

NETLIST INC
Form 10-K/A
April 30, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 30, 2017

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.)

175 Technology Drive, Suite 150

Irvine, CA 92618

(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:

Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	The Nasdaq Stock Market (The Nasdaq Capital Market)

Securities registered pursuant to Section 12(g) of the Act:

None

(Title of class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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
(Do not check if a
smaller reporting company)

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 Act). Yes No

The aggregate market value of the registrant's voting and non-voting common equity held by non-affiliates, computed by reference to the price at which the registrant's common stock was last sold on July 1, 2017, the last business day of the registrant's most recently completed second fiscal quarter, as reported by the Nasdaq Capital Market, was approximately \$58.0 million. For purposes of this calculation, it has been assumed that all shares of the registrant's common stock held by directors, executive officers and persons beneficially owning ten percent or more of the registrant's common stock are held by affiliates. The treatment of these persons as affiliates for purposes of this calculation is not, and shall not be considered, a determination as to whether such persons are affiliates of the registrant for any other purpose.

As of April 15, 2018, there were 85,790,180 outstanding shares of the registrant's common stock.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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EXPLANATORY NOTE

Netlist, Inc. (our Company, Netlist, we, us, or our) is filing this Amendment No. 1 to Annual Report on Form 10-K/A (this Amendment to Form 10-K) to amend the Annual Report on Form 10-K for our fiscal year ended December 30, 2017 (Fiscal 2017), as filed by us with the Securities and Exchange Commission (SEC) on March 30, 2018 (the Original Form 10-K). The purpose of this Amendment to Form 10-K is to include in Part III the information that was to be incorporated by reference from the definitive proxy statement for the 2018 annual meeting of our stockholders in reliance on General Instruction G(3) to Form 10-K, because such proxy statement is not expected to be filed until July of 2018 in connection with a proposed date for such annual meeting in August 2018.

As a result, and in accordance with Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the Exchange Act), this Amendment to Form 10-K hereby amends and restates the cover page; Part III, Items 10 through 14; and Part IV, Item 15 of the Original Form 10-K. Also in accordance with such rule, this Amendment to Form 10-K contains new certifications by our principal executive officer and principal financial officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act), which are filed as exhibits hereto; however, because no financial statements or amendments to any disclosures with respect to Items 307 or 308 of Regulation S-K promulgated by the SEC are included in this Amendment to Form 10-K, paragraphs 3, 4, and 5 of such certifications have been omitted.

Except as described above, this Amendment to Form 10-K does not amend, modify or otherwise update any of the information included in the Original Form 10-K, including, without limitation, to reflect events occurring after the filing of the Original Form 10-K on March 30, 2018 or to modify or update any disclosures that may be affected by any such events. Accordingly, this Amendment to Form 10-K should be read in conjunction with the Original Form 10-K in all respects, as well as with our other filings made with the SEC subsequent to the filing of the Original Form 10-K.

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Each member of our Board of Directors (referred to as our Board or Board of Directors) is elected annually at a meeting of our stockholders and serves for a one-year term until the next annual meeting of our stockholders and until his or her successor is elected and qualified, or until an earlier resignation or removal. Each of our executive officers is appointed by, and serves at the direction of, our Board, subject to the terms of our employment agreement with our President and Chief Executive Officer, which is described under Employment Agreements in Item 11 of this Amendment to Form 10-K, and which establishes, among other things, such executive officer's term of office.

The table and narrative below provide, for our current directors and executive officers, each such individual's name; age as of April 30, 2018; current position(s) with our Company; tenure in such position(s); information about such individual's business experience and qualifications, including principal occupation or employment and principal business of the employer, if any, for at least the past five years, and involvement in certain legal or administrative proceedings, if any; and, for each of our directors, other public company director positions held currently or at any time in the last five years and the experiences, qualifications, attributes and skills that led to the conclusion that such individual should serve as a director of our Company. Additionally, for each of our directors, and in addition to each such individual's specific qualifications and skills described below, we believe each such individual brings a strong and unique background and set of skills to our Board of Directors, which gives our Board competence and experience in a wide variety of areas, including corporate governance and board service, executive management, financial reporting, law and regulation, the memory systems market, the semi-conductor industry, licensing, and worldwide customer and manufacturer management. There is no arrangement or understanding between any director or executive officer and any other person(s) pursuant to which such director or executive officer was or is to be selected as a director or executive officer of our Company, and there are no family relationships between any of our directors or executive officers.

