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MAY 2 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NICHOLE L. KONOLOFF; JASON
EAVES,

Plaintiffs-Appellants,

v.

SAFECO INSURANCE COMPANY OF
AMERICA, a Liberty Mutual Company; et
al.,

Defendants-Appellees.

No. 22-35759

D.C. No. 3:20-cv-01622-AR

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, Chief District Judge, Presiding

Submitted May 2, 2024 **

Before: FERNANDEZ, SILVERMAN, AND N.R. SMITH, Circuit Judges.

Plaintiffs appeal the district court's grant of summary judgment to
Defendants. We have jurisdiction under 28 U.S.C. § 1291. "We review de novo a

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court’s grant of summary judgment, considering the record in the light most favorable to the non-moving party.” *G & G Closed Cir. Events v. Liu*, 45 F.4th 1113, 1115 (9th Cir. 2022). We affirm.

1. In their opening brief and in two motions to supplement the record (Dkts. 10, 22), Plaintiffs attached additional documents that were not presented to the district court. We will not consider any documents on appeal that were not presented to the district court and hereby deny the motions. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988) (“Papers not filed with the district court or admitted into evidence by that court are not part of the clerk’s record and cannot be part of the record on appeal.”).

2. Plaintiffs challenge the district court’s grant of summary judgment, because their counsel before the district court was ineffective. However, absent due process concerns, which are not present here, ineffective assistance of counsel is not a basis to reverse a district court’s grant of summary judgment. *See Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) (per curiam) (“Generally, a plaintiff in a civil case has no right to effective assistance of counsel.”).

3. The district court did not err in granting summary judgment on Plaintiffs' claims against Defendants.¹ Plaintiffs failed to present evidence showing triable issues of material fact precluding summary judgment against Defendants. Notably, Plaintiffs failed to establish any damages arising from the alleged motor vehicle accident. Additionally, Plaintiffs failed to establish that Subaru materially misrepresented, concealed, or failed to disclose any material information about an alleged sudden acceleration defect.²

AFFIRMED.

¹ Because Plaintiffs' claims fail on the merits, we do not address Defendants' contentions that Plaintiffs' opening brief should be struck.

² Plaintiffs similarly fail to set forth facts to support an award of punitive damages or injunctive relief.