

1 is committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes &*
2 *Bands of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

3 III. DISCUSSION

4 As an initial matter, it is unclear from Plaintiffs’ briefing on the motion if they are
5 arguing that the Court committed manifest error or if previously unavailable evidence or
6 authority warrants reconsideration. As noted accordingly throughout the Court’s discussion
7 below, Plaintiffs do not cite to any legal authority or factual evidence that was unavailable at the
8 time the Parties briefed the summary judgment motions. To the extent Plaintiffs are attempting to
9 relitigate issues decided on summary judgment by making arguments or citing to authority they
10 failed to raise in their opposition to Defendants’ motion for summary judgment, the Court could
11 simply deny the motion to reconsider on that basis alone. *Marlyn Nutraceuticals*, 571 F.3d
12 at 880. Instead, out of an abundance of caution and to clarify any potential misconceptions
13 regarding the Court’s prior order, the Court will assume Plaintiffs are raising only manifest error
14 arguments.

15 Plaintiffs fail to establish that the Court committed any manifest errors. As the Court
16 understands Plaintiffs’ otherwise indistinct arguments, Plaintiffs primarily appear to assign error
17 to the dismissal of the breach of contract and conversion claims because Defendants’ alleged
18 anticipatory repudiation prohibits the Court from deciding the issues on nonoccurrence of a
19 condition precedent grounds. *See* Dkt. No. 91 at 2–3.

20 For the first time, Plaintiffs cite to a footnote from the legal authority the Court relied on
21 in reaching its determination on the breach of contract issue,¹ for the proposition that “[f]ailure to
22

23 ¹ The Court previously highlighted Plaintiffs’ failure to provide any legal authority to substantiate a similar
24 argument it raised in opposition to summary judgment on the condition precedent issue. *See* Dkt. No. 86 at 13.
Plaintiffs do not even attempt to explain why they failed to reference this footnote in their opposition on this issue,
despite Defendants having relied on this case in their affirmative briefing. *See* Dkt. No. 26 at 24; Dkt. No. 38 at 9.

1 satisfy a condition precedent does not excuse the promisor's performance if the failure was the
2 result of misconduct or fault of the promisor.” Dkt. No. 91 at 2 (quoting *Tacoma Northpark, LLC*
3 *v. NW, LLC*, 96 P.3d 454, 459 n.4 (Wash. App. 2004)). Nothing in *Tacoma Northpark* provides
4 context to assist the Court in the application of the exception stated in the footnote (*see* 96 P.3d
5 at 459), nor do Plaintiffs provide any argument indicating a specific error on the Court’s part
6 arising from the stated exception. Thus, the Court is left to guess at the specific error in its ruling
7 that Plaintiffs are alleging.

8 Plaintiffs’ argument appears to be that (1) Defendants’ own conduct caused the daycare
9 license to be temporarily suspended; (2) Defendants’ actions in response to the suspension
10 allegedly prove, or at least raise a dispute of fact, regarding Plaintiffs’ claim that Defendants
11 anticipatorily breached the contract; and therefore, (3) the Court erred in concluding that the
12 absence of DCYF approval of the license transfer prevents Plaintiffs from arguing breach of
13 contract based on Defendants’ alleged anticipatory repudiation at trial. Dkt. No. 91 at 2–3.
14 Defendants note that Plaintiffs appear to conflate, without support, DCYF’s temporary license
15 suspension protocols with DCYF’s license transfer protocols. Dkt. No. 94 at 3–4. The Court
16 agrees. Plaintiffs’ argument would only impact the Court’s analysis in the way Plaintiffs suggest
17 if DCYF’s temporary license suspension actually resulted in the license transfer being denied.
18 But as Plaintiffs correctly point out, “[t]here is no evidence in the record that DCYF *refused* to
19 transfer the license.” *Id.* at 2 (emphasis in original). The undisputed facts on summary judgment
20 established that there was still time between the original license suspension and the closing date
21 during which the suspension could have been lifted and transfer approval could have been
22 secured. Dkt. No. 86 at 4, 12; *see also* Dkt. No. 26 at 11; Dkt. No. 33-5 at 81–82 (179:23–
23 180:16); Dkt. No. 33-31. Thus, the Court’s inquiry properly turned on whether Defendants acted
24 in good faith to try to bring about the license transfer prior to the closing date despite the

1 temporary suspension. *See CHG Int'l, Inc. v. Robin Lee, Inc.*, 667 P.2d 1127, 1129–30 (Wash.
2 App. 1983); *see also Tacoma Northpark, LLC*, 96 P.3d at 458–59 (citing *CHG Int'l* in the
3 relevant footnote, but ultimately deciding that the exception did not apply and instead applying
4 the good faith standard). In that regard, the Court concluded that “Defendants were actively
5 working toward DCYF approval up to—and even after—DCYF suspended the daycare license”
6 based on the undisputed facts on summary judgment. Dkt. No. 86 at 13. Thus, the Court did not
7 err in concluding that the nonoccurrence of the condition precedent—which was DCYF’s
8 *approval* of the license transfer—precluded liability as a matter of law in dismissing the breach
9 of contract claim. *Id.*