Name	Age	Position(s)
Chun K. Hong	57	President, Chief Executive Officer and Chairman of the Board
Jun S. Cho	58	Lead Independent Director
Jeffrey Benck	53	Director
Kiho Choi	62	Director
Blake A. Welcher	56	Director
Gail Sasaki	61	Vice President, Chief Financial Officer and Secretary

Chun K. Hong is one of the founders of Netlist and has been our President and Chief Executive Officer and a director since our inception in June 2000. Mr. Hong assumed the title of Chairman of the Board of Directors in January 2004. Prior to his tenure at Netlist, Mr. Hong has served in various other executive positions including President and Chief Operating Officer of Infinilink Corporation, a DSL equipment company, as Executive Vice President of Viking Components, Inc., a memory subsystems manufacturing company, and as General Manager of Sales at LG Semicon Co., Ltd., a public semiconductor manufacturing company in South Korea. Mr. Hong received his Bachelor of Science degree in economics from Virginia Commonwealth University and his Master of Science degree in technology management from Pepperdine University's Graduate School of Management. As one of our founders and as our Chief Executive Officer, Mr. Hong brings to the Board extensive knowledge of our organization and our market.

Jun S. Cho joined the Netlist Board in November 2014 and became the Lead Independent Director of the Board in December 2017. Mr. Cho currently serves as General Counsel to Fiat Chrysler Automobiles (FCA) Asia Pacific and Vice President and Assistant General Counsel to FCA US LLC (formerly called Chrysler Group LLC), a global automobile company. Mr. Cho has more than 19 years of experience as legal counsel for the FCA and over 12 years of experience in the Asia Pacific region leading FCA's initiatives in technology licensing, product distribution, M&A transactions and joint ventures, from his bases in Beijing and Shanghai. Prior to FCA, Mr. Cho specialized in international financing and corporate transactions working for global-reaching law firms including Debevoise & Plimpton in New York, Kim & Chang in Seoul, Korea and Arnold & Porter in Washington D.C. Mr. Cho holds a Juris Doctorate degree from the New York University School of Law and is admitted to the bar in the state of New York and in Washington D.C. He received his undergraduate degree in economics from the College of William and Mary. Mr. Cho brings to Netlist's Board of Directors his considerable legal background and extensive experience with complex organizations and transactions.

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Jeffrey Benck joined the Netlist Board in June 2016. Mr. Benck is currently President, Chief Executive Officer and Director of Lantronix, Inc., a global IoT solutions provider. Prior to joining Lantronix in December 2015, Mr. Benck served as President and Chief Executive Officer of Emulex Corporation, a global supplier of advanced networking, monitoring and management solutions, from July 2013 to May 2015, when Emulex was acquired by Avago Technologies. Mr. Benck joined Emulex in May 2008 as Executive Vice President and Chief Operating Officer and was subsequently appointed to President and Chief Operating Officer in August 2010. Prior to joining Emulex, Mr. Benck was the President and Chief Operating Officer of QLogic, a supplier of storage networking solutions. Mr. Benck began his career at IBM, a global leader in information technology and services, and for 18 years, held various executive leadership roles, including Vice President of xSeries, BladeCenter and Retail Store Solutions development. Mr. Benck holds a Master of Science degree in management of technology from University of Miami and a Bachelor of Science degree in mechanical engineering from Rochester Institute of Technology. He is also a distinguished inventor in the computer systems field and holds six U.S. patents. Mr. Benck brings to Netlist's Board of Directors a track record of leadership and breadth of expertise spanning technology development, intellectual property management and customer engagement.

