

PRIMO WATER CORP /CN/

FORM 8-K (Current report filing)

Filed 08/03/18 for the Period Ending 08/01/18

Address	4221 W. BOY SCOUT BLVD. SUITE 400 TAMPA, FL, 33607
Telephone	813-313-1732
CIK	0000884713
Symbol	PRMW
SIC Code	2086 - Bottled and Canned Soft Drinks and Carbonated Waters
Industry	Non-Alcoholic Beverages
Sector	Consumer Non-Cyclicals
Fiscal Year	12/28

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 1, 2018

Cott Corporation

(Exact name of registrant as specified in its charter)

Canada
(State or other jurisdiction
of incorporation)

001-31410
(Commission
File Number)

98-0154711
(IRS Employer
Identification No.)

1200 Britannia Rd., East
Mississauga, Ontario, Canada

L4W 4T5

Corporate Center III
4221 W. Boy Scout Blvd., Suite 400
Tampa, Florida, United States
(Address of Principal Executive Offices)

33607
(Zip Code)

Registrant's telephone number, including area code: (813) 313-1732

N/A

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Leadership Transition

On August 1, 2018, David T. Gibbons, Chairman of the Board of Directors (the “Board”) of Cott Corporation (the “Company”), notified the Company of his decision to retire from the Board effective as of December 29, 2018. Mr. Gibbons’s retirement is not due to any disagreement with the Company on any matters relating to the Company’s operations, policies or practices.

On August 1, 2018, the Board appointed Jerry Fowden as executive chairman of the Board, effective December 30, 2018. Mr. Fowden, 61, has served as the Company’s chief executive officer since 2009. In connection with his appointment as executive chairman of the Board, Mr. Fowden will retire as the Company’s chief executive officer and as an officer of the Company’s affiliates, subsidiaries and associated companies, effective December 29, 2018. As executive chairman, Mr. Fowden will continue to guide the Company’s overall vision and direction and will facilitate other significant strategic activity.

In connection with Mr. Fowden’s appointment to executive chairman, on August 1, 2018, the Company and Mr. Fowden entered into an Offer Letter governing the terms of his employment. Under the terms of his Offer Letter, Mr. Fowden’s base salary will be \$680,000 and his annual target bonus will be 75% of his base salary. He will also receive a one-time long-term incentive (“LTI”) award equal to \$1,010,000, which will be allocated as follows: 25% restricted share units with time-based vesting; 37.5% stock options; and 37.5% restricted share units with performance-based vesting. The stock options and time-based restricted share units will vest in three equal annual installments, commencing on the first anniversary of the grant date, and the performance-based restricted share units will vest based upon the achievement of a specific level of cumulative pre-tax income over the three-year period ending at the end of fiscal 2021. The LTI award will be governed by the Offer Letter, the Company’s equity incentive plans, and award agreements.

During his tenure as executive chairman, Mr. Fowden will continue to receive an annual car allowance and will continue to participate in the Company’s health, welfare and other benefit plans consistent with his current arrangements. Mr. Fowden will continue to participate in the Company’s Severance and Non-Competition Plan dated February 18, 2009 (the “Severance Plan”) as a “Level 1” participant, as modified by the terms of his Offer Letter. Following expiration of the one-year term of the Offer Letter, it is expected that Mr. Fowden will assume the traditional role of Chairman of the Board.

On August 1, 2018, the Board appointed Thomas J. Harrington as the Company’s chief executive officer, effective December 30, 2018. Mr. Harrington, 60, was appointed chief executive officer of the Company’s DS Services of America, Inc. (“DSS”) business unit upon the Company’s acquisition of DSS in December 2014 and was

appointed President of the Company's Route Based Services reporting segment in July 2016. Prior to the acquisition, Mr. Harrington served in various roles with DSS from 2004 to 2014, including Chief Executive Officer, President, Chief Operating Officer, West Division President, and Senior Vice President, Central Division. Prior to joining DSS, Mr. Harrington served in various roles with Coca-Cola Enterprises, Inc., including Vice President and General Manager of Coca-Cola Enterprises New York and Chicago divisions. He also served in various sales and marketing roles with Pepperidge Farm from 1979 to 1985. Mr. Harrington previously served as a member of the board of directors of the National Automatic Merchandising Association, the International Bottled Water Association and the Water Quality Association.

The Board also appointed Mr. Harrington to serve as a director on the Board, effective December 30, 2018.

In connection with Mr. Harrington's appointment, on August 1, 2018, the Company entered into an Offer Letter setting out the terms of his employment.

