independent members of our Board of Directors. This Audit Committee now assists in evaluating our system of internal controls and provides oversight of our financial reporting process. Despite the reformation of our Audit Committee and these recent appointments, the material weakness discussed above cannot be considered remediated until these controls operate for a sufficient period and management has concluded, through testing, that our internal controls are operating effectively. We can give no assurance that the measures we have taken and plan to take in the future will remediate the material weakness identified or that any additional material weaknesses will not arise in the future due to a failure to implement and maintain adequate internal control over financial reporting.

Risks Related to Intellectual Property and Litigation

We may be unsuccessful in monetizing our intellectual property portfolio.

We dedicate substantial resources to developing technology innovations we believe are critical to our business. We intend to pursue monetization avenues for our intellectual property portfolio, potentially including licensing, royalty or other revenue-producing arrangements. However, other than monies received from SK hynix, we have not generated any such revenue stream from our intellectual property to date, and we may never be successful in achieving this objective.

Although we may pursue agreements with third parties to commercially license certain of our products and/or technologies, we may never successfully enter into any such agreement. Further, the terms of any such agreements we may reach with third parties are uncertain and may not provide sufficient royalty or other revenues to us to justify our costs of developing and maintaining the related intellectual property or may otherwise include terms that are not favorable to us. Additionally, the pursuit of licensing arrangements would require by its nature that we relinquish certain of our rights to our technologies and intellectual property that we license to third parties, which could limit our ability to base our own products on such technologies or could reduce the economic value we receive from such technologies and intellectual property. Additionally, the establishment of arrangements to monetize our intellectual property may be more difficult or costly than expected, may require additional personnel and investments and may be a significant distraction for management.

Our ability to establish licensing, royalty, or similar revenues, and maintain or increase any such revenues we are able to establish, depends on a variety of factors, including, among others, the novelty, utility, performance, quality, breadth, depth and overall perceived value of our intellectual property portfolio, all as compared to that of our competitors, as well as our sales and marketing capabilities. Even if we are able to secure these revenues, they may be negatively affected by factors that are entirely or partially outside our control, including reductions in our customers' sales prices, sales volumes and the general state of their business, as well as the terms of the license arrangements.

We maintain a system of controls over our intellectual property, including U.S. and foreign patents, trademarks, copyrights, trade secrets, licensing arrangements, confidentiality procedures, non-disclosure agreements with employees, consultants, and vendors, and a general system of internal controls. Despite our system of controls over our intellectual property, it may be possible for our current or future competitors to obtain, copy, use, or disclose, illegally or otherwise, our product and process technology or other proprietary information. The laws of some foreign countries may not protect our intellectual property to the same degree as U.S. laws, and our confidentiality, non-disclosure, and non-compete agreements may be unenforceable or difficult and costly to enforce in foreign countries.

Additionally, our ability to maintain and develop intellectual property is dependent upon our ability to attract, develop, and retain highly skilled employees. If our competitors or future entrants into our industry are successful in hiring our employees, they may directly benefit from the knowledge these employees gained while they were under our employment, and this may also negatively impact our ability to maintain and develop intellectual property.

If we are not successful in monetizing our intellectual property portfolio, protecting our intellectual property, or retaining key employees, we may never recoup our investments of time, capital and other resources in the development, maintenance, defense and enforcement of this portfolio, which could materially harm our financial condition and prospects.

If our proprietary rights are not protected, our customers or our competitors might gain access to our proprietary designs, processes and technologies, which could adversely affect our operating results.

We rely on a combination of patent protection, trade secret laws and restrictions on disclosure to protect our intellectual property and other proprietary rights. We have submitted a number of patent applications regarding our proprietary processes and technology, many of which have resulted in issued patents. For our pending patent applications, it is uncertain when or if any of the claims in these applications will be allowed or result in issued patents, in which case the technologies or processes sought to be patented would remain unprotected from use by third parties. In addition, although we intend to continue filing patent applications with respect to new processes and technologies we develop, patent protection may not be available for some of these processes or technologies. Further, even if we are successful in obtaining patent protection, these protections could be limited in scope by the USPTO, a court or applicable foreign authorities or challenged by third parties by way of review or reexamination proceedings and subsequently invalidated, which would reduce the protections these patents are able to provide. Moreover, patent protection is limited as to duration and all of our issued patents will eventually expire, at which time the previously protected technologies would become widely available for use by third parties, including our competitors.

Despite our efforts to protect our intellectual property rights, these efforts may not:

- prevent challenges to or the invalidation or circumvention of our intellectual property rights;
- keep our competitors or other third parties from independently developing similar products or technologies, duplicating, reverse engineering or otherwise using our products or technologies without our authorization or designing around any patents that may be issued to us;
- prevent disputes with third parties regarding ownership of our intellectual property rights;
- prevent disclosure of our trade secrets and know-how to third parties or into the public domain;
- result in valid patents, including international patents, from any of our pending or future applications; or
- otherwise adequately protect our intellectual property rights.

Moreover, monitoring for any unauthorized use of our technologies is costly, time-consuming and difficult. This is particularly true in foreign countries, such as the PRC, where the laws may not protect our proprietary rights to the same extent as applicable U.S. laws.

If some or all of the claims in our patent applications are not allowed, if any of our issued patents or other intellectual property protections are limited, invalidated or circumvented by third parties, or if we are not able to obtain extensions of existing patents upon their expiration or issuance of new patents to maintain protections provided by expiring patents, we could face increased competition for our products and technologies and be unable to execute on our strategy of monetizing our intellectual property. Any of these outcomes could significantly harm our business, operating results and prospects.

We may become involved in non-patent related litigation and administrative proceedings that may materially adversely affect us.

From time to time, we may become involved in various legal proceedings relating to matters incidental to the ordinary course of our business, including commercial, employment, class action, whistleblower and other litigation and claims, as well as governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, because litigation is inherently unpredictable, the results of these actions could subject us to monetary damages or other liabilities and have a material adverse effect on our business, results of operations and financial condition.

Risks Related to Capitalization and Financial Markets

We may not have sufficient working capital to fund our planned operations, and, as a result, we may need to raise additional capital in the future, which may not be available when needed, on acceptable terms or at all. Our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate.

To support our activities in the near term, we expect to rely on cash generated from our business, the cash received under the Strategic Agreement entered into on April 5, 2021 with SK hynix, proceeds from issuances of debt and equity securities, proceeds from our registered offerings with certain investors, and the equity financing available under the March 2025 Purchase Agreement entered into with Lincoln Park on March 13, 2025, and borrowing availability under our credit facility with SVB. Taking into account our planned activities and sources of capital, we believe we have sufficient cash resources to satisfy our capital needs for at least the next 12 months. However, our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate. Further, some or all of our ongoing or planned investments may not be successful and could further deplete our capital without immediate, or any, cash returns.

