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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 NETLIST INC., a Delaware
17 corporation,

18 Plaintiff,

19 v.

20 SAMSUNG ELECTRONICS CO.,
21 LTD., a Korean corporation,

22 Defendant.

CASE NO. 8:20-cv-993-JAK (DFMx)

**REDACTED FIRST AMENDED
COMPLAINT FOR BREACH OF
CONTRACT AND DECLARATORY
RELIEF**

DEMAND FOR JURY TRIAL

**FILED UNDER SEAL PURSUANT
TO ORDER OF COURT DATED
AUGUST 12, 2020**

1 Plaintiff Netlist Inc. (“Netlist”) complains and alleges the following against
2 Defendant Samsung Electronics Co., Ltd. (“Samsung”):

3 **THE PARTIES**

4 1. Netlist is a Delaware corporation having its principal place of business at
5 175 Technology Drive, Suite 150, Irvine, CA 92618.

6 2. Samsung is a Korean corporation with its principal offices at 129
7 Samsung-Ro, Yeontong-gu, Suwon-si, Gyeonggi-do, South Korea. Samsung
8 manufactures and sells a wide range of products, including semiconductors, memory
9 components, and memory modules, in the United States.

10 **JURISDICTION**

11 3. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)
12 because the amount in controversy exceeds seventy-five thousand dollars (\$75,000)
13 exclusive of interest and costs, and there is complete diversity of citizenship because
14 Defendant Samsung is a citizen of South Korea and Plaintiff Netlist is a citizen of
15 California.

16 4. This Court has personal jurisdiction over Samsung because Samsung
17 transacted and continues to transact business in this District and its actions caused and
18 continue to cause injury to Netlist within this District.

19 5. This Court has the power to grant declaratory relief under the Declaratory
20 Judgment Act, 28 U.S.C. §§ 2201, 2202. An actual controversy exists between the
21 Parties within the meaning of 28 U.S.C. § 2201(a), which is of sufficient immediacy
22 and reality to warrant declaratory relief.

23 **VENUE**

24 6. Venue is proper within this District under 28 U.S.C. § 1391(b) and (c).
25 Samsung transacts business and contracted to sell its products to Netlist within this
26 District. Venue also is proper because Netlist’s principal place of business is in this
27 District, and Netlist suffered harm in this District. Finally, a substantial part of the
28 events giving rise to the claims occurred in this District.

1 **BACKGROUND**

2 7. Netlist is a leading provider of high-performance modular memory
3 subsystems to original equipment manufacturers, and specializes in hybrid memory
4 that merges DRAM and NAND flash raw materials to create efficient memory
5 solutions.

6 8. Samsung is South Korea’s largest company and one of the world’s largest
7 producers of semiconductors. Among other things, Samsung develops, manufactures,
8 and sells memory components and memory modules.

9 9. On November 12, 2015, Netlist and Samsung entered into a Joint
10 Development and License Agreement (the “Agreement”). Netlist and Samsung
11 entered into the Agreement [REDACTED]

12 [REDACTED]
13 [REDACTED]

14 **Supply Terms**

15 10. As part of the consideration of the Agreement, Netlist sought to ensure
16 that it would have a dependable and stable supply of [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 11. In the year prior to entering the Agreement, Samsung [REDACTED]
22 [REDACTED] to Netlist. After signing the Agreement, Netlist and
23 Samsung increased their transactions. At first, Samsung supplied [REDACTED]
24 [REDACTED] and Netlist purchased
25 these products regularly. During the first two years, Samsung sold Netlist [REDACTED]
26 [REDACTED] each quarter. In 2016, Netlist purchased approximately [REDACTED]
27 [REDACTED] from Samsung. In 2017, Netlist’s
28 purchases [REDACTED]

1 12. However in 2018, Samsung began not to fulfill Netlist’s requests or
2 orders. Samsung deliberately began to restrict Netlist’s access to products and failed
3 to fulfill its orders, often without notice and always in violation of the Agreement. For
4 example, in the first quarter of 2018, Samsung supplied Netlist with only [REDACTED]
5 [REDACTED]—despite Netlist’s request for substantially higher volumes—which
6 is less than [REDACTED] supplied in the same quarter of the previous year.