Kiho Choi joined the Netlist Board in May 2017. In 2005, Mr. Choi established Choi, Kim & Park, LLP, the largest Korean American full service CPA firm in the United States, and is currently the Managing Partner of the firm. In this role, Mr. Choi is responsible for directing the publicly-held and international company audit service and management and financing consulting practices of the firm. Mr. Choi also currently serves on the Board of Directors of Hanmi Financial Corporation and Hanmi Bank. Mr. Choi began his public accounting career in 1989 in the Assurance and Consulting Division of Watkins, Meegan, Drury & Co, LLC in Washington D.C., a full service regional accounting and consulting firm specializing in government, financial institutions, and non-profit organizations. As a director in-charge of the resolution services division, Mr. Choi had responsibility for auditing banks and government contractors and worked closely with Resolution Trust Corporation and Federal Deposit Insurance Corporation. In 1995, Mr. Choi joined Kim & Lee, LLP, a Korean-American CPA firm, as a partner responsible for the firm's audit and consulting practice. Mr. Choi is a graduate of the University of Illinois, at Chicago, receiving both a Bachelor and Master of Science degrees in Accounting. Mr. Choi brings to Netlist's Board of Directors his significant accounting and financial expertise, as well as his extensive senior management experience.

Blake A. Welcher joined the Netlist Board in August 2013. Mr. Welcher currently serves as General Counsel for PSI Services LLC, an assessment and testing development and administration company. Mr. Welcher served as Executive Vice President, General Counsel and Corporate Secretary of DTS, Inc., a consumer electronics company, until December 2016, when DTS was sold to Tesser Technologies. Mr. Welcher had been a member of the DTS executive team since March 2000. As General Counsel at DTS, he managed the licensing operations and was instrumental in building key assets that have led to DTS's success. Mr. Welcher led DTS's legal licensing functions, collaborated with key partners and worked to establish DTS as a global name in consumer electronics. Mr. Welcher holds a bachelor's degree in Aeronautical Engineering from California Polytechnic State University at San Luis Obispo, a Juris Doctorate and Masters of Intellectual Property degree from Franklin Pierce Law Center (University of New Hampshire School of Law) and is a U.S. licensed Patent Attorney. Mr. Welcher brings more than 20 years of industry experience to Netlist's Board of Directors with his extensive background in worldwide licensing operations, corporate governance, risk management, intellectual property and legal affairs.

Gail Sasaki has been our Vice President and Chief Financial Officer since January 2008 and our Secretary since August 2007. From 2006 to January 2008, Ms. Sasaki served as our Vice President of Finance. Prior to her tenure at Netlist, Ms. Sasaki served in various senior financial roles, including Chief Financial Officer of eMaiMai, Inc., a commercial technology company based in Hong Kong and mainland China; Chief Financial Officer, Senior Vice President of Finance, Secretary and Treasurer of eMotion, Inc. (a Kodak subsidiary and formerly Cinebase Software), a developer of business-to-business media management software and services, and Chief Financial Officer of MicroNet Technology, Inc., a leader in storage technology. Ms. Sasaki also spent seven years in public accounting leaving as an audit manager with Arthur Young (now known as Ernst & Young LLP). Ms. Sasaki earned a Bachelor's degree from the University of California at Los Angeles, and also earned a Master of Business Administration degree from the University of Southern California.

Table of Contents**Board Committees**

Our Board has established a standing Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee, each of which is described below and operates pursuant to a written charter adopted by our Board and available on our website, <http://www.netlist.com>. The table below shows the membership of these committees during Fiscal 2017 and our current fiscal year (Fiscal 2018) to date. Our Board may also create additional committees from time to time, including committees relating to pending litigation proceedings or other significant corporate matters or committees to approve financing or other strategic transactions.

Name	Audit (1)	Compensation (2)	Nominating and Corporate Governance (3)
Jeffrey Benck	•		
Jun S. Cho		Chair	•
Kiho Choi (4)	Chair	•	
Blake A. Welcher	•		Chair

(1) Mr. Choi has served as the Chair of this committee since May 2017; Mr. Benck has served as a member of this committee since December 2017; and Mr. Welcher has served as a member of this committee at all times during Fiscal 2017 and Fiscal 2018 to date. In addition, the membership of this committee previously included our former directors Mr. Vincent Sheeran, who served on our Board and this committee during Fiscal 2017 until the end of his term in May 2017, and Mr. Charles Cargile, who served on our Board and this committee during Fiscal 2017 until his resignation in December 2017.

