

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 20 2017

FOR THE NINTH CIRCUIT

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

ADAM VICTOR, individually and on behalf
of all others similarly situated,

Plaintiff-Appellant,

v.

R.C. BIGELOW, INC.,

Defendant-Appellee.

No. 16-16639

D.C. No. 3:13-cv-02976-WHO

MEMORANDUM*

ALEX KHASIN, individually and on behalf
of all others similarly situated,

Plaintiff-Appellant,

v.

R.C. BIGELOW, INC.,

Defendant-Appellee.

No. 16-16641

D.C. No. 3:12-cv-02204-WHO

Appeal from the United States District Court
for the Northern District of California
William Horsley Orrick, District Judge, Presiding

Argued and Submitted November 15, 2017
San Francisco, California

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

Before: BERZON and FRIEDLAND, Circuit Judges, and SESSIONS,** District Judge.

Adam Victor and Alex Khasin appeal the district court orders granting summary judgment to Bigelow on their injunctive relief claims.¹ The district court concluded in these related cases that Victor and Khasin lacked Article III standing to seek an injunction forcing Bigelow to conform its labels to Food and Drug Administration requirements.

“Once a plaintiff has been wronged, he is entitled to injunctive relief only if he can show that he faces a ‘real or immediate threat . . . that he will again be wronged in a similar way.’” *Munns v. Kerry*, 782 F.3d 402, 411 (9th Cir. 2015) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)) (internal quotation marks omitted). The relevant testimony in the two cases is nearly identical,² and shows that Plaintiffs do not face such a threat of future harm. Victor and Khasin

** The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

¹ The litigation originally involved claims for restitution as well. The district court granted Defendant summary judgment on those claims, and Plaintiffs only appeal the summary judgment on their injunctive relief claims.

² The similarity may not be a coincidence. Counsel for Victor and Khasin repeatedly made the troubling suggestion at oral argument that their testimony about their desire to buy Bigelow products may have been driven not by their true intentions but rather by what he believed would be the answer most likely to cause a court to hold that they had standing. We caution that coaching witnesses to offer false testimony would be a serious violation of professional standards and could amount to criminal conduct. *See* Cal. Penal Code § 127; Cal. R. Prof'l Conduct 5-200(B).

testified that, having discovered what they believed to be mislabeling on tea packages, they will consider buying Bigelow tea again only if they receive an injunction first. They will not consider purchasing even those teas with updated packaging that they acknowledge is accurate and resolves their concerns. Because they will not consider buying even properly labeled tea until they receive an injunction, Victor and Khasin will not be harmed by wondering if the tea is still mislabeled or by buying the tea without knowing if it is still mislabeled. Victor and Khasin do not face a real or immediate risk of being harmed again in the same manner and so lack Article III standing to seek injunctive relief.

AFFIRMED.