7 13. Samsung continues to restrict the supply of [REDACTED]
8 to Netlist.

9 14. By repeatedly breaching the Agreement, Samsung forced Netlist to forgo
10 business opportunities and [REDACTED]
11 [REDACTED] Netlist was unable to obtain many products that Samsung
12 provided and was required to supply under the Agreement. When Samsung failed to
13 fulfill Netlists’ orders, Netlist could not supply its customers and lost business
14 opportunities and profits it otherwise would have earned had Samsung performed. In
15 addition, Netlist [REDACTED]

16 [REDACTED]
17 **Joint Development Fees**

18 15. In addition, Section 3.1 of the Agreement provides that Samsung [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 Section 3.2 of the Agreement permits Samsung to withhold taxes due or payable to the
22 Korean tax authority [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 16. Shortly after entering the Agreement, Samsung withheld [REDACTED]
26 [REDACTED] owed to Netlist under Section 3.1. Samsung claims it paid this
27 withholding to the Korean tax authority, even though, on information and belief, [REDACTED]
28 [REDACTED] This was a surprise to

1 Netlist, which had understood that the amount would not be taxed in Korea under the
2 applicable law.

3 17. Netlist has sought and continues to seek its lawful refund from the Korean
4 tax authorities for the amount over-withheld and has repeatedly requested that
5 Samsung cooperate in claiming a credit, refund, or exemption for this amount.
6 Samsung has instead responded that it properly withheld taxes, has delayed or declined
7 to provide the cooperation requested, and has not been forthcoming to Netlist
8 regarding what it has done or could do to help.

9 18. Samsung has breached the Agreement by wrongfully withholding [REDACTED]
10 [REDACTED] owed to Netlist, and by failing to cooperate with Netlist as the latter
11 continues to seek to recover the amount withheld.

12 **Termination**

13 19. On May 27, 2020, Netlist notified Samsung that Netlist was exercising its
14 rights under Section 13.2 of the Agreement. That section provides that a party may
15 terminate the Agreement if the other [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 20. Samsung's breaches preclude a material purpose of the Agreement from
20 being achieved—namely, Netlist's contractual right to [REDACTED]

21 [REDACTED]
22 21. Samsung did not cure its breach within thirty days of receiving notice.

23 22. On July 15, 2020, Netlist issued written notice to Samsung terminating
24 the Agreement under Section 13.2.

25 23. Upon a termination pursuant to Section 13.2 of the Agreement, all

26 [REDACTED]
27 [REDACTED] [i.e., July 20, 2020].

28 Moreover, [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 24. Samsung has not responded to Netlist’s attempts to notify the company of
5 its breaches and its decision to terminate the Agreement. Samsung has not complied
6 with its obligations upon termination.

7 **COUNT ONE**
8 **(Breach of Contract)**

9 25. Plaintiffs hereby incorporate each preceding and succeeding paragraph as
10 relevant and as though fully set forth herein.

11 26. As alleged above, Samsung entered into an Agreement with Netlist that
12 required Samsung to supply [REDACTED]
13 [REDACTED]

14 27. Samsung breached the Agreement by failing to [REDACTED]
15 [REDACTED] These breaches occurred repeatedly, beginning in June 2017, and
16 continue to this day.

17 28. Netlist has performed all material obligations owed to Samsung under the
18 Agreement.

19 29. As a direct and proximate result of Samsung’s breach of the Agreement,
20 Netlist has suffered damages.

21 **COUNT TWO**
22 **(Breach of Contract)**

23 30. Plaintiff hereby incorporates each preceding and succeeding paragraph as
24 relevant and as though fully set forth herein.

25 31. As alleged above, Samsung entered into an Agreement with Netlist that
26 required Samsung to pay Netlist [REDACTED]
27 [REDACTED]
28 [REDACTED]