(2) Mr. Cho has served as the Chair of this committee at all times during Fiscal 2017 and Fiscal 2018 to date; and Mr. Choi has served as a member of this committee since May 2017. In addition, the membership of this committee previously included Mr. Benck, who served on this committee during Fiscal 2017 until December 2017, and our former director Mr. Sheeran, who served on our Board and this committee during Fiscal 2017 until the end of his term in May 2017.

(3) Messrs. Welcher (Chair) and Cho have served on this committee at all times during Fiscal 2017 and Fiscal 2018 to date. In addition, the membership of this committee previously included our former director Mr. Cargile, who served on our Board and this Committee during Fiscal 2017 until his resignation in December 2017.

(4) Our Board has determined that Mr. Choi qualifies, and before Mr. Choi's election, our former director Mr. Cargile qualified, as an audit committee financial expert in accordance with applicable SEC rules.

Audit Committee

The primary functions of our Audit Committee are, among other things, to:

- oversee our financial reporting process, including discussing with our independent registered public accounting firm the scope and plans for all annual audits and discussing with management and our independent registered public accounting firm the adequacy and effectiveness of our accounting and financial controls, systems to monitor and manage business risk, and legal and ethical compliance programs;
- review with management and our independent registered public accounting firm all of our audited and interim financial statements;
- review and approve in advance any transactions by us with related parties;
- appoint, terminate, replace, ensure the independence of and oversee our independent registered public accounting firm;

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- pre-approve all audit services and, subject to a de minimus exception, all permissible non-audit services to be performed by the independent registered public accounting firm;
- be responsible for setting the corporate tone for quality financial reporting and sound business risk practices and ethical behavior; and
- establish procedures for the confidential and anonymous submission, receipt, retention and treatment of concerns or complaints regarding accounting, internal accounting controls and auditing matters.

Compensation Committee

The primary functions of our Compensation Committee are, among other things, to:

- review and approve, or make recommendations to the Board regarding, our programs and arrangements for our Section 16 executive officers, including salary, incentive compensation, equity compensation and perquisite programs;
- review the evaluation process and compensation structure for our non Section 16 executive officers;
- assist the Board in developing and evaluating potential candidates for executive positions and oversee the development of executive succession plans; and
- review and act as administrator of our incentive compensation and other stock-based plans.

Nominating and Corporate Governance Committee

The primary functions of our Nominating and Corporate Governance Committee are, among other things, to:

- lead the search for individuals qualified to become members of the Board and select director nominees to be presented at our annual meetings of stockholders;
- review the standards to be applied by the Board in making determinations as to whether a director satisfies applicable independence requirements;
- review the Board's structure and the Board's committee structure and make recommendations as appropriate, including recommending to the Board the directors to serve as members of each Board committee;
- conduct an annual performance evaluation of the Board and its committees;
- advise the Board on candidates for the positions of Chairman of the Board, Lead Independent Director, Chief Executive Officer and other executive officer positions;
- develop, recommend to the Board and review a set of corporate governance guidelines and a code of business conduct and ethics; and
- review changes in legislation, regulations and other developments impacting corporate governance and make recommendations to the Board with respect to these matters and corporate governance matters generally.

Code of Business Conduct and Ethics

Our Board has adopted a Code of Business Conduct and Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as well as all of our other executive officers and employees and all of our directors. This code satisfies applicable requirements of the Sarbanes-Oxley Act and the rules of the Nasdaq Stock Market (Nasdaq) and the SEC, and a copy of the code is available on our website, <http://www.netlist.com>. We intend to disclose on our website any amendments to or waivers from this code, to the extent required by applicable law or Nasdaq or SEC rules.

Table of Contents**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires our executive officers and directors and persons who beneficially own more than 10% of our common stock to file with the SEC reports of ownership on Form 3 and changes in ownership on Forms 4 or 5. These executive officers, directors and 10% beneficial owners are also required by SEC rules to furnish us with copies of all such reports they file. To our knowledge, based solely on our review of the copies of such reports received by us or written representations from persons subject to Section 16(a) of the Exchange Act, we believe our executive officers, directors and 10% beneficial owners complied with all applicable Section 16(a) filing requirements in Fiscal 2017.

