

1 Plaintiff's causes of action against Defendants (the "Settlement Agreement"). (*See* ECF
2 No. 56.) Defendants argue two alternate reasons why Plaintiff does not have a right to
3 a jury trial during this phase: (1) Defendant's affirmative defense seeks an equitable
4 remedy, and (2) Title VII only contains a right to jury trial when compensatory or
5 punitive damages are at issue. (ECF No. 68-1.)

6 **A. Title VII**

7 Citing *Lutz v. Glendale Union High Sch.*, 403 F.3d 1061 (9th Cir. 2005),
8 Defendants argue that "Title VII grants parties a limited right to a jury trial only when
9 compensatory or punitive damages are at issue." (ECF No. 68-1, at 5 (citing *Lutz*, 403
10 F.3d at 1068).) This argument misunderstands *Lutz*. While *Lutz* did note that, under
11 Title VII, compensatory and punitive damages are legal remedies to which the right to
12 a jury trial attaches, it did so to contrast those remedies with the equitable remedies of
13 back pay and reinstatement to which the right to a jury trial does not attach. *See Lutz*,
14 403 F.3d at 1061 ("In light of the nearly uniform view of the courts of appeals that back
15 pay under Title VII must be tried to the court, it is particularly telling that Congress
16 provided a jury trial right for some Title VII claims while expressly declining to do so
17 for back pay.") (citations omitted). However, the issue to be decided by the finder of
18 fact during the first phase of this bifurcated trial is related to liability, namely, whether
19 or not Defendants are liable on a number of Plaintiff's causes of action based on the
20 Settlement Agreement. The decision in *Lutz* makes clear that plaintiffs do have a "jury
21 trial right on [the issue of liability]." *Id.* at 1067 (holding that the issue of liability
22 would be decided by the judge on remand, not because there was no right to a jury trial
23 on that issue, but because the plaintiff had waived that right). Accordingly, the Court
24 finds that, consistent with the Ninth Circuit's holding in *Lutz*, Plaintiff generally has
25 a right to a jury trial on the issue of liability.

26 **A. Seventh Amendment Right to a Jury Trial**

27 However, the specific issue that is relevant during the first phase of this
28 bifurcated trial is the validity of the Settlement Agreement, an issue that relates only

1 to Defendants’ affirmative defense. In the Ninth Circuit, “[a] litigant is not entitled to
2 have a jury resolve a disputed affirmative defense if the defense is equitable in nature.”
3 *Granite State Ins. Co. v. Smart Modular Techs., Inc.*, 76 F.3d 1023, 1027 (9th Cir.
4 1996) (citation omitted).¹ Defendants have plead an affirmative defense of settlement
5 and release based on agreement between Plaintiff and Defendants reached prior to the
6 institution of this lawsuit (the “Settlement Agreement”). (ECF No. 1-2, Ex. E, at 44.)

7 Defendants argue that they “seek to enforce the [Settlement Agreement]” and
8 that “[a] party who seeks to enforce a settlement agreement essentially seeks specific
9 performance of a contract.” (ECF No. 68-1, at 3.) This argument, however, ignores that
10 Defendants raised the Settlement Agreement as an affirmative defense that bars a
11 number of Plaintiff’s causes of action, but did *not* assert a counterclaim for specific
12 performance of that agreement. (See ECF No. 1-2, Ex. E, at 44.) Had Defendants
13 counterclaimed for specific performance rather than raise the affirmative defense of
14 release, that would be an equitable claim tried by the Court. *Adams v. Johns-Manville*
15 *Corp.*, 876 F.2d 702, 709 (9th Cir. 1989) (“An action for specific performance without
16 a claim for damages is purely equitable and historically has always been tried to the
17 court.”) (citations and internal quotation marks omitted).