Mr. Harrington will earn an annual base salary of \$850,000 and is eligible to participate in the Company's annual executive bonus plan with an annual target bonus equal to 100% of his base salary, and he has the opportunity to earn up to 200% of his base salary for achievement of goals in excess of the target goals, as approved by the Board's Human Resources and Compensation Committee. He will also receive an annual car allowance of \$16,000.

Mr. Harrington will also be entitled to up to \$250,000 for relocation assistance to the Tampa, Florida area, payable following his purchase of a residence in the Tampa, Florida area. This payment is subject to repayment under certain circumstances if Mr. Harrington is terminated for Cause or voluntarily resigns from his position without Good Reason (as such terms are defined in the Severance Plan) in the first two years of his tenure as chief executive officer.

Mr. Harrington will continue to be eligible to participate in all of the Company's benefit plans made available to its employees and senior executives. He will receive a LTI award equal to \$2,300,000 when the 2019 annual awards are made to other senior executives. The LTI award will be split as follows: 25% restricted share units with time-based vesting; 37.5% stock options; and 37.5% restricted share units with performance-based vesting. The stock options and time-based restricted share units will vest ratably in three equal annual installments from the grant date, and the performance-based restricted share units will vest based upon the achievement of a specific level of cumulative pre-tax income over the three-year period ending at the end of fiscal 2021. The LTI award will be governed by the Company's equity incentive plans and award agreements.

Mr. Harrington will participate in the Severance Plan as a "Level 1" participant, which entitles him to a cash payment equal to the sum of his annual base salary and bonus (based on target bonus if the termination occurs in 2019 or 2020, and based on the average actual bonus paid for the previous two years if the termination occurs thereafter) if his employment is terminated by the Company without Cause or by him for Good Reason (as such terms are defined in the Severance Plan).

Mr. Harrington is subject to standard confidentiality undertakings and has agreed to several restrictive covenants under the Severance Plan. He has agreed to a non-competition covenant that generally limits his ability to compete with the Company in any country in which it conducts business. He has also agreed to non-solicitation and non-disparagement covenants. These limitations continue during the term of employment and for a period of one year following termination, regardless of the cause of the termination.

There is no arrangement or understanding between Mr. Harrington and any other person(s) pursuant to which he was selected as chief executive officer or a director. Mr. Harrington does not have any family relationship with any director, executive officer, or person nominated or chosen by the Company to become a director or executive officer. Other than his employment relationship, Mr. Harrington does not have a direct or indirect material interest in any transaction in which the Company is a participant.

Amendment to Cott Corporation Severance and Non-Competition Plan

On August 1, 2018, the Board approved an amendment to the Severance Plan (the "Severance Plan Amendment") to, among other things, (i) remove the tax gross-up provision, (ii) update the definition of "Business" to reflect the Company's recent transformation, (iii) update certain covenants to reflect current practices and applicable law, and (iv) provide that Florida law governs non-Canadian participants.

The foregoing descriptions of Mr. Fowden's Offer Letter, Mr. Harrington's Offer Letter and the Severance Plan Amendment are qualified in their entirety by reference to the full text of the documents, which are filed as Exhibits 10.1, 10.2, and 10.3 to this Current Report on Form 8-K, respectively, and are incorporated by reference herein. A copy of the press release announcing the leadership changes described herein was furnished as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on August 2, 2018.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

Exhibit No.	Description
10.1	<u>Offer Letter Agreement with Jerry Fowden, dated August 1, 2018.</u>
10.2	<u>Offer Letter Agreement with Thomas Harrington, dated August 1, 2018.</u>
10.3	<u>Amendment to Cott Corporation Severance and Non-Competition Plan, dated August 1, 2018.</u>

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 hereunto duly authorized.

August 3, 2018

Cott Corporation
(Registrant)

By: /s/ Marni Morgan Poe
Marni Morgan Poe
Vice President, General Counsel and Secretary

August 1, 2018

Jerry Fowden
Cott Corporation
4221 West Boy Scout Blvd.
Tampa FL 33607

Dear Jerry:

We are pleased to offer you the position of the Executive Chairman of Cott Corporation (the "Company"), effective December 30, 2018 (the "Effective Date"). The term of this position shall be one year from the Effective Date, unless extended by mutual, written agreement of the parties. This is a part-time position, with the expectation that, on average, you will devote 30 percent of your working time to your duties hereunder, understanding that you may devote more or less than this amount at various times during your employment.

In this position, you will report to, and perform such duties as are assigned by, the Cott Board of Directors. Except as otherwise expressly set out herein, upon the Effective Date, this new offer will replace your existing terms and conditions of employment presented to you in the letter from the Company dated February 18, 2009 (the "Prior Offer").