Our capital requirements will depend on many factors, including, among others:

- the costs associated with maintaining, defending and enforcing our intellectual property rights;
- the acceptance of, and demand for, our products and the component products we resell to customers;
- our success, and that of our strategic partners, in developing and selling products derived from our technology;
- the extent and timing of any investments in developing, marketing and launching new or enhanced products or technologies;
- the costs of developing, improving and maintaining our internal design, testing and manufacturing processes;
- our results of operations, including our levels of net product sales and any other revenues we may receive, including non-recurring engineering fees, licensing fees, royalties, or other fees;
- the amount and timing of vendor payments and the collection of receivables, among other factors affecting our working capital;
- whether our current customers continue purchasing our products;
- changing projected inventory needs and estimates;
- our receipt of cash proceeds from the exercise of outstanding stock options to acquire our common stock;
- the results of ongoing litigation and legal proceedings;
- the nature and timing of acquisitions or other strategic transactions or relationships in which we engage, if any;
- changes in international trade policies; and

- the costs associated with the continued operation, and any future growth, of our business.

Pursuant to the October 2025 Purchase Agreement, we may not effect any sale under the March 2025 Purchase Agreement for a period of 90 days from the closing of the October 2025 Offering. Further, pursuant to the terms of the October 2025 Purchase Agreement and subject to certain limited exceptions, we have agreed for a period of 90 days from the closing of the October 2025 Offering not to (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of common stock or Common Stock Equivalents (as defined in the October 2025 Purchase Agreement) or (ii) file any registration statement or amendment or supplement to any registration statement. Until we can generate sufficient revenues to finance our cash requirements from our operations, which we may never do, we may need to increase our liquidity and capital resources by one or more measures, which may include, among others, reducing operating expenses, restructuring our balance sheet by negotiating with creditors and vendors, entering into strategic partnerships or alliances, raising additional financing through the issuance of debt, equity or convertible securities or pursuing alternative sources of capital, such as through asset or technology sales or licenses or other alternative financing arrangements. Further, even if our near-term liquidity expectations prove correct, we may still seek to raise capital through one or more of these financing alternatives. However, we may not be able to obtain capital when needed or desired, on terms acceptable to us or at all.

Inadequate working capital would have a material adverse effect on our business and operations and could cause us to fail to execute our business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require us to again significantly modify our business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of our ongoing and planned investments in corporate infrastructure, research and development projects, legal proceedings, business development initiatives and sales and marketing activities, among other activities. Modification of our business model and operations could result in an impairment of assets, the effects of which cannot be determined. Furthermore, if we continue to issue equity or convertible debt securities to raise additional funds, our existing stockholders may experience significant dilution, and the new equity or debt securities may have rights, preferences and privileges that are superior to those of our existing stockholders. If we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization or have other material consequences. If we pursue asset or technology sales or licenses or other alternative financing arrangements to obtain additional capital, our operational capacity may be limited and any revenue streams or business plans that are dependent on the sold or licensed assets may be reduced or eliminated. Moreover, we may incur substantial costs in pursuing any future capital-raising transactions, including investment banking, legal and accounting fees, printing and distribution expenses and other similar costs, which would reduce the benefit of the capital received from the transaction.

The price and trading volume of our common stock has and may continue to fluctuate significantly in reaction to real or perceived developments in our business.

Our common stock has been publicly traded since November 2006. The price and trading volume of our common stock are volatile and have in the past fluctuated significantly. This volatility could continue, in which case an active trading market in our common stock may not be sustained and stockholders may not be able to sell their shares at a desired time or a desired price.

The market price at which our common stock trades may be influenced by many factors, including, among others, the following:

- the results of legal proceedings in which we are involved;
- our operating and financial performance and prospects;
- investor perceptions of us and the industry in which we operate;
- our ability to meet investor and analyst expectations for our operating results;
- the availability and level of research coverage of and market-making in our common stock;

- changes in buy/sell recommendations by analysts;
- any financial projections we may provide to the public, any changes to these projections or our failure to meet these projections;
- our announcement of significant strategic transactions or relationships or the initiation of legal proceedings, including patent infringement actions;
- general political, economic and market conditions, including volatility or uncertainty in these conditions;
- short selling activities;
- third-party manipulation; and
- the other risk factors described in this report.

In addition, shares of our common stock and the public stock markets in general have experienced, and may continue to experience, extreme price and trading volume volatility, at times irrespective of the state of the business of any particular company. These fluctuations may adversely affect the market price of our common stock. Further, following periods of volatility in the overall market and the market price of a particular company's securities, securities litigation can sometimes be instituted against us. Securities litigation, like other types of litigation, is expensive and time-consuming, and if such litigation is instituted against us in the future, we may incur substantial costs, management's attention and resources may be diverted, and we could be subject to damages in the event of unfavorable results.

We expect to incur additional indebtedness to support the growth of our business and to facilitate effective working capital. Our level of indebtedness and the terms of such indebtedness could adversely affect our operations and liquidity.

Our operations have consumed substantial amounts of cash since inception, and we expect to incur additional indebtedness to support the growth of our business and to facilitate effective working capital. Incurrence and maintenance of debt could have material adverse consequences on our business and financial condition, such as:

- requiring us to dedicate a portion of our cash flows from operations and other capital resources to debt service, thereby reducing our ability to fund working capital, capital expenditures and other cash requirements;
- increasing our vulnerability to adverse economic and industry conditions;
- limiting our flexibility in planning for or reacting to changes and opportunities in our business and industry, which may place us at a competitive disadvantage; and
- limiting our ability to incur additional debt when needed, on acceptable terms or at all.

Adverse developments affecting financial institutions, companies in the financial services industry or the financial services industry generally could adversely affect our operations and liquidity.

Actual events involving limited liquidity, defaults, non-performance or other adverse developments that affect financial institutions or other companies in the financial services industry or the financial services industry generally, or concerns or rumors about any events of these kinds, have in the past and may in the future lead to market-wide liquidity problems.

Our access to our cash and cash equivalents in amounts adequate to finance our operations could be significantly impaired by the financial institutions with which we have arrangements directly facing liquidity constraints or failures. In addition, investor concerns regarding the United States or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on acceptable terms or at all. Any material decline in available funding or our ability to access our cash and cash equivalents could adversely impact our ability to meet our operating expenses, result in breaches of our contractual obligations or result in violations of

federal or state wage and hour laws, any of which could have material adverse impacts on our operations and liquidity.

