

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

BRUCE BELODOFF, Individually and On Behalf of )	Lead Case No.
All Others Similarly Situated, )	SACV-07-00677-DOC(MLGx)
)	)
Plaintiff, )	<u>CLASS ACTION</u>
)	)
vs. )	)
)	)
NETLIST, INC., et al., )	)
)	)
Defendants. )	)
)	)
)	)

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NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED NETLIST, INC. ("NETLIST" OR THE "COMPANY") COMMON STOCK PURSUANT TO OR TRACEABLE TO NETLIST'S NOVEMBER 29, 2006 INITIAL PUBLIC OFFERING ("IPO") DURING THE PERIOD BETWEEN NOVEMBER 29, 2006 AND APRIL 17, 2007, INCLUSIVE ("CLASS PERIOD")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM POSTMARKED ON OR BEFORE AUGUST 2, 2010.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Central District of California, Southern Division (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of this class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement. The settlement resolves the Class's claims against Netlist, Chun K. Hong, Lee Kim, Nam Ki Hong, Thomas F. Lagatta, Alan H. Portnoy, David M. Rickey, Preston Romm, Thomas Weisel Partners, LLC, Needham and Company, LLC, and WR Hambrecht + Co., LLC (collectively, "Defendants"). This Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and this class action litigation.

The proposed settlement creates a fund in the amount of \$2,600,000 in cash and will include interest that accrues on the fund prior to distribution. Based on Lead Counsel's estimate of the number of shares entitled to participate in the settlement and the anticipated number of claims to be submitted by Class Members, the average distribution per share to Class Members who purchased or acquired Netlist common stock pursuant to or traceable to the Company's IPO between November 29, 2006 and April 17, 2007, inclusive, would be approximately \$0.36 before deduction of Court-approved fees and expenses. Your actual recovery from this fund will depend on a number of variables, including the number of claimants, the number of shares they purchased or acquired, the number of Netlist common shares you purchased or acquired, the expense of administering the claims process, and the timing of your purchases, acquisitions, and sales, if any (see the Plan of Allocation below for a more detailed description of how the settlement proceeds will be allocated among Class Members).

Lead Plaintiff and Defendants do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff had prevailed on each claim asserted. The issues on which the parties disagree include: (1) whether the statements made or facts allegedly omitted were false, material, or otherwise actionable under the federal securities laws; (2) the extent to which the various matters that Lead Plaintiff alleged were materially false or misleading influenced (if at all) the trading price of Netlist common stock at various times during the Class Period; (3) the extent to which the various allegedly adverse material facts that Lead Plaintiff alleged were omitted influenced (if at all) the trading price of Netlist common stock at various times during the Class Period; (4) the extent to which external factors, such as general market conditions, influenced the trading price of Netlist common stock at various times during the Class Period; (5) the effect of various market forces influencing the trading price of Netlist common stock at various times during the Class Period; (6) the amount by which Netlist common stock was allegedly artificially inflated (if at all) during the Class Period; and (7) the appropriate economic model for determining the amount by which Netlist common stock was allegedly artificially inflated (if at all) during the Class Period.

Lead Plaintiff believes that the proposed settlement is a good recovery and is in the best interests of the Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that Lead Plaintiff would not have prevailed on any of its claims, in which case the Class would receive nothing. For example, Lead Plaintiff faced the very real

possibility that the Court would grant Defendants' motions to dismiss Lead Plaintiff's complaint without further leave to amend, and it has already given Lead Plaintiff three opportunities to amend. In addition, the amount of damages recoverable by the Class was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the Litigation gone to trial, Defendants intended to assert that all of the losses of Class Members were caused by non-actionable market, industry, or general economic factors. Defendants would also assert that throughout the Class Period the uncertainties and risks associated with Netlist's business and financial condition were fully and adequately disclosed.

Plaintiffs' Counsel have not received any payment for their services in conducting this Litigation on behalf of Lead Plaintiff and the members of the Class, nor have they been reimbursed for their out-of-pocket expenditures. If the settlement is approved by the Court, Lead Counsel will apply to the Court for attorneys' fees not to exceed 25% of the settlement proceeds plus expenses not to exceed \$150,000, both to be paid from the Settlement Fund. If the amount requested by counsel is approved by the Court, the average cost per share would be approximately \$0.11.

This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in this Litigation or the fairness or adequacy of the proposed settlement.