While employed pursuant to this offer, your base salary will be \$680,000 per year, and you will continue to receive a car allowance equal to \$16,000 per year, which will be prorated for any partial years of employment and paid on a regular basis consistent with the Company's regular reimbursement practices. During your employment, the Company will also continue to reimburse you for the reasonable cost of income tax preparation on your behalf and reasonable expenses incurred by you to maintain your green card.

In addition, you will continue to be eligible to participate in Cott's USA Benefit Program (the "Program") available, from time to time, to other senior executives of the Company. The Program currently includes health, disability and life insurance benefits. To be clear, employee contributions are required for the Program. You shall also continue to be entitled to participate in all other benefit plans and programs made available to senior executives of the Company, as such plans and programs change from time to time.

You are eligible to participate in the Company's annual bonus plan at a target amount of 75% of your base salary, based upon the achievement of specified goals. The bonus year is the Company's fiscal year. Your performance goals shall be established annually and will be communicated to you promptly upon the determination thereof by the Human Resources and Compensation Committee of the Company. Please note that the bonus plan is entirely discretionary, and the Company reserves in its absolute discretion the right to terminate or amend any bonus plan or arrangement in effect from time to time.

You shall be entitled to participate in the long-term incentive plans and programs ("LTIP") as made available from time to time to senior executives of the Company. You will receive a one-

time incentive award valued at \$1,010,000 in December 2018 during the regularly scheduled LTIP grant cycle, which will be allocated as follows: 37.5% to performance-based restricted share units, 25.0% to time-based restricted share units, and 37.5% to stock options. The performance-based restricted share units shall vest based upon the achievement of a specific, Company-determined level of cumulative pre-tax income over the three-year period ending at the end of fiscal year 2021. All of the time-based restricted share units and stock options shall vest in three equal annual installments, commencing on the first anniversary of the grant date. You shall not be eligible for any additional long-term incentive awards. Outstanding awards made prior to the date hereof, along with the award granted to you in December 2018, shall continue to vest in accordance with their normal applicable vesting schedules.

Upon acceptance of this offer, you shall continue to be entitled to the benefits of and be bound by the obligations under the Severance and Non-Competition Plan, as amended (the "Severance and Non-Competition Plan") as a "Level 1 Employee"; provided that:

- for the purposes of Section 3(a) of the Plan, in connection with an Involuntary Termination in 2019, your Severance Amount shall be calculated based on your target bonus, not your Average Bonus;
- upon an Involuntary Termination, you shall be entitled to the Excise Tax Gross up as provided in Section 6 of the Severance and Non-Competition Plan, as in effect immediately prior to the effective date of the First Amendment to the Cott Corporation Severance and Non-Competition Plan, dated as of August 1, 2018; and
- in the event the Company terminates your employment as Executive Chairman upon a determination by the Company Board of Directors that there is no longer a business need for the role of Executive Chairman or your employment as Executive Chairman terminates naturally on the one-year anniversary of the Effective Date (or such later date as may be agreed pursuant to the first paragraph of this offer), such termination shall not be deemed an Involuntary Termination, and you shall not be entitled to the Severance Amount or other severance payment pursuant to the Severance and Non-Competition Plan (although the Company will continue to pay you through the end of the above-referenced one-year term).

All capitalized terms used in the foregoing paragraph of this offer shall have the meaning ascribed thereto in the Severance and Non-Competition Plan.

Upon acceptance of this offer, you acknowledge and agree that the Company has the right to disclose confidential information regarding you, this offer or your employment to any third party or publicly as required by law.

At the conclusion of the term of the Executive Chairman position (as it may be extended as provided in the first paragraph of this letter), it is expected that you will be appointed as the Non-Executive Chairman of the Company, subject to your continued status as a director and the board's discretion. The arrangements for that further role will be determined closer to the time of that transition.

Jerry, please indicate your acceptance of this offer by returning one signed original of this offer letter.

Yours truly,

/s/ Stephen Halperin

Stephen Halperin

I accept this offer of continued employment and the terms identified herein. I have had an opportunity to obtain independent legal advice in connection with this offer and have either obtained such advice or hereby expressly waive the opportunity.

/s/ Jerry Fowden 8/1/2018
Jerry Fowden Date

August 1, 2018

Dear Tom:

I am very pleased to outline in this letter (the “**Offer Letter**”) the terms and conditions on which we are offering you the position of Chief Executive Officer of Cott Corporation (the “**Company**”). This Offer Letter will not constitute an agreement until it has been fully executed by both parties. Please note that this Offer Letter does not contemplate a contract or promise of employment for any specific term; you will be an at-will employee at all times.