10 Plaintiffs close their motion with an argument based on an out-of-context block quote in a
11 case that tangentially discusses the disposition of earnest money after the failure of a condition
12 precedent in a real estate transaction, citing *Langston v. Huffacker*, 678 P.2d 1265 (Wash. App.
13 1984), without explaining how the case relates to the legal standard the Court must apply to their
14 motion for reconsideration.² *See* Dkt. No. 91 at 3. The Court must again assume that Plaintiffs
15 are raising a manifest error argument in some way related to the newly identified authority.³

16 As best as the Court understands their argument, Plaintiffs appear to assign error to the
17 Court’s dismissal of their conversion claim, arguing without reference to any of the Court’s
18 specific decisions on summary judgment that “[e]ven if there was a failure of the condition
19

20 ² *Langston* was decided in 1984, and Plaintiffs again fail to explain why this “legal authority [] could not have been
brought to [the Court’s] attention earlier with reasonable diligence.” *See* LCR 7(h).

21 ³ Additionally, Defendants affirmatively moved for summary judgment on the conversion claim “for the same
22 reasons they are not liable for breach of contract.” Dkt. No. 26 at 30. Plaintiffs’ opposition on the conversion claim
was based solely on their argument that Defendants anticipatorily beached the contract, instead of raising these
23 *Langston*-based arguments, even though Defendants affirmatively argued failure of condition precedent as
alternative grounds for dismissing the breach of contract claim. Dkt. No. 36 at 24. The Court could deny
24 reconsideration on this issue based on this failure alone. *Marlyn Nutraceuticals*, 571 F.3d at 880 (“A motion for
reconsideration may not be used to raise arguments . . . for the first time when they could reasonably have been
raised earlier in the litigation.” (internal quotation marks and citation omitted)).

1 precedent, that failure not only relieved Plaintiffs of the obligation to perform under the contract
2 but also allowed them to recover their earnest money.” *Id.* This argument would be relevant if,
3 on the Parties’ agreed-upon closing date, when they would have been obligated to perform under
4 the contract *but for* the nonoccurrence of the condition precedent, the \$100,000 at issue was still
5 considered earnest money as described in the *Langston* case. Unfortunately for Plaintiffs, their
6 right to “recover any amount theretofore paid” because of the nonoccurrence of the condition
7 precedent pursuant to the “universal rule prevailing in this country” as described in *Langston*,
8 678 P.2d at 1270, would only apply so long as the contract terms regarding the “earnest money”
9 at issue there were the same as they are here. But they are not. Here, the undisputed facts show
10 that Plaintiffs’ “earnest money” payment was converted to a “nonrefundable deposit” upon
11 Plaintiffs’ waiver of the financing contingency prior to the closing date, and even prior to the
12 license suspension and Defendants’ alleged repudiation. *See* Dkt. No. 27 ¶¶ 10–12, 16, 20, 23.
13 Thus, *Langston* is inapplicable, as that case did not involve a contractually governed
14 nonrefundable deposit. Here, the terms of the Parties’ agreement govern the disposition of the
15 nonrefundable deposit. *Id.* Plaintiffs therefore fail to establish any manifest error in the Court’s
16 conclusion that “[b]ecause Plaintiffs’ breach of contract claim against Defendants fails . . . there
17 is no evidence of wrongful retention *per the Parties’ agreement*” warranting dismissal of the
18 conversion claim. Dkt. No. 89 at 20 (emphasis added).

19 As a final matter, the Court will address Plaintiffs’ misconception that it somehow
20 “adopt[ed] a rule that would permit a party induce another party to enter into an agreement and
21 then scuttle a condition precedent, thus retaining the other party’s earnest money—in this case,
22 \$100,000. . . . creat[ing] an incentive for parties to undermine the satisfaction of conditions
23 precedent and then profit from their conduct.” Dkt. No. 91. The Court did no such thing. The
24 Parties moved for summary judgment as to Defendants’ liability on Plaintiffs’ respective claims.

1 The Court applied the law as it stands to the specific facts of this case as presented by the Parties
2 on summary judgment. The Court did not adopt or announce any new generally applicable rules
3 of law. Further, nothing in the Court’s decision limits Plaintiffs’ ability to prove and recover
4 damages for any of their remaining claims, including fraudulent inducement and unjust
5 enrichment, either of which would presumably allow for recovery of the \$100,000 should
6 Plaintiffs meet their necessary burden at trial.

7 **IV. CONCLUSION**

8 Plaintiffs have failed to identify any errors, let alone any manifest errors, in the Court’s
9 rulings on summary judgment. Consequently, Plaintiffs’ motion for reconsideration (Dkt.
10 No. 91) is DENIED.

11 Dated this 6th day of October 2023.

12 
13 _____
14 Tana Lin
15 United States District Judge
16
17
18
19
20
21
22
23
24