For further information regarding this settlement you may contact: Rick Nelson, c/o Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, California 92101, Telephone: 800/449-4900. Please do not call any representative of the Defendants or the Court.

## **I. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A settlement hearing (the "Settlement Hearing") will be held on September 30, 2010, at 8:30 a.m., before the Honorable David O. Carter, United States District Judge, at the United States District Court, Central District of California, Southern Division, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California. The purpose of the Settlement Hearing will be to determine: (1) whether the settlement consisting of \$2,600,000 in cash plus accrued interest should be approved as fair, reasonable, and adequate to each of the Settling Parties; (2) whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation") is fair, reasonable, and adequate; (3) whether the application by Lead Counsel for an award of attorneys' fees and expenses should be approved; and (4) whether the Litigation should be dismissed with prejudice. The Court may adjourn or continue the Settlement Hearing without further notice to the Class.

## **II. DEFINITIONS USED IN THIS NOTICE**

1. "Authorized Claimant" means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

2. "Claims Administrator" means the firm of Gilardi & Co. LLC.

3. "Class" means Lead Plaintiff and all Persons or entities (and their beneficiaries) who purchased or otherwise acquired Netlist common stock pursuant to or traceable to Netlist's November 29, 2006 IPO during the Class Period. Excluded from the Class are the Defendants; any officers or directors of Netlist during or after the Class Period; any corporation, trust or other entity in which any Defendant has a controlling interest; and the members of the immediate families of the Individual Defendants or their successors, heirs, assigns, and legal representatives. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to this Notice.

4. "Class Member" or "Class Members" mean any Person who falls within the definition of the Class as set forth in paragraph 3 above.

5. "Class Period" means the period between November 29, 2006 and April 17, 2007, inclusive.

6. "Effective Date" means the first date by which all of the events and conditions specified in paragraph 7.1 of the Stipulation have been met and have occurred.

7. "Escrow Agent" means Robbins Geller Rudman & Dowd LLP or its successor(s).

8. "Final" means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached to the Stipulation, shall occur: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Judgment has passed without any appeal having been taken (which date shall be deemed to be thirty-three (33) days following the entry of the Judgment, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the thirty-third (33rd) day falls on a weekend or a Court holiday, in which case the date for purposes of the Stipulation shall be deemed to be the next business day after such thirty-third (33rd) day); and (iii) if such motion to alter or amend is filed and/or if an appeal is taken, three (3) business days after the determination and disposition of that motion and/or appeal (including any petition for writ of certiorari) in such a manner as to permit the consummation of the settlement substantially in accordance with the terms and conditions of the Stipulation. For purposes of this paragraph, an "appeal" shall not include any appeal that

concerns only the issue of attorneys' fees and expenses or the Plan of Allocation of the Settlement Fund. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of distribution and/or application for attorneys' fees, costs, or expenses, shall not in any way delay or preclude the Judgment from becoming Final.

9. "Individual Defendants" means Chun K. Hong, Lee Kim, Nam Ki Hong, Thomas F. Lagatta, Alan H. Portnoy, David M. Rickey, and Preston Romm.

10. "Judgment" means the judgment to be rendered by the Court, substantially in the form and content attached to the Stipulation as Exhibit B.

11. "Lead Counsel" means Robbins Geller Rudman & Dowd LLP or its successor(s).

12. "Lead Plaintiff" means Iron Workers Local No. 25 Pension Fund.

13. "Netlist" means Netlist, Inc. and its subsidiaries, divisions, affiliates, predecessors, and successors.

14. "Notice Order" means the order described in paragraph 3.1 of the Stipulation.

15. "Person" means a natural person, individual, corporation, partnership, limited partnership, limited liability company, association, joint venture, joint venturer, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

16. "Plaintiffs' Counsel" means any counsel who have appeared for any plaintiff in the Litigation.

17. "Plan of Allocation" means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, Taxes and Tax Expenses, and such attorneys' fees, costs, expenses, and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and Defendants and their Related Parties shall have no responsibility therefor or liability with respect thereto.

18. "Related Parties" means each of Defendants' past, present, or future directors, officers, employees, partners, insurers, co-insurers, reinsurers, principals, agents, controlling shareholders, attorneys, accountants or auditors, advisors, investment advisors, underwriters, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, members of an Individual Defendant's immediate family, and any trust of which any Individual Defendant is the settler or which is for the benefit of any Individual Defendant and/or members of his/her immediate family, and any entity in which an Individual Defendant and/or any member of an Individual Defendant's immediate family has or have a controlling interest (directly or indirectly).