1. Position and Duties.

1.1. Position. Subject to the terms and conditions hereof, you will be employed by the Company as its Chief Executive Officer and serve as a Director on the Company’s Board of Directors (the “**Board**”), effective as of December 30, 2018 (the “**Employment Date**”) and continuing until terminated by you or the Company.

1.2. Responsibilities.

(a) As the Company’s Chief Executive Officer, you will report to the Board and have such duties and responsibilities as may be assigned to you from time to time by the Board.

(b) You agree to devote substantially all of your business time and attention to the business and affairs of the Company and to discharging the responsibilities assigned to you. This shall not preclude you from (i) serving on the boards of directors of a reasonable number of charitable organizations, (ii) engaging in charitable activities and community affairs, and (iii) managing your personal affairs, so long as these activities do not interfere with the performance of your duties and responsibilities as the Company’s Chief Executive Officer.

1.3. No Employment Restriction. You hereby represent and covenant that, except as disclosed to the Company, your employment by the Company does not violate any agreement or covenant to which you are subject or by which you are bound and that there is no such agreement or covenant that could restrict or impair your ability to perform your duties or discharge your responsibilities to the Company.

2. Remuneration.

2.1. Base Salary. Your annual base salary will initially be at the rate of US \$850,000 per year (“**Annual Base Salary**”), paid on a bi-weekly basis, prorated for any partial periods based on the actual number of days in the applicable period. Your performance will be evaluated at least annually, and any increase to the level of your Annual Base Salary will be determined as part of the regular annual review process.

2.2. Bonus. You will be eligible to participate in the Company's annual bonus plan and may earn a bonus based upon the achievement of specified performance goals. The amount of your target bonus is 100% of your Annual Base Salary. The bonus year is the Company's fiscal year. Currently the maximum potential payout permitted under the bonus plan is two (2) times the applicable target bonus for achievement of performance goals significantly in excess of the target goals, as established by the Human Resources and Compensation Committee of the Company's Board of Directors (the "HRCC"). Please note that the bonus plan is entirely discretionary, and the Company reserves in its absolute discretion the right to terminate or amend it or any other bonus plan that may be established.

2.3. LTI Grant. You will be entitled to receive a long term incentive ("LTI") award equivalent to US \$2,300,000 comprised of stock options (37.5%), performance-based restricted share units (37.5%) and time-based restricted share units (25%), granted to you in December 2018 during the regularly scheduled LTI grant cycle. The stock options and time-based restricted share units will vest ratably in three equal annual installments from the grant date, and the performance-based restricted units will vest based upon the achievement of a specific level of cumulative pre-tax income over the three-year period ending at the end of fiscal 2021. The LTI award, including the vesting terms, will be governed by the terms of the Cott Corporation equity incentive plan under which the award is made (the "Equity Plan") and your award agreement. You will be eligible for future LTI awards that will be based on your performance. Annual grants are issued following approval by the HRCC at its regularly scheduled meetings in December.

3. Benefits.

3.1. Benefit Programs. You will continue to be eligible to participate in the Company's benefit programs generally available to other senior executives of the Company. Our benefit programs include our 401(k) plan and health, disability and life insurance benefits. Employee contributions are required for our benefit programs. You will continue to receive a cell phone in order to perform your employment obligations. The Company shall pay the monthly charges for the cell phone, according to its policy, as in effect from time to time.

3.2. ESPP. In addition, you will continue to be eligible to participate in the Company's Employee Stock Purchase Plan (the "ESPP"), through which you can purchase Company common shares at a discount through payroll deductions.

3.3. Vacation. You will be entitled to four (4) weeks' vacation per calendar year. You are encouraged to take vacation in the calendar year it is earned. All earned vacation must be taken by March 31st of the year following the year in which it is earned; otherwise it may be forfeited. If you should leave the Company, the value of any unearned vacation taken by you will be considered a debt to the Company. All vacation periods shall be subject to the oversight of the Board.

3.4. Reimbursement. You will be reimbursed for expenses reasonably incurred in connection with the performance of your duties in accordance with the Company's policies as established from time to time.