18 In spite of their lack of counterclaim, Defendants respond that an affirmative
19 defense of release is similar to a motion to enforce a settlement agreement and the
20 Ninth Circuit and other courts have found settlement agreements to “essentially [be]
21 an action to specifically enforce a contract.” *Id.* But the cases involving motions to

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23 ¹ The Court notes that this is not necessarily the same in other circuits. Several
24 district courts have stated that “the right to trial by jury attaches to ‘claims’ and not
25 ‘defenses.’” *Burlington N. R. Co. v. Neb. Public Power Dist.*, 931 F. Supp. 1470, 1481
26 (D. Neb. 1996); see also *Goettsch v. Goettsch*, 29 F. Supp. 3d 1231, 1243 (N.D. Iowa
27 2014); *CPI Plastics, Inc. v. USX Corp.*, 22 F. Supp. 1373, 1377 (N.D. Ga. 1995). This
28 is consistent with some circuit decisions as well. See, e.g., *Taylor Corp. v. Four*
Seasons Greetings, LLC, 403 F.3d 958, 969 (8th Cir. 2005); *Tegal Corp. v. Tokyo*
Electron Am., Inc., 257 F.3d 1331, 1341 (Fed. Cir. 2001) (“In summary, this court
holds that a defendant, asserting only affirmative defenses and no counterclaims, does
not have a right to a jury trial in a patent infringement suit if the only remedy sought
by the plaintiff-patentee is an injunction.”). However, other courts have found that the
“right to a jury trial is . . . determined . . . by an appraisal of the claims, defenses, and
remedies.” *Kerr-McGee Corp. v. Bokum Corp.*, 453 F.2d 1067, 1071 (10th Cir. 1972).

1 enforce settlement agreements—such as those cited by Defendants, *e.g.*, *Adams*, 876
2 F.2d 702; *Ford v. Citizens and S. Nat. Bank, Cartersville*, 928 F.2d 1118 (11th Cir.
3 1991); *Warner v. Rossignol*, 513 F.2d 678 (1st Cir. 1975)—are not directly on point
4 because “it is well settled that a court has inherent power to enforce summarily a
5 settlement agreement involving an action pending before it.” *In re Suchy*, 786 F.2d 900,
6 903–04 (9th Cir. 1985) (citations omitted); *see also Ford*, 928 F.2d at 1121; *Warner*,
7 513 F.2d at 680–83; *In re Gerry*, 670 F. Supp. 276, 277 n.2 (N.D. Cal. 1987), *aff’d sub*
8 *nom. Adams v. Johns-Manville Corp.*, 876 F.2d 702 (9th Cir. 1989). In contrast to
9 *Adams*, *Ford*, and *Warner*, the Settlement Agreement was reached prior to the
10 institution of this lawsuit and did not involve an action pending before this Court. *See*
11 *In re Suchy*, 786 F.2d at 903–04. Thus, the Court does not have the inherent authority
12 that it would have had the Settlement Agreement been formed after Plaintiff filed suit.
13 Without guidance from these cases, the Court turns to first principles.

14 To determine whether there is a right to a jury trial, the Court determines whether
15 an affirmative defense is legal or equitable. *Adams*, 876 F.2d at 709 (citations omitted);
16 *Granite State*, 76 F.3d at 1027. In assessing this distinction, two factors are important:
17 (1) premerger custom, and (2) the remedy sought. *Id.* (citations omitted). Prior to the
18 merger of law and equity in 1938, the Supreme Court referred to “the bar of release”
19 as a “legal defense” and noted that a “release . . . is a . . . defense at law.” *Radio Corp.*
20 *of Am. v. Raytheon Mfg. Co.*, 296 U.S. 459, 462–63 (1935). However, the Supreme
21 Court also noted that “there are times when a release . . . is voidable in equity, and in
22 equity only.” *Id.*²

23 The First Circuit has noted a distinction between ways in which a defendant can
24 raise a release as a defense, specifically whether the parties to the contract containing
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26 ² The Court does note that some courts, primarily in the CERCLA context, have
27 referred to release as an “equitable defense.” *See, e.g., United States v. Smuggler-*
28 *Durant Min. Corp.*, 823 F. Supp. 873, 876 (D. Col. 1993); *United States v. Walerko*
Tool and Engineering Corp., 784 F. Supp. 1385, 1388 (N.D. Ind. 1992); *Peterson v.*
A. Guthrie & Co., 3 F. Supp. 136, 138 (W.D. Wash. 1933). However, none of these
courts explained why the defense was equitable and thus they are unpersuasive.