We hold our cash and cash equivalents that we use to meet our working capital needs in deposit accounts at multiple financial institutions. The balance held in these accounts may exceed the Federal Deposit Insurance Corporation ("FDIC") standard deposit insurance limit or similar government guarantee schemes. If a financial institution in which we hold such funds fails or is subject to significant adverse conditions in the financial or credit markets, we could be subject to a risk of loss of all or a portion of such uninsured funds or be subject to a delay in accessing all or a portion of such uninsured funds. Any such loss or lack of access to these funds could adversely impact our short-term liquidity and ability to meet our obligations. In addition, if any parties with whom we conduct business are unable to access funds held in uninsured deposit accounts or pursuant to lending arrangements with a financial institution that is placed in receivership by the FDIC, such parties' ability to pay their obligations to us or to enter into new commercial arrangements requiring additional payments to us could be adversely affected.

As our shares of common stock are not listed on a national securities exchange, it may be more difficult for you to dispose of your shares and they may be less liquid when compared to securities that are listed on a national securities exchange.

Netlist common shares began trading on the Over-the-Counter market in October 2018, following the decision to move trading of our common stock from the Nasdaq Capital Market. Because our stock is no longer listed on a registered national securities exchange, we are subject to certain "blue sky" laws of the various states which impose restrictions on our ability to offer and sell our securities. These "blue sky" laws may make it more difficult for us to raise capital or to issue our common stock for equity compensation or other strategic purposes, which could adversely affect our ability to fund our operations or to attract and retain employees. In addition and depending on our results of operations, our stock may be defined as a "penny stock" under Rule 3a51-1 under the Exchange Act. "Penny stocks" are subject to Rule 15g-9 of the Exchange Act, which imposes additional sales practice requirements on broker-dealers that sell low-priced securities to persons other than established customers and institutional accredited investors. For transactions covered by this rule, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to sale. Consequently, the rule may affect the ability of broker-dealers to sell our common stock and affect the ability of holders to sell their shares of our common stock in the secondary market. To the extent our common stock is subject to the penny stock regulations, the market liquidity for the shares will be adversely affected.

Future issuances of our common stock or rights to purchase our common stock, including pursuant to our outstanding warrants, equity incentive plans or the March 2025 Purchase Agreement, would result in additional dilution to the percentage ownership of our stockholders and could cause the price of our common stock to decline.

We have historically funded our operations in large part with proceeds from equity and convertible debt financings, and we expect to continue to do so in the future, including through the issuance of up to $75 million in shares of common stock pursuant to the March 2025 Purchase Agreement. In addition to capital-raising purposes, we may also issue securities from time to time at prices and on other terms as we determine for acquiring other businesses or assets in exchange for shares of our common stock or other securities, issuing securities to collaborators in connection with strategic partnerships, attracting and retaining employees with equity compensation, or other purposes. If we sell common stock or other equity or convertible debt securities in the future, our then-existing stockholders could be materially diluted by such issuances and new investors could gain rights, preferences and privileges senior to the holders of our common stock, which could cause the price of our common stock to decline.

A large portion of our warrants contain anti-dilution provisions for certain dilutive issuances of our securities at prices lower than the exercise prices set forth in such warrants.

We currently have outstanding June 2025 Warrants to purchase up to 34,285,720 shares of our common stock and October 2025 Warrants to purchase up to 28,571,432 shares of our common stock. The June 2025 Warrants and October 2025 Warrants provide for a reduction of the exercise price if we, at any time while these warrants are outstanding, issue, or are deemed to have issued, common stock or common stock equivalents, at a price less than the exercise price then in effect for these warrants, subject to certain customary exceptions. The June 2025 Warrants currently have an exercise price of $0.60 and the October 2025 Warrants currently have an exercise price of $0.70. The exercise price of the June 2025 Warrants and the October 2025 Warrants will also remain subject to adjustment for future dilutive issuances. The dilutive effect of any exercise price adjustments to the June 2025 Warrants and the October 2025 Warrants would likely have a negative impact on the trading price of our common stock and these terms may cause the exercise price of these warrants to be reduced to a price that is well below their current exercise price or any further reduced exercise price pursuant to the terms of these warrants.

Sales of our common stock, or the perception that such sales could occur, could cause the market price of our stock to drop significantly, regardless of the state of our business.

As of September 27, 2025, there were 292,659,926 shares of our common stock outstanding. In addition, 2,708,763 shares of our common stock are subject to outstanding stock options, 2,874,880 shares of our common stock are subject to outstanding unvested restricted stock units, and 59,033,196 shares of our common stock are subject to outstanding warrants. We may also issue up to $75 million shares of common stock pursuant to the March 2025 Purchase Agreement. All outstanding shares of our common stock and stock issuable pursuant to the March 2025 Purchase Agreement are eligible for sale in the public market under applicable federal securities laws, subject in certain cases to the requirements of Rule 144 under the Securities Act of 1933, as amended, and shares issued upon the exercise or conversion of outstanding stock options, or warrants may also be eligible for sale in the public market, to the extent permitted by Rule 144 or other applicable securities laws and the provisions of the applicable stock option, and warrant agreements. If these shares are sold, or if it is perceived that they may be sold, in the public market, the trading price of our common stock could fall.

Anti-takeover provisions under our charter documents and Delaware law, as well as our rights agreement, could delay or prevent a change of control and could also limit the market price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our Company or changes in our board of directors that our stockholders might consider favorable, including:

- our board of directors is authorized, without prior stockholder approval, to designate and issue preferred stock, commonly referred to as “blank check” preferred stock, which may have rights senior to those of our common stock;
- stockholder action by written consent is prohibited;
- nominations for election to our board of directors and the submission of matters to be acted upon by stockholders at a meeting are subject to advance notice requirements; and
- our board of directors is expressly authorized to make, alter or repeal our bylaws.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. Further, we adopted a rights agreement that would, under certain specified circumstances and for so long as the rights issued under the rights agreement are outstanding, give the holders of our common stock the right to acquire additional shares of our capital stock, which would make it more difficult for a third

party to acquire a significant percentage of our outstanding capital stock or attempt a hostile takeover of our Company.

These and other provisions in our certificate of incorporation and bylaws and of Delaware law, as well as the existence of our rights agreement, could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by our board of directors, including a merger, tender offer, proxy contest or other change of control transaction involving our Company. Any delay or prevention of a change of control transaction or changes in our board of directors could prevent the consummation of a transaction in which our stockholders could receive a substantial premium over the then-current market price for our common stock. In addition, these anti-takeover provisions could reduce the price that investors are willing to pay for shares of our common stock.

We do not currently intend to pay dividends on our common stock, and any return to investors is expected to result, if at all, only from potential increases in the price of our common stock.

