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F I L E D
 Superior Court of California
 County of San Francisco
 JAN 03 2024
 CLERK OF THE COURT
 BY: Don Hori
 Deputy Clerk

7 Attorneys for Plaintiffs,
 MATTHEW HOWARD; A.W. MILLER
 8 ENTERPRISES, INC.

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

12 MATTHEW HOWARD and A.W. MILLER)
 ENTERPRISES, INC.,)
 13 Plaintiffs,)
 14 vs.)
 15 FEDERATED MUTUAL INSURANCE)
 16 COMPANY; BACCARELLA INSURANCE)
 SERVICES, INC.; and DOES 1-20, inclusive,)
 17 Defendants.)
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Case No. CGC-22-601299
**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' MOTION FOR SUMMARY
 ADJUDICATION AGAINST FEDERATED
 MUTUAL INSURANCE COMPANY**
 Date: January 3, 2024
 Time: 9:30 a.m.
 Dept.: 302
 Complaint Filed: August 17, 2022
 Trial Date: February 26, 2024

1 Defendant Federated Mutual Insurance Company's Motion for Summary Judgment or, in the
2 alternative, Motion for Summary Adjudication and Plaintiffs' Motion for Summary Adjudication
3 against Defendant Federated Mutual Insurance Company came on for hearing before this Court on
4 January 3, 2024, at 9:30 a.m. in Department 302. Plaintiffs and Defendant were represented by their
5 respective counsel of record. After reviewing the moving, opposition and reply papers, and
6 considering the arguments of counsel:

7 IT IS HEREBY ORDERED that Plaintiff A.W. Miller Enterprises, Inc.'s motion for summary
8 adjudication is granted.

9 General contractor A.W. Miller engaged subcontractor Gold Star Plumbing for a 2016 project.
10 Gold Star employee Matthew Howard was gravely injured on the jobsite when he fell off a temporary
11 walkway. Howard sued A.W. Miller in Calaveras County Superior Court. A.W. Miller tendered a
12 claim for defense to Federated Mutual Insurance Company ("Federated"), contending it was an
13 additional insured on Gold Star's insurance policy. Federated denied the claim, and Howard won a
14 judgment against A.W. Miller for roughly \$16.8 million dollars. A.W. Miller sued Federated before
15 this court claiming the insurer wrongfully denied its claim for defense. It now moves for summary
16 adjudication on the issue of Federated's duty to defend.

17 "The duty to defend is broader than the duty to indemnify." (*Montrose Chemical Corp. v.*
18 *Superior Court* (1993) 6 Cal.4th 287, 295.) It exists where there is a possibility the underlying claim
19 may fall within policy coverage. (*Id.* at 300.) Whether the insurer owes a defense depends on the
20 policy terms; the allegations in the third party's complaint; and all facts known by the insurer at the
21 inception of the third-party suit. (*Id.* at 295.) On a motion for summary adjudication, the insurer must
22 be able to negate potential coverage as a matter of law. (*Maryland Cas. Co. v. National American Ins.*
23 *Co. of Calif.* (1996) 65 Cal.App.4th 21, 33.) If a triable issue of fact exists concerning whether the
24 claim is covered, the duty to defend is established. (*Horace Mann Ins. Co. v. Barbara B.* (1993) 4
25 Cal.4th 1076, 1085.)

26 Here, Federated erroneously concluded A.W. Miller was not an additional insured. Gold Star's
27 policy allowed additional insureds when it and the party to be insured "agreed in writing in a contract
28 or agreement that such person or organization be added as an additional insured on your policy."

1 (Decl. Coleman, exh. A.) In tendering its claim, A.W. Miller submitted (1) Gold Star's July 14, 2016,
2 bid proposal (it never executed a formal contract with A.W. Miller); and (2) an August 25, 2016, email
3 from Gold Star asking its insurance broker to send certificates naming A.W. Miller as an additional
4 insured. (Decl. Coleman, exh. B; undisputed material fact 59.) These documents evince an agreement,
5 confirmed in writing, to have A.W. Miller added as an additional insured. The court rejects
6 Federated's strict interpretation that "there is no written contract or agreement by which Gold [Star]
7 agreed to add A.W. Miller as an additional insured." (Decl. Coleman, exh. B.) These documents can
8 be read together as an agreement in writing, thereby satisfying Federated's requirement. As Federated
9 cannot negate potential coverage as a matter of law, A.W. Miller has established the duty to defend.

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11 IT IS SO ORDERED.

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13 Dated: 1/3/24

lll
14 Superior Court of California, County of San Francisco

15 RICHARD ULMER
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