1 the release have or have not fulfilled their respective obligations. *See Warner v.*
2 *Rossignol*, 513 F.2d 678, 683 (1st Cir. 1975). In *Warner*, the parties reached an oral
3 settlement agreement after the institution of the lawsuit, but the defendant delayed
4 payment. *Id.* at 680–81. Due to the delay, the plaintiff purported to withdraw from the
5 settlement. *Id.* at 681. Several weeks after the plaintiff purported to withdraw from the
6 settlement, the defendant provided a check payment to plaintiff which the plaintiff
7 refused to cash. *Id.* The defendant responded by filing a motion to enforce the
8 settlement agreement, which the district court granted and the plaintiff appealed. *Id.* at
9 681–82. On appeal, the First Circuit held that:

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11 Plaintiff has claimed a jury trial on these matters. Accord and satisfaction
12 is a traditional affirmative defense at law apparently requiring, if
13 demanded, a jury determination of disputed material facts. *See Brown v.*
14 *Spofford*, 95 U.S. 474, 483–84, 24 L.Ed. 508 (1877); *Cushing v. Wyman*,
15 44 Me. 121 (1857); Fed. R. Civ. P. 8(c) & 38. But this is not a case where
the defending party raises a consummated accord and satisfaction in bar.
Rather the defendant seeks to block plaintiff’s continuation of an original
action by asking the court to specifically enforce a settlement contract
which plaintiff refuses to carry out. Specific performance is an equitable
proceeding.

16 *Id.* at 683 (citations omitted); *cf. Adams v. Johns-Manville Corp.*, 876 F.2d 702,
17 709–10 (9th Cir. 1989). In essence, the First Circuit distinguished between settlement
18 agreements where the parties have met their obligations under the contract, e.g., a
19 “consummated accord and satisfaction,” and settlement agreements where the parties
20 have not met their obligations, e.g., “asking the court to specifically enforce a
21 settlement contract which plaintiff refuses to carry out.” *Warner*, 513 F.2d at 683.
22 However, as noted above, *Warner* involved a motion to enforce a settlement agreement
23 and not an affirmative defense.

24 Overall, the Court finds that the caselaw on this issue is mostly inapposite. The
25 majority of cases that deal with this issue involve motions to enforce rather than
26 affirmative defenses. As the Settlement Agreement did not involve a case pending
27 before the Court at the time it was reached, it is unclear whether the Court could
28 actually summarily enforce that agreement, in contrast to *Adams*, *Ford*, and *Warner*.

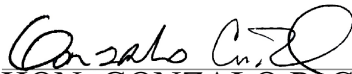
1 That said, the cases cited by Plaintiff where the validity of a release has been decided
2 by a jury did not actually analyze the issue of whether it should have been presented
3 to a jury, (ECF No. 77, at 2–4). *See, e.g., Callen v. Penn. R. Co.*, 332, U.S. 625, 628–29
4 (1948); *Wastak v. Lehigh Valley Health Network*, 342 F.3d 281, 295 (3d Cir. 2003);
5 *Shaw v. City of Sacramento*, 250 F.3d 1289, 1292 (9th Cir. 2001)

6 The Court finds that the most relevant fact is that Defendants have not sought
7 any affirmative relief. They have neither filed a counterclaim for specific performance
8 nor filed a motion to enforce the Settlement Agreement. Those two remedies ask the
9 Court to use its equitable powers to force the parties to adhere to an agreement. In
10 contrast, an affirmative defense of release merely asks the Court to dismiss Plaintiff’s
11 lawsuit as barred. Additionally, at least one court has noted that the validity of a release
12 is a question for the jury. *See Wastak*, 342 F.3d at 295. However similar to a
13 counterclaim for specific performance Defendants’ affirmative defense of settlement
14 and release is, the fact remains that Defendants are not actually requesting specific
15 performance. Rather they are merely raising the Settlement Agreement as a bar to a
16 certain number of Plaintiff’s causes of action and thus they are raising a legal defense.
17 Accordingly, the Court finds there is a right to a jury trial because Defendants are
18 seeking a legal remedy, not an equitable one.

19 III. CONCLUSION

20 For the reasons stated above, **IT IS HEREBY ORDERED** that Defendants’
21 Motion in Limine for a Bench Trial, (ECF No. 68), is **DENIED**.

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23 DATED: July 27, 2015

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25 HON. GONZALO P. CURIEL
26 United States District Judge
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