We intend to use all available funds to finance our operations and pursuant to the 2023 SVB Credit Agreement, we are required to obtain prior written consent from SVB prior to payment of any dividends. Accordingly, while all decisions about dividends are at the discretion of our board of directors, we have never declared or paid cash dividends on our capital stock in the past, and we have no intention of declaring or paying any such dividends in the foreseeable future. As a result, any return to investors is expected to result, if at all, only from potential increases in the price of our common stock.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Insider Trading Arrangements

During the fiscal quarter ended September 27, 2025, none of our directors or officers (as defined in Rule 16a-1 under the Exchange Act) adopted, modified or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement" (as those terms are defined in Item 408 of Regulation S-K), except as follows:

On September 12, 2025, Chun K. Hong, our President, Chief Executive Officer and Chairman of our Board of Directors, entered into a Rule 10b5-1 sales plan (the “Hong 10b5-1 Sales Plan”) intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act. The Hong 10b5-1 Sales Plan, which has a term that expires on December 31, 2026, provides for the sale of up to 2,388,823 shares of our common stock and certain shares of common stock (not currently determinable) to satisfy applicable tax withholding obligations upon the vesting of 412,250 restricted stock units (“RSUs”).

On September 12, 2025, Mr. Hong and Won Kyung Cha, as trustees of the Chun Ki Hong Won Kyung Cha Community Property Trust dated 8/16/2004, entered into a Rule 10b5-1 sales plan (the “Hong and Cha Trust 10b5-1 Sales Plan”) intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act. The Hong and Cha Trust 10b5-1 Sales Plan, which has a term that expires on December 31, 2026, provides for the sale of up to 3,611,177 shares of our common stock.

On September 12, 2025, Gail Sasaki, our Executive Vice President and Chief Financial Officer, entered into a Rule 10b5-1 sales plan (the “Sasaki 10b5-1 Sales Plan”) intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act. The Sasaki 10b5-1 Sales Plan, which has a term that expires on December 31, 2026, provides for the sale of up to 175,000 shares of our common stock and certain shares of common stock (not currently determinable) to satisfy applicable tax withholding obligations upon the vesting of 75,000 RSUs.

On September 12, 2025, Jun Cho, a member of our board of directors, entered into a Rule 10b5-1 sales plan (the “Cho 10b5-1 Sales Plan”) intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act. The Cho 10b5-1 Sales Plan, which has a term that expires on December 31, 2026, provides for the sale of up to 50,000 shares of our common stock.

On September 12, 2025, Blake Welcher, a member of our board of directors, entered into a Rule 10b5-1 sales plan (the “Welcher 10b5-1 Sales Plan”) intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) of the Exchange Act, The Welcher 10b5-1 Sales Plan, which has a term that expires on December 31, 2026, provides for the sale of up to 75,000 shares of our common stock.

Amendment to 2023 SVB Credit Agreement

On November 7, 2023, we entered into the 2023 SVB Credit Agreement, which provides for a revolving line of credit up to $10.0 million. The borrowing base is limited to 85% of eligible accounts receivable, subject to certain adjustments. Borrowings accrue interest on advance at a per annum rate equal to the greater of 8.50% and the Wall Street Journal prime rate. On November 7, 2025, we entered into the 2023 SVB Credit Agreement Amendment to, among other things, extend the maturity date from November 7, 2025 to November 7, 2027.

All obligations under the 2023 SVB Credit Agreement are secured by a first priority security interest in our tangible and intangible assets (excluding our intellectual property). The 2023 SVB Credit Agreement subjects us to certain affirmative and negative covenants, including financial covenants with respect to our liquidity and restrictions on the payment of dividends.

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As of September 27, 2025, the outstanding borrowings under the 2023 SVB Credit Agreement were $1.1 million with no availability under the revolving line of credit. During the nine months ended September 27, 2025, we had net borrowings of $2.2 million under the 2023 SVB Credit Agreement.

The full text of the 2023 SVB Credit Agreement Amendment is filed as Exhibit 10.7 of this Quarterly Report on Form 10-Q and is incorporated herein by reference. Descriptions of the 2023 SVB Credit Agreement Amendment are qualified in their entirety by this Exhibit 10.7.

Item 6. Exhibits

		Filed	Incorporated by Reference		
Exhibit No.	**Exhibit Description**	**Herewith**	**Form**	**File No.**	**Filing Date**
3.1	Restated Certificate of Incorporation of Netlist, Inc.		10-Q	001-33170	August 15, 2017
3.1.1	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.		10-Q	001-33170	August 15, 2017
3.1.2	Certificate of Amendment of the Restated Certificate of Incorporation of Netlist, Inc.		8-K	001-33170	August 17, 2018
3.1.3	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.		8-K	001-33170	August 10, 2020
3.1.4	Certificate of Designation of the Series A Preferred Stock of Netlist, Inc.		10-Q	001-33170	August 15, 2017
3.1.5	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.		8-K	001-33170	September 25, 2025
3.2	Second Amended and Restated Bylaws of Netlist, Inc.		10-Q	001-33170	November 7, 2024
4.1	Form of Common Stock Purchase Warrant		8-K	001-33170	October 7, 2025
4.2	Form of Amended and Restated Common Stock Purchase Warrant	X			
10.1^	Form of Securities Purchase Agreement, dated October 6, 2025, by and among Netlist, Inc. and the purchasers identified therein		8-K	001-33170	October 7, 2025
10.2	Placement Agency Agreement, dated October 6, 2025, by and between Netlist, Inc. and Roth Capital Partners, LLC		8-K	001-33170	October 7, 2025
10.3	Form of Lock-Up Agreement		8-K	001-33170	October 7, 2025
10.4	Form of Waiver and Amendment, dated October 6, 2025, by and between Netlist, Inc. and the purchasers identified therein		8-K	001-33170	October 7, 2025
10.5#	Netlist, Inc. 2025 Equity Incentive Plan		8-K	001-33170	September 11, 2025
10.6#	Form of Restricted Stock Unit Agreement issued pursuant to the Netlist, Inc. 2025 Equity Incentive Plan	X			
10.7	First Amendment to Loan and Security Agreement, dated November 7, 2025, between Silicon Valley Bank, a division of First-Citizens Banks & Trust Company and Netlist, Inc.	X			
31.1	Rule 13a-14(a) / 15d-14(a) Certification of Chief Executive Officer	X			
31.2	Rule 13a-14(a) / 15d-14(a) Certification of Chief Financial Officer	X			
32.1+	Section 1350 Certifications of Chief	X			

Executive Officer and Chief Financial Officer

Exhibit No.	Exhibit Description	Filed Herewith	Incorporated by Reference Form	File No.	Filing Date
101.INS	Inline XBRL Instance Document	X			
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X			
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document	X			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X			
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)				

+ Furnished herewith.

Management contract or compensatory plan or arrangement.

^ Certain exhibits and schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. We hereby undertake to furnish supplementally a copy of any omitted exhibit or schedule upon request by the SEC.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date:November 12, 2025

Netlist, Inc.