19. "Released Claims" means any and all rights, liabilities, suits, debts, obligations, demands, claims (including Unknown Claims as defined in paragraph 23 below) and causes of action of every nature and description whatsoever, in law or equity and regardless of upon what legal theory based, whether arising under federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or un-liquidated, matured or un-matured, known or unknown, discoverable or undiscoverable, concealed or hidden, whether class and/or individual in nature that (a) Lead Plaintiff or any member of the Class asserted, or could have asserted in this Litigation against any of the Released Persons, or (b) that could have been asserted in this Litigation, or any other action or forum by Lead Plaintiff and/or the members of the Class or any of them against any of the Released Persons arising out of or relating to the purchase or acquisition of Netlist common stock pursuant to or traceable to the IPO during the Class Period, and the facts, matters, allegations, transactions, events, disclosures, statements, acts, or omissions or failures to act which were alleged or that could have been alleged in any of the complaints in the Litigation.

20. "Released Persons" means each and all of the Defendants and each and all of their Related Parties.

21. "Settlement Fund" means the principal amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) in cash, to be paid pursuant to paragraph 2.1 of the Stipulation, plus all interest earned thereon.

22. "Settling Parties" means, collectively, each of the Defendants and the Lead Plaintiff on behalf of itself and each of the Class Members.

23. "Unknown Claims" means any and all Released Claims which Lead Plaintiff or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or might have affected his, her, or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall waive, and each of the Class Members shall be deemed to have waived, and by operation of the Judgment shall have waived, the provisions, rights and benefits of California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lead Plaintiff shall expressly waive, and each of the Class Members shall be deemed to have by operation of the Judgment expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Lead Plaintiff and the Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the Released Claims, but Lead Plaintiff shall expressly fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

### **III. THE LITIGATION**

Beginning in May 2007, the Company and certain of its officers and directors were named as defendants in four class action shareholder complaints, two of which were filed in the United States District Court for the Southern District of New York (*Tran v. Netlist, Inc.*, No. 1:07-cv-03754-RMB; *Benjamin v. Netlist, Inc.*, No. 1:07-cv-05518-RMB) (the "New York Actions"), and two of which were filed in the United States District Court for the Central District of California (*Belodoff v. Netlist, Inc.*, No. SACV-07-677 DOC (MLGx); *Swofford v. Netlist, Inc.*, No. CV07-04006 DOC (MLGx)).

In September 2007, the Southern District of New York transferred the New York Actions to the Central District of California, Southern Division. Also in September 2007, the Court entered an Order consolidating all of these cases under the caption entitled *Belodoff v. Netlist, Inc., et al.*, Lead Case No. SACV-07-00677-DOC (MLGx) (the "Litigation"), and appointing the Iron Workers Local No. 25 Pension Fund as Lead Plaintiff and approving its selection of Lead Counsel.

On November 5, 2007, Lead Plaintiff filed its Consolidated Complaint for Violations of Federal Securities Laws (the "Complaint"). The Complaint alleged that Defendants violated the securities laws, specifically Sections 11 and 15 of the Securities Act of 1933, by causing Netlist to issue a false and misleading Registration Statement and Prospectus in connection with the Company's November 29, 2006 IPO. The Complaint also alleged that as a result of the purported false and misleading Registration Statement and Prospectus, Netlist sold its stock at an artificially inflated price during the IPO.

Defendants moved to dismiss the Complaint on January 9, 2008. On May 30, 2008, the Court granted Defendants' motions to dismiss with leave to amend. Lead Plaintiff filed its First Amended Consolidated Complaint for Violations of Federal Securities Laws (the "Amended Complaint") on July 15, 2008. Defendants moved to dismiss the Amended Complaint on January 9, 2009, and on April 17, 2009, the Court granted Defendants' motions, again granting leave to amend. On May 21, 2009, Lead Plaintiff filed its Second Amended Consolidated Complaint for Violations of Federal Securities Laws (the "Second Amended Complaint"). Defendants moved to dismiss the Second Amended Complaint on June 22, 2009, and on September 1, 2009, the Court granted Defendants' motions to dismiss, with limited leave to amend.

Following issuance of the Court's September 1, 2009 Order, Lead Plaintiff and Defendants discussed a possible resolution of the Litigation, and ultimately reached an agreement-in-principle to resolve their claims. On December 7, 2009, the parties signed a Memorandum of Understanding setting out their agreement.