3.5. Relocation. You will be provided with a relocation allowance of US \$250,000, which must be used for costs incurred during your relocation to the Tampa, Florida area and will

be paid conditioned upon, and within 30 days after, your closing on a new residence in the Tampa, Florida area. As a condition of continued employment with the Company, you will be expected to complete your relocation to the Tampa, Florida area within the 12-month period following the Employment Date. In view of the amounts being provided to you in accordance with this Section 3.5, you will be required to repay the Company in full if, prior to the one-year anniversary of the Employment Date, you are terminated for Cause (as defined in the Severance and Non-Competition Plan, as defined below) or voluntarily resign your position without Good Reason (as defined in the Severance and Non-Competition Plan), and you will be required to repay the Company one-half of any relocation allowance received by you if you are terminated for Cause or voluntarily resign without Good Reason between the first and second anniversary of the Employment Date. Repayment of any amounts due by you to the Company shall be made to the Company on or before the 90th day after the date of resignation or termination.

3.6. Allowances. You will receive an annual vehicle allowance in the amount of US \$16,000 annually, which amount shall be prorated during any partial year of employment.

3.7. No Other Benefits. Other than benefits generally available to all full-time employees, you will not be entitled to any benefit or perquisite other than as specifically set out in this Offer Letter or separately agreed to in writing by the Company.

4. Termination; Payments and Entitlements Upon a Termination.

4.1. Termination. The Company may terminate your employment: (a) for Cause or (b) for any reason or no reason, in all cases, upon reasonable notice to you. Your employment with the Company will terminate upon your death. You are able to resign your employment, as provided in the Severance and Non-Competition Plan.

4.2. Involuntary Termination. Upon the Employment Date, you shall be entitled to the benefits of and be bound by the obligations under the Severance and Non-Competition Plan (the “**Severance and Non-Competition Plan**”) (a copy of which is attached hereto) as a “Level 1 Employee”; provided that:

- for the purposes of Section 3(a) of the Severance and Non-Competition Plan, in connection with an Involuntary Termination in 2019 and 2020, your Severance Amount shall be calculated based on your target bonus, not your Average Bonus; and
- your failure to relocate to the Tampa area within 12 months after the Employment Date shall also constitute “Cause.”

All capitalized terms used in this Section 4 shall have the meaning ascribed thereto in the Severance and Non-Competition Plan unless otherwise indicated.

4.3. Change in Control. If (1) your LTI awards are continued, assumed, or replaced by the surviving or successor entity, and, within two years after the Change of Control (as defined in the Equity Plan), you experience an involuntary termination of employment for reasons other than Cause (as defined in the Equity Plan), or you terminate your employment for Good Reason (as defined in the Equity Plan), or (2) such awards are not continued, assumed or

replaced by the surviving or successor entity, then (i) your unvested options will immediately become vested and exercisable, (ii) all of your unvested time-based and performance-based restricted share units will immediately vest, and (iii) any performance objectives applicable to awards will be deemed to have been satisfied at your “target” level of performance.

4.4. Resignation. If you are a Director of the Company or a director or an officer of a company affiliated or related to the Company at the time of your termination, you will be deemed to have resigned all such positions, and you agree that upon termination you will execute such tenders of resignation as may be requested by the Company to evidence such resignations.

5. Restrictive Covenants.

5.1. Severance and Non-Competition Plan. You shall be bound by the restrictive covenants contained in the Severance and Non-Competition Plan, as modified in Section 4.2 above.

5.2. DTSA Acknowledgement. You acknowledge that, by this Section, you have been notified in accordance with the Defend Trade Secrets Act of 2016 that, notwithstanding the foregoing:

(a) You will not be held criminally or civilly liable under any federal or state trade secret law or this Offer Letter for the disclosure of confidential information that: (1) You make (A) in confidence to a federal, state, or local government official, either directly or indirectly, or to your attorney; and (B) solely for the purpose of reporting or investigating a suspected violation of law; or (2) you make in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(b) If you file a lawsuit for retaliation by the Company for reporting a suspected violation of law, you may disclose confidential information to your attorney and use the confidential information in the court proceeding if you: (i) file any document containing confidential information under seal and (ii) do not disclose Confidential Information, except pursuant to court order.

6. Code Section 409A.

6.1. In General. This Section shall apply to you if you are subject to Section 409A of the United States Internal Revenue Code of 1986 (the “Code”), but only with respect to any payment due hereunder that is subject to Section 409A of the Code.

6.2. Release. Any requirement that you execute and not revoke a release to receive a payment hereunder shall apply to a payment described in Section 6.1 only if the Company provides the release to you on or before the date of your Involuntary Termination.