By: /s/ Chun K. Hong

Chun K. Hong
President, Chief Executive Officer and Director
(Principal Executive Officer)

By: /s/ Gail Sasaki

Gail Sasaki
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 4.2

AMENDED AND RESTATED
COMMON STOCK PURCHASE WARRANT

NETLIST, INC.

Warrant Shares: _____ Issue Date: October 7, 2025

Initial Exercise Date: June 25, 2025

THIS AMENDED AND RESTATED COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on June 25, 2030 (the "Termination Date") but not thereafter, to subscribe for and purchase from Netlist, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b). The Company and the Holder each acknowledge and agree that this Amended and Restated Common Stock Purchase Warrant replaces that certain Common Stock Purchase Warrant originally issued to the Holder on June 25, 2025 and is being issued in accordance with and subject to the terms of Section 4.17 of that certain Securities Purchase Agreement, dated October 6, 2025, by and among the Company and the purchasers signatory thereto.

Section 1.Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated June 24, 2025, among the Company and the purchasers signatory thereto.

Section 2.Exercise.

Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been

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exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise on the Trading Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

a)Exercise Price. The exercise price (the "Exercise Price") per share of Common Stock under this Warrant shall equal the lesser of (i) $0.60 and (ii) the lowest VWAP (as defined below) of the shares of Common Stock on any Trading Day during the period commencing on October 6, 2025 and including, the fourth (4th) Trading Day immediately following October 7, 2025, subject to adjustment hereunder (such period, the "Exercise Price Adjustment Period") (for the avoidance of doubt, if this Warrant is exercised on any given Exercise Date (as defined below) during any such Exercise Price Adjustment Period, solely with respect to such portion of this Warrant exercised on such applicable Exercise Date, such applicable Exercise Price Adjustment Period shall be deemed to have ended on, and included, the Trading Day immediately prior to such Exercise Date).

b)Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the highest Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") within two (2) hours of the time of the Holder's delivery of the Notice of Exercise pursuant to Section 2(a) hereof if such Notice of Exercise is delivered during "regular trading hours," or within two (2) hours after the close of "regular trading hours" on a Trading Day or (iii) the VWAP on the date of the applicable Notice

Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is delivered pursuant to Section 2(a) hereof after two (2) hours following the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market and if the Common Stock is listed or quoted for trading on OTCQB Venture Market (the "OTCQB") or the OTCQX Best Market (the "OTCQX"), the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on a Trading Market, in OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market ("Pink Market") operated by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is not then listed or quoted on a Trading Market and if the Common Stock is then listed or quoted on the OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on a Trading Market, in OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Market operated by the OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all

other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

c) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate or by electronic delivery through books and records maintained by the Company's transfer agent (at the election of the Holder), registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earlier of (i) one (1) Trading Day after the delivery to the Company of the Notice of Exercise, and (ii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days (including no Trading Days if the settlement date is the trade date), on the Company's primary Trading

Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 12:00 p.m. (New York City time) on the Initial Exercise Date, which may be delivered at any time after the time of execution of the Purchase Agreement, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For

example, if the Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of Warrants for shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy- In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v.No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi.Charges, Taxes and Expenses. Issuance and delivery of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii.Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

d)Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, any other Persons acting as a group together with

the Holder or any of the Holder's Affiliates, and any other Persons whose beneficial ownership of the shares of Common Stock would or could be aggregated with the Holder's for the purposes of Section 13(d) of the Exchange Act (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination (other than to the extent that the information on the number of outstanding shares of Common Stock is provided by the Company, either directly or through one or more public filings relied upon by the Holder). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the

Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3.Certain Adjustments.

a)Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b)Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for

the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c)Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d)Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company or any of its subsidiaries, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the outstanding common equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase

agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% of the outstanding shares of Common Stock or 50% or more of the voting power of the outstanding common equity of the Company (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. Notwithstanding anything to the contrary, in the event of a Fundamental Transaction, the Company or any Successor Entity (as defined below) shall, at the Holder's option, exercisable at any time concurrently with, or within thirty (30) days after, the consummation of the Fundamental Transaction (or, if later, the date of the public announcement of the applicable Fundamental Transaction), purchase this Warrant from the Holder by paying to the Holder an amount of cash equal to the Black Scholes Value (as defined below) of the remaining unexercised portion of this Warrant on the date of the consummation of such Fundamental Transaction; provided, however, that, if the Fundamental Transaction is not within the Company's control, including not approved by the Company's Board of Directors, the Holder shall only be entitled to receive from the Company or any Successor Entity the same type or form of consideration (and in the same proportion), at the Black Scholes Value of the unexercised portion of this Warrant, that is being offered and paid to the holders of Common Stock of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Stock are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction; provided, further, that if holders of Common Stock of the Company are not offered or paid any consideration in such Fundamental Transaction, such holders of Common Stock will be deemed to have received common stock of the Successor Entity (which Successor Entity may be the Company following such Fundamental Transaction) in such Fundamental Transaction. "Black Scholes Value" means the value of this Warrant based on the Black-Scholes Option Pricing Model obtained from the "OV" function on Bloomberg determined as of the day of consummation of the applicable Fundamental

Transaction for pricing purposes and reflecting (A) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date, (B) an expected volatility equal to the greater of (1) the 30 day volatility, (2) the 100 day volatility or (3) the 365 day volatility, each of clauses (1)-(3) as obtained from the HVT function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the public announcement of the applicable contemplated Fundamental Transaction, (C) the underlying price per share used in such calculation shall be the greater of (i) the sum of the price per share being offered in cash, if any, plus the value of any non-cash consideration, if any, being offered in such Fundamental Transaction and (ii) the highest VWAP during the period beginning on the Trading Day immediately preceding the public announcement of the applicable contemplated Fundamental Transaction (or the consummation of the applicable Fundamental Transaction, if earlier) and ending on the Trading Day of the Holder's request pursuant to this Section 3(d), (D) a remaining option time equal to the time between the date of the public announcement of the applicable contemplated Fundamental Transaction and the Termination Date, and (E) a zero cost of borrow. The payment of the Black Scholes Value will be made by wire transfer of immediately available funds (or such other consideration) within the later of (i) five Business Days of the Holder's election and (ii) the date of consummation of the Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall be added to the term "Company" under this Warrant (so that from and after the occurrence or consummation of such Fundamental Transaction, each and every provision of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to each of the Company and the Successor Entity or Successor Entities, jointly and severally with the Company, may exercise every right and power of the Company prior thereto and the Successor Entity or Successor Entities shall assume all of the obligations of the Company prior thereto under this Warrant and the other Transaction Documents with the same effect

as if the Company and such Successor Entity or Successor Entities, jointly and severally, had been named as the Company herein. For the avoidance of doubt, the Holder shall be entitled to the benefits of the provisions of this Section 3(d) regardless of whether the Company has sufficient authorized shares of Common Stock for the issuance of Warrant Shares.