Item 11. Executive Compensation**Executive Compensation**

The table below provides information about the compensation awarded to, earned by or paid to each of the following individuals, which we refer to collectively as our named executive officers, for Fiscal 2017 and our fiscal year ended December 31, 2016 (Fiscal 2016): each person serving at any time during Fiscal 2017 as our principal executive officer (our President and Chief Executive Officer, Mr. Hong); and our only other executive officer serving as such at any time during Fiscal 2017 (our Vice President, Chief Financial Officer and Secretary, Ms. Sasaki).

Summary Compensation Table

Name and Principal Position	Fiscal Year	Salary (\$)	Bonus (\$)	Option Awards (\$) (1)	All Other Compensation (\$) (2)	Total (\$)
Chun K. Hong	2017	323,000		224,412	52,899	600,311
<i>President and Chief Executive Officer</i>	2016	323,000	160,000	177,129	45,445	705,574
Gail Sasaki	2017	200,000		56,103	5,382	261,485
<i>Vice President, Chief Financial Officer and Secretary</i>	2016	200,000	80,000	44,282	5,382	329,664

(1) Represents the grant date fair value of awards granted in the applicable fiscal year, measured in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, *Compensation Stock Compensation* (ASC Topic 718). The assumptions used in the calculations for these amounts are described in Note 2 Summary of Significant Accounting Policies Stock-Based Compensation and Note 8 Stockholders Equity Stock-Based Compensation to our consolidated financial statements included in the Original Form 10-K. The material terms of each stock option award granted in Fiscal 2016 and Fiscal 2017 are described below under Outstanding Equity Awards at Fiscal Year End.

(2) For Fiscal 2017, the amount consists of (a) for Mr. Hong, \$12,317 for automobile rental payments, \$6,479 for other vehicle-related costs, \$20,927 for a country club membership, \$7,411 for a health club membership, and \$5,765 for income tax and estate planning costs incurred on Mr. Hong's behalf, and (b) for Ms. Sasaki, the amount of our matching contributions under our savings plan qualified under Section 401(k) of the Code. For Fiscal 2016, the amount consists of (a) \$12,303 for automobile rental payments, \$20,435 for a country club membership, \$6,487 for a health club membership, and \$6,220 for income tax and estate planning costs incurred on Mr. Hong's behalf, and (b) for Ms. Sasaki, the amount of our matching contributions under our savings plan qualified under Section 401(k) of the Code.

Employment Agreements

We entered into an employment agreement with our President and Chief Executive Officer, Mr. Hong, in September 2006. This agreement provides for an initial base salary of \$323,000 plus other specified benefits, including the reimbursement of professional fees and expenses incurred in connection with income and estate tax planning and preparation, income tax audits and the defense of income tax claims; the reimbursement of membership fees and expenses for professional organizations and one country club; the reimbursement of employment-related legal fees; automobile rental payments and other vehicle-related expenses; and the reimbursement of health club membership fees and other similar health-related expenses. Mr. Hong may earn annual cash performance bonuses, at the discretion of our Compensation Committee or our Board, of up to 100% of his base salary based upon the achievement of individual and Company performance objectives.

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Mr. Hong's employment agreement automatically renews for additional one-year periods unless we provide or Mr. Hong provides notice of termination six months prior to the renewal date, but at all times Mr. Hong may terminate his employment upon six months' advance written notice to us and we may terminate Mr. Hong's employment upon 30 days' advance written notice to Mr. Hong. If we terminate Mr. Hong's employment without cause or if he resigns from his employment for good reason, which includes a termination or resignation upon a change of control of our Company, Mr. Hong would be entitled to receive continued payments of his base salary for one year, reimbursement of medical insurance premiums during that period unless he becomes employed elsewhere, a pro-rated portion of his annual performance bonus, and, if any severance payment is deemed to be an excess parachute payment within the meaning of Section 280G of the Internal Revenue Code (the Code), an amount equal to any excise tax imposed under Section 4999 of the Code. In addition, upon any such termination or resignation, any unvested stock options held by Mr. Hong would immediately become fully vested and exercisable as of the effective date of the termination or resignation. If Mr. Hong's employment is terminated due to death or disability, he or his estate would receive a lump-sum payment equal to half of his annual base salary and any stock options held by Mr. Hong would vest to the same extent as they would have vested one year thereafter. Additionally, if Mr. Hong's employment is terminated due to death or disability, 25% of the shares subject to outstanding stock options, or such lesser amount as is then unvested, would immediately vest and become exercisable. If Mr. Hong resigns without good reason or is terminated for cause, we would have no further obligation to him other than to pay his base salary or other amounts earned by him through the date of resignation or termination.