6.3. Payment Following Involuntary Termination. Notwithstanding any other provision herein to the contrary, any payment described in the Severance and Non-Competition Plan that is due to be paid within a stated period following your Involuntary Termination shall be paid:

(a) If, at the time of your Involuntary Termination, you are a “specified employee” as defined in Section 409A of the Code and such payment is subject to (and not exempt from) Section 409A of the Code, such payment shall be made as of the later of (i) the date payment is due hereunder, or (ii) the earlier of the date which is six months after your “separation from service” (as defined under Section 409A of the Code), or the date of your death; or

(b) In any other case, on the later of (i) last day of the stated period, or if such stated period is not more than 90 days, at any time during such stated period as determined by the Company without any input from you, or (ii) the date of your “separation from service” (as defined under Section 409A of the Code).

6.4. Reimbursements. The following shall apply to any reimbursement that is a payment described in Section 6.1: (a) with respect to any such reimbursement under Section 7.8, reimbursement shall not be made unless the expense is incurred during the period beginning on your effective hire date and ending on the sixth anniversary of your death; (b) the amount of expenses eligible for reimbursement during your taxable year shall not affect the expenses eligible for reimbursement in any other year; and (c) the timing of all such reimbursements shall be as provided herein, but not later than the last day of your taxable year following the taxable year in which the expense was incurred.

6.5. Offset. If payments to you under this Agreement are subject to Section 409A of the Code, any offset under Section 7.11 shall apply to a payment described in Section 6.1 only if the debt or obligation was incurred in the ordinary course of your employment with the Company, the entire amount of the set-off in any taxable year of the Company does not exceed \$5,000, and the set-off is made at the same time and in the same amount as the debt or obligation otherwise would have been due and collected from you.

6.6. Interpretation. This Offer Letter shall be interpreted and construed so as to avoid the additional tax under Section 409A(a)(1)(B) of the Code to the maximum extent practicable.

7. General Provisions.

7.1. Entire Agreement. This Offer Letter, together with the plans and documents referred to herein, constitutes and expresses the whole agreement of the parties hereto with reference to any of the matters or things herein provided for or herein before discussed or mentioned with reference to your employment. All promises, representation, collateral agreements and undertakings not expressly incorporated in this Offer Letter are hereby superseded by this Offer Letter. For clarity, you and the Company confirm that, as of the Employment Date, this Offer Letter shall supersede and replace the First Amended and Restated Employment Agreement between you and DS Services of America Inc., except that you agree that the obligations contained therein that were intended to survive the termination of that agreement or your separation from that employment (e.g., as to confidentiality) shall continue in full force and effect to the extent not inconsistent with this Offer Letter.

7.2. **Amendment.** This Offer Letter may be amended or modified only by a writing signed by both of the parties hereto.

7.3. **Assignment.** This Offer Letter may be assigned by the Company to any successor to its business or operations. Your rights hereunder may not be transferred by you except by will or by the laws of descent and distribution and except insofar as applicable law may otherwise require. Any purported assignment in violation of the preceding sentence shall be void.

7.4. **Governing Law; Consent to Personal Jurisdiction and Venue.** This Offer Letter takes effect upon its acceptance and execution by the Company. The validity, interpretation, and performance of this Offer Letter shall be governed, interpreted, and construed in accordance with the laws of the State of Florida without giving effect to the principles of comity or conflicts of laws thereof. You hereby consent to personal jurisdiction and venue, for any action brought by the Company arising out of a breach or threatened breach of this Offer Letter or out of the relationship established by this Offer Letter, exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida; and, if applicable, the federal and state courts in any jurisdiction where you are employed or reside; you hereby agree that any action brought by you, alone or in combination with others, against the Company, whether arising out of this Offer Letter or otherwise, shall be brought exclusively in the United States District Court for the Middle District of Florida, Tampa Division, or in the Circuit Court in and for Hillsborough County, Florida.

7.5. **Severability.** The invalidity of any one or more of the words, phrases, sentences, clauses or sections contained in this Offer Letter shall not affect the enforceability of the remaining portions of the Offer Letter or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses or sections contained in the Offer Letter shall be declared invalid, the Offer Letter shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

7.6. **Section Headings and Gender.** The section headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the person or persons may require.

7.7. **No Term of Employment.** Nothing herein obligates the Company to continue to employ you. Where lawfully permitted in any jurisdiction in which you perform employment responsibilities on behalf of the Company, your employment shall be at will.

7.8. **Indemnification.** The Company will indemnify and hold you harmless to the maximum extent permitted by applicable law against judgments, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys' fees, in connection with

the defense of, or as a result of any action or proceeding (or any appeal from any action or proceeding) in which you are made or are threatened to be made a party by reason of the fact that you are or were an officer of the Company or any Affiliate (as defined in the Severance and Non-Competition Plan). In addition, the Company agrees that you shall be covered and insured up to the maximum limits provided by any insurance which the Company maintains to indemnify its directors and officers (as well as any insurance that it maintains to indemnify the Company for any obligations which it incurs as a result of its undertaking to indemnify its officers and directors).