e)Adjustment Upon Issuance of Shares of Common Stock. If and whenever on or after the Issue Date, the Company grants, issues or sells (or enters into any agreement to grant, issue or sell), or in accordance with this Section 3 is deemed to have granted, issued or sold, any shares of Common Stock (including the grant, issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Exempt Issuance (as defined in the Purchase Agreement) granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the "New Issuance Price") less than a price equal to the Exercise Price in effect immediately prior to such grant, issuance or sale or deemed grant, issuance or sale (such Exercise Price then in effect is referred to herein as the "Applicable Price") (the foregoing a "Dilutive Issuance"), then, simultaneously with the consummation (or, if earlier, the announcement) of each such Dilutive Issuance, the Exercise Price then in effect shall be reduced to an amount equal to the New Issuance Price. Notwithstanding anything to the contrary herein, the Exercise Price may only decrease and shall never increase. For all purposes of the foregoing (including, without limitation, determining the adjusted Exercise Price and the New Issuance Price under this Section 3(e)), the following shall be applicable:

(i)Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting, issuance or sale (or the time of execution of such agreement to grant, issue or sell, as applicable) of such Option for such price per share. "Options" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities. "Convertible Securities" means any share or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock. For purposes of this Section 3(e)(i), the "lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting, issuance or sale (or pursuant to the agreement to grant,

issue or sell, as applicable) of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) upon the granting, issuance or sale (or the agreement to grant, issue or sell, as applicable) of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such shares of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms of or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii)Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 3(e)(ii), the "lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof" shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) upon the issuance or sale (or the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other

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consideration received or receivable by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Exercise Price shall be made upon the actual issuance of such Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of this Warrant has been or is to be made pursuant to other provisions of this Section 3(e), except as contemplated below, no further adjustment of the Exercise Price shall be made by reason of such issuance or sale.

(iii)Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 3(a)), the Exercise Price in effect at the time of such increase or decrease shall be adjusted to the Exercise Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate, as the case may be, at the time initially granted, issued or sold. For purposes of this Section 3(e)(iii), if the terms of any Option or Convertible Security that was outstanding as of the date of execution of the Purchase Agreement (the "Subscription Date") are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 3(e) shall be made if such adjustment would result in an increase of the Exercise Price then in effect.

(iv)Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the "Primary Security", and such Option and/or Convertible Security and/or Adjustment Right, the "Secondary Securities", and the Secondary Securities together with the Primary Security, each a "Unit"), together comprising one integrated transaction, the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be the lowest of (x) the purchase price of such Unit, (y) if such Primary Security is an Option and/or Convertible Security, the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise or conversion of the Primary Security in accordance with Section 3(e)(i) or 3(e)(ii) above

and (z) the lowest VWAP of the shares of Common Stock on any Trading Day during the period commencing on the date of the public announcement of such Dilutive Issuance through, and including, the fourth (4th) Trading Day immediately following the closing of such Dilutive Issuance (the "Adjustment Period") (for the avoidance of doubt, if this Warrant is exercised on any given Exercise Date during any such Adjustment Period, solely with respect to such portion of this Warrant exercised on such applicable Exercise Date, such applicable Adjustment Period shall be deemed to have ended on, and included, the Trading Day immediately prior to such Exercise Date). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the lowest VWAP on any Trading Day during the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the "Valuation Event"), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company. For purposes of hereof, "Adjustment Right" means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with this Section 3(e)) of Common Stock (other than rights of the type described in Section 3(a), Section 3(b) and Section 3(c) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(v)Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive

a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(vi).No Readjustment. For the avoidance of doubt, in the event the Exercise Price has been adjusted pursuant to this Section 3(e) and the Dilutive Issuance that triggered such adjustment does not occur, is not consummated, is unwound or is cancelled after the facts for any reason whatsoever, in no event shall the Exercise Price be readjusted to the Exercise Price that would have been in effect if such Dilutive Issuance had not occurred or been consummated.

f)Share Combination Event Adjustment. In addition to the adjustments set forth in this Section 3, if at any time on or after the initial issuance date of this Warrant there occurs any share split, reverse share split, share dividend, share combination recapitalization or other similar transaction involving the Common Stock (each, a "Share Combination Event", and such date on which the Share Combination Event is effected, the "Share Combination Event Date") and the lowest daily VWAP of the Common Stock during the period commencing on the Trading Day immediately following the applicable Share Combination Event Date and ending on the fifth (5th) Trading Day immediately following the applicable Share Combination Event Date (the "Event Market Price") (provided if the Share Combination Event is effective prior to the opening of trading on the Trading Market, then, commencing on the Share Combination Event Date and ending on the fourth (4th) Trading Day immediately following the applicable Share Combination Event Date (such period, the "Share Combination Adjustment Period")) is less than the Exercise Price then in effect (after giving effect to the adjustment in Section 3(a) above), then, at the close of trading on the Trading Market on the last day of the Share Combination Adjustment Period, the Exercise Price then in effect on such 5th Trading Day shall be reduced (but in no event increased) to the Event Market Price. For the avoidance of doubt, if the adjustment in this Section 3(f) would otherwise result in an increase in the Exercise Price hereunder, no adjustment shall be made, and if this Warrant is exercised, on any date on which the Holder delivers an Exercise Notice to the Company (an "Exercise Date") during the Share Combination Adjustment Period, solely with respect to such portion of this Warrant exercised on such applicable Exercise Date, such applicable Share Combination Adjustment Period shall be deemed to have ended on, and include, the Trading Day immediately prior to such Exercise Date and the Event Market Price on such applicable Exercise Date will be the lowest daily VWAP of the Common Stock immediately following the Share Combination Event Date and ending on, and including the Trading Day immediately prior to such Exercise Date. Any adjustment to the Exercise Price pursuant to this Section 3(f) shall be effective retroactively to the Share Combination Event Date.

g)Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

h)Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment. For purposes of clarification, whether or not the Company provides any such notice, each Holder shall only be required to pay the adjusted Exercise Price with respect to such exercise, regardless of whether a Holder accurately refers to such price in any Notice of Exercise If the aggregate Exercise Price paid by the Holder exceeds the amount that should have been paid based on the adjusted Exercise Price, the Company shall promptly return any excess aggregate Exercise Price to the Holder.

ii. Notice to Allow Exercise by Holder. If, while the Warrant is outstanding, (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company, directly or indirectly, is a party, any sale or transfer of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or any Fundamental Transaction, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by email to the Holder at its last email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that

holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

i)Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4.Transfer of Warrant.

a)Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b)New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued

Samsung Ex. 1116, p. 109
Samsung Electronics Co., Ltd. v. Netlist, Inc., IPR2026-00018

on transfers or exchanges shall be dated the original Issue Date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c)Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5.Miscellaneous.

a)No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

b)Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c)Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then, such action may be taken or such right may be exercised on the next succeeding Trading Day.

d)Authorized Shares.

