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===== Start of Answer #4 (1267 words) =====

1. MAY BUYER JOIN CLAIMS FOR FRAUD AND BREACH OF CONTRACT IN THE SAME SUIT AGAINST SELLER?

The buyer may join the claims for Fraud and Breach of Contract in the same suit against the seller. Here the parties are identical on both sides. Both of the amounts sued for exceed the \$75,000 damages requirement (although in certain situations they may also be aggregated) So long as the issues would not cause confusion by the litigation of the issues together, they are likely allowed to be joined. Because the Seller refused to follow through with the second contract because of the issues and falling out with Buyer regarding the painting, there is a nexus of the two claims to make it even more feasible to have the matters heard together, including the need for judicial efficiency and economy. Claims regarding RP generally must be heard in the FC district in which the property sits (California) which is discussed infra.

2. IS BUYERS ALLEGATION SUFFICIENT TO STATE A CLAIM FOR FRAUD INVOLVING THE PAINTING

Under the Federal Rules of Civil Procedure, Notice pleading is required, complaints are generally used to put the other party on Notice of the pending claims. However, greater specificity must be pleaded when a claim of fraud arises.

Here the parties had a valid contract (presumed written although the facts only say valid) -- however the item(good) was sold for excess of \$500, and as such, a writing would be needed to satisfy the Statute of Frauds (SOF) - although it should be noted that the item being sold is unique, it was not uniquely manufactured for the buyer, but merely unique) therefore the SOF would like control, to make the contract valid.

Here the facts state that the buyer alleged only that Seller committed 'Fraud in the supposed value' and sought \$1m in damages. This may not be enough to satisfy the heightened standard on the specificity of the pleading required under Federal Rules of Civil Procedure.

Here, the Buyer likely should have included information regarding the valid contract, including any material details required in the contract under SOF, the price paid, and the claim that it was an original Rothko, and supposedly worth \$1m, which was the price (value for exchange of bargain/detriment). That the parties executed the contract under concurrent conditions, with the seller turning over the painting and the buyer paying the contract price. Further, the buyer should plead how he came to learn of the fraud (painting being a fake) including articulated facts regarding the fraud by the Seller; and any remedial actions Buyer took to try to remedy the problem with Seller.

This may or may not be fatal to Buyer's cause of action, if Defendant files a 12 (b) motion, or an action on the pleadings for greater specificity, the court may allow the plaintiff leave to amend his pleading. This would ultimately be up to the judge (not a jury) to decide.

As part of the initial disclosures, under the Federal Rules of Civil Procedure, Buyer may also need to provide the contract, and any other documentation evidencing support of his cause of action against Seller.

3. DOES THE FEDERAL COURT HAVE SUBJECT MATTER JURISDICTION OVER THE SUIT?

Federal courts may hear cases and controversies that are at issue with either a federal question, or diversity of citizenship of the parties.

Here, Buyer was living in New York (And presumed by facts to be a resident of NY) and Seller was living in California (presumed by facts to be a resident of CA) Therefore the Federal Court (FC) would have subject matter jurisdiction, because of the diversity of citizenship of the two parties. Further the amount claimed is over the \$75,000 threshold required for Diversity actions.

California Federal Court would also be the proper venue to hear the matter, as to the Real Property, both the defendant and the property involved sit/reside within the State of California. As to the Fraud of the painting, the details are silent as to where the valid contract for the painting took place, however, the fact that the Seller is a resident of CA, would allow the claim to be brought there as proper venue.

Further, the Venue of California would be proper, because it is in the state where the Defendant Resides, as well as the state where the RP at issue is located. Filing in the Federal Court in California, also is the most straightforward way of allowing the court to gain Personal Jurisdiction over Seller.

Because the purchase of the Real Property, was not to occur until June 30th, Buyer would either need to wait until after that date to make sure that Seller did not follow through, or that seller had anticipatorily repudiated the contract, which would then allow Buyer to move forward with enforcement of the breach. Because there has to be an actual case or controversy and the court does not give advisory opinions, the Seller must actually breach prior to the matter being heard. The facts do not state what day the Buyer filed suit, but presuming it was after the time allowed by the contract and or repudiation occurred.

4. MAY THE FEDERAL COURT APPLY CALIFORNIA LAW TO DECIDE THE BREACH OF CONTRACT CLAIM INVOLVING THE REAL PROPERTY.

Federal Courts apply Federal Procedural law, and substantive state law (State in

which the Federal Court sits) Here the Federal Court would apply the substantive California law that affects contracts, and property to the Breach of Contract Claim for the RP. Further, it would also, likely apply California Law regarding the Fraud cause of action of the Painting. (same reasoning)

5. ON WHAT ISSUES, IF ANY, WOULD BUYER BE ENTITLED TO A JURY TRIAL?

Judges are the triers of law and Jury are the triers of fact. Judges have exclusive rights to hear any matters involving equitable remedies - an equitable remedy is provided when a legal (money damages) remedy is inadequate. Specific Performance is considered an equitable remedy and as such would be decided by a Judge rather than a jury. (other equitable remedies include TROs, Injunctions, constructive trusts).

Typically any matters that may be resolved with an adequate legal remedy are first decided by a jury, and then the judge will make their ruling on an issues where equitable remedies are requested.

Although the right to a jury for a civil trial 7th Amendment -- is not extended to the states through the 14th amendment, California does provide jury trials on civil actions.

The Breach of Contract action for the Fraud of the painting would be decided by a jury.

Because the Buyer resold the painting to another party (benefited purchaser for value) the court cannot order rescission of the contract for the sale of the painting, which would allow the Seller to take back the painting and the buyer to take back his money. This would also be considered an equitable remedy and one that

would not be available to go before a jury. However, as the facts state a BPV has obtained the painting for \$200, this remedy choice becomes moot. Leaving Legal Damages (money damages as the remedy.)

If the buyer decides later that money damages would be adequate for the Breach of Contract on the RP matter, rather than specific performance, then that too may be decided by a jury. However, because RP is considered unique, specific performance as a remedy may be allowed. However, the Plaintiff again, would not be entitled to have the matter decided by the jury, but rather the Judge would make the final decision.

Question #1 Final Word Count = 1267

===== End of Answer #4 =====