

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSH WEBBER, et al., :
: 19-CV-0610 (RWL)
Plaintiffs, :
:
- against - : **ORDER**
:
DAMON ANTHONY DASH, et al., :
:
Defendants. :
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ROBERT W. LEHRBURGER, United States Magistrate Judge.

1. **Jury Trial:** Plaintiffs' application to "waive" their jury demand and proceed with a bench trial is DENIED. Plaintiff's jury demand may be withdrawn only with consent of the Defendants, absent an applicable exception. Fed. R. Civ. P. 38(d). Defendants object to the request, and no other exception applies. The one case cited by Plaintiffs from the Northern District of Ohio is inapt because, there, the defendant had previously objected to the plaintiff's jury demand. See *Chicago Insurance Company v. Capwill*, No. 3:01-CV-2588, 2010 WL 2723716, at *1 (N.D. Ohio July 8, 2010). Defendants did not do so here. Accordingly, unless and until Defendants consent, trial will be by jury.

2. **EstoppeL:** Plaintiffs contend that Defendants should be collaterally estopped from defending Plaintiffs' defamation claims with respect to the statement regarding Plaintiffs purportedly having robbed a child. The basis for the application is a very recent (September 29, 2021) decision in *Brown v. Dash*, No. CV 20-10676, pending in the Central District of California, granting Brown summary judgment on the same statement (and several other false and defamatory statements) insofar as it applied to him. The Court denies the motion without prejudice. The parties have not sufficiently briefed whether and to what extent the elements of collateral estoppel are satisfied. For instance,

the California court determined that Brown was not a public figure but did not address that issue with respect to the Plaintiffs in this case. Similarly, it is not apparent whether the California court found the statement false in its entirety, or instead only determined its falsity with respect to Brown. Plaintiffs may renew the issue, if they believe they have a good faith basis for doing so, by way of a motion in limine in conformity with the schedule for pretrial filings.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: October 8, 2021
New York, New York

Copies transmitted this date to all counsel of record.