7.9. Survivorship. Upon the termination your employment, the respective rights and obligations of the parties shall survive such termination to the extent necessary to carry out the intended preservation of such rights and obligations.

7.10. Taxes. All payments under this Offer Letter shall be subject to withholding of such amounts, if any, relating to tax or other payroll deductions as the Company may reasonably determine and should withhold pursuant to any applicable law or regulation.

7.11. Set-Off. Except as limited by Section 6.5, the Company may set off any amount or obligation that may be owing by you to the Company against any amount or obligation owing by the Company to you.

7.12. Records. All books, records, and accounts relating in any manner to the Company or to any suppliers, customers, or clients of the Company, whether prepared by you or otherwise coming into your possession, shall be the exclusive property of the Company and immediately returned to the Company upon termination of employment or upon request at any time.

7.13. Counterparts. This Offer Letter may be executed in counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

7.14. Consultation with Counsel. You acknowledge that you have conferred with your own counsel with respect to this Offer Letter, and that you understand the restrictions and limitations that it imposes upon your conduct.

Tom, please indicate your acceptance of this offer by returning one signed original of this Offer Letter.

Yours truly,

/s/ Stephen Halperin

Stephen Halperin

I accept this offer of employment and agree to be bound by the terms and conditions listed herein.

/s/ Thomas Harrington

Thomas Harrington

8/1/2018

Date

**FIRST AMENDMENT
TO THE
COTT CORPORATION SEVERANCE AND NON-COMPETITION PLAN**

WHEREAS , Cott Corporation (including its subsidiaries, affiliates and related corporations, the “Corporation”) previously adopted the Cott Corporation Severance and Non-Competition Plan, effective as of February 18, 2009 (the “Plan”) for the benefit of certain key employees of the Corporation; and

WHEREAS , pursuant to Section 8.4 of the Plan, the Board of Directors of Cott Corporation (the “Board”) has the right to amend the Plan; and

WHEREAS , the Board desires to amend the Plan to remove those provisions that provide for a “gross-up” payment to Plan participants who become subject to an excise tax under Section 4999 of the Internal Revenue Code; and

WHEREAS , the Board desires to amend the Plan to modify the definition of “Business” for purposes of the non-competition and non-solicitation prohibitions contained in Section 7.5 of the Plan; and

WHEREAS , the Board desires to amend the Plan to reflect current prevailing practice;

NOW, THEREFORE , the Plan is hereby amended as follows, effective as of August 1, 2018:

1. Section 6 of the Plan is hereby amended in its entirety to read as follows:

“6. Excise Tax: Limitation on Payments .

(a) Anything in this Plan to the contrary notwithstanding, in the event it shall be determined that any payment to or for the benefit of a Participant by the Corporation, whether pursuant to this Plan or otherwise (each, a “Payment” and collectively, the “Payments”), would be subject to the Excise Tax, then the Payment to such Participant shall be reduced to the amount that will result in no portion of the Payments being subject to such Excise Tax (the “Safe Harbor Cap”), but only to the extent that, after such reduction, the net after-tax amount that would be received by such Participant, taking into account all applicable federal, state and local income taxes and the Excise Tax, is greater than the net after-tax amount that would be received by such Participant if the Payment is not reduced to the Safe Harbor Cap. For purposes of reducing the Payment to the Safe Harbor Cap, only amounts payable to such Participant under the Plan (and no other payments) shall be reduced.

(b) All determinations required to be made under this Section 6, including whether and when a reduction to the Safe Harbor Cap is required, the amount of such reduction and the assumptions to be utilized in arriving at such determination, shall be made by the firm engaged as the Corporation's accountants immediately prior to the event which triggered the Excise Tax (the "Accounting Firm"). The Accounting Firm shall provide detailed supporting calculations both to the Corporation and such Participant within 15 business days of the receipt of notice from such Participant that there has been a Payment or such earlier time as is requested by the Corporation; provided that such notice or request shall be made prior to the date of the payment of any Excise Tax. If the Accounting Firm determines that a reduction to the Safe Harbor Cap is required, then the Accounting Firm shall deliver to such Participant a written opinion to that effect and to the effect that after such reduction, failure to report the Excise Tax on such Participant's applicable federal income tax return will not result to the imposition of a negligence or similar penalty. All fees and expenses of the Accounting Firm shall be borne solely by the Corporation. Any determination by the Accounting Firm shall be binding upon the Corporation and such Participant.

