

his federally-protected rights, as well as pendant state tort causes of action. The defendants moved to dismiss, which motion was briefed and orally argued by the parties. At the conclusion of oral argument, I granted the motion to dismiss the § 1983 cause of action on the ground that “color of state law” was not involved in the hazing incident, even assuming that it occurred as alleged. *See Martinez v. Colon*, 54 F.3d 980, 987 (1st Cir. 1995) (holding that police officer who shot fellow officer with his service revolver while on duty was not exercising any power by virtue of state law and conduct was not in any meaningful way related to official status or performance of police duties). I also dismissed without prejudice Givens’ state causes of action. *See* 28 U.S.C.A. § 1367(c)(3) (West 1993) (providing that district court may decline to exercise supplemental jurisdiction over remaining claims where it has dismissed all claims over which it has original jurisdiction).

Out of an abundance of caution, and based on the representations made at oral argument, I granted the plaintiff leave to file a Third Amended Complaint solely setting forth a claim for retaliation by certain of the defendants. The plaintiff did thereafter file a Third Amended Complaint, and has also filed a Motion to Add Argued Factual Detail to Amended Complaint and a Motion to Reconsider the Court’s Dismissal. The defendants have again moved to dismiss. They have also responded to the plaintiff’s motions and the plaintiff has replied and all of the

motions are thus ripe for decision.¹

Nothing in the new allegations or arguments made by the plaintiff persuades me to reconsider my earlier decision. In addition, I find that no valid claim for retaliation is alleged in the Third Amended Complaint and that it should therefore be dismissed. I agree with the defendants that based on the plaintiff's allegations, there has been no actionable retaliation for exercise of a protected constitutional right. *See Huang v. Bd. of Governors of the Univ. of N.C.*, 902 F.2d 1134, 1140 (4th Cir. 1990) (holding that plaintiff in § 1983 retaliation claim must show that retaliation was as a result of exercise of protected rights and that retaliation deprived him of some valuable benefit).

For the foregoing reasons, I will deny the plaintiff's motions and dismiss the action. A separate judgment consistent with this opinion is being entered herewith.

DATED: August 29, 2003

United States District Judge

¹ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.