The Company covenants that, during the period that the Warrant is outstanding, it will reserve and keep available from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon

which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e)Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the provisions of the Purchase Agreement.

f)Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g)Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable

attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h)Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i)Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j)Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k)Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l)Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m)Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n)Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

NETLIST, INC.

By: _____

Gail Sasaki, Chief Financial Officer

NOTICE OF EXERCISE

TO:NETLIST, INC.

(1) The undersigned hereby elects to purchase _ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

[ ] in lawful money of the United States; or

[ ] if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____, _____

Holder's Signature: _____

Holder's Address: _____

Exhibit 10.6

Restricted Stock Unit No._____

NETLIST, INC.

Restricted Stock Unit Award Grant Notice
Restricted Stock Unit Award Grant under the Company's
Netlist, Inc. 2025 Equity Incentive Plan

Name: _____

Grant Number: _____

Grant Date: _____

Grant Type: _____

Grant Shares: _____

Vesting of Award: This Restricted Stock Unit Award shall vest as follows provided the Participant is an Employee, director or Consultant of the Company or of an Affiliate on the applicable vesting date:

Number of Restricted Stock Units	Vesting Date
_____	_____
_____	_____
_____	_____
_____	_____

The Company and the Participant acknowledge receipt of this Restricted Stock Unit Award Grant Notice and agree to the terms of the Restricted Stock Unit Agreement attached hereto and incorporated by reference herein, the Company's 2025 Equity Incentive Plan and the terms of this Restricted Stock Unit Award as set forth above.

NETLIST, INC.

By: _____
Name: _____
Title: _____

_____
Participant

NETLIST, INC.

RESTRICTED STOCK UNIT AGREEMENT
INCORPORATED TERMS AND CONDITIONS

AGREEMENT (this "**Agreement**") made as of the date of grant set forth in the Restricted Stock Unit Award Grant Notice between Netlist, Inc. (the "**Company**"), a Delaware corporation, and the individual whose name appears on the Restricted Stock Unit Award Grant Notice (the "**Participant**").

WHEREAS, the Company has adopted the Netlist, Inc. 2025 Equity Incentive Plan (the "**Plan**"), to promote the interests of the Company by providing an incentive for Employees, directors and Consultants of the Company and its Affiliates;

WHEREAS, pursuant to the provisions of the Plan, the Company desires to grant to the Participant restricted stock units ("**RSU**s") related to the Company's common stock, $0.001 par value per share ("**Common Stock**"), in accordance with the provisions of the Plan, all on the terms and conditions hereinafter set forth; and

WHEREAS, the Company and the Participant understand and agree that any terms used and not defined herein have the meanings ascribed to such terms in the Plan.

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.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 Grant 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 and in the Plan, which is incorporated herein by reference. The Participant acknowledges receipt of a copy of the Plan.

2.VESTING OF AWARD.

(a)Subject to the terms and conditions set forth in this Agreement and the Plan, the Award granted hereby shall vest as set forth in the Restricted Stock Unit Award Grant Notice and is subject to the other terms and conditions of this Agreement and the Plan. On each vesting date set forth in the Restricted Stock Unit Award Grant Notice, the Participant shall be entitled to receive such number of shares of Common Stock equivalent to the number of RSUs as set forth in the Restricted Stock Unit Award Grant Notice provided that the Participant is providing service to the Company or an Affiliate on such vesting date. Such shares of Common Stock shall thereafter be delivered by the Company to the Participant within five business days of the applicable vesting date and in accordance with this Agreement and the Plan.

(b)Except as otherwise set forth in this Agreement, if the Participant ceases to be providing services for any reason to the Company or an Affiliate (the "**Termination**") prior to a vesting date set forth in the Restricted Stock Unit Award Grant Notice, then as of the date on which the Participant's employment or service terminates, all unvested RSUs shall immediately be forfeited to the Company and this Agreement shall terminate and be of no further force or effect.

3.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 Internal Revenue 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 incompetence, 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.

4.ADJUSTMENTS.

The Plan contains provisions covering the treatment of RSUs and shares of Common Stock in a number of contingencies such as stock splits. Provisions in the Plan for adjustment with respect to this Award and the related provisions with respect to successors to the business of the Company are hereby made applicable hereunder and are incorporated herein by reference.

5.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 of 1933, as amended. The Company currently has an effective registration statement on file with the Securities and Exchange Commission with respect to the Common Stock to be granted hereunder. The Company intends to maintain this registration statement but has no obligation to do so. If the registration statement ceases to be effective for any reason, 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.

6.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.

7.INCORPORATION OF THE PLAN.

The Participant specifically understands and agrees that the RSUs and the shares of Common Stock to be issued under the Plan will be issued to the Participant pursuant to the Plan, a copy of which Plan the Participant acknowledges he or she has read and understands and by which Plan he or she agrees to be bound. The provisions of the Plan are incorporated herein by reference.

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 Administrator as follows:

(a)through reducing the number of shares of Common Stock entitled to be issued to the Participant on the applicable vesting date in an amount up to the statutory maximum 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;

(b)by 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 up to the statutory maximum 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)by requiring 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. Such sales shall be made pursuant to a mandatory "sell-to-cover" program instituted by the Company with no discretion by the Participant with respect to any sale under the "sell-to-cover" program. 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. 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.

It is the Company's intention that the Participant's tax obligations under this Section 8 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 the Plan or this Award obligated to continue the Participant as an employee, director or consultant of the Company or an Affiliate.

(b)The Plan is discretionary in nature and may be suspended or terminated by the Company at any time.

(c)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 under the Plan, benefits in lieu of awards or any other benefits in the future.

(d)The Plan is a voluntary program of the Company and future awards, if any, will be at the sole discretion of the Company, including, but not limited to, the timing of any grant, the amount of any award, vesting provisions and the purchase price, if any.

(e)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.

(f)The Participant (i) authorizes the Company and each Affiliate and any agent of the Company or any Affiliate administering the Plan or providing Plan recordkeeping services, 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 of the Award and the administration of the Plan; and (ii) authorizes the Company and each Affiliate to store and transmit such information in electronic form for the purposes set forth in this Agreement.

10.NOTICES.

Any notices required or permitted by the terms of this Agreement or the Plan shall be given by recognized courier service, facsimile, registered or certified mail, return receipt requested, addressed as follows:

If to the Company:

Netlist, Inc.
111 Academy, Suite 100
Irvine, CA 92617
Attn: Chief Financial Officer

If to the Participant at the Participant's most recent address as shown in the employment or stock records of the Company. 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.