2. New Section 7.1(c) is hereby added to the Plan to read as follows:

"(c) Participant acknowledges that, by this Section, he has been notified in accordance with the United States Defend Trade Secrets Act of 2016 that, notwithstanding the foregoing:

(i) The Participant will not be held criminally or civilly liable under any federal or state trade secret law or this Agreement for the disclosure of trade secrets that: (A) the Participant makes (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to his attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) Participant makes in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

(ii) If the Participant files a lawsuit for retaliation by the Corporation for reporting a suspected violation of law, he may disclose trade secrets to his attorney and use the trade secrets in the court proceeding if Participant: (A) files any document containing trade secrets under seal and (B) does not disclose trade secrets, except pursuant to court order."

3. Section 7.4 of the Plan is hereby amended in its entirety to read as follows:

“7.4 Non Competition and Non Solicitation .

(a) The Participant will not at any time without the prior written consent of the Corporation, during the Participant’s employment with the Corporation or for a period that is equal to the product of one (1) Year and the Participant’s Severance Multiple after the termination of the Participant’s employment (regardless of the reason for such termination), either individually or in partnership, jointly or in conjunction with any person, persons, firm, association, syndicate, or corporation, whether as agent, shareholder, employee, consultant or in any manner whatsoever, directly or indirectly:

- (i) anywhere in the Territory, engage in, carry on or otherwise have any interest in, advise, lend money to, perform services for, guarantee the debts or obligations of, or permit the Participant’s name to be used in connection with any business which is competitive to the Business or which provides the same or substantially similar services as the Business;
- (ii) for the purpose, or with the effect, of competing with any business of the Corporation, solicit, assist another to solicit, interfere with, accept any business from or render any services to anyone who is a client or a prospective client of the Corporation or any Affiliate at the time the Participant ceased to be employed by the Corporation or who was a client during the 12 months immediately preceding such time;
- (iii) Solicit, assist another to solicit, or offer employment to any person employed or engaged by the Corporation or any Affiliate at the time the Participant ceased to be employed by the Corporation or who was an employee during the 12-month period immediately preceding such time.”

4. Section 7.6 is hereby amended in its entirety to read as follows:

“7.6 Non-disparagement. The Participant shall not disparage the Corporation or any of its Affiliates, directors, officers, employees or other representatives in any manner and shall in all respects avoid any negative criticism of the Corporation; provided, however, that nothing contained herein shall prevent the Participant from providing truthful information to a government agency, filing a complaint with any government agency, or participating in any government agency investigation, in each case without providing prior notice to the Corporation.”

5. Section 9.4 of the Plan is hereby amended in its entirety to read as follows:

“9.4 “ **Business** ” shall mean the business of manufacturing, selling or distributing water, coffee, tea, powdered beverages, concentrates, extracts, water filtration units and other beverages or products manufactured, sold or distributed by Cott at the time of termination of your employment, as well as such other beverages or products that are contemplated or projected to contribute materially to the profits of Cott at the time of termination of your employment.”

6. Section 11.2 is hereby amended in its entirety to read as follows:

“11.2 Governing Law. The Plan shall be governed by and construed in accordance with the laws of the State of Florida, without reference to the principles of conflicts of law; provided, however, that notwithstanding the foregoing, the laws of the province of Ontario shall apply to any Participant who is a resident of Canada and whose primary place of employment is in Canada.”

7. New Section 8 is hereby added to the Release Agreement (Exhibit A) to read as follows:

“8. For clarity, and notwithstanding the foregoing, the Corporation confirms that nothing in this Release Agreement is intended to prevent, impede or interfere with Employee’s right, without notice to the Corporation, to (a) file a charge or complaint with any agency which enforces anti-discrimination, workplace safety, securities, or other laws; (b) communicate with, cooperate with or provide truthful information to any governmental agency, or participate in any government investigation; (c) testify truthfully in any court or administrative proceeding; or (d) receive and retain any monetary award from a government administered whistleblower award program for providing information directly to a government agency. However, Employee understands that by signing this Release Agreement and not revoking it, he has waived his right to recover any money from the Corporation and the other Releasees, other than as provided for in the Plan.”

THIS FIRST AMENDMENT to the Cott Corporation Severance and Non-Competition Plan is hereby adopted as of August 1, 2018.

COTT CORPORATION

By: /s/ Marni Morgan Poe

Name: Marni Morgan Poe

Title: Vice President, General Counsel and Secretary