For purposes of Mr. Hong's employment agreement:

- cause means a reasonable determination by the Board, acting in good faith based upon actual knowledge at the time, that Mr. Hong has (i) materially breached the terms of his employment agreement, or any other material agreement between us and Mr. Hong, including an arbitration agreement and a proprietary information and invention assignment agreement, (ii) committed gross negligence or engaged in serious misconduct in the execution of his assigned duties, (iii) been convicted of a felony or other serious crime involving moral turpitude, (iv) materially refused to perform any lawful duty or responsibility consistent with Mr. Hong's position with our Company, or (v) materially breached his fiduciary duty or his duty of loyalty to our Company;
- good reason means (i) the assignment to Mr. Hong, without his consent, of duties inconsistent with his position so as to constitute a diminution of status with our Company, including an assignment of Mr. Hong to a position other than President and Chief Executive Officer of our Company, (ii) our reduction of Mr. Hong's base salary as in effect at any time without Mr. Hong's consent, other than a decrease of up to (and including) 10% in connection with an adverse change in the business operations or financial condition of our Company, (iii) the occurrence of a change of control, or (iv) a requirement that Mr. Hong relocate (or report on a regular basis) to an office outside of Orange County without his consent; and
- a change of control means the occurrence of any of the following: (i) any person or entity is or becomes the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of our Company representing a percentage of the combined voting power of our then-outstanding securities that is greater than 50%, (ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the date of Mr. Hong's employment agreement, constituted our Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of our Company) whose appointment or election by the Board or nomination for election by our stockholders is approved or recommended by

a vote of at least two-thirds of the directors then still in office who either were directors on the date of Mr. Hong's employment agreement or whose appointment, election or nomination for election was previously so approved or recommended; (iii) there is consummated a merger or consolidation of our Company in which our Company does not survive or our Company survives but the shares of our common stock outstanding immediately prior to such merger or consolidation represent 50% or less of the voting power of our Company after such merger or consolidation; or (iv) our stockholders approve a plan of our complete liquidation or dissolution or there is consummated an agreement for our sale or disposition of all or substantially all of our assets, other than a sale or disposition of all or substantially all of our assets to an entity, at least 50% of the combined voting power of the voting securities of which are owned by our stockholders in substantially the same proportions as their ownership of our Company immediately prior to such sale.

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We have not entered into an employment agreement with Ms. Sasaki, our Vice President, Chief Financial Officer and Secretary. For Fiscal 2017 and Fiscal 2016, Ms. Sasaki received an annualized base salary of \$200,000. If Ms. Sasaki's employment is terminated due to death or disability, any stock options held by Ms. Sasaki would vest to the same extent as they would have vested one year thereafter. Additionally, if Ms. Sasaki's employment is terminated due to death or disability, 25% of the shares subject to outstanding stock options, or such lesser amount as is then unvested, would immediately vest and no additional shares would vest thereafter. Ms. Sasaki is eligible for a target cash bonus of 75% of her base salary, which is to be determined by our Board in its discretion based on various factors.

Cash Bonuses

No cash bonuses were paid to either Mr. Hong or Ms. Sasaki for Fiscal 2017. Mr. Hong and Ms. Sasaki received cash bonuses of \$160,000 and \$80,000, respectively, for Fiscal 2016, based on the achievement of certain Company performance goals.

Retirement Benefits

We maintain a savings plan that qualifies as a defined contribution plan under Section 401(k) of the Code, to which all of our employees, including our named executive officers, are able to contribute up to the limit prescribed by applicable tax rules on a before-tax basis. All of these employee contributions are fully-vested upon contribution. In addition, we may make matching contributions on the contributions of our employees on a discretionary basis, and during Fiscal 2017 and Fiscal 2016, we made matching contributions equal to 50% of the first 6% of pay that was contributed by employees, including our named executive officers, to the plan. Effective for pay periods beginning April 15, 2018, we no longer make these matching contributions.

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Outstanding Equity Awards at Fiscal Year End