### **IV. CLAIMS OF THE LEAD PLAINTIFF AND BENEFITS OF SETTLEMENT**

Lead Plaintiff believes that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. However, Lead Plaintiff recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and through appeals. Lead Plaintiff also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Lead Plaintiff is also mindful of the inherent difficulties of proof under and possible defenses to the securities law violations asserted in the Litigation. Lead Plaintiff believes that the settlement set forth in the Stipulation of Settlement dated February 16, 2010 (the "Stipulation") confers substantial benefits upon the Class. Based on their evaluation, Lead Plaintiff and Lead Counsel have determined that the settlement set forth in the Stipulation is in the best interests of Lead Plaintiff and the Class, and that the settlement provided for therein is fair, reasonable, and adequate.

## V. THE DEFENDANTS' STATEMENT AND DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Lead Plaintiff in the Litigation. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation.

Defendants further deny that Lead Plaintiff and the Class have suffered damages and that the price of Netlist common stock was artificially inflated during the Class Period as the result of any alleged misrepresentations, omissions, or otherwise by Defendants. Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation, in order to limit further expense, inconvenience and distraction, and to dispose of the burden of protracted litigation. Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as this Litigation and have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

## VI. TERMS OF THE PROPOSED SETTLEMENT

The amount of \$2,600,000 has been transferred to an interest-bearing escrow account under the control of the Escrow Agent. This principal amount of \$2,600,000 in cash, plus any accrued interest, shall constitute the Settlement Fund. A portion of the settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Notice, the cost of publishing notice, payment of any taxes assessed against the Settlement Fund, and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Plaintiffs' Counsel as attorneys' fees and for expenses incurred in reaching the settlement. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation described below to Class Members who submit valid and timely Proof of Claim and Release forms.

## VII. PLAN OF ALLOCATION

The Net Settlement Fund will be distributed to Class Members who submit valid, timely Proof of Claim and Release forms under the Plan of Allocation described below. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Netlist common stock during the Class Period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Counsel have consulted with their damage consultants. The Plan of Allocation reflects an assessment of the damages that could have been recovered as well as the statutory calculation of recovery under Section 11 of the Securities Act of 1933.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

The total of all profits shall be subtracted from the total of all losses from transactions during the Class Period to determine if a Class Member has a claim. Only if a Class Member had a net loss, after all profits from transactions in Netlist common stock during the Class Period are subtracted from all losses, will such Class Member be eligible to receive a distribution from the Net Settlement Fund.

A claim shall be calculated as follows:

**Common Stock  
CUSIP: 64118P109**

**Section 11 Claims for the November 2006 Initial Public Offering**

Initial Public Offering Price:	\$7.00 per share
Closing Price on the date the lawsuit was filed: <sup>1</sup>	\$3.30 per share

For shares of Netlist common stock purchased or acquired ***pursuant to or traceable to the Company's initial public offering dated November 29, 2006***, and

1) sold prior to May 11, 2007, the claim per share is the lesser of: (i) the purchase price per share less the sales price per share, or (ii) \$7.00 less the sales price per share.

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<sup>1</sup> First Class Action Complaint filed on May 11, 2007.

2) retained at the end of, or, sold on or after May 11, 2007, the claim per share is the lesser of: (i) the purchase price per share less the sales price per share, or (ii) \$7.00 less \$3.30.

The date of purchase or sale is the "contract" or "trade" date as distinguished from the "settlement" date. The determination of the price paid per share and the price received per share, shall be exclusive of all commissions, taxes, fees, and charges.

For Class Members who made multiple purchases, acquisitions or sales during the Class Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the Class Period will be matched, in chronological order, against shares purchased during the Class Period.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if such Class Member had a net loss, after all profits from transactions in Netlist common stock during the Class Period are subtracted from all losses.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

## VIII. ORDER CERTIFYING A CLASS FOR PURPOSES OF SETTLEMENT

On April 19, 2010, the Court certified a class. The Class is defined above.

## IX. PARTICIPATION IN THE CLASS

If you fall within the definition of the Class, you are a Class Member unless you elect to be excluded from the Class pursuant to this Notice. If you do not request to be excluded from the Class, you will be bound by any judgment entered with respect to the settlement in the Litigation against Defendants whether or not you file a Proof of Claim and Release form.