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 Delaware and agree that such litigation shall be conducted in the state courts of the state of Delaware or the federal courts of the United States for the District of Delaware.

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, together with the Plan, constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement not expressly set forth in this Agreement shall affect or be used to interpret, change or restrict the express terms and provisions of this Agreement provided, however, in any event, this Agreement shall be subject to and governed by the Plan.

15. MODIFICATIONS AND AMENDMENTS; WAIVERS AND CONSENTS.

The terms and provisions of this Agreement may be modified or amended as provided in the Plan. Except as provided in the Plan, 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.

17. 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 administering the Plan or providing Plan recordkeeping services, 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 of options and the administration of the Plan; (ii) to the extent permitted by applicable law waives any data privacy rights he or she 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.

Exhibit 10.7

FIRST AMENDMENT TO
LOAN AND SECURITY AGREEMENT

THIS **FIRST AMENDMENT** to Loan and Security Agreement (this "Agreement") is entered into as of November 7, 2025, by and between **SILICON VALLEY BANK**, a division of First-Citizens Bank & Trust Company ("Bank") and **NETLIST, INC.**, a Delaware corporation ("Borrower").

RECITALS

A.Bank and Borrower have entered into that certain Loan and Security Agreement dated as of November 7, 2023 (as the same may from time to time be amended, modified, supplemented or restated, the "Loan Agreement").

B.Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C.Borrower has requested that Bank amend the Loan Agreement to (i) extend the Revolving Line Maturity Date, and (ii) make other revisions to the Loan Agreement as more fully set forth herein.

D.Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1.Definitions. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Loan Agreement.

2.Amendments to Loan Agreement.

2.1Section 12.2 (Definitions). Clauses (b) through (d) of the defined term "Eligible Accounts" set forth in Section 12.2 of the Loan Agreement hereby are amended and restated in their entirety and replaced with the following:

> "(b)Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms; provided, however, with respect to Accounts owing from (i) Account Debtor World Wide Technology and (ii) Account Debtor SanDisk, such period of time shall be increased to one hundred twenty (120) days;
>
> (c)Accounts with credit balances over ninety (90) days from invoice date, to the extent of such credit balances; provided, however, with respect to Accounts owing from (i) Account Debtor World Wide Technology and (ii) Account Debtor SanDisk, such period of time shall be increased to one hundred twenty (120) days;
>
> (d)Accounts owing from an Account Debtor if fifty percent (50%) or more of the Accounts owing from such Account Debtor have not been paid within ninety (90) days of invoice date; provided, however, with respect to Accounts owing from (i) Account

Debtor World Wide Technology and (ii) Account Debtor SanDisk, such period of time shall be increased to one hundred twenty (120) days;"

2.2Schedule I (LSA Provisions). The following section contained in Schedule I of the Loan Agreement hereby is amended and restated in its entirety and replaced with the following:

12.2 – "Revolving Line Maturity Date"	"**Revolving Line Maturity Date**" is November 7, 2027.

3.Limitation of Agreement.

3.1 This Agreement is effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Agreement shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4.Representations and Warranties of Borrower. To induce Bank to enter into this Agreement, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Agreement (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Agreement and to perform its obligations under the Loan Agreement, as amended by this Agreement;

4.3 The organizational documents of Borrower delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect, except as may otherwise be disclosed to Bank in writing;

4.4 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Agreement, have been duly authorized;

4.5 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Agreement, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Agreement and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Agreement, do not require

any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Agreement has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5.Updated Perfection Certificate. Borrower has delivered an updated Perfection Certificate in connection with this Agreement (the "**Updated Perfection Certificate**"), which Updated Perfection Certificate shall supersede in all respects the Perfection Certificate delivered to Bank on the Effective Date. Borrower and Bank acknowledge and agree that all references in the Loan Agreement to the "Perfection Certificate" shall hereinafter be deemed to be a reference to the Updated Perfection Certificate.

6.Prior Agreement. The Loan Documents are hereby ratified and reaffirmed and shall remain in full force and effect. Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to the Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations. This Agreement is not a novation and the terms and conditions of this Agreement shall be in addition to and supplemental to all terms and conditions set forth in the Loan Documents. In the event of any conflict or inconsistency between this Agreement and the terms of such documents, the terms of this Agreement shall be controlling, but such document shall not otherwise be affected or the rights therein impaired.

7.Integration. Except as expressly modified pursuant to this Agreement, the terms of the Loan Documents remain unchanged and in full force and effect. This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

8.Counterparts. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

9.Fees and Expenses. Borrower shall pay to Bank all Bank Expenses due and owing as of the date hereof, which may be debited from any of Borrower's accounts at Bank.

10.Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11.Conditions to Effectiveness. The parties agree that the obligations of Bank herein shall be effective upon the satisfaction of each of the following conditions precedent, each in form and substance reasonably satisfactory to Bank: the due execution and delivery to Bank of this Agreement by each party hereto.

12.Miscellaneous.

12.1 This Agreement shall constitute a Loan Document under the Loan Agreement; the failure to comply with the covenants contained herein shall constitute an Event of Default under the Loan Agreement; and all obligations included in this Agreement (including, without limitation, all obligations

for the payment of principal, interest, fees, and other amounts and expenses) shall constitute obligations under the Loan Agreement and secured by the Collateral.

12.2 Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.3 This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

12.4 The Loan Documents are hereby amended wherever necessary to reflect the changes described above.

12.5 Section 11.9 of the Loan Agreement applies to this Agreement.

12.6 This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of California.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

BANK

FIRST-CITIZENS BANK & TRUST COMPANY

By: /s/ Andrew Skalitzky

Name: Andrew Skalitzky

Title: Director

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first written above.

___

[_____]

[_____]

BORROWER

NETLIST, INC.

By: /s/ Gail Sasaki

Name: Gail Sasaki

Title: CFO

Exhibit 31.1

CERTIFICATION

I, Chun K. Hong, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:November 12, 2025

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Director

Exhibit 31.2

CERTIFICATION

I, Gail Sasaki, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date:November 12, 2025

/s/ Gail Sasaki
Gail Sasaki
Executive Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Netlist, Inc., a Delaware corporation ("Netlist") for the quarter ended September 27, 2025, as filed with the Securities and Exchange Commission on or about the date hereof (the "Report"), each of the undersigned officers of Netlist certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of such officer's knowledge:

(1) the Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Netlist.

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Date:November 12, 2025

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Director

Date:November 12, 2025

/s/ Gail Sasaki
Gail Sasaki
Executive Vice President and Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Netlist and will be retained by Netlist and furnished to the Securities and Exchange Commission or its staff upon request.