***If you are a Class Member, you need do nothing (other than timely file a Proof of Claim and Release form if you wish to participate in the distribution of the Net Settlement Fund). Your interests will be represented by Lead Counsel.*** If you choose, you may enter an appearance individually or through your own counsel at your own expense.

TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE. The Proof of Claim and Release must be postmarked on or before August 2, 2010, and delivered to the Claims Administrator at the address below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release form, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

## X. EXCLUSION FROM THE CLASS

You may request to be excluded from the Class. To do so, you must mail a written request stating that you wish to be excluded from the Class to:

*Netlist Securities Litigation*  
Exclusions  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

The request for exclusion must state: (1) your name, address, and telephone number; and (2) all purchases and acquisitions of Netlist common stock made during the Class Period, including the date of each purchase or acquisition and the number of shares purchased or acquired. YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE AUGUST 2, 2010. If you submit a valid and timely request for exclusion, you shall have no rights under the settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or the Judgment.

## XI. DISMISSAL AND RELEASES

If the proposed settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice. The Judgment will dismiss the Released Claims with prejudice as to all Defendants.

The Judgment will provide that all Class Members who have not previously validly and timely requested to be excluded from the Class shall be deemed to have released and forever discharged all Released Claims (to the extent members of the Class have such claims) against all Released Persons.

## **XII. APPLICATION FOR ATTORNEYS' FEES AND EXPENSES**

At the Settlement Hearing, Lead Counsel will request the Court to award attorneys' fees of 25% of the Settlement Fund, plus expenses, not to exceed \$150,000, which were advanced in connection with the Litigation, plus interest thereon. Class Members are not personally liable for any such fees or expenses.

To date, Plaintiffs' Counsel have not received any payment for their services in conducting this Litigation on behalf of the Lead Plaintiff and the members of the Class, nor have counsel been reimbursed for their out-of-pocket expenses. The fee requested by Lead Counsel would compensate counsel for their efforts in achieving the Settlement Fund for the benefit of the Class, and for their risk in undertaking this representation on a contingency basis. The fee requested is within the range of fees awarded to plaintiffs' counsel under similar circumstances in litigation of this type.

## **XIII. CONDITIONS FOR SETTLEMENT**

The settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of December 7, 2009.

## **XIV. THE RIGHT TO BE HEARD AT THE HEARING**

Any Class Member who has not validly and timely requested to be excluded from the Class, and who objects to any aspect of the settlement, the Plan of Allocation, or the application for attorneys' fees and expenses may appear and be heard at the Settlement Hearing. Any such Person must file a written notice of objection with the Clerk of the Court at the address below, on or before August 16, 2010:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION  
RONALD REAGAN FEDERAL BUILDING  
AND UNITED STATES COURTHOUSE  
411 West Fourth Street  
Santa Ana, CA 92701

and copies to be received by the following counsel on or before August 2, 2010:

Lead Counsel for Plaintiffs:

Counsel for Defendants:

ROBBINS GELLER RUDMAN  
& DOWD LLP  
ELLEN GUSIKOFF STEWART  
655 West Broadway, Suite 1900  
San Diego, CA 92101

MORRISON & FOERSTER LLP  
SEAN T. PROSSER  
12531 High Bluff Drive, Suite 100  
San Diego, CA 92130

WILSON SONSINI GOODRICH  
& ROSATI, P.C.  
DANIEL W. TURBOW  
650 Page Mill Road  
Palo Alto, CA 94304-1050

The notice of objection must demonstrate the objecting Person's membership in the Class, including the number of shares of Netlist common stock purchased or acquired during the Class Period, and contain a statement of the reasons for objection. Only Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing unless the Court orders otherwise.

## **XV. SPECIAL NOTICE TO NOMINEES**

If you hold or held any Netlist common stock during the Class Period as nominee for a beneficial owner, then, within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim and Release form by First-Class Mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Netlist Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

If you choose to mail the Notice and Proof of Claim and Release form yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for, or advancement of, reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and Proof of Claim and Release form and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim and Release, upon submission of appropriate documentation to the Claims Administrator.

**XVI. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, United States District Court, Central District of California, Southern Division, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701.

If you have any questions about the settlement of the Litigation, you may contact a representative of Lead Counsel: Robbins Geller Rudman & Dowd LLP, Rick Nelson, c/o Shareholder Relations, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900.

**PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

DATED: April